

CAUSE NO. D-1-GN-21-001227

THE CITY OF DENTON,

Plaintiff,

v.

ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC. *et al.*,

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

**PLEA TO THE JURISDICTION
AND ALTERNATIVE PLEA IN ABATEMENT**

Defendants Electric Reliability Council of Texas, Inc. (“ERCOT”), Mark Carpenter, Lori Cobos, Keith Emery, Nick Fehrenbach, Kevin Gresham, Sam Harper, William L. ‘Bill’ Magness, Jeyant Tamby, and Woody Rickerson, in their official capacities only (collectively the “Individual Defendants” and with ERCOT, the “ERCOT Defendants”), file this Plea to the Jurisdiction and Alternative Plea in Abatement (the “Plea”) to dismiss (or abate) the claims asserted by Plaintiff the City of Denton (the “City”).

I. SUMMARY

1. The Court lacks subject-matter jurisdiction over the City’s claims because they fall within the exclusive jurisdiction of the Public Utility Commission of Texas (“PUCT”), and ERCOT retains its immunity in this *ultra vires* action. Also, and alternatively, the Court lacks jurisdiction, or at least should not proceed, because the City has failed to join jurisdictionally indispensable and/or necessary parties who will be affected by the declaratory and injunctive relief the City seeks—a curable defect within the City’s control.

2. Under well-settled Texas law, a court has no jurisdiction over a dispute when a statute places exclusive jurisdiction within a state agency or when the Legislature has created a

pervasive regulatory scheme by which an agency is to address such disputes. *Oncor Elec. Delivery Co. v. Chaparral Energy, LLC*, 546 S.W.3d 133, 138 (Tex. 2018). In the Public Utility Regulatory Act (“PURA”),¹ the Legislature granted the PUCT exclusive jurisdiction to develop and enforce the rules governing the Texas wholesale electric market and created a pervasive regulatory scheme by which the PUCT has complete authority over ERCOT’s operations. Because the City complains about ERCOT’s actions under the Protocols, seeks to avoid its payment responsibilities imposed by the ERCOT market rules, and seeks to enjoin ERCOT from enforcing any penalties set forth in the rules for non-payment, the PUCT has exclusive jurisdiction over this dispute. The City’s claims raise mixed questions of historical fact and law, and the PUCT has the ability and authority to grant the City the relief it seeks, or to fashion appropriate relief—taking into account the complicated workings of the wholesale electric market and its many members—that avoids any of the constitutional concerns raised by the City. Accordingly, the Court should dismiss the cause without prejudice and require the City to exhaust its administrative remedies before the PUCT.

3. The Texas Supreme Court has made clear that in an *ultra vires* suit against individuals in their official capacity, the underlying entity remains immune. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009). The City expressly pleads only *ultra vires* claims based on ERCOT’s actions. Sec. Am. Pet. at ¶¶ 14, 61. Thus, ERCOT retains its immunity and the claims against it should be dismissed for lack of jurisdiction.

4. If the Court finds that the City’s claims fall outside the purview of the PUCT’s exclusive jurisdiction (which ERCOT Defendants dispute), it still should not proceed with the lawsuit because the City failed to join all necessary and indispensable parties. When a party brings a declaratory judgment action, Texas law mandates that “all persons who have or claim

¹ PURA is codified at §§ 11.001-66.016 of the Texas Utilities Code.

any interest that would be affected by the declaration *must* be made parties.” Tex. Civ. Prac. & Rem. Code § 37.006(a) (emphasis added). The failure to join all persons whose interests would be affected by a declaratory judgment can, in some circumstances, constitute fundamental error and deprive a court of jurisdiction. *See, e.g., Sage St. Assocs. v. Fed. Ins. Co.*, 43 S.W.3d 100, 103 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (“...the supreme court did not eliminate fundamental error in those cases where a judgment rendered in the absence of certain parties clearly prejudices the absent parties’ rights.”) (citing *Clear Lake City Water Auth. v. Clear Lake Utils. Co.*, 549 S.W.2d 385, 390 (Tex. 1977)); *see also* Tex. Gov’t Code § 311.034 (“Statutory prerequisites to a suit . . . are jurisdictional requirements in all suits against a governmental entity.”). This is one of those cases. And in any event, the failure to join necessary and indispensable parties is properly addressed through a plea in abatement. Of course, the City can correct this defect of parties, but if it chooses not to do so, the Court should dismiss the City’s claims.

5. Given the procedural posture of this case and the tactics of the City to date—filing suit in an improper venue shortly before one of the disputed market rules was to be implemented without meaningful notice to ERCOT before a TRO hearing and without joining all required parties—the Court should require the City to correct its self-inflicted defect expeditiously or face immediate dismissal. The City should not be allowed to proceed on its Application for a Temporary Injunction in the absence of all parties who will be affected if the Court were to grant the City its requested relief.

II. FACTUAL BACKGROUND

A. ERCOT's role in the Texas electricity market.

6. Texas operates an independent and self-contained electric production grid. *See BP Chems., Inc. v. AEP Tex. Cent. Co.*, 198 S.W.3d 449, 451 (Tex. App.—Corpus Christi 2006, no pet.). ERCOT is the “independent organization” (also referred to as the “independent system operator”) designated by the PUCT pursuant to PURA for the purpose of managing the flow of electric power for the State’s independent electric grid, which covers approximately 90 percent of the State’s electric load.² *See* Tex. Util. Code § 39.151(a). ERCOT’s role includes, among other things, scheduling power on an electric grid that connects more than 46,000 miles of transmission lines and over 680 generation units, and performing financial settlements for the competitive wholesale bulk-power market.³ ERCOT operates the wholesale electricity market in which generators offer their power for sale to retail electric providers, municipally owned utilities, and other entities that provide retail electric service to end-use customers.

7. In connection with its operation of the wholesale electricity market, ERCOT has a statutory obligation to “ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers” in the ERCOT footprint. Tex. Util. Code § 39.151(a). ERCOT fulfills that obligation by accepting payments from buyers of electricity and remitting payment to sellers of electricity, with ERCOT retaining a sufficient amount to cover its costs. *Id.* at § 39.151(e). ERCOT essentially serves as the clearinghouse for market transactions between electricity buyers and sellers, ensuring that electricity production, scheduling, and downstream delivery are ultimately timely and accurately accounted for and

² *See About ERCOT, ERCOT.com*, <http://www.ercot.com/about> (last visited March 24, 2021).

³ *Id.*

provided. *See* **Ex. A** (ERCOT Nodal Protocols) at § 1.2(1)(d); *see also* **Ex. B** (K. Ogleman affidavit) at ¶ 3.

B. Rules of the ERCOT market.

8. The rules and policies governing the ERCOT wholesale market are set forth in the ERCOT Nodal Protocols (the “Protocols”), all of which have been approved by the PUCT at one time or another. The Protocols, which provide the framework for the administration of the ERCOT market, have the force and effect of state law. *See PUC v. Constellation Energy Commodities Grp.*, 351 S.W.3d 588, 594-95 (Tex. App.—Austin 2011, pet. denied) (“ERCOT protocols are rules that provide the framework for the administration of the Texas electricity market,” and, as administrative rules, “have the force and effect of statutes”). The Protocols are developed and revised through a collaborative stakeholder process with Market Participants overseen by the PUCT—meaning the City participated in developing the very rules it now wants to avoid. *See Ex. A* at § 1.1(1) (“The [ERCOT] Protocols, created through the collaborative efforts of representatives of all segments of Market Participants.”); **Ex. B** at ¶ 4. At the time the Protocols at issue were adopted, neither the City nor any other municipally owned utility raised the objections that are the subject of this suit.

9. ERCOT’s Protocols and procedures mandate that eligible Market Participants, should they choose to voluntarily participate in the ERCOT market, are obligated to “abide by the procedures established by ERCOT.” *See BP Chems.*, 198 S.W.3d at 452 (citing Tex. Util. Code § 39.151(j)). This mandate is reiterated through ERCOT’s procedure requiring that all eligible Market Participants enter into a Standard Form Market Participant Agreement (the “Market Participant Agreement”) that establishes their relationship with ERCOT, including that

Market Participants are obligated to “comply with, and be bound by, all ERCOT Protocols.” *See Ex. B* at ¶ 4 and *Ex. B-1* (City’s Market Participant Agreement) at ¶ 5(A).

10. Again, the City, as a long-time Market Participant, participated in the collaborative stakeholder process that developed the very Protocols that the City now seeks to avoid. *See Ex. B* at ¶ 4. The City not only participated in the development of the Protocols, it also contractually agreed to follow them. *See Ex. B-1* at ¶ 5(A).

C. Winter Storm Uri forces ERCOT to invoke short-payment and Default Uplift Protocols.

11. The Court is well aware of the catastrophic impact of Winter Storm Uri that struck the State in February 2021. In the wake of the storm, ERCOT certain Market Participants began to fail making all required daily financial settlement payments owed for electricity they purchased. *See Ex. B* at ¶ 5. In the event of a shortfall in required payments by Market Participants, the Protocols specifically authorize, and in fact require a “short-payment” procedure whereby ERCOT must reduce payments to Market Participants who are owed money if other Market Participants do not pay their invoices in full. *See id.* at ¶ 5; *Ex. A* (Protocols) at § 9.19(1)(d) (“If...ERCOT still does not have sufficient funds to pay all amounts that it owes to Settlement Invoice Recipients in full, ERCOT **shall**...reduce payments to all Settlement Invoice Recipients owed monies from ERCOT.”) (emphasis added).

12. On February 26, 2021, ERCOT was presented with exactly that situation—multiple Market Participants failed to make a total of \$2.12 billion in required payments. *See Ex. B* at ¶ 5. After taking every reasonable step to collect payment from each short-paying Market Participant, drawing on available financial security, offsetting the shorted amount against amounts owed, and tapping into \$800 million from an ERCOT revenue account, ERCOT was required to initiate the short-payment procedures mandated by the Protocols to make up for a

\$1.32 billion short-fall in payments. *See id.* at ¶ 5 and **Ex. B-3** (Feb. 26 short-pay market notice). ERCOT was required to again initiate the short-payment procedures on March 1, 2021 to account for another approximately \$345 million in short-payments from market participants. *See id.* at ¶ 6 and **Ex. B-4** (March 1 short-pay market notice). ERCOT was also required to initiate the short-payment procedures to cover short-payments on several days after March 1. *See id.* at ¶ 7 and **Ex. B-5** (aggregate short-pay notice). During that time, ERCOT also received money for previously short-paid invoices. As of April 9, 2021, there remains an aggregate short-pay amount of approximately \$2.9 billion. *Id.* at ¶ 7.

