DOCKET NO. 52322

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**

NRG ENERGY, INC.'S RESPONSE TO ORDER REQUESTING BRIEFING

NRG Energy, Inc. ("NRG") files this response to the Public Utility Commission of Texas ("Commission") Order Requesting Briefing issued in this docket on July 21, 2021.

In making its determination regarding whether the amounts load serving entities ("LSEs") are eligible to receive should be offset by amounts paid either to the LSE or its affiliates, NRG encourages the Commission to review the different options available related to offsets using criteria that assess impacts to market participants, retail customers, and the financial integrity of the wholesale power market. Although Public Utility Regulatory Act ("PURA") Chapter 39 Subchapter N does not provide specific instructions for whether or how to offset, NRG believes that the statute may be interpreted to permit a variety of outcomes. In the event that the Commission determines that netting is appropriate, it should consider all affiliated entities within a corporate group. If the Commission decides that netting is not allowed, then it should limit the aggregate amount of LSE proceeds to mitigate the need for proration of distributed proceeds.

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.*

PURA Chapter 39 Subchapter N does not include specific guidance for whether or how to offset or "net" eligible amounts charged to LSEs with amounts paid to the same LSE or its affiliates. PURA § 39.653(b)(3) provides that the debt obligation order issued by the Commission

must "provide the process for remitting the proceeds of the financing to *load-serving entities who were exposed to the costs* included in the uplift balance" (emphasis added) but does not define nor provide additional context for the word "exposed."[1] In addition, Chapter 39 Subchapter N also includes a $2.1 billion cap on the Uplift Balance[2] amounts eligible for securitization, but the statute itself does not specify a reason for the cap. Importantly, PURA § 39.653 also requires that the Commission's Debt Obligation Order for the Uplift Balance "support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale market participants and retail customers."[3]

To understand how LSEs are exposed to charges that were part of the Uplift Balance ("Eligible Uplift Charges"), it is important to understand how costs for wholesale power are settled and invoiced in the ERCOT market. ERCOT settles transactions and invoices market participants for costs solely through Qualified Scheduling Entities ("QSEs") that represent the market participants. QSEs can represent LSEs or resources entities ("RE"), or both. LSEs are entities that serve retail load and REs are entities that operate generation resources or load resources. ERCOT assesses net charges or issues net payments exclusively to QSEs for all market activity represented by that QSE for each given operating day. The QSE then settles with the market participants it represents, such as retail electric providers ("REPs"), which are a type of LSE. Market participants may be represented by QSEs that are owned and controlled by the same corporate group, or by an unaffiliated third party. Some entities have affiliated LSEs and REs represented by the same QSE and some have LSEs represented by one QSE and REs represented by separate QSEs (this is the arrangement currently used by NRG). In addition, many QSEs represent LSEs and REs that are not part of the same corporate family. Therefore, whether and how an LSE was directly subject to Eligible Uplift Charges may be dependent upon its relationship to its QSE and other entities represented by the same QSE. Included as Exhibit A to these comments is a visual depiction of various example QSE arrangements.

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[1] Merriam-Webster defines the word "exposed" as "not shielded or protected." Exposed, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/exposed.

[2] See PURA § 39.652(4) defining "Uplift Balance" 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 ("RDPA") charges and ancillary services costs in excess of the commission's system wide 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."

[3] PURA § 39.653(a).

Given the variety of commercial arrangements and the relationships LSEs may have with QSEs and REs, the meaning of the phrase "load-serving entities who were exposed to the costs" in the statute is arguably ambiguous. The Commission has authority to interpret the meaning of the statute, including whether the statute allows for or requires the consideration of netting.[4] In this filing, NRG offers several methodologies based on whether the term "exposed" contemplates netting, and also offers a matrix of criteria by which those methodologies can be judged. To make a fully informed decision about whether offsets should be applied, NRG recommends the Commission analyze the various netting options using a set of criteria based on the goals of financial integrity of the market and the public interest.[5] NRG has created a matrix, attached here as Exhibit B, which provides an analysis of how various netting options impact market participants based on certain criteria. These options include:

- **Corporate Affiliate Netting.** Offsetting or netting an LSE's Eligible Uplift Charges by corresponding payments received by an LSE's affiliated RE(s) that are within the same corporate parent as the LSE *regardless of the LSE's relationship with one or more QSE*s;

- **QSE Affiliate Netting.** Offsetting charges and payments among affiliated QSEs that represent affiliated LSEs and REs or the "as invoiced by ERCOT" outcome where LSEs and REs are within a single QSE and have their charges and payments offset through the original invoicing process; and

- **No Netting.** Each LSE will present its Eligible Uplift Charges without consideration of any payments received by affiliates for the corresponding settlement amounts.

