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PETITION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR EXPEDITED DECLARATORY ORDER REGARDING PUBLIC UTILITY REGULATORY ACT CHAPTER 39, SUBCHAPTER N	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

DECLARATORY ORDER

This Declaratory Order addresses the petition for a declaratory order filed by the Electric Reliability Council of Texas, Inc. (ERCOT) on January 10, 2024. In the petition, ERCOT seeks a Commission declaratory order interpreting specific provisions of PURA[1] and the Debt Obligation Order issued by the Commission in Docket No. 52322.[2] Specifically, ERCOT asks that the Commission determine whether end-use customers in the service area of the City of Lubbock, acting by and through Lubbock Power & Light (LP&L), will remain exempt from the assessment of uplift charges once the City of Lubbock begins its transition to retail competition on or about March 4, 2024.

For the reasons discussed in this Declaratory Order, the Commission concludes that, under PURA § 39.151(j-1) and the Debt Obligation Order, current and future end-use customers in LP&L's service area will remain exempt from the assessment of uplift charges upon the commencement of the City of Lubbock's transition to retail competition.

I. Background and Procedural History

Following Winter Storm Uri in February 2021, the Legislature enacted H.B. 4492, which, among other things, added subchapters M and N to PURA chapter 39 and a limited exemption in PURA § 39.151(j-1).[3] Subchapters M and N provided for two separate financing mechanisms to help alleviate Winter Storm Uri's financial impact on the ERCOT wholesale electricity market: (1) a mechanism prescribed by subchapter M to fund the "default

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[1] Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

[2] *Application of the Electric Reliability Council of Texas, Inc for a Debt Obligation Order Pursuant to Chapter 39, Subchapter N, of the Public Utility Regulatory Act*, Docket No. 52322, Debt Obligation Order (Oct. 13, 2021).

[3] Act of May 30, 2021, 87th Leg. R.S., ch. 908, §§ 2–5, 2021 Tex. Gen. Laws 2218 (H.B. 4492) (codified at PURA §§ 39.601–609 (subchapter M) and §§ 39.651–.664 (subchapter N)).

balance,"[4] and (2) a mechanism prescribed by subchapter N to fund the "uplift balance."[5] The Legislature's goal in establishing these debt financing mechanisms was to "allow[] the [C]ommission to stabilize the wholesale electricity market in the ERCOT power region"[6] by "alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market."[7] The Legislature capped the uplift balance at $2.1 billion in reliability deployment price adder charges and ancillary services costs in excess of the system wide offer cap incurred by load serving entities (LSEs) during Winter Storm Uri,[8] and directed that "[ERCOT] shall assess uplift charges to all [LSEs] on a load ratio share basis."[9]

On July 16, 2021, as directed under PURA § 39.653(a),[10] ERCOT filed in Docket No. 52322 its application for a debt obligation order with the Commission to finance the uplift balance. On October 13, 2021, the Commission issued the Debt Obligation Order which, among other things: (1) approved the securitization of the uplift balance in an amount up to the statutory cap of $2.1 billion;[11] and (2) approved the assessment of uplift charges to all qualified scheduling entities (QSEs) representing LSEs,[12] except for those LSEs expressly exempted by PURA.

Under PURA chapter 39 and the Debt Obligation Order, two categories of LSEs are expressly exempted from the assessment of uplift charges: (1) certain LSEs that were eligible to, and did, opt out of paying the uplift charges;[13] and, relevant here, (2) a municipally owned utility (MOU) that becomes subject to the jurisdiction of ERCOT on or after May 29, 2021, and before

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[4] PURA § 39.602(1).

[5] PURA § 39.652(4).

[6] PURA § 39.651(c); *see also* PURA § 39.601(c) ("The legislature finds that the financing authorized by this subchapter serves the public purpose of preserving the integrity of the electricity market in the ERCOT power region.").

[7] PURA § 39.651(b).

[8] PURA § 39.652(4).

[9] PURA § 39.653(c).

[10] PURA § 39.653(a) ("[ERCOT] shall file an application with the [C]ommission to establish a debt financing mechanism for the payment of the uplift balance. . . .").