13. ERCOT will continue taking steps to collect the short-paid amounts from each short-paying Market Participant. But if sufficient funds continue to be unavailable to pay all amounts owed to short-paid Market Participants, ERCOT may ultimately be required to initiate the Default Uplift procedures mandated by the Protocols.⁴ Under those procedures, ERCOT must allocate the loss due to the short-paying Market Participants' defaults to other Market Participants on a pro-rata basis, which is derived from a complex formula based upon financial settlement data for each month in the preceding month. *See id.* at ¶ 10; **Ex. A** (Protocols) at § 19.9(1)(e) (“If sufficient funds continue to be unavailable for ERCOT to pay all amounts in full to short-paid entities...ERCOT shall uplift short-paid amounts through the Default Uplift process....”); § 9.19.1(2) (“Each Counter-Party’s share of the uplift is calculated using the best available Settlement data for each Operating day in the month prior to the month in which the default occurred....”).

14. The Protocols were designed in the public’s and the market’s interest to remedy potential market instability in the event of unforeseen circumstances in order to avoid

⁴ The Legislature is currently considering Bills that would address funding for the market shortfall caused by the February 2021 extreme cold weather event.

catastrophic market failure. *See Ex. B* at ¶¶ 10, 12. These Protocols ensure the continued liquidity and function of the market in the short-term in the event Market Participants fail to make settlement payments in full. And they provide a long-term hedge and mitigation tool by spreading out settlement risks to all Market Participants to minimize the risk that one (or more) Market Participant's default will cascade through the market and cause further damage or take the market under. *Id.*

D. The City secures a TRO (and seeks temporary and permanent injunctive relief) because it does not want to comply with its statutory and contractual obligations.

15. The City has been an ERCOT member and wholesale power Market Participant for over two decades. *See id.* at ¶ 4. When times were good, the City was more than willing to benefit from the market stability created by the ERCOT Protocols. But when times got rough in the wake of Winter Storm Uri, the City decided it no longer wanted to comply with its market obligations and instead seeks to have the Court bail it out.

16. On the afternoon of February 25, 2021, the City put its orchestrated plan into action. At 1:38 p.m. it filed a detailed twenty-four page Petition seeking an emergency TRO. *See Orig. Pet., on file herein.* An hour later, it sent the Petition by email to ERCOT's general counsel stating that a hearing was being scheduled. *See Ex. C* (emails). Then, at 3:00 p.m. the City shared for the first time 92 pages of evidence—29 minutes before the hearing on its TRO. ERCOT had no meaningful notice. *Id.* The TRO was entered at 4:45 p.m., fifteen minutes before the end of the business day. *See Temporary Restraining Order, on file herein.* The TRO prohibited ERCOT from, among other things, carrying out its statutorily mandated function under the Protocols to reduce the amount of power generation revenues to be paid to the City the next day. It also necessitated manual accounting to treat the City differently than all others.

17. The City not only failed to give meaningful notice, it purposefully filed suit in an improper venue in Denton County in order to secure this extraordinary injunctive relief from a local court even though it had contractually agreed to file any suit in Travis County and Texas law required it to file its suit against state officials in Travis County.

18. Why did the City do it? The City expected to be paid \$78 million on February 26, 2021 for power it generated and sold in the market at scarcity prices during the storm. Under the Protocols, that \$78 million payment would have been reduced by approximately \$8 million but for the City obtaining the TRO. *See Ex. B* at ¶ 5. As a result, on February 26, 2021, hundreds of Market Participants—that is, almost every Market Participant other than the City that was owed money—were forced to absorb the City’s obligation for its share of the shortfall. While the City was paid in full more than \$78 million, the other Market Participants owed money had their payments reduced and absorbed the City’s share of reduced payments. *See id.* at ¶ 5. The same thing happened again on March 1, 2021, when Market Participants were forced to absorb the City’s obligation for its portion of a roughly \$345 million shortfall—approximately \$2.7 million. *See id.* at ¶ 6.

19. The City’s conduct and willingness to force other Market Participants to absorb its financial obligations, while at the same time remaining fully paid itself, has had a direct impact on the financial interests of hundreds of Market Participants. *See id.* at ¶¶ 9-12. Many of the Market Participants were already under significant financial strain and cannot afford to absorb the larger payment reductions caused by the City’s conduct. *See id.* at ¶¶ 9-10, 12.

20. The City wants the Court to continue to bail it out and excuse it from participating in the true-up procedures mandated by the Protocols for re-paying these short-pays under the Default Uplift Invoice process mandated by the Protocols. Ironically—and wholly absent from

the City’s lengthy self-serving description of the Protocol process—the Default Uplift procedure is the mechanism by which those participants whose payments were reduced in the first instance are in fact later re-paid by the market. *See id.* at ¶ 10. The premise of the City’s claimed irreparable harm—that “if the City pays the Default Uplift Invoice, its money is gone forever and cannot be recovered”—is belied by the actual way that the Protocols work. And in fact, the City has already been paid back for reduced payments it received on February 24 based on market shortfalls on February 19, 2021—before the TRO was entered. *See id.* at ¶ 8. And since the TRO was entered, ERCOT has collected funds from other previously non-paying participants such that the City would have already been repaid in part, reducing the \$8 million to \$6.79 million. *See id.* at ¶ 9; *see also Ex. B-7* (Market Notice of Denton short-pays).

21. The City seeks declaratory relief and temporary and permanent injunctive relief from compliance with the short-pay and Default Uplift Protocols on the basis that ERCOT’s actions are unconstitutional. *See Sec. Am. Pet.* at ¶¶ 64-73. If the City were allowed to opt itself out of the Default Uplift protocols, that would only magnify the financial ramifications to the other Market Participants. *See Ex. B* at ¶¶ 9-13. Because the City’s actions have had, and will continue to have, a direct impact on almost every other Market Participant’s financial interests, every other affected Market Participant should be a party to this lawsuit—if the Court has jurisdiction. But it does not.

III. ARGUMENT AND AUTHORITIES

22. A plea to the jurisdiction challenges the trial court’s authority to determine the subject matter of a cause of action. *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). Whether a trial court has jurisdiction is a question of law. *Tex. Natural Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Subject-matter jurisdiction is “essential to

a court's power to decide a case." *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013). Without subject-matter jurisdiction, a court does not have authority to render judgment and must dismiss the claim without resolving the parties' substantive arguments. *See id.* All courts bear the affirmative obligation "to ascertain that subject matter jurisdiction exists regardless of whether the parties have questioned it." *Id.* (internal citations omitted). A trial court must determine at its earliest opportunity whether it has jurisdiction before allowing the litigation to proceed. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

A. The PUCT has exclusive jurisdiction over the City's claims.

1. Legal standard governing exclusive jurisdiction.

23. "A state agency 'has exclusive jurisdiction when the Legislature has granted that agency the sole authority to make an initial determination in a dispute.'" *Oncor*, 546 S.W.3d at 137 (quoting *In re Entergy Corp.*, 142 S.W.3d 316, 321 (Tex. 2004)). When an agency has exclusive jurisdiction over a matter, courts lack jurisdiction over the matter until the complaining party has exhausted all administrative remedies before the agency. *Id.* The PUCT's exclusive jurisdiction is properly raised by a challenge to the trial court's jurisdiction. *Id.* at 137-138.

24. A statute grants an agency exclusive jurisdiction when its language clearly expresses the Legislature's intent for the agency to have exclusive jurisdiction over matters the statute governs. *Id.* But even without such an explicit grant, the agency has exclusive jurisdiction when a "pervasive regulatory scheme indicates that the Legislature intended for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed." *Id.* In construing statutes implicating exclusive jurisdiction concerns, the primary objective is to determine and give effect to the Legislature's intent based on the "plain and common meaning of the statute's words." *Entergy*, 142 S.W.3d at 322.

2. PURA expresses a clear legislative intent that the PUCT have exclusive jurisdiction to enforce the Protocols.

25. PURA sets forth an explicit statutory scheme in which the PUCT must adopt and enforce rules governing the wholesale electric market. Under PURA, the PUCT:

shall adopt and enforce rules relating to the . . . accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by [ERCOT] and any enforcement actions taken by [ERCOT] are subject to commission oversight and review.

Tex. Util. Code § 39.151(d). By this language, the Legislature expressly delegated to the PUCT the authority to prescribe *and enforce* rules regarding the accounting for the production and delivery of electricity. If the PUCT decides to delegate all or part of that responsibility to ERCOT, the statute requires that the PUCT maintain oversight over any actions taken by ERCOT.

26. The Legislature also required all participants in the ERCOT market, including municipally owned utilities, to abide by the rules and policies adopted by ERCOT:

A . . . municipally owned utility . . . shall observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by [ERCOT].

Id. at § 39.151(j). Moreover, the Legislature prescribed specific penalties for failure to abide by those rules and policies:

Failure to comply with this subsection may result in the revocation, suspension or amendment of a certificate as provided by Section 39.356 or in the imposition of an administrative penalty as provided by Section 39.357.

Id. Notably, the only entity authorized to revoke, suspend or amend a certificate under PURA is the PUCT.⁵ Similarly, the only entity authorized to impose an administrative penalty under

⁵ See Tex. Util. Code § 39.356(a) (“The *commission* may suspend, revoke, or amend a retail electric provider’s certificate for significant violations of this title or the rules adopted under this title, . . . including

PURA is the PUCT.⁶ Finally, PURA authorizes the Commission to “resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.” *Id.* at § 39.151(d-4)(6).

27. As the foregoing statutory provisions show, the Legislature has expressly directed the PUCT to adopt and enforce rules governing the accounting of the production and generation of electricity. And the Legislature has prescribed specific penalties for entities that fail to comply with those rules and policies, giving the PUCT the statutory authority to impose those penalties.⁷ In addition, the Legislature has expressly authorized the PUCT to resolve disputes between ERCOT and “an affected person,” which includes the City. *See* Tex. Util. Code. § 39.151(d-4)(6). The plain language of those statutes compels the conclusion that the PUCT has exclusive jurisdiction over disputes regarding the enforcement of the Protocols.

28. Although the City couches its claims in this Court in the form of constitutional violations, it is clear that the relief the City seeks is an order nullifying its payment obligations under the Protocols and enjoining ERCOT from initiating the enforcement actions prescribed by the Protocols. The City is asking this Court to prevent ERCOT—and by extension the PUCT—from enforcing the Protocols. Because the Legislature has given the PUCT exclusive jurisdiction to enforce the Protocols, this Court has no jurisdiction to interfere with that enforcement responsibility. Accordingly, this case must be dismissed for lack of jurisdiction.

the failure to observe any . . . settlement protocols established by [ERCOT].”); *id.* at § 39.356(b) (“The *commission* may suspend or revoke a power generation company’s registration for significant violations of this title or the rules adopted under this title, . . . including the failure to observe any . . . settlement protocols established by [ERCOT].” (All emphasis added)).