The criteria used to analyze the impact of each of these options should include factors that assess impacts to the wholesale power market as a whole, as well as market participants and retail customers, consistent with the law. The criteria entailed by this standard sometimes conflict with

[4] See *In re Entergy Corp*., 142 S.W.3d 316, 322 (Tex. 2004) (providing that the PUCT has the authority to exercise those powers "reasonably necessary to fulfill a function or perform a duty that the Legislature has expressly placed with the agency.") cited favorably in *In re Oncor Elec. Delivery Co. LLC*, 2021 WL 2605852, at *2 (Tex. Jun. 25, 2021). *See also Railroad Comm. of Texas v. Texas Citizens for a Safe Future and Clean Water*, 336 S. W.3d 619, 624-625 (Tex. 2011) (noting that an administrative agency's interpretation of a statute it is charged with enforcing is entitled to deference, so long as the interpreted language is ambiguous and the agency's interpretation is reasonable and does not contradict the plain language of the statute).

[5] A key assumption here must be that to the extent netting would be applied, only charges and payments for the settlements related to ancillary services above the system wide offer cap of $9,000 and the RDPA can be offset or netted. No other settlement amounts for unrelated charges should be considered for netting in this policy decision. In addition, if netting is applied in some form, payments or charges for REs, which include generation resources as well as load resources, should be included to capture the full range of impacts.

one another, but in considering varying options through the lens of various criteria, the Commission can come to a considered decision on the question it poses. NRG proposes the following criteria that should be used to judge the various options:

Criteria	Relevance
Account for revenues received by REs affiliated with LSEs	If a corporate entity controls an LSE and an RE or other entity that received or made payments associated with ancillary services over $9,000/MWh and RDPA, the exposure to Eligible Uplift Charges could be mitigated through the corporate group. The distribution of proceeds may account for the fact that not all entities were impacted in the same way.
Maximize number of customer refunds	The netting of an LSE's Eligible Uplift Charges could impact the number of customers that are eligible to receive refunds. For example, if netting is applied to an LSE that is affiliated with REs that received payments greater than the charges to the LSE, that LSE's customers would not receive proceeds, even though Eligible Uplift Charges were contractually assigned to them.
Simplicity to administer funds/Implementation barriers	If QSE-level settlement amounts are used, these numbers are readily accessible from ERCOT and can be verified for accuracy. On the other hand, ERCOT has said that it does not have direct costs for LSEs and any offsetting amounts from affiliate entities.[6] The statute contemplates an expeditious process and adding complexity without clear benefits compared to other options should be avoided.
Validation of data and documentation	QSE settlement amounts are determined and can be verified by ERCOT. Costs outside of the ERCOT settlement may be more difficult for the PUCT or ERCOT to verify, and result in a subjective process due to different business practices at the corporate and LSE level.
Minimize proration of funds for market participants and customers	If the amount of Eligible Uplift Charges sought by LSEs is significantly greater than the $2.1 billion limit prescribed, the amount that each LSE receives will be proportionately reduced by a significant amount.

[6] Direct Testimony of Kenan Ögleman at 24:19-25:2.