[11] Docket No. 52322, Debt Obligation Order at Ordering Paragraph No. 2.

[12] *Id.* at Ordering Paragraph No. 18.

[13] PURA § 39.653(d); *see also* Debt Obligation Order at Ordering Paragraphs 20–25; *Proceeding for Eligible Entities to File an Opt Out Pursuant to PURA § 39.653(d) and for Load-Serving Entities to File Documentation of Exposure Costs Pursuant to the Debt Obligation Order in Docket No. 52322*, Project No. 52364 (pending).

December 30, 2021. This latter exemption is set forth in PURA § 39.151(j-1), which provides in its entirety:

> (j-1) Notwithstanding Subsection (j) of this section, Section 39.653(c), or any other law, the independent system operator in the ERCOT power region may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of that independent system operator on or after May 29, 2021, and before December 30, 2021, related to a default on a payment obligation by a market participant that occurred before May 29, 2021.

In the Debt Obligation Order, the Commission recognized the exemption in PURA § 39.151(j-1) and directed that—distinct from those LSEs that opted out of uplift charges—"the City of Lubbock . . . must not be assessed uplift charges."[14] ERCOT has, accordingly, excluded LP&L from the calculation and assessment of any uplift charges.[15]

Beginning on or around March 4, 2024, however, the City of Lubbock will begin its transition to retail competition within LP&L's service area, meaning that LP&L will no longer act as an LSE and its end-use customers will choose their own retail electric providers (REPs), which are a subset of LSEs.[16] LP&L will no longer sell electricity to retail customers in its service area, but will continue to provide transmission and distribution services to those customers.[17]

In anticipation of this transition, on January 10, 2024, ERCOT filed its petition requesting that the Commission issue a declaratory order finding, as a matter of law, that: (1) LP&L's end-use customers will remain exempt from the imposition of uplift charges once the City of Lubbock begins its transition to retail electric competition; and (2) LSEs serving that exempt load are prohibited from assessing or passing through to those customers any charges or costs related to uplift charges.[18] ERCOT asks that the Commission consider the petition on an expedited basis to allow time for ERCOT to develop, test, and implement the ERCOT system changes necessary to implement a Commission order before the City of Lubbock's

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[14] Debt Obligation Order at Ordering Paragraph No. 26.

[15] ERCOT's Initial Brief at 6 (Jan. 26, 2024).

[16] Petition at 1; LP&L Motion to Intervene at 2 (Jan. 18, 2024).

[17] Petition at 7.

[18] *Id.* at 10.

transition to retail competition begins.[19] An expedited scheduling order was entered on January 17, 2024, setting the intervention and initial briefing deadlines for January 22 and January 26, 2024, respectively.

Commission Staff and all parties that intervened—the City of Lubbock, acting by and through LP&L; the Texas Energy Association for Marketers (TEAM); the Alliance for Retail Markets (ARM); and the Office of Public Utility Counsel (OPUC)—support the declaratory relief sought by ERCOT. LP&L, TEAM and ARM filed briefs in support of the petition. No party opposes the relief sought by ERCOT.

II. Discussion

The "primary rule in statutory interpretation is [to] give effect to legislative intent."[20] When determining legislative intent, the Commission must "look to the language of the statute, as well as its legislative history, the objective sought, and the consequences that would flow from alternate constructions."[21] The Commission "cannot ignore a statute's context that may illumine its meaning."[22]

At issue here is the scope of the statutory exemption found at PURA § 39.151(j-1), which prohibits the assessment of uplift charges to an MOU that becomes subject to the jurisdiction of ERCOT on or after May 29, 2021, and before December 30, 2021. In compliance with PURA § 39.151(j-1), the Commission ordered, in the Debt Obligation Order, that "the City of Lubbock . . . must not be assessed uplift charges."[23] In compliance with this directive, ERCOT has not assessed uplift charges to LP&L, which currently acts as both LSE and transmission and distribution service provider to its end-use customers.