⁶ *See id.* at § 39.357 (“In addition to the suspension, revocation, or amendment of a certification, the commission may impose an administrative penalty, as provided by Section 15.023, for violations described by Section 39.356.” (emphasis added)).

⁷ The PUCT has delegated certain enforcement rights to ERCOT. *See Ex. A* (ERCOT Protocols) at § 16.11.6.

3. PURA creates a pervasive regulatory scheme in which the PUCT has sole authority to address disputes about the Protocols.

29. Regardless of whether the plain language of PURA evidences a legislative intent to vest the PUCT with exclusive jurisdiction to enforce the Protocols, this case must be dismissed for want of jurisdiction because the Legislature has created a pervasive regulatory scheme in which the PUCT has exclusive jurisdiction over disputes involving the provision of utility service. In fact, the Legislature has stated that the very purpose of PURA “is to establish a *comprehensive and adequate regulatory system* for electric utilities to assure rates, operations and services that are just and reasonable to the consumers and to the electric utilities.” Tex. Util. Code § 31.001(a) (emphasis added). Based on that language, the Texas Supreme Court has held that PURA is intended to serve as a pervasive regulatory scheme for electric utilities operating in Texas:

In cases like this one, where the Legislature clearly expresses its intent through statutory language, our exclusive jurisdiction inquiry is uncomplicated. Here, the Legislature’s language demonstrates that it intended PURA to be the exclusive means of regulating electric utilities in Texas. The Legislature’s description of PURA as “comprehensive,” coupled with the fact that PURA regulates even the particulars of a utility’s operations and accounting, demonstrates the statute’s pervasiveness.

Entergy, 142 S.W.3d at 323. In subsequent cases, the Supreme Court has reaffirmed that PURA provides a comprehensive and pervasive regulatory scheme to govern the rates, operations, and services of utilities in Texas. *See, e.g., Oncor*, 546 S.W.3d at 139; *In re Sw. Bell Tel. Co., L.P.*, 235 S.W.3d 619, 626 (Tex. 2007). The Protocols, which form the basis of the City’s obligation to ERCOT, are an integral part of that comprehensive and pervasive regulatory scheme.⁸

30. Indeed, the Supreme Court has recognized that even more granular pervasive regulatory schemes may exist within the overall pervasive regulatory scheme created by PURA.

⁸ *See Constellation*, 351 S.W.3d at 594 (stating that the Protocols are rules that provide the framework for the administration of the Texas electricity market).

In *Southwestern Bell*, the Supreme Court concluded that in addition to the general grant of exclusive jurisdiction over the operation of a telephone utility, chapter 56 of PURA constituted a “comprehensive regulatory scheme for a Texas Universal Service Fund administered by the PUC.” *Sw. Bell*, 235 S.W.3d at 625. The detailed PURA provisions outlining the PUCT’s responsibility to administer and oversee the Texas Universal Service Fund confirmed that the Legislature granted the PUCT exclusive jurisdiction to address disputes involving the Texas Universal Service Fund.

31. So it is with the wholesale electricity market governed by the Protocols. By granting the PUCT the authority to develop and enforce the rules governing the wholesale market, the Legislature has created a pervasive regulatory scheme that confers exclusive jurisdiction on the PUCT to resolve disputes arising under the Protocols. Thus, regardless of whether the City is subject to the comprehensive regulatory scheme of PURA as a whole, it subjected itself to the comprehensive regulatory scheme that the Legislature created for the operation of the wholesale electricity market when it elected to participate in that market.⁹

32. The City cannot avoid the PUCT’s exclusive jurisdiction by couching its causes of action in terms of constitutional violations. As explained earlier, the City is asking the Court to nullify its obligations under the Protocols and enjoin ERCOT from enforcing the Protocols. In determining whether an agency has exclusive jurisdiction, a court must look past “the way the [plaintiffs] pleaded their causes of action” and focus on the “nature of the claims.” *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 547 (Tex. 2016). It must ask whether “the problem”

⁹ It is irrelevant that the City is a municipally owned utility that retains control over its own retail rates. The dispute in this case involves the City’s rights and obligations in the *wholesale* market, which are controlled by the Protocols. It is indisputable that the PUCT maintains regulatory oversight and enforcement authority with respect to the ERCOT Protocols. Thus, by electing to participate in the ERCOT wholesale market, the City has subjected itself to the pervasive regulatory scheme that the Legislature created for that wholesale market, and it must exhaust its administrative remedies at the PUCT like any other participant in the market.

underlying the plaintiffs' action is one over which the Legislature intended an agency to have exclusive jurisdiction. *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 221 (Tex. 2002); *see also Marquez*, 487 S.W.3d at 547 (explaining that while the plaintiff's claims were pleaded as constitutional violations, their underlying nature was for violations of the Education Code).

33. If any further proof were needed to show that the Legislature has created a pervasive regulatory scheme for the wholesale market, that proof is the very nature of the market itself. As explained earlier, the Protocols require that ERCOT essentially operate as a clearinghouse for payments between market participants. As a non-profit corporation, ERCOT retains only enough of the payments to pay its operating expenses, which are carefully monitored by the PUCT. Tex. Util. Code § 39.151(e). The transfers of payment from buyers to ERCOT, and then from ERCOT to sellers, are the lifeblood of the market. If buyers and sellers were allowed to use the courts to avoid payment obligations imposed by the Protocols, it would impair, if not destroy, the carefully balanced market design.

34. That is not to say the PUCT is certain to require that the City pay the amounts at issue, or that the PUCT will subject the City to the enforcement procedures in the Protocols. The PUCT may (or may not) decide that circumstances warrant an exception to the Protocols insofar as the City is concerned. But the PUCT will be able to make a decision regarding the City's claims with full knowledge of how the market works and how granting the City's request for relief would affect the market as a whole. This Court does not have that level of expertise, which is precisely why the Legislature vested exclusive jurisdiction in the PUCT to adjudicate claims such as the ones that the City advances in this case. *See Marquez*, 487 S.W.3d at 544 ("By requiring the agency to address the complaints first, the law permits the agency to apply its

expertise and exercise its discretion to resolve the issue and to develop a complete factual record if the courts later get involved.”).

4. The City cannot create jurisdiction in this Court by alleging that the implementation of the Protocols would violate the Texas Constitution.

35. The City cannot avoid the PUCT’s exclusive jurisdiction just because its pleading “challenges the constitutionality of ERCOT’s acts.” Sec. Am. Pet. at ¶ 18. In *Clint Independent School District v. Marquez*, the Texas Supreme Court held that the fact that a constitutional claim is at issue does not *per se* remove it from an agency’s exclusive jurisdiction. 487 S.W.3d at 553. Rather, the question remains whether the subject matter of the dispute is within the agency’s exclusive jurisdiction—and here it plainly is, regardless of how the claims are pleaded. *Id.* This is especially so when there are historical fact questions and mixed questions of law and fact. *Id.* at 558. And here, these fact questions are pervasive. As discussed in more detail below, the PUCT will need to determine (among other things)—based on the facts pleaded by the City—if ERCOT charged the right prices, if it failed to require sufficient deposits, the amount of defaults at issue, whether ERCOT has deviated from the Protocols, whether an uplift will be needed, how much of an uplift the City would bear, and whether the City will ultimately be repaid.

36. Two cases are particularly important to understanding an agency’s appropriate role in this situation: *City of Dallas v. Stewart*, 361 S.W.3d 562 (Tex. 2012), and *Clint Independent School District v. Marquez*, 487 S.W.3d at 538 (Tex. 2016).

(a) *Stewart and Marquez*

37. *Stewart* concerned an agency’s ability to determine value for the purposes of a takings claim—an issue of constitutionally significant fact. 361 S.W.3d at 564. In *Stewart*, a municipal agency determined that Stewart’s house was a public nuisance and ordered its demolition. *Id.* at 564-65. Stewart appealed that decision to district court, where she pleaded a

constitutional takings claim—but not before her home was demolished. *Id.* at 565. According to the statute at issue, the agency’s findings were entitled to substantial-evidence review. The question, therefore, was whether the agency’s nuisance finding, which was affirmed on substantial-evidence review, precluded Stewart’s takings claim. *Id.* at 566.

38. In holding that it did not, the Court explained that a nuisance finding is essentially a finding that, for the purposes of a constitutional takings claim, a person’s property is valueless. *Id.* at 575 (holding that the determination’s “only meaning” is that “it gives the government the authority to take and destroy a person’s property *without compensation*”). It is “thus a value determination.” *Id.* In other words, the agency was effectively deciding the value question at issue in Stewart’s constitutional takings claim. The Court held that review of this finding could not be limited to substantial-evidence review because constitutional claims “must *ultimately* be decided by a court rather than an agency.” *Id.* at 568 (emphasis added).

39. Importantly, while it held that the nuisance finding was constitutionally significant, the Court did not hold that the agency was precluded from deciding the question in the first instance. To the contrary, the Court ratified the agency’s power to make an initial determination, so long as it was subject to *de novo* judicial review. *See id.* at 580 (“*de novo* review is required only when a nuisance determination is appealed,” so “the City need not institute court proceedings to abate every nuisance”). The Court held that a claimant had to participate in and appeal from the agency process in order to preserve her takings claim. *Id.* at 579.

40. The Court also more carefully distinguished between issues that are properly for the agency, and to which a court must give deference, and those that must be considered anew by a reviewing court:

[I]n the takings context, we may grant deference to findings of historical fact, but mixed questions of law and constitutionally relevant fact—like the nuisance determination here—must be reviewed *de novo*.... An analysis of whether a structure is a nuisance requires fairly subtle consideration. There are initial questions of historical fact—whether or not the structure had foundation damage, for example. These questions are within the competence of the administrative agency and are accorded deference. But the second-order analysis, which applies those historical facts to the legal standards, are questions of law that determine the constitutionality of a property’s demolition. These legal-factual determinations are outside the competence of administrative agencies.

Id. at 578 (citations and footnotes omitted).

41. The next critical decision is *Marquez*, in which the parents of public school students challenged the manner in which the school district allocated money among the district’s schools. *See* 487 S.W.3d at 543. The parents alleged that the district’s actions violated the Texas constitution. *Id.* The question presented was whether the parents first had to bring their complaints to the Texas Commissioner of Education, who has exclusive jurisdiction over claims alleging violations of the “school laws of this state.” *Id.* at 546.

42. The Court held that while the parents’ claims presented only constitutional claims, they were nevertheless within the Commissioner’s jurisdiction because the parents alleged that the district infringed their constitutional rights “*by violating the requirements of the Education Code.*” *Id.* at 547.

