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

SHELL ENERGY NORTH AMERICA (US) LP'S RESPONSE TO COMMISSION ORDER REQUESTING BRIEFING

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION:

Shell Energy North America (US) LP ("Shell Energy"), files this Response to the Commission's Order Requesting Briefing ("Order").[1] The Order indicates that parties should file responsive briefs by August 4, 2021, so this Brief is timely filed.

I. INTRODUCTION AND SUMMARY

Shell Energy[2] is the upstream corporate owner of REPs and QSEs that together participate in the ERCOT market to serve retail customers. Shell Energy is also a wholesale market participant, as a power marketer and congestion revenue rights holder. Shell Energy also provides portfolio services, including serving as QSE and managing wholesale power supply, to several unaffiliated LSEs that serve customers in the ERCOT market. From the outset of the restructured ERCOT-area electric markets, Shell Energy has been an active market participant and has additionally participated extensively in ERCOT committees and groups contributing to strengthen market rules and ensure competitiveness. With that history and the experience of its

[1] Order Requesting Briefing (Jul. 21, 2021).

[2] Shell Energy North America (US) LP is also registered as an Option I REP.

extensive involvement, Shell Energy offers these recommendations in connection with the Commission's Order.

Shell Energy believes that in determining the extent to which a Load Serving Entity ("LSE") is exposed to the costs included in the uplift balance,[3] the Commission must consider only the LSE's uplift balance without netting that amount against any revenues or payments the LSE or its affiliates may have received from adder charges or ancillary services payments exceeding the system wide offer cap. Shell Energy explains that conclusion below.

II. DISCUSSION

The Commission has requested briefing on the following questions:

> **Question 1: Does the phrase *exposed to the costs included in the uplift* contemplate offsetting the amounts paid in excess of the commission's system-wide offer cap by amounts received in excess of the commission's system-wide offer cap? If so, does this offset include amounts received by entities affiliated with the entity that made such payments?**
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> **Question 2: What is the appropriate definition for entities affiliated with the entity that made such payments? If the entity that made such payments is part of a larger business structure, what is the highest level of the business structure (up to the ultimate parent of the larger business structure) that should be used to identify the affiliated entities whose amounts received should be used as an offset when determining the exposure of the entity that made such payment?**

Shell Energy agrees with Rep. Paddie's letter to the Commission dated August 2, 2021,[4] stating the Legislature did not expect the Commission to calculate an LSE's exposure to the uplifted costs specified in HB 4492 ("Uplift Costs") based on netting that exposure against any payments that an LSE's affiliates may have received. As Rep. Paddie stated, "The legislation is clear that each load-serving entity is to provide documentation of its own exposure to the uplift

[3] Tex. Util. Code § 39.653 (b)(3).

[4] Letter of Rep. Chris Paddie to the Commission, August 2, 2021, interchange item no. 67.

costs (see, for example Section 39.653(b)(3)). It does not contemplate or authorize any "netting" between companies." As several other parties' responsive briefs explain, the bill does not contemplate or allow any netting. Shell Energy recommends the Commission adopt that position.

Separate and apart from the legal interpretation, as a policy matter, the Commission should not calculate an LSE's or its customers' exposure to the Uplift Costs based on netting as described in the briefing question. Netting in any form is discriminatory and distorts the problem of end-use customer exposure to Uplift Costs. It potentially requires an LSE's affiliates, some of whom may not have the same ownership group as the LSE or its end use customers, to finance those costs. Inter-company netting could require this without any showing that an LSE's affiliate's market position had some connection to the LSE or its customers, or even provided the affiliate with a net gain after considering the affiliate's costs incurred in its wholesale market positions. Netting, either between companies or even within an LSE's customer portfolio, would also penalize the exposed end-use customers (who may contractually bear these Uplift Costs on a flow through basis), or non-affiliated LSEs served by a QSE, if the QSE's own generator affiliate's payments are netted against the exposure of customers served by an LSE unaffiliated with the QSE (such as those non-affiliated LSEs for whom Shell Energy performs QSE services). Netting will only harm customers whom the Legislature intended HB 4492 to benefit, potentially depriving them of a means of mitigating their exposure to these Uplift Costs.

Additionally, netting an LSE's or its affiliate's payments or revenues against an LSE's exposure is inequitable to entities who have prudently engaged in financial or physical hedging, since the charges for paying back the debt financing facility ("Uplift Charges") are calculated using each LSE's load ratio share.[5] Consider the example of an LSE's affiliate that entered into

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[5] Tex. Util. Code § 39.653 (c).

hedging transactions or other arrangements to secure supplies, thereby ensuring continued supplies for ERCOT or mitigating against its own losses. That entity could have received ancillary services or adder payments from ERCOT, which would then be attributed to its LSE affiliate, depriving the affiliate of the access to the debt financing that the Legislature intended to make available for end use customers' benefits. Then, because the Uplift Charges will be calculated based on load ratio share without credit for load that the LSE cannot finance due to netting, that LSE would be further obligated to pay the full amount of Uplift Charges based on its total load. This would require such an LSE to finance the exposure of other LSE's positions and customers who may not have engaged in any hedging. Similarly, unless an LSE's exposure is calculated based on its actual load ratio share, an LSE that entered into hedging transactions for ancillary services, thereby ensuring continued supplies for ERCOT, would not have access to the debt financing even if its hedging was done in excess of the Commission's system-wide offer cap. Netting or determining an LSE's exposure based on something other than its true load ratio share would therefore act as a future disincentive to hedging, as it would cause entities, who incurred costs by prudently hedging, whether by financial hedging or building (or securing the supply from) generation plants to physically hedge, to now spend money to subsidize the entities who took the risk of not hedging to save money.

The equitable way to implement uplift financing is to ensure the payments from the financing and the charges for the financing are calculated on the same basis as specified in the HB4492. HB4492 defines "Uplift balance" as an amount uplifted based on load ratio share.[6] HB4492 specifies "Uplift charges" as charges assessed to recover the balance of financing proceeds, also based on load ratio share.[7] This will ensure that there are no unintended

[6] Tex. Util. Code § 39.652 (4).
[7] *Id.*, §39.653 (c).

consequences that would disincentivize hedging. It will also make financing simpler to implement, as it will be consistent with current uplift settlements, which are based on load ratio share. Additionally, staying consistent with the statutory wording by using the same "load ratio share" for both payments and charges will put the ultimate debt obligation order issued in this docket on firmer legal ground, reduce the risk of subsequent legal challenges, and eliminate uncertainty about the debt obligation order's validity that might arise in the financial community otherwise.

Shell Energy therefore urges the Commission to find, in relation to the first briefing question, that the phrase *exposed to the costs included in the uplift* does not contemplate offsetting the amounts paid by an LSE in excess of the Commission's system-wide offer cap by amounts received either by an LSE or its affiliates in excess of the Commission's system-wide offer cap. Shell Energy does not address the second question here but hereby reserves the right to comment on the issue in the future.

Respectfully submitted,

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AUTHORIZED REPRESENTATIVE FOR:
SHELL ENERGY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been forwarded to all parties of record via electronic mail on the 4th day of August, 2021 in accordance with the Order Suspending Rules, issued in Project No. 50664. Pursuant to Order No. 2, filing this document on the Commission's Interchange constitutes service of the document on all parties to this proceeding.

_/s/ R. Surendran___________________
Resmi Surendran