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PUC DOCKET NO. 52322

APPLICATION OF THE ELECTRIC	§	
RELIABILITY COUNCIL OF	§	PUBLIC UTILITY COMMISSION
TEXAS, INC. FOR A DEBT	§	
OBLIGATION ORDER TO	§	
FINANCE UPLIFT BALANCES	§	
UNDER PURA CHAPTER 39,	§	OF TEXAS
SUBCHAPTER N, FOR AN ORDER	§	
INITIATING A PARALLEL	§	
DOCKET, AND FOR A GOOD	§	
CAUSE EXCEPTION	§	

**CALPINE CORPORATION’S RESPONSE TO STAFF’S RECOMMENDATION TO OPEN
A PARALLEL DOCKET**

TO THE HONORABLE HUNTER BURKHALTER, ADMINISTRATIVE LAW JUDGE:

COMES NOW Calpine Corporation (“Calpine”), and files this Response pursuant to Order No. 1.¹ In support thereof, Calpine would show as follows:

I. BACKGROUND

In its Application underlying this proceeding, the Electric Reliability Council of Texas, Inc. (“ERCOT”) requests that the Public Utility Commission of Texas (“Commission”) open a separate docket, to be processed in parallel with this docket, in which eligible load-serving entities (“LSEs”) subject to Subchapter N of the Public Utility Regulatory Act (“PURA”)² should be required to make their one-time election regarding whether to opt out of uplift charges.”³ Also in this parallel docket, ERCOT suggests that LSEs should be required to provide documentation of their exposure to the costs included in the Uplift Balance⁴ so that ERCOT may

¹ Order No. 1 Entering Protective Order, Requiring Commission Staff’s Recommendations, Adopting a Procedural Schedule, Notifying the Parties of a Prehearing Conference, and Discussing Other Procedural Matters at 3 (Jul. 20, 2021).

² TEX. UTIL. CODE §§ 11.001-66.016 (“PURA”).

³ Application at 2 (Jul. 16, 2021).

⁴ The “uplift balance” is defined as: an amount of money of not more than \$2.1 billion that was uplifted to load-serving entities on a load ratio share basis due to energy consumption during the period of emergency for reliability deployment price adder charges and ancillary services costs in excess of the commission’s system-wide

quantify the amounts to be financed under Subchapter N.⁵ ERCOT's Application represents that this parallel docket is contemplated by PURA § 39.653(b)(3), which require the Commission to set forth a "process" in its debt obligation order that will require LSEs to submit such information.⁶

On July 27, 2021, Commission Staff ("Staff") filed its recommendation on ERCOT's request for opening of a parallel proceeding.⁷ Order No. 1 allows all other parties to respond to Staff's recommendation by July 30, 2021.⁸ Accordingly, Calpine submits the below Response.

II. CALPINE'S RESPONSE TO STAFF'S RECOMMENDATION

Calpine does not object in principle to the resolution of certain issues through a "parallel docket," but proposes alternate recommendations from Staff in part related to the objectives and processing of the docket. Calpine requests that the administrative law judge ("ALJ") expound on some areas of Staff's recommendation should an order be issued opening a parallel proceeding.

a. Calpine does not object to a parallel proceeding provided a limited opportunity exists to scrutinize the filings made therein.

Staff's recommendation is that the parallel docket serve as a "clearinghouse" for filings made by entities electing to opt out of Uplift Charges⁹ and by LSEs submitting documentation of

offer cap, excluding amounts securitized under Subchapter D, Chapter 41. The term does not include amounts that were part of the prevailing settlement point price during the period of emergency. PURA § 39.652(4).

⁵ *Id.*

⁶ *Id.* at 3.

⁷ Commission Staff's Recommendation on Sufficiency of the Application and Notice, Request for Good Cause Exception, and Request for Parallel Proceeding (Jul. 27, 2021) ("Staff's Recommendation").

⁸ Order No. 1 at 3 (Jul. 20, 2021).