43. The parents tried to invoke a putative exception to exclusive jurisdiction for constitutional claims, which several courts of appeals had adopted based on a footnote in *Tex. Educ. Agency v. Cypress-Fairbanks Indep. Sch. Dist.* *See id.* at 550 (citing 830 S.W.2d 88 (Tex. 1992)). But as the Court explained, *Cypress-Fairbanks* only held—based on binding Supreme Court precedent—that a section 1983 claim alleging violations of the *federal* constitution could not be subject to state-law administrative-exhaustion rules. *Id.* at 551.

44. The *Marquez* Court did not hold that this exhaustion exception applied to claims under the Texas constitution, or even to federal constitutional claims in state court. Instead, it merely held that if a plaintiff alleged claims that a school board “violated *only* the person’s state or federal constitutional rights, and the conduct or decision does not violate the school laws of the state,” then the claim would not be within the Commissioner’s exclusive jurisdiction—but, then, “no ‘exception’ to an exhaustion requirement is needed.” *Id.* at 552-53. But if the constitutional claim was “ancillary to or supportive of” a claim within the Commissioner’s jurisdiction, then exhaustion was required. *Id.* at 553.

45. Finally, the Court explained that it “ha[d] never globally exempted claims based on the Texas constitution from statutory exhaustion-of-remedies requirements.” *Id.* at 553 n.9. It “decline[d] to do so,” noting that it had, “at least on some occasions, required exhaustion of administrative remedies before asserting claims under the Texas constitution.” *Id.* (citing *Stewart*, 361 S.W.3d at 579).¹⁰

(b) The PUC can consider the City’s constitutional arguments.

46. The essence of the City’s complaint is that ERCOT’s actions under the Protocols and a PUCT Order are inconsistent with the Texas Constitution. As noted above, a Market Participant’s complaint about an ERCOT Protocol is within the PUCT’s exclusive jurisdiction. The PUCT’s jurisdiction does not change just because the market participant’s complaints about the Protocols are of a constitutional nature. Constitutionally based or not, complaints about ERCOT Protocols strike at the very core of the PUCT’s special competence, because changes could have significant market-wide impacts. The City’s attack on the default-uplift protocols

¹⁰ Beal’s administrative law treatise explains that where a plaintiff argues that “the agency action is unconstitutional by how the agency has interpreted and applied the statute, rules, or both, there is a valid argument, even though no reported decisions, that the party must exhaust all administrative remedies in order to allow the agency to cure the alleged error.” 2 Tex. Admin. Prac. & Proc. § 13.4 (2020).

bear this out: if municipally owned utilities cannot have payments reduced or be issued default-uplift invoices, the consequence would be to shift onto private market participants (and ultimately their customers) a significant amount of costs that would otherwise be partially borne by municipally owned utilities. If the default-uplift Protocols cannot stand as currently written, it would make the most sense for the PUCT to adjust them because it, more so than a court, could take into account the change's broader effects.

47. The PUCT could give the City complete relief without actually adjudicating the City's constitutional claims. Because the PUCT's power over ERCOT's Protocols is plenary, the PUCT need not hold that the Protocols in fact violated the constitution in order to alter them prospectively, as the City effectively requests. Instead, it could act on the basis of constitutional avoidance or other similar principles, as the PUCT has done in the past. As Beal's treatise explains regarding as-applied constitutional challenges to agency action:

Even though the agency cannot issue a binding decision as to a constitutional issue, if the agency is apprised of the challenge and its legal basis, it may be possible for the agency to modify its conduct or adopt an alternative interpretation of its statutory authority in order to avoid the constitutional issue.

2 Tex. Admin. Prac. & Proc. § 9.3.1.[c].

(c) Questions of historical fact and mixed questions of law and fact inherent in the City's claims must be answered by the PUCT.

48. While *Marquez* rejected the putative constitutional-claim exception to exhaustion, it reaffirmed another exception: the exception for pure questions of law. *Marquez*, 487 S.W.3d at 557. But that exception does not fit here.

49. The Texas Supreme Court's per curiam opinion in *Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501 (Tex. 2006), illustrates this point. There, the plaintiffs challenged the assessment of ad valorem taxes on their travel trailers, arguing that the taxes were both

unconstitutional and that the trailers were nontaxable under the Tax Code. *See id.* at 502. Not all the plaintiffs had pursued their mandatory administrative remedies, but they argued that they need not have done so because the claims were constitutional and purely legal. *Id.* The Court disagreed. In holding that plaintiffs had to exhaust remedies, the Court explained:

The taxpayers here are seeking more than a declaration that taxing trailers is unconstitutional—they are seeking to have their individual assessments set aside. While the former claim need not be brought administratively, the latter must.... Accordingly, the court of appeals erred in reversing the trial court’s partial dismissal and requiring certification of taxpayers who had failed to pursue administrative remedies.

Id.

50. In *Marquez*, similarly, the Court rejected the plaintiffs’ pure-question-of-law defense because:

the parents’ claims here do not present pure questions of law; they present questions of historical fact (such as what happened up until now in the district and its individual schools with respect to funding and student performance), questions of law (such as what the students’ constitutional rights are with respect to public education funding), and mixed questions of law and fact (such as whether the students’ constitutional rights have been violated by the district’s distribution of educational funding).

487 S.W.3d at 558.

51. The City’s claims are not purely legal. They present questions of historical fact and mixed questions of law and fact. The City’s claims are based on allegations regarding alleged improper pricing, *see* Sec. Am. Pet. at ¶ 35, ERCOT’s alleged failure to require sufficient deposits, *id.* at ¶ 37, ERCOT’s alleged assertion of limitless power to settle accounts however it wants, *id.* at ¶ 39, ERCOT’s alleged deviation from the Protocols to create a Ponzi scheme, *id.* at ¶ 42, and ERCOT’s alleged intent to exceed the \$2,500,000 monthly limit for default uplifts, *id.* at ¶ 43, i.e., questions of historical fact. The City’s claims raise issues about what the Protocols require, how they have been applied, and how the City fears ERCOT intends to apply them going

forward based on alleged conversations with ERCOT, i.e., questions of historical fact and application of law to fact. There are also allegations about, e.g., the purpose of the default-uplift protocols and whether the City benefits from the default-uplift charges that are not purely constitutional questions. *Id.* at ¶ 53. Indeed, many of the City’s allegations turn on the question of whether it is paying others’ debt gratuitously, *id.* at ¶¶ 51, 58-59, a question with legal and factual components, and whether it would ever be able to recover any amounts paid, a question with legal and factual components. *Id.* at ¶ 67. These fact-driven inquiries are best left to the PUCT with its knowledge and understanding of the wholesale electric market and how the Protocols govern and protect that market, including the fact the Default Uplift Invoices in Protocol section 9.19.1 are designed to re-pay the reduced payments mandated by Protocol section 9.19(1)(d)—a critical omission in the City’s pleadings and one the PUCT would easily sniff out.

4. The City cannot avoid the PUCT’s exclusive jurisdiction by seeking injunctive relief.

52. The City pleads another putative exception to exclusive jurisdiction, arguing that the district court has exclusive jurisdiction over suits seeking injunctive relief and that requiring the City to bring its claims in the PUCT would “deprive the district court of [this] jurisdiction.” *Id.* at ¶ 6 (quoting *PUC v. Houston Lighting & Power Co.*, 778 S.W.2d 195, 197 (Tex. App.—Austin 1989, no writ)).

53. *Marquez* addressed this argument, too, holding:

a party need not exhaust administrative remedies before seeking a temporary injunction if (1) the administrative agency lacks the power to issue immediate injunctive relief *and* (2) the party will suffer irreparable harm during the pendency of the administrative process if not afforded temporary injunctive relief.

487 S.W.3d at 555 (quoting *Houston Federation of Teachers v. Houston Indep. Sch. Dist.*, 730 S.W.2d 644, 646 (Tex. 1987)) (emphasis added); see *Houston Federation*, 730 S.W.3d at 646 (permitting an injunction before exhaustion “if the agency is unable to provide relief” (emphasis added)).

54. Here, even if the PUCT could not grant injunctive relief generally, its plenary power over ERCOT permits it to order ERCOT to take any action necessary to prevent irreparable harm to the City pending resolution of the City’s complaints. But the PUCT *can* order temporary relief to prevent irreparable harm. See e.g., PURA § 15.104(a)(1), (a)(D) (permitting the PUC to “issue a cease and desist order ... without notice” if it will cause an “injury [that] is incapable of being repaired or rectified by monetary compensation”). The rules implementing PURA by which the PUC has this power apply to ERCOT. 16 Tex. Admin. Code § 24.54(a).¹¹ Additionally, if the PUC determines there is a meritorious complaint warranting corrective action against ERCOT, it may grant “the relief the [PUCT] deems appropriate.” *Id.* at § 22.251(o). Thus, the City can obtain temporary relief at the PUCT to prevent imminent, irreparable harm.

B. ERCOT is immune in this *ultra vires* action.

55. An *ultra vires* suit is one to require a state official to comply with the law. *Heinrich*, 284 S.W.3d at 372. An *ultra vires* suit can only be maintained against individuals in their official capacity, not against the immune entity itself. *Id.* at 373. The City explicitly pleads that it is bringing an *ultra vires* suit against state officials:

¹¹ The City notably cites *Houston Lighting & Power Co.*, 778 S.W.2d at 195, rather than *Marquez* or *Houston Federation*. *HL&P* is distinguishable, as it arose from an administrative proceeding. During a PUCT contested case, one party sought certain documents that *HL&P* argued were privileged; an ALJ agreed with *HL&P* but was overruled by the PUCT. See *id.* at 197. *HL&P* then sought and received a district court injunction against disclosure of the documents. Thus, with respect to the question at issue, *HL&P* had *already* exhausted its remedies. Construing *HL&P* any more broadly would conflict with *Marquez*. Notably, the decision appears never to have been relied on for its jurisdictional holding regarding injunctions.

14. The Directors and Officers are sued *in their official capacities only*. The Directors and Officers are *not* sued in their individual capacities, and *the City seeks no recovery from any of the Directors or Officers individually*. In this ultra-vires suit against state officials in their official capacities, the City seeks only prospective injunctive relief against the offices that the Directors and Officers presently hold at ERCOT. So while the Officers and Directors may be the titular defendants, the entity they represent, through the offices they hold, is the real party in interest. See *City of El Paso v. Heinrich*, 284 S.W.3d 366, 370–73 (Tex. 2009). Though this suit names the Directors and Officers in their official capacities, “[i]t is fundamental” that this suit “is merely another way of pleading an action against” ERCOT. See *Univ. of Tex. Health Sci. Ctr. v. Bailey*, 322 S.W.3d 395, 401 (Tex. 2011).

Sec. Am. Pet. at ¶ 14; see also *id.* at ¶ 61 (“Moreover, this ultra vires action against ERCOT’s defendant officers and directors does not implicate [ERCOT’s] immunity.”).

