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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, SUBCHAPTER N,	§	OF TEXAS
AND FOR A GOOD CAUSE	§	
EXCEPTION	§	
	§	
	§	
	§	

**TENASKA POWER SERVICES CO.’S RESPONSE TO COMMISSION ORDER
REQUESTING BRIEFING**

Tenaska Power Services Co. files this Response to the Commission’s July 21, 2021 Order Requesting Briefing from interested parties on the following questions:

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?
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 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?

As this response is filed on or before August 4, 2021, it is timely submitted.

I. Background

Tenaska Power Services Co. (“TPS”) is a Qualified Scheduling Entity (“QSE”) in ERCOT, serving as a third-party QSE service provider for a substantial number of generating facilities owned by its customers. TPS does not have operational control over any of the generating facilities, but provides access to the ERCOT wholesale market, scheduling and settlement services,

and other administrative services to these generators, and facilitates the purchase and sale of energy products with ERCOT on their behalf. In its role as a QSE service provider, TPS also represents a small number of Retail Electric Providers (“REPs”). In accordance with the ERCOT Protocols, the ERCOT financial settlement positions from representing generation and representing load are consolidated, so that TPS, as QSE, receives a single net invoice from ERCOT for each ERCOT statement.

TPS also serves as an Option 2 REP¹ for a number of industrial load customers, some of which take service at transmission voltage only, some of which take service at less than transmission voltage only, and some of which take service both at transmission voltage and less than transmission voltage. Some of these industrial load customers are generating facilities that take station service at transmission voltage when they are not generating. Others are more traditional industrial facilities, some of which own cogeneration facilities that serve their own load.

Finally, TPS’s ultimate parent company owns a portion of the economic interests in three generating facilities that serve ERCOT. TPS currently represents two of these generating facilities as QSE but is not the QSE for the third generating facility. All energy produced by the third generating facility is subject to a “tolling agreement” with an unrelated third-party, under which the third party owns the energy output from the plant and has its own QSE to represent the generating facility and transact directly with ERCOT. Another company that is wholly owned by TPS’s ultimate parent company provides operating and administrative services to all three generating facilities.

II. Any Netting Rule Should be Narrowly Tailored

Unlike load serving entities serving residential customers under fixed rate plans, TPS as an Option 2 REP does not generally offer fixed rate pricing to its customers. TPS passes through to each retail customer all charges which TPS receives from ERCOT arising from the consumption of the customer loads, including the variable ERCOT Real-Time Market Settlement Point Price applicable to each load’s applicable ERCOT Load Zone. Accordingly, it was TPS’s industrial load customers rather than TPS, itself, that were exposed to costs that are now to be included in the Subchapter N uplift. TPS, itself, is not affected by the answer to the Commission’s first

¹ 16 Tex. Admin. Code § 25.107.

question as to whether amounts paid in excess of the Commission's system-wide offer cap should be netted against amounts received in excess of the Commission's system-wide offer cap, and TPS takes no position on this question. All costs included in the definition of uplift balance have been absorbed by TPS's customers and not by TPS. TPS does not anticipate that it will have a claim for uplift balance other than for amounts that will be passed through to its customers.

With respect to the other questions posed by the Commission, if the Commission does order some form of "netting" to determine the amount of uplift incurred by a load serving entity (either within the activities of a legal entity or across related legal entities), the netting rules, and in particular any disregard of corporate form, should be narrowly tailored to avoid consequences clearly not intended by the Legislature that would both distort the allocation of securitization benefits and burdens and be contrary to the market participants' expectations that the corporate forms they have selected to do their business in ERCOT would be honored in accordance with the rule of law. Specifically, under any form of netting or disregard of corporate form that may be ordered by the Commission:

1. Activity by an entity acting in its capacity as a QSE should not be netted with activity of a load serving entity, either within that same entity or by a related entity that is a load serving entity. Although a QSE is the nominal party that transacts financially with ERCOT on behalf of both load and generation, QSEs are not the true parties at interest. QSEs, in effect, serve a clearinghouse and administrative function. It is the activity of the load serving entity or other market participant represented by the QSE that would be relevant under any appropriate netting rule.
2. Transactions by an Option 2 REP serving an industrial load customer, whether at transmission voltage or less than transmission voltage, should not be aggregated or netted other than with other transactions with that same industrial load customer.
3. Netting should not occur between for-profit entities unless (a) one of the entities is a wholly owned direct or indirect subsidiary of the other entity or (b) both entities are wholly owned, directly or indirectly, by the same parent entity.

Any netting rules that are not narrowly tailored as described above would be contrary to the provisions Subchapter N, contrary to the intent of the Legislature and contrary to law.

III. Prayer

For the reasons set forth in this Response, TPS prays that any form of netting rules be narrowly tailored to fit with the Commission's finding of legislative intent, and not provide for netting or disregard of corporate form under any of the three circumstances enumerated immediately above.

Dated: August 4, 2021

Respectfully submitted,

/s/Keith Emery

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**AUTHORIZED REPRESENTATIVE FOR:
TENASKA POWER SERVICES CO.**

CERTIFICATE OF SERVICE

In accordance with Order No. 2 in this docket, filing a document on the Commission's Interchange website constitutes service of the document on all parties to this proceeding.

/s/ Keith Emery

Keith Emery