While there may be additional criteria for the Commission to consider, these factors directly address the impact on the wholesale market and the public interest. As further shown on Exhibit B, each option performs differently under the criteria and provides varying levels of positive impacts. For example, the analysis on Exhibit B shows that "Corporate Affiliate Netting" takes account of revenues within a corporate structure and minimizes proration of market participant financing. However, it does not maximize the number of potential customer refunds, because certain customers to whom Eligible Uplift Charges were passed through could have the total amount of securitization proceeds flowing to the LSE that serves them reduced by an affiliated RE's revenues. The approach depends on non-uniform and private business information, because it primarily relies on the underlying contractual relationships within a QSE and between LSEs and REs instead of ERCOT settlement data.[7] The approach would be more complicated than any of the other methodologies to administer because it requires assessment of costs outside of the ERCOT settlement process, which will make it more difficult for the PUCT or ERCOT to verify the costs, which is a critical step to ensure the program is successful.

The "No Netting" option maximizes the number of eligible customers receiving refunds, but also would significantly reduce any refund amount they would receive by amplifying the need for proration to ensure the Uplift Balance cap of $2.1 billion cap is not exceeded. Based on ERCOT's responses to NRG RFI 1-1 and 1-2, the total potential Eligible Uplift Charges to LSEs without offsetting payments is $3.42 billion.[8] If that is the total amount of claims submitted by all LSEs seeking distribution of proceeds, depending on the method of proration chosen, one possible outcome could require a reduction to all LSE claims by approximately 38.5% to ensure total costs are below the $2.1 billion cap. Indeed, it is conceivable under a No Netting approach that LSEs could submit claims for Eligible Uplift Costs that exceed $3.42 billion if the Commission were to allow LSEs to reflect a completely unhedged position. The administration of claims with No Netting would be less complicated than determining amounts needed for Corporate Affiliate Netting, but it will require some additional calculations by ERCOT for those LSEs represented by QSEs that also represent REs to separate the charges and payments.

[7] It is not clear whether this approach also would entail considering financial arrangements as offsets to cost exposure. If it did, that would make this approach still more complex. If it did not, it could defeat the core purpose of a "Full Netting" approach by ignoring the primary way certain businesses manage cost exposure.

[8] ERCOT's Response to NRG Energy, Inc.'s First Request for Information, NRG No. 1-2 and 1-3 (Aug. 2, 2021).

Finally, the QSE Affiliate Netting approach would use QSE-level settlement data that ERCOT has already produced, making it the most easily administered approach. The approach applies the ERCOT settlement invoices for each QSE, and then nets affiliated QSEs' invoices against one another to obtain a total amount of securitization proceeds related to the uplift costs of those. Another variation of this approach does not net QSEs against one another but uses the settlement invoice for an individual QSE that represents affiliated LSEs and REs. QSE Affiliate Netting should take account of revenues within a corporate structure—although it may also impact third-party LSEs embedded within those QSEs and may also impede the number of customers qualifying for refunds. Either of the QSE Affiliate Netting options will minimize proration when compared to the No Netting option.

If the Commission decides to adopt a netting approach, NRG recommends the Commission adopt a policy that requires netting either within the QSE or among QSEs that are affiliated or contain affiliated LSEs and REs to better reflect the actual costs invoiced by ERCOT. The Commission should also include flexibility for LSEs subject to netting the ability to demonstrate contractual arrangements with customers that were directly assigned Eligible Uplift Charges by their LSE to ensure customers receive all proceeds due to them. Meanwhile, if the Commission adopts the No Netting approach, then it should make clear that aggregate Eligible Uplift Charges should not exceed $3.42 billion, as described above, and that any LSE attempting to claim an amount more than their contemporaneous load ratio share, when applied to this figure, should be subject to a strict standard of scrutiny. This step is important to ensure that there is a limit to the proration that will occur in a No Netting scenario, and that LSEs are treated equitably.

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?*

If the Commission determines that netting is appropriate, then the impacts to all of an LSE's corporate affiliates should be considered, including the charges and payments incurred or received by an LSE's affiliated QSEs and REs. Affiliated entities should be those that are owned or controlled by the same corporate parent. The actual exposure of costs contemplated by this proceeding are the amounts invoiced by ERCOT to QSEs. QSEs may then pass those costs on to

LSEs or share payments with REs per contractual agreements. The QSE may be part of the same corporate umbrella as the LSEs and REs it represents, or it may be acting as a third party for an LSE or RE and have no affiliation with the LSE or RE. In addition, a QSE that represents affiliated entities and third parties may be impacted by charges that its unaffiliated market participants refuse to pay. Therefore, to ensure the full scope of exposure that an affiliated corporate group may have, NRG believes it is appropriate for the definition of affiliated entities to apply to QSEs, LSEs, and REs to capture the full range of potential business structures, contractual arrangements and corporate exposure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