56. The City’s complaints, and its request for declaratory relief, are limited to ERCOT’s *actions*. Sec. Am. Pet. at § VII(A) (“ERCOT’s **actions** violate Article XI, Section 3 and Article III, Section 52(a) . . .”) (emphasis added); *id.* at ¶ 18 (“this dispute . . . challenges the constitutionality of ERCOT’s **acts**.”) (emphasis added). Nowhere in its pleading does the City ask the Court to declare PURA or the Protocols unconstitutional. See *id.* at ¶¶ 48-59. For this and other reasons, ERCOT is not a proper party under *Heinrich* and should be dismissed because it retains its immunity. *Heinrich*, 284 S.W.3d at 372; *Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 552 S.W.3d 297, 318 (Tex. App.—Dallas Apr. 16, 2018, orig. proceeding) (“[W]e conclude ERCOT is entitled to sovereign immunity from private damages suits in connection with the discharge of its regulatory responsibilities”), *mand. denied*, No. 18-0781, 2021 WL 1047236 (Tex. Mar. 19, 2021).

57. The City’s reliance on *Patel v. Tex. Dept’t of Licensing and Reg.*, 469 S.W.3d 69 (Tex. 2015), is misplaced. Sec. Am. Pet. at ¶ 60. There, the plaintiffs explicitly sought to declare a statute unconstitutional—the City does not. *Id.* at 76. Indeed, *Patel* clarified that a suit to

declare a rule or statute unconstitutional is not an *ultra vires* claim. *Id.* at 77. The City’s reliance on *City of Elsa v. M.A.L.*, 226 S.W.3d 390 (Tex. 2007), and *City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995), is also misplaced. Sec. Am. Pet. at ¶ 60. Those cases pre-date the Texas Supreme Court’s clarification of *ultra vires* claims and suits for equitable relief in *Patel*. *See e.g.*, *El Paso Indep. Sch. Dist. v. McIntyre*, 584 S.W.3d 185, 198-99 (Tex. App.—El Paso 2018, no. pet.) (dismissing suit for injunctive relief against entity where complaint was about officials actions and not to declare statute invalid, and noting that *City of Elsa* and *Buillion* were reconciled in *Patel* and did not allow claim to proceed). Because the City’s *ultra vires* action is, at best, viable (though not meritorious) against only the officials sued herein, ERCOT retains immunity and the claims against it must be dismissed. *Heinrich*, 284 S.W.3d at 373.

C. The City’s failure to join the PUCT and affected Market Participants supports dismissal of the City’s claims or, at a minimum, abatement until they are joined.

58. The Declaratory Judgment Act (the “DJA”) requires joinder of “all persons who have or claim any interest that would be affected by the declaration must be made parties.” Tex. Civ. Prac. & Rem. Code § 37.006(a). “When a party asserts Section 37.006(a) as a bar to any judgment favoring a party who has failed to join all necessary parties, Rule of Civil Procedure 39’s standards govern.” *Amboree v. Bonton*, 575 S.W.3d 38, 44 (Tex. App.—Houston [1st Dist.] 2019, no. pet.) (citing *Brooks v. Northglen Ass’n*, 141 S.W.3d 158, 162-64 (Tex. 2004)). Under Rule 39, there are two types of parties: (i) those who are necessary for a just adjudication and that should be joined if feasible; and (ii) in rare circumstances, those whose are so vital to the disposition of the suit that they are “truly indispensable” or “jurisdictionally indispensable,” and their absence deprives the court of jurisdiction. *See, e.g.*, *Brooks*, 141 S.W.3d at 162-63; *Sage St.*, 43 S.W.3d at 103. This case presents the rare circumstance where the absence of the PUCT and affected Market Participants deprives the Court of jurisdiction and warrants dismissal of the

City's claims; but certainly, in any event, at a minimum the facts of this case support abatement until they are joined. As such, ERCOT raises the issue alternatively in its Plea to the Jurisdiction and also as a Plea in Abatement.¹²

59. “Rule 39 mandates joinder of persons whose interests would be affected by the judgment...[and] determines whether a trial court has authority to proceed without joining a person whose presence in the litigation is made mandatory by the Declaratory Judgment Act.” *Brooks*, 141 S.W.3d at 162. Under the Rule, all parties who have an interest in the litigation must be joined so that the litigation will effectively and completely adjudicate the dispute. This includes parties in whose absence complete relief cannot be accorded amongst those that are already parties or those whose absence will, as a practical matter, impair or impede their ability to protect their interest in the subject matter of the suit. *Id.* (citing Tex. R. Civ. P. 39). In addition, parties should be joined if their absence would leave any of the persons that are already parties to subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. *Id.*

60. Generally, the failure to comply with the mandate of DJA Section 37.006(a) to join all necessary parties triggers an analysis of “whether the court ought to proceed” or “whether the trial court should have refused to enter a judgment” until the necessary parties are joined. *Id.* (citing *Cooper v. Tex. Gulf. Indus., Inc.*, 513 S.W.2d 200, 204 (Tex. 1974)). However, where a trial court’s ruling would “clearly prejudice” the absent parties’ rights or where “a judgment would adversely affect the interests of absent parties who had no opportunity to assert

¹² “Abatement of an action is proper where it is apparent that all parties whose interests would be affected by the action have not been made parties.” *April Sound Mgmt. Corp. v. Concerned Prop. Owners for April Sound, Inc.*, 153 S.W.3d 519, 524 (Tex. App.—Amarillo 2004, no pet.) (internal citation omitted). A plea in abatement should identify the impediment to the continuation of the suit, identify an effective cure, and ask the court to abate the suit until the defect is corrected, which ERCOT asks the Court to do here if it finds it has jurisdiction over the City’s claims. *See, e.g., Truong v. City of Houston*, 99 S.W.3d 204, 216 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (citing *Tex. Highway Dep’t v. Jarrell*, 418 S.W.2d 486, 488 (Tex. 1967)).

their rights in the trial court,” the failure to join those parties may constitute a *jurisdictional* defect. See *Vondy v. Comm’rs Court of Uvalde Cnty.*, 620 S.W.2d 104, 106-07 (Tex. 1981); *Sage St.*, 43 S.W.3d at 103-04 (citing *Clear Lake*, 549 S.W.2d at 390) (the Supreme Court “did not eliminate fundamental error in those cases where a judgment rendered in the absence of certain parties clearly prejudices the absent parties’ rights”).

61. There is no “litmus paper test” for determining whether a particular party is “jurisdictionally indispensable,” just as there is “no arbitrary standard or precise formula” for determining whether a party should be joined if feasible under Rule 39. *Longoria v. Exxon Mobil Corp.*, 255 S.W.3d 174, 180 (Tex. App.—San Antonio 2008, no pet.) (quoting *Cooper*, 513 S.W.2d at 204); *Sage St.*, 43 S.W.3d at 104 (citing *Clear Lake*, 549 S.W.2d at 390)). Instead, courts “must examine the surrounding facts and circumstances of the case to determine if the interests of an absent party will be prejudiced and if an adequate judgment can be rendered for the parties before the court.” *Sage St.*, 43 S.W.3d at 104 (citing *Vondy*, 620 S.W.2d at 106; *Clear Lake*, 549 S.W.2d at 390). In this vein, where a party seeks declaratory relief, a trial court must make this determination by “liberally construing the [Declaratory Judgment Act] in light of its purpose—‘to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’” *Longoria*, 255 S.W.3d at 180 (citing Tex. Civ. Prac. & Rem. Code § 37.002(b); *Clear Lake*, 549 S.W.2d at 390).

62. Non-parties have been held to be “jurisdictionally indispensable,” for example, where a party seeks declaratory or injunctive relief compelling a specific action or the performance of a certain duty. See *Henry v. Cox*, 520 S.W.3d 28 (Tex. 2017); *Gaal v. Townsend*, 14 S.W. 365 (Tex. 1890). In those circumstances, “all persons charged with the performance of that duty must be made parties....” *Henry*, 520 S.W.3d at 34. In both *Henry* and *Gaal*, the parties

sought relief compelling the defendant to take an action within the purview and authority of the county commissioners' court, but in each case, the party seeking relief failed to actually join the county commissioners' court or the majority of the members—the necessary parties that would actually be charged with the performance of the duty. *See* 520 S.W.3d. 35-36; 14 S.W. at 365-66. In each instance the party seeking relief only joined the county judge (who presided over, but could not act in place of, the commissioners' court). *See id.* In both cases, the Supreme Court held that the commissioners' court was a necessary and indispensable party, and the “failure to name them deprived the trial court of the authority to bind them.” *Henry*, 520 S.W.3d at 36. If the Court determines that the PUCT does not have exclusive jurisdiction over the City's claims, then it is a jurisdictionally indispensable party because the Legislature granted it the authority to enforce the market rules that the City seeks to evade. *See id.*; *see also Gilmer Indep. Sch. Dist. v. Dorfman*, 156 S.W.3d 586, 588 (Tex. App.—Tyler 2003, no pet.) (trial court erred in denying plea to the jurisdiction because commissioner was indispensable party to suit for declaratory judgment).

63. Likewise, non-parties have been held “jurisdictionally indispensable” where a declaratory judgment in their absence would “clearly prejudice” the non-parties' contractual rights or benefits. *See Sage St.* 43 S.W.3d at 100. In *Sage St.*, parties to the suit sought a declaratory judgment that a contractual assignment between two *non-parties* was void, thereby also voiding a settlement agreement between the two opposing parties in the lawsuit. *Id.* at 101-03. The parties argued that the non-parties were not indispensable because a finding that the assignment was void was “incidental” to the declaratory judgment and did not prejudice the non-parties because the judgment “is not binding on them.” *Id.* at 104. The appellate court disagreed, finding that although the DJA “expressly provides that it does not prejudice the rights of a person

not a party to the proceeding, it is undeniable that the trial court's ruling would prejudice [the non-parties]." *Id.* Even though the parties are not technically bound by a declaratory judgment rendered in their absence, the practical effect is that the non-parties would be deprived of the benefit of the bargain of their contract (a settlement agreement) without giving them their day in court. *See id.* Thus, the non-parties were "jurisdictionally indispensable" and required to be joined before a judgement could be rendered declaring the assignment void. *Id.*

64. While non-parties have been held to be "jurisdictionally indispensable" in relatively limited circumstances, Texas courts have held in numerous circumstances that joinder of non-parties is mandated under DJA Section 37.006(a) and Rule 39, especially where non-parties' rights would be affected or determined by a resolution of the claims of the parties before the court. *See, e.g., Veal v. Thomason*, 159 S.W.2d 472 (Tex. 1942); *Kodiak Res., Inc. v. Smith*, 361 S.W.3d 246, 252 (Tex. App.—Beaumont 2012, no pet.); *Riddick v. Quail Harbor Condo. Ass'n, Inc.* 7 S.W.3d 663 (Tex. App.—Texarkana [14th Dist.] 1999, no pet.). It is only in those circumstances where a court can adjudicate the issues between existing parties without determining or impairing non-parties' rights or interests that joinder of non-parties is not required upon a party's request to the trial court. *See, e.g., Zurita v. SvH-1 Partners, Ltd.*, No. 03-10-00650-CV, 2011 Tex. App. LEXIS 9670, *22 (Tex. App.—Austin Dec. 8, 2011, pet. denied) (explaining that complete relief could be granted amongst those already parties because the trial court "was able to adjudicate the issues between [the parties] without determining the rights of [a non-party]..." and the appellant never sought or requested to have the non-party joined by the trial court). Courts have held that where non-parties have a direct financial interest in the subject matter of the lawsuit, that is not the case; the non-parties are necessary parties and Rule 39 mandates their joinder, if requested and feasible. *See Veal*, 159 S.W.2d at 474, 477; *Kodiak*, 361

S.W.3d at 249, 251-52. This is especially true where non-parties' interests are not aligned with the interests of parties to the lawsuit. *Kodiak*, 361 S.W.3d at 251.