In this proceeding, ERCOT asks the Commission to issue a declaratory order finding that PURA § 39.151(j-1) and the Commission's directive that "the City of Lubbock . . . must not be assessed uplift charges" requires ERCOT to continue to exempt the load of LP&L's end-use

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[19] *Id.*

[20] *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 383 (Tex. 2000); *see also* Tex. Gov't Code § 312.005 ("In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy").

[21] *Casteel*, 22 S.W.3d at 383; Tex. Gov't Code § 312.005.

[22] *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 447 (Tex. 2009) (Hecht, J., concurring).

[23] Debt Obligation Order at Ordering Paragraph No. 26.

customers from uplift charges once the City of Lubbock begins its transition to retail electric competition. Stated differently, ERCOT requests a finding that PURA § 39.151(j-1) and the Debt Obligation Order exempt end-use customers in LP&L's service area from the assessment of uplift charges, regardless of whether those customers buy their electricity from LP&L or, starting in March 2024, from REPs.

The Commission agrees with ERCOT's interpretation. As discussed below, the legislative history behind the adoption of PURA § 39.151(j-1), the objective sought by the provision, and the consequences that would flow from alternate constructions of PURA § 39.151(j-1) demonstrate that the Legislature's intent was to exempt current and future end-use customers in LP&L's service area from the assessment of uplift charges.

As the Commission previously found in the Debt Obligation Order, PURA subchapter N was enacted in response to the economic fallout from Winter Storm Uri.[24] For several days during the week of the storm, the demand for power exceeded supply, which drove up prices in the ERCOT wholesale electricity market.[25] Many LSEs in the ERCOT power region incurred significant costs as a result, prompting the Legislature to provide LSEs a debt financing mechanism for the uplift balance to stabilize the wholesale electricity market in the ERCOT power region. However, at the time of Winter Storm Uri and H.B. 4492's introduction, LP&L was not yet a part of the ERCOT power region. Rather, LP&L was in the process of transitioning from the Southwest Power Pool into the ERCOT power region.[26]

In recognition of LP&L's pending transition to ERCOT, and in light of the fact that during Winter Storm Uri LP&L's end-use customers did not contribute to the ERCOT load that required LSEs to purchase energy with extraordinary ERCOT price adder and ancillary service costs, the Legislature added PURA § 39.151(j-1) to H.B. 4429 before its passage. This exemption was not a part of H.B. 4492's original text.[27] As introduced, H.B. 4492 contained no exemptions from uplift charges. In committee, however, the House added PURA

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[24] *Id.* at 2–3.

[25] *Id.* at 2–3.

[26] *See Application of the City of Lubbock through Lubbock Power & Light for Authority to Connect a Portion of its System with the Electric Reliability Council of Texas*, Docket No. 47576, Order at Ordering Paragraph Nos. 1–3 (Mar. 15, 2018) (approving LP&L's application; authorizing LP&L to integrate the requested load into the ERCOT system; setting the date of integration at June 1, 2021).

[27] H.B. 4492, 87th Leg., R.S. (Mar. 12, 2021) (filed).

§ 39.151(j-1) to H.B. 4492, exempting from the imposition of uplift charges only a MOU that meets very specific criteria, and the only MOU that satisfied those criteria was the City of Lubbock.[28] Since LP&L first became subject to the jurisdiction of ERCOT on or after May 29, 2021 but before December 30, 2021, LP&L's end-use customers have been served exclusively by LP&L. As a vertically integrated MOU, LP&L has provided its customers with both retail and transmission and distribution services, has done so through the completion of its transition into ERCOT in December 2023, and will continue do so until the City of Lubbock's transition to retail competition beginning in March 2024.[29] The history and context of H.B. 4492, therefore, support a finding that PURA § 39.151(j-1)'s exemption applies not just to LP&L the entity—but also to the end-use customers in LP&L's service area.