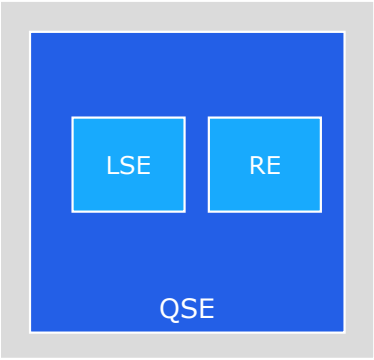
I certify that on August 4, 2021 this instrument was filed with the Public Utility Commission of Texas and a true and correct copy of it was served on all parties of record in this proceeding by Interchange.

Andrea Moore Stover

Example QSE Arrangements

EXHIBIT A

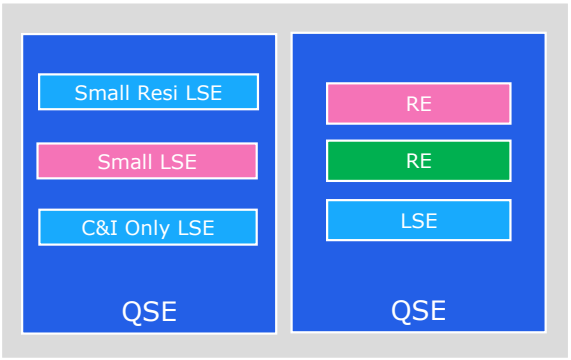
Example A:
QSE with Affiliated Load (LSE)* and Generation (RE)



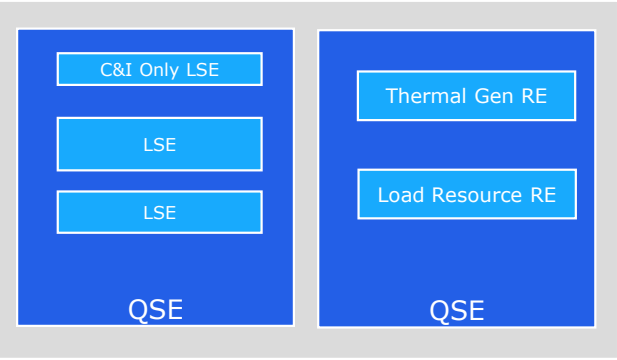
Example B:
QSE with Affiliated REP Only



Example C:
Corporate Affiliates - Affiliated LSEs and REs in different QSEs along with Unaffiliated LSEs and REs



Example D:
QSE Affiliates – LSEs in one QSE and REs in the other



* For purposes of this diagram, LSE and retail electric provider (REP) are used synonymously as REPs are a type of LSE.

**Like colors indicate affiliates.

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Analysis of Netting Options

EXHIBIT B

	1 Accounts for revenues within a corporate structure	2 Maximizes number of customer refunds	3 Simplicity to administer / implementation barriers	4 Validation process	5 Minimize prorated reduction of market participants financing
Corporate Affiliate Netting	🟢	🔴	🔴	🔴	🟢
QSE Affiliate Netting	🟡	🟡	🟢	🟢	🟡
No Netting	🔴	🟢	🟡	🟡	🔴

Corporate Affiliate Netting = Offsetting or netting an LSE's eligible uplift charges by corresponding payments received by the LSE's affiliated RE(s) that are within the same corporate parent as the LSE regardless of the LSE's relationship with one or more QSEs. See Example C in Exhibit A.

QSE Affiliate Netting = Offsetting charges and payments among affiliated QSEs that represent affiliated LSEs and REs, or the "as invoiced by ERCOT" outcome where LSEs and REs are within a single QSE and have their charges and payments offset through the original invoicing process. See Example A and Example D in Exhibit A.

No Netting = Each LSE will present its Eligible Uplift Costs without consideration of any payments received by affiliates for the corresponding settlement amounts. All uplift charges for the LSEs only in Examples A, B, C, and D would be eligible.

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