1. Affected Market Participants have a direct financial interest in the subject matter of this lawsuit that would be prejudiced if they are not joined.

65. Texas courts have addressed analogous circumstances to those created by the City several times, and those opinions are instructive on the application of Rule 39 here. In *Veal v. Thomason*, a group of neighboring landowners entered into a unitized oil and mineral lease that split ownership of any royalty interests from oil or minerals found underneath the unitized block on a proportionate basis based on each lessor's land contribution to the lease. 159 S.W.2d at 473. One of the lessors later filed suit to have his lease canceled without joining the other lessors. *Id.* at 474. Noting that each lessor's interest in the royalty revenue under the lease was based their proportionate ownership of land, the Supreme Court concluded that all of the lessors had a "direct interest in the object and subject matter of the suit and [their] interests will necessarily be affected by any judgment that may be rendered." *Id.* at 476-77. The Supreme Court explained that if one lessor were allowed to free his interest from the obligations under the unitized lease without joining the other lessors, the remaining lessors "will have had such royalty interest in his land, for all practical purposes, cut off and destroyed without having had their day in court." *Id.* at 477. Thus, the remaining lessors were necessary parties to the suit. *Id.*

66. Similarly in *Kodiak*, at issue was a mineral lease and pooling agreement between multiple landowners and oil and gas producers. 361 S.W.3d at 247. A group of the landowners (but not all of them) filed suit under the DJA seeking a declaration that a mineral lease had terminated. *Id.* The oil and gas producers moved the trial court to join the remaining landowners as necessary parties, which the trial court denied. *Id.* On appeal, the court found that the remaining landowners were necessary parties because they "have a direct financial interest in the

lease as well as a financial interest in the pooling agreement,” and without them “the trial court was deprived of their input regarding whether facts existed to extend the lease’s terms and concerning their interests in the pooling agreements.” *Id.* at 249. The court explained that “[a]s a practical matter, in their absence, the lessees’ obligations to all parties to the lease have been impaired by the trial court’s declaration that the lease, as to some parties, has ended.” *Id.* at 251. Thus, it was error for the trial court to refuse their joinder upon request because “...the DJA [does not] permit[] a trial court to deny a party’s request to join additional parties whose interests...would be determined in resolving the claims of the parties before the court.” *Id.* at 250, 252.

67. This rationale has been echoed by other Texas courts, including *Riddick v. Quail Harbor Condo. Ass’n, Inc.* 7 S.W.3d at 663. In that case, a condominium unit owner sued the condo association seeking, among other things, a declaration that the association was liable to him for damages to his unit caused by the shifting foundation of the building, which belonged to all condominium unit owners. *Id.* at 672-73. The unit owner argued that he did not have to join all other unit owners because “he is entitled to his proportionate share of damages.” *Id.* at 673. The appellate court disagreed finding that all other unit owners were necessary parties because they had a direct interest in the subject of the lawsuit—namely, if the single owner were granted his requested declaratory relief, the remaining unit owners would suffer a pecuniary injury in that their maintenance fees would be used to pay the owner’s damages. *Id.* Thus, the remaining owners “must be made parties” and the owner’s failure to do so warranted dismissal. *Id.*

68. The same circumstances present themselves here. In essence, the City seeks a declaratory judgment that the City’s obligation to comply with certain contractual obligations and Protocols has ended—at the expense of hundreds of other Market Participants who have

been forced, to date, to absorb the City's obligation for its share of millions of dollars of market short-pays. This number will only continue to grow if the City is granted its requested relief and allowed to opt itself out of compliance with the Protocols' Default Uplift procedures. Indisputably, the affected Market Participants have a direct financial interest in the subject matter of this lawsuit and their interests will undoubtedly be affected by any judgment in this lawsuit. Indeed, their rights have already been affected. They were forced to absorb the City's financial obligations and receive larger payment reductions when the City filed its last minute TRO with virtually no notice and in an improper court only to agree afterwards to transfer venue to Travis County, the county of proper venue, once the City had already secured its relief.

2. ERCOT would also be subject to a substantial risk of incurring multiple or inconsistent obligations if affected Market Participants are not joined.

69. In addition, Rule 39 also requires a trial court to consider the effect on ERCOT of granting the City its requested relief. *Id.* at 251. "The purpose of [Rule 39] is to avoid a multiplicity of suits...." *Zurita*, 2011 Tex. App. LEXIS 9670, at *21. In other words, the Court must consider whether granting the City its requested relief would leave ERCOT "subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." *Kodiak*, 361 S.W.3d at 252. Given that there are hundreds of affected Market Participants, none of which would technically be bound by a declaratory judgment rendered in this lawsuit, if the affected Market Participants were not joined, ERCOT is left subject to a substantial risk of a multiplicity of suits from some or all of the affected Market Participants, many of which may raise the same issues the City raises in this lawsuit. In fact, a similar lawsuit has been filed in Bexar County by another Market Participant—increasing the risk to ERCOT of inconsistent multiple judgments. A declaratory judgment rendered in the absence of all affected Market Participants "could not have a preclusive effect" and would not "terminate the uncertainty or controversy giving rise to the

proceeding.” *Longoria*, 255 S.W.3d at 180; *Beacon Nat’l Ins. Co. v. Montemayor*, 86 S.W.3d 260, 268 (Tex. App.—Austin 2002, no pet). Moreover, allowing the litigation to proceed in such piecemeal fashion could conceivably force ERCOT into the situation where it is faced with inconsistent obligations in terms of the payments (or the withholding of payments) from Market Participants, which may subject ERCOT to potentially additional claims, litigation, or liability (not to mention the additional costs and attorneys’ fees ERCOT would be forced to incur if the litigation were allowed to proceed in this manner).

70. These issues are unnecessary and entirely avoidable simply by requiring the City to join the affected Market Participants in this suit. And there is no compelling reason otherwise for the Court to move forward in their absence—especially since the City created this defect through its inequitable conduct (from which it has already benefited) and the City alone can remedy the defect. It is proper for the Court to refuse, and the Court should refuse, to proceed until the City joins the affected Market Participants. *See Montemayor*, 83 S.W.3d at 268.

3. Joinder of the affected Market Participants is feasible.

71. Finally, it is feasible to join all affected Market Participants. ERCOT’s Standard Form Market Participant Agreement, which each Market Participant must execute prior to participation in the ERCOT market, contains a forum and venue selection clause making Market Participants subject to Texas law and mandatory venue for all claims in Travis County, Texas. *See Ex. B-1* (ERCOT standard form agreement) at § 11(A). Thus, each affected Market Participant is “subject to service of process,” as required by Rule 39. *See Tex. R. Civ. P. 39(a)*.

72. When a party requests that the trial court join additional necessary parties whose interests would be determined in resolving the claims of the parties before the court, and the court determines that the non-parties fall within the purview of Rule 39 and are subject to

service of process, the parties *must* be joined. *See* Tex. R. Civ. P. 39(a); *Kodiak*, 361 S.W.3d at 252; *Longoria*, 255 S.W.3d at 184. A trial court has no discretion to deny the request in a declaratory judgment action if the above are satisfied. *Kodiak*, 361 S.W.3d at 252. And the sheer number of necessary parties that must be joined is of no consequence either. *See, e.g., Pierce v. Blalack*, 535 S.W.3d 35, 39-44 (Tex. App.—Texarkana 2017, no pet.) (affirming dismissal with prejudice where at least 286 necessary parties were identified, trial court ordered plaintiff to join and serve all parties, and plaintiff served only 55 parties); *Dahl v. Hartman*, 14 S.W.3d 434, 435-37 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (affirming trial court’s dismissal with prejudice where plaintiff failed to serve and join 333 necessary parties). When necessary parties under Rule 39 are identified, the plaintiff faces two choices: either join and serve the necessary parties or have its claims dismissed. *See, e.g., Longoria*, 255 S.W.3d at 184.

73. As explained above, the affected Market Participants clearly fall within the provisions of Rule 39, and each is subject to the laws of this State and mandatory venue in Travis County. Therefore, DJA Section 37.006(a) and Rule 39 mandate that the City effect their joinder. Accordingly, ERCOT moves the Court to either dismiss the City’s claims out of hand if the Court finds the PUCT and affected Market Participants are so indispensable that the Court already lacks jurisdiction over the City’s claims or, alternatively, abate this lawsuit for 14 days and order the City to effect their joinder within that timeframe.¹³ If the City fails to do so, ERCOT Defendants request that the Court dismiss the City’s claims.

CONCLUSION AND PRAYER

This dispute falls within the exclusive jurisdiction of the PUCT. The PUCT has the ability and expertise to entertain the City’s complaints and to weigh the effects on the wholesale electric market in affording the City relief. The Court should dismiss the City’s claims until the

¹³ The affected Market Participants are identified in **Exhibit B-8**.

City has exhausted its administrative remedies. In any event, ERCOT is immune in this *ultra vires* suit and should be dismissed. Alternatively, the Court should abate this lawsuit for 14 days and order the City to join the PUCT and all affected Market Participants. If the City fails, or refuses, to do so within that timeframe, ERCOT Defendants requests that the Court dismiss the City's claims with prejudice. ERCOT Defendants request such further relief, at law or in equity, to which they may show themselves entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of this document has been served in accordance with the Texas Rules of Civil Procedure on this 15th day of April, 2021.