⁹ "Uplift charges" means charges assessed to load-serving entities to repay amounts financed under this subchapter to pay the uplift balance and reasonable costs incurred by a state agency or the independent organization to implement a debt obligation order under Section 39.653, 39.654, or 39.655, including the cost of retiring or refunding existing debt. PURA § 39.652(5).

their Uplift Balance exposure for the purpose of receiving financing proceeds.¹⁰ While Staff submits that the present docket must determine the *process* for documenting Uplift Balance exposure,¹¹ Staff does not represent that the present docket must determine the *actual* amount of Uplift Balance exposure for each LSE. Additionally, Staff's proposed parallel docket would not be a contested proceeding wherein the actual amounts of Uplift Balance exposure are determined per LSE. Further, while Staff's recommendation requires ERCOT to confirm that each LSE submitted documentation as required by the process adopted under this docket's debt financing order, ERCOT explicitly would not verify any of the cost details provided by the LSEs.¹²

The result of Staff's proposal is a parallel proceeding that merely serves as a repository for opt-out entities and LSEs to submit filings which, in the case of LSEs submitting Uplift Balance exposure documentation, would result in no substantive verification of the proffered amounts. Calpine proposes that, should the Commission open a parallel docket as suggested by Staff, it should be one in which the Uplift Balance filings and the supporting data are subject to some level of scrutiny and verification by LSEs, ERCOT, Staff and the Commissioners, akin to what would occur in a more typical contested case proceeding – although possibly much more limited. This would allow Staff, ERCOT, and LSEs to test the validity and accuracy of the data offered to support exposure filings as necessary to ensure the accuracy thereof. This important feature provides transparency in substantiating the amounts for which each LSE requests financing proceeds and protects the public and market participants against financing unqualified amounts.

¹⁰ See Staff's Recommendation at 6.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

- b. Opt-outs should be voluntary for all eligible opt-out entities. For eligible transmission-voltage customers, opting out should be prompted by a form notice sent to market participants by ERCOT, which retail electric providers then send to their customers.**

Staff proposes that retail electric providers (“REPs”) be required to notify transmission-voltage customers in writing of the right to opt out of Uplift Charges.¹³ If a customer does not respond with a statement affirmatively opting out, then “the REP must assume that the customer has elected to opt out.”¹⁴ Staff does not propose this assumption for other eligible opt out entities, and this negates the very notion set forth in the statute that the customer must “opt,” through making a definitive choice. In fact, Staff recommends that all other categories of eligible entities be made to file affirmative statements electing to opt out in the proposed parallel docket.¹⁵

Calpine recommends that all eligible entities be treated in the same manner, such that opt-out eligible transmission-voltage customers must affirmatively state their intent to opt out of Uplift Charges. As discussed below, adequate notice should suffice to ensure such customers are apprised of the right to opt out. This will ensure that PURA § 39.653(d) is accurately implemented, as the plain language of the statute contemplates an active *opt-out* process rather than a default *opt-in* process, particularly because it conditions such opt-out on the payment in full by the relevant entity of all invoices owed during the period of the emergency.¹⁶

To satisfy notice to eligible transmission-voltage customers, Calpine recommends that ERCOT provide a form notice for REPs to use in this endeavor. A standardized notice will ensure that all customers are adequately and equally apprised of the ability to voluntarily opt out.

¹³ *Id.* at 6.

¹⁴ *Id.*


¹⁵ *See id.* at 5-6.

REPs will then be responsible for sending the form notice to their transmission-voltage customers. The notice could also advise customers that opting out will result in the customer not receiving finance proceeds, as described in PURA § 39.653(d). Calpine would additionally propose that ERCOT consult with interested parties in preparing the form notice.

¹⁶ PURA § 39.653(d) allows certain entities to opt out of uplift charges “by paying in full all invoices owed for usage during the period of emergency.”

Respectfully submitted,

Diana Woodman Hammett
Vice President & Managing Counsel, Legal
Department
Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Direct: (713) 820-4030
Email: diana.woodmanhammett@calpine.com


By: 

Chris Reeder
State Bar No. 166923300
Maria Faconti
State Bar No. 24078487
Chad Johnson
State Bar No. 24026259
Alaina Zermeno
State Bar No. 24098656
HUSCH BLACKWELL, LLP
111 Congress Avenue, Suite 1400
Austin, Texas 78701
Phone: (512) 479-1154
Fax: (512) 481-1101
chris.reeder@huschblackwell.com
maria.faconti@huschblackwell.com
chad.johnson@huschblackwell.com
alaina.zermeno@huschblackwell.com

**ATTORNEYS FOR:
CALPINE CORPORATION**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been served on all parties of record via filing on the Commission's Interchange on the 30th day of July 2021 in accordance with Order No. 2, issued in Docket No. 52322.



Chris Reeder