The Commission must also consider the consequences that would flow from alternate constructions of PURA § 39.151(j-1). Here, the alternative construction is to read PURA § 39.151(j-1) as exempting LP&L's end-use customers from uplift charges when their retail electric service is provided by LP&L, but not when their retail electric service is provided by a different LSE. After the City of Lubbock transitions to retail competition, however, this construction would render PURA § 39.151(j-1) a nullity under subchapter N, and the Commission "should strive to avoid construing a statute in a manner that could render it meaningless."[30]

Under PURA § 39.653(c), uplift charges are assessed only to LSEs. On or around March 4, 2024, LP&L will begin stepping out of the role of LSE for the end-use customers in its service area and various REPs will begin stepping into that role. Thus, if PURA § 39.151(j-1) is construed to apply only to LP&L as an LSE, this statutory exemption will have no effect on uplift charges once REPs become the LSEs for LP&L's service area. Because this alternative construction of PURA § 39.151(j-1) would render that provision a nullity under subchapter N, the Commission finds that PURA § 39.151(j-1) and the Debt Obligation Order

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[28] House Comm. on State Affairs, Committee Report, H.B. 4492, 87th Leg., R. S. (Apr. 22, 2021).

[29] *See Compliance Filing for Docket No. 53529 (Application of the City of Lubbock Acting by and through Lubbock Power & Light , for Authority to Connection the Remaining Portion of its Load with the Electric Reliability Council of Texas and for Approval of an Agreement)*, Docket No. 54553, Update Concerning City of Lubbock, Acting by and through Lubbock Power & Light, Integration of Load at 1 (Dec. 12, 2023).

[30] *Ferrer v. Almanza*, 667 S.W.3d 735, 743 (Tex. 2023).

are properly construed as requiring current and future end-use customers in LP&L's service area to remain exempt from uplift charges once the transition to retail competition begins.

To properly harmonize all relevant statutory provisions in a way that is consistent with legislative intent,[31] the Commission concludes that, once the City of Lubbock begins its transition to retail electric competition, ERCOT must continue to exclude the load of current and future end-use customers in LP&L's service area from the calculation and assessment of any uplift charges. Consistent with this conclusion, the Commission further directs that LSEs providing retail electric service to current and future end-use customers in LP&L's service area are expressly prohibited from assessing or passing through to those customers any charges or costs related to uplift charges.

These conclusions are limited to interpreting the Debt Obligation Order and PURA in the context of the undisputed facts before the Commission regarding the transition to competition for retail customers in LP&L's current service area. Parties have not briefed, and the Commission declines to address, the applicability of the exemption under PURA § 39.151(j-1) to other possible scenarios, such as but not limited to LP&L's acquisition of another entity's service area.

Because the City of Lubbock intends to begin its transition to retail competition on or about March 4, 2024, it is appropriate to consider this Declaratory Order at the earliest open meeting available. Therefore, there is good cause under 16 Texas Administrative Code (TAC) § 22.5(b) to grant an exception to the 20-day notice requirement in 16 TAC § 22.35(b)(2).

III. Ordering Paragraphs

In accordance with the discussion and analysis above, the Commission issues the following orders.

1. The exemption currently applicable to LP&L under PURA § 39.151(j-1) and the Debt Obligation Order related to uplift charges will remain in effect for current and future end-use customers in LP&L's service area upon the commencement of the City of Lubbock's transition to retail competition.

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[31] *See Fort Worth Transp. Auth. v Rodriguez*, 547 S.W.3d 830, 839 (Tex. 2018) (explaining that, in undertaking statutory construction, "we consider the context and framework of the entire statute and meld its words into a cohesive reflection of legislative intent.").

2. ERCOT must not assess uplift charges to QSEs representing LSEs for the portion of load they serve that is associated with those current and future electric service identifiers registered to LP&L as a transmission and distribution provider in LP&L's service area.

3. ERCOT must implement a process to exclude current and future end-use customers in LP&L's service area from any other load served by an LSE to ensure that current and future end-use customers in LP&L's service area are not assessed uplift charges and are not included in the calculation of uplift charges.

4. LSEs (and the QSEs that represent them) providing retail electric service to current and future end-use customers in LP&L's service area are prohibited from assessing or passing through to those customers any costs or charges related to uplift charges.

5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas on the 15th day of February 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

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