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**ATTORNEYS FOR PLAINTIFF
THE CITY OF DENTON, TEXAS**

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EXHIBIT A

ERCOT Nodal Protocols

Section 1: Overview

January 1, 2021

1 OVERVIEW

1.1 Summary of the ERCOT Protocols Document

- (1) The Electric Reliability Council of Texas (ERCOT) Protocols, created through the collaborative efforts of representatives of all segments of Market Participants, means the document adopted by ERCOT, including any attachments or exhibits referenced in these Protocols, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. To determine responsibilities at a given time, the version of the ERCOT Protocols in effect at the time of the performance or non-performance of an action governs with respect to that action. These Protocols are intended to implement ERCOT's functions as the Independent Organization for the ERCOT Region as certified by the Public Utility Commission of Texas (PUCT) and as the Program Administrator appointed by the PUCT that is responsible for carrying out the administrative responsibilities related to the Renewable Energy Credit (REC) Program as set forth in subsection (g) of P.U.C. SUBST. R. 25.173, Goal for Renewable Energy. Market Participants, the Independent Market Monitor (IMM), and ERCOT shall abide by these Protocols.
- (2) The ERCOT Board, Technical Advisory Committee (TAC), and other ERCOT subcommittees authorized by the ERCOT Board or TAC or ERCOT may develop policies, guidelines, procedures, forms, and applications for the implementation of and operation under, these Protocols and to comply with applicable rules, laws, and orders of a Governmental Authority. A policy, guideline, procedure, form, or application described above is an "Other Binding Document." Other Binding Documents do not include ERCOT's internal administrative procedures, documents and processes necessary to fulfill its role as the Independent Organization or as a registered Entity with the North American Electric Reliability Corporation (NERC).
- (3) ERCOT shall post the Other Binding Documents List and all Other Binding Documents to a part of the ERCOT website reserved for posting Other Binding Documents. A TAC designated subcommittee shall review the Other Binding Documents List at least annually, and modifications to the Other Binding Documents List shall be reviewed and considered by the TAC designated subcommittee and by TAC at its next scheduled meeting.
- (4) Any revision of an Other Binding Document must follow the revision process set forth in that Other Binding Document. If an Other Binding Document does not specify a revision process, the Other Binding Document shall be subject to the procedures in Section 21, Revision Request Process, and shall be treated as if it were a Protocol for purposes of the revision process.
- (5) To the extent that Other Binding Documents are not in conflict with these Protocols or with an Agreement to which it is a party, each Market Participant, the IMM, and ERCOT shall abide by the Other Binding Documents. Taken together, these Protocols and the

Other Binding Documents constitute all of the “scheduling, operating, planning, reliability, and Settlement policies, rules, guidelines, and procedures established by the independent System Operator in ERCOT,” as that phrase is used in subsection (j) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.151 (Vernon 1998 & Supp. 2007) (PURA), Essential Organizations, that bind Market Participants.

- (6) Except as provided below, if the provisions in any attachment to these Protocols or in any of the Other Binding Documents conflict with the provisions of Section 1, Overview, through Section 21, and Section 24, Retail Point to Point Communications, then the provisions of Section 1 through Section 21, and Section 24 prevail to the extent of the inconsistency. If any provision of any Agreement conflicts with any provision of the Protocols, the Agreement prevails to the extent of the conflict. Any Agreement provision that deviates from the standard form for that Agreement in Section 22, Attachments, must expressly state that the Agreement provision deviates from the standard form in Section 22. Agreement provisions that deviate from the Protocols are effective only upon approval by the ERCOT Board on a showing of good cause.
- (7) These Protocols are not intended to govern the direct relationships between or among Market Participants except as expressly provided in these Protocols. ERCOT is not responsible for any relationship between or among Market Participants to which ERCOT is not a party.

1.2 Functions of ERCOT

- (1) ERCOT is the Independent Organization certified by the Public Utility Commission of Texas (PUCT) for the ERCOT Region. The major functions of ERCOT, as the Independent Organization, are to:
 - (a) Ensure access to the ERCOT Transmission Grid and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms;
 - (b) Ensure the reliability and adequacy of the ERCOT Transmission Grid;
 - (c) Ensure that information relating to a Customer’s choice of Retail Electric Provider (REP) in Texas is conveyed in a timely manner to the persons who need that information; and
 - (d) Ensure that electricity production and delivery are accurately accounted for among the Generation Resources and Settlement Only Generators (SOGs) and wholesale buyers and sellers, and Transmission Service Providers (TSPs) and Distribution Service Providers (DSPs), in the ERCOT Region.
- (2) ERCOT is the Control Area Operator (CAO) for the ERCOT interconnection and performs all Control Area functions as defined in the Operating Guides and the North American Electric Reliability Corporation (NERC) policies.
- (3) ERCOT procures Ancillary Services to ensure the reliability of the ERCOT System.

ERCOT Nodal Protocols

Section 9: Settlement and Billing

January 1, 2021

$$FEE = \$C / (n + 1)$$

The above variables are defined as follows:

Variable	Definition
n	The number of REPs subscribing to the profile segment
\$C	The total reimbursable cost

- (5) The fee must be paid by each successive subscribing REP to the requestor and any previous subscribing REPs per instructions and validation by ERCOT. As additional REPs subscribe to the profile segment, the fee is recalculated and reallocated equally among all subscribing REPs and the requestor, if the requestor is not a REP.
- (6) Beginning four years after the date on which the profile segment becomes available for Settlement, any REP may request assignment of Electric Service Identifiers (ESI IDs) to the profile segment without being assessed the profile development cost recovery fee.

9.19 Partial Payments by Invoice Recipients

- (1) If at least one Invoice Recipient owing funds does not pay its Settlement Invoice in full (short-pay), ERCOT shall follow the procedure set forth below:
 - (a) ERCOT shall make every reasonable attempt to collect payment from each short-paying Invoice Recipient prior to four hours preceding the close of the Bank Business Day Central Prevailing Time (CPT) on the day that payments by ERCOT are due to be paid to applicable Invoice Recipient(s).
 - (b) ERCOT shall draw on any available Financial Security pledged to ERCOT by each short-paying Invoice Recipient that did not pay the amount due under paragraph (a) above. If the amount of any such draw is greater than the amount of the short-paying Invoice Recipient's cash collateral held in excess of that required to cover its Total Potential Exposure (TPE) ("Excess Collateral"), then a draw on available security for a short-paying Invoice Recipient shall be considered a Late Payment for purposes of Section 16.11.6, Payment Breach and Late Payments by Market Participants. ERCOT may, in its sole discretion, hold up to 5% of Financial Security of each short-paying Invoice Recipient and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held will be applied to unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1, Default Uplift Invoices.
 - (c) ERCOT shall offset or recoup any amounts owed, or to be owed, by ERCOT to a short-paying Invoice Recipient against amounts not paid by that Invoice Recipient, and ERCOT shall apply the amount offset or recouped to cover short pays by that Invoice Recipient. ERCOT may, in its sole discretion, hold credit Invoices and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held will be offset or recouped against unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1.

- (d) If, after taking the actions set forth in paragraphs (a), (b) and (c) above, ERCOT still does not have sufficient funds to pay all amounts that it owes to Settlement Invoice Recipients in full, ERCOT shall deduct any applicable administrative fees as specified in Section 9.16, ERCOT System Administration and User Fees, payments for Reliability Must-Run (RMR) Services, and the Congestion Revenue Right (CRR) Balancing Account (CRRBA) from the amount received or collected and then reduce payments to all Settlement Invoice Recipients owed monies from ERCOT. The reductions must be based on a pro rata basis of monies owed to each Settlement Invoice Recipient, to the extent necessary to clear ERCOT's accounts on the payment due date to achieve revenue neutrality for ERCOT. ERCOT shall provide to all Market Participants payment details on all short pays and subsequent reimbursements of short pays. Details must include the identity of each short-paying Invoice Recipient and the dollar amount attributable to that Invoice Recipient, broken down by Invoice numbers. In addition, ERCOT shall provide the aggregate total of all amounts due to all Invoice Recipients before applying the amount not paid on the Settlement Invoice.
- (e) If sufficient funds continue to be unavailable for ERCOT to pay all amounts in full to short-paid Entities for that Settlement Invoice and the short-paying Entity is not complying with a payment plan designed to enable ERCOT to pay all amounts in full to short-paid Entities, ERCOT shall uplift short-paid amounts through the Default Uplift process described below in Section 9.19.1 and Section 9.19.2, Payment Process for Default Uplift Invoices.
- (f) When ERCOT enters into a payment plan with a short-pay Invoice Recipient, ERCOT shall post to the Market Information System (MIS) Secure Area:
- (i) The short-pay plan;
 - (ii) The schedule of quantifiable expected payments, updated if and when modifications are made to the payment schedule; and
 - (iii) Invoice dates to which the payments will be applied.
- (g) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient before the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds to the earliest short-paid Invoice for that short-paying Invoice Recipient. ERCOT shall use its best efforts to distribute collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000 on a pro rata basis of monies owed. Subsequently collected funds that have not previously been distributed will be applied against unpaid Invoices in conjunction with the uplift process outlined in Section 9.19.1.
- (h) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient, after the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds using the same allocation method as in

the default uplift process. ERCOT shall use its best efforts to distribute subsequently collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000.

9.19.1 Default Uplift Invoices

- (1) ERCOT shall collect the total short-pay amount for all Settlement Invoices for a month, less the total payments expected from a payment plan, from Qualified Scheduling Entities (QSEs) and CRR Account Holders. ERCOT must pay the funds it collects from payments on Default Uplift Invoices to the Entities previously short-paid. ERCOT shall notify those Entities of the details of the payment.
- (2) Each Counter-Party's share of the uplift is calculated using the best available Settlement data for each Operating Day in the month prior to the month in which the default occurred, and is calculated as follows:

$$\mathbf{DURSCP}_{cp} = \mathbf{TSPA} * \mathbf{MMARS}_{cp}$$

Where:

$$\mathbf{MMARS}_{cp} = \mathbf{MMA}_{cp} / \mathbf{MMATOT}$$

$$\begin{aligned} \mathbf{MMA}_{cp} = \text{Max} \{ & \sum_{mp} (\mathbf{URTMG}_{mp} + \mathbf{URTDCIMP}_{mp}), \\ & \sum_{mp} (\mathbf{URTAML}_{mp} + \mathbf{UWSLTOT}_{mp}), \\ & \sum_{mp} \mathbf{URTQQES}_{mp}, \\ & \sum_{mp} \mathbf{URTQQEP}_{mp}, \\ & \sum_{mp} \mathbf{UDAES}_{mp}, \\ & \sum_{mp} \mathbf{UDAEP}_{mp}, \\ & \sum_{mp} (\mathbf{URTOBL}_{mp} + \mathbf{URTOBLLO}_{mp}), \\ & \sum_{mp} (\mathbf{UDAOPT}_{mp} + \mathbf{UDAOBL}_{mp} + \mathbf{UOPTS}_{mp} + \mathbf{UOBLS}_{mp}), \\ & \sum_{mp} (\mathbf{UOPTP}_{mp} + \mathbf{UOBLP}_{mp}) \} \end{aligned}$$

[NPRR917 and NPRR1012: Replace applicable portions of the formula “MMA_{cp}” above with the following upon system implementation for NPRR917; or upon system implementation of the Real-Time Co-Optimization (RTC) project for NPRR1012:]

$$\mathbf{MMA}_{cp} = \text{Max} \{ \sum_{mp} (\mathbf{URTMG}_{mp} + \mathbf{URTDCIMP}_{mp}),$$

$$\begin{aligned}
& \sum_{mp} (\text{URTAML}_{mp} + \text{UWSLTOT}_{mp}), \\
& \sum_{mp} \text{URTQQES}_{mp}, \\
& \sum_{mp} \text{URTQQEP}_{mp}, \\
& \sum_{mp} \text{UDAES}_{mp}, \\
& \sum_{mp} \text{UDAEP}_{mp}, \\
& \sum_{mp} (\text{URTOBL}_{mp} + \text{URTOBLLO}_{mp}), \\
& \sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBLs}_{mp}), \\
& \sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp}), \\
& \sum_{mp} \text{UDAASOAWD}_{mp}, \\
& \sum_{mp} (\text{USOGTOT}_{mp}) \}
\end{aligned}$$

$$\text{MMATOT} = \sum_{cp} (\text{MMA}_{cp})$$

Where:

$\text{URTMG}_{mp} = \sum_{p, r, i} (\text{RTMG}_{mp, p, r, i})$, excluding RTMG for RMR Resources and RTMG in Reliability Unit Commitment (RUC)-Committed Intervals for RUC-committed Resources

$$\text{URTDCIMP}_{mp} = \sum_{p, i} (\text{RTDCIMP}_{mp, p, i}) / 4$$

$$\text{URTAML}_{mp} = \max(0, \sum_{p, i} (\text{RTAML}_{mp, p, i}))$$

$$\text{URTQQES}_{mp} = \sum_{p, i} (\text{RTQQES}_{mp, p, i}) / 4$$

$$\text{URTQQEP}_{mp} = \sum_{p, i} (\text{RTQQEP}_{mp, p, i}) / 4$$

$$\text{UDAES}_{mp} = \sum_{p, h} (\text{DAES}_{mp, p, h})$$

$$\text{UDAEP}_{mp} = \sum_{p, h} (\text{DAEP}_{mp, p, h})$$

$$\text{URTOBL}_{mp} = \sum_{(j, k), h} (\text{RTOBL}_{mp, (j, k), h})$$

$$\text{URTOBLLO}_{mp} = \sum_{(j, k), h} (\text{RTOBLLO}_{mp, (j, k), h})$$

$$\text{UDAOPT}_{mp} = \sum_{(j, k), h} (\text{DAOPT}_{mp, (j, k), h})$$

$$\text{UDAOBL}_{mp} = \sum_{(j, k), h} (\text{DAOBL}_{mp, (j, k), h})$$

$$\text{UOPTS}_{mp} = \sum_{(j, k), h} (\text{OPTS}_{mp, (j, k), h})$$

$$UOBS_{mp} = \sum_{(j, k), h} (OBS_{mp, (j, k), h})$$

$$UOPTP_{mp} = \sum_{(j, k), h} (OPTP_{mp, j, h})$$

$$UOBLP_{mp} = \sum_{(j, k), h} (OBLP_{mp, (j, k), h})$$

$$UWSLTOT_{mp} = (-1) * \sum_{r, b} (MEBL_{mp, r, b})$$

[NPRR1012: Insert the formula “UDAASOAWD_{mp}” below upon system implementation of the Real-Time Co-Optimization (RTC) project:]

$$UDAASOAWD_{mp} = \sum_h (DARUOAWD_{mp, h} + DARDOAWD_{mp, h} + DARROAWD_{mp, h} + DANSOAWD_{mp, h} + DAECROAWD_{mp, h})$$

[NPRR917: Insert the formula “USOGTOT_{mp}” below upon system implementation:]

$$USOGTOT_{mp} = \sum_{gsc, b} (OFSOG_{mp, gsc, b}) + \sum_{p, i} (RTMGSOGZ_{mp, p, i})$$

The above variables are defined as follows:

Variable	Unit	Definition
DURSCP _{cp}	\$	<i>Default Uplift Ratio Share per Counter-Party</i> —The Counter-Party’s pro rata portion of the total short-pay amount for all Day-Ahead Market (DAM) and Real-Time Market (RTM) Invoices for a month.
TSPA	\$	<i>Total Short Pay Amount</i> —The total short-pay amount calculated by ERCOT to be collected through the Default Uplift Invoice process.
MMARS _{cp}	None	<i>Maximum MWh Activity Ratio Share</i> —The Counter-Party’s pro rata share of Maximum MWh Activity.
MMA _{cp}	MWh	<i>Maximum MWh Activity</i> —The maximum MWh activity of all Market Participants represented by the Counter-Party in the DAM, RTM and CRR Auction for a month.
MMATOT	MWh	<i>Maximum MWh Activity Total</i> —The sum of all Counter-Party’s Maximum MWh Activity.
RTMG _{mp, p, r, i}	MWh	<i>Real-Time Metered Generation per Market Participant per Settlement Point per Resource</i> —The Real-Time energy produced by the Generation Resource <i>r</i> represented by Market Participant <i>mp</i> , at Resource Node <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTMG _{mp}	MWh	<i>Uplift Real-Time Metered Generation per Market Participant</i> —The monthly sum of Real-Time energy produced by Generation Resources represented by Market Participant <i>mp</i> , excluding generation for RMR Resources and generation in RUC-Committed Intervals, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTDCIMP _{mp, p, i}	MW	<i>Real-Time DC Import per QSE per Settlement Point</i> —The aggregated Direct Current Tie (DC Tie) Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System through DC Tie <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.

Variable	Unit	Definition
URTDICIMP _{mp}	MW	<i>Uplift Real-Time DC Import per Market Participant</i> —The monthly sum of the aggregated DC Tie Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System where the Market Participant is a QSE assigned to a registered Counter-Party.
RTAML _{mp, p, i}	MWh	<i>Real-Time Adjusted Metered Load per Market Participant per Settlement Point</i> —The sum of the Adjusted Metered Load (AML) at the Electrical Buses that are included in Settlement Point <i>p</i> represented by Market Participant <i>mp</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTAML _{mp}	MWh	<i>Uplift Real-Time Adjusted Metered Load per Market Participant</i> —The monthly sum of the AML represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQES _{mp, p, i}	MW	<i>QSE-to-QSE Energy Sale per Market Participant per Settlement Point</i> —The amount of MW sold by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQES _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Sale per Market Participant</i> —The monthly sum of MW sold by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQEP _{mp, p, i}	MW	<i>QSE-to-QSE Energy Purchase per Market Participant per Settlement Point</i> —The amount of MW bought by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQEP _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Purchase per Market Participant</i> —The monthly sum of MW bought by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAES _{mp, p, h}	MW	<i>Day-Ahead Energy Sale per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offers at Settlement Point <i>p</i> , for the hour <i>h</i> , where the Market Participant is a QSE.
UDAES _{mp}	MWh	<i>Uplift Day-Ahead Energy Sale per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offer Curves, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAEP _{mp, p, h}	MW	<i>Day-Ahead Energy Purchase per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids at Settlement Point <i>p</i> for the hour <i>h</i> , where the Market Participant is a QSE.
UDAEP _{mp}	MWh	<i>Uplift Day-Ahead Energy Purchase per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTOBL _{mp, (j, k), h}	MW	<i>Real-Time Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's Point-to-Point (PTP) Obligations with the source <i>j</i> and the sink <i>k</i> settled in Real-Time for the hour <i>h</i> , and where the Market Participant is a QSE.
URTOBL _{mp}	MWh	<i>Uplift Real-Time Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations settled in Real-Time, counting the quantity only once per source and sink pair, and where the Market Participant is a QSE assigned to the registered Counter-Party.

Variable	Unit	Definition
$RTOBLLO_{q, (j, k)}$	MW	<i>Real-Time Obligation with Links to an Option per QSE per pair of source and sink</i> —The total MW of the QSE’s PTP Obligation with Links to an Option Bids cleared in the DAM and settled in Real-Time for the source j and the sink k for the hour.
$URTOBLLO_{q, (j, k)}$	MW	<i>Uplift Real-Time Obligation with Links to an Option per QSE per pair of source and sink</i> —The monthly total of Market Participant mp ’s MW of PTP Obligation with Links to Options Bids cleared in the DAM and settled in Real-Time for the source j and the sink k for the hour, where the Market Participant is a QSE assigned to the registered Counter-Party.
$DAOPT_{mp, (j, k), h}$	MW	<i>Day-Ahead Option per Market Participant per source and sink pair per hour</i> —The number of Market Participant mp ’s PTP Options with the source j and the sink k owned in the DAM for the hour h , and where the Market Participant is a CRR Account Holder.
$UDAOPT_{mp}$	MWh	<i>Uplift Day-Ahead Option per Market Participant</i> —The monthly total of Market Participant mp ’s PTP Options owned in the DAM, counting the ownership quantity only once per source and sink pair, and where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
$DAOBL_{mp, (j, k), h}$	MW	<i>Day-Ahead Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant mp ’s PTP Obligations with the source j and the sink k owned in the DAM for the hour h , and where the Market Participant is a CRR Account Holder.
$UDAOBL_{mp}$	MWh	<i>Uplift Day-Ahead Obligation per Market Participant</i> —The monthly total of Market Participant mp ’s PTP Obligations owned in the DAM, counting the ownership quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
$OPTS_{mp, (j, k), a, h}$	MW	<i>PTP Option Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant mp ’s PTP Option offers with the source j and the sink k awarded in CRR Auction a , for the hour h , where the Market Participant is a CRR Account Holder.
$UOPTS_{mp}$	MWh	<i>Uplift PTP Option Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant mp ’s PTP Option offers awarded in CRR Auctions, counting the awarded quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
$OBLS_{mp, (j, k), a, h}$	MW	<i>PTP Obligation Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant mp ’s PTP Obligation offers with the source j and the sink k awarded in CRR Auction a , for the hour h , where the Market Participant is a CRR Account Holder.
$UOBLS_{mp}$	MWh	<i>Uplift PTP Obligation Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant mp ’s PTP Obligation offers awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
$OPTP_{mp, (j, k), a, h}$	MW	<i>PTP Option Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant mp ’s PTP Option bids with the source j and the sink k awarded in CRR Auction a , for the hour h , where the Market Participant is a CRR Account Holder.

Variable	Unit	Definition
UOFTP _{mp}	MWh	<i>Uplift PTP Option Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLP _{mp, (j, k), a, h}	MW	<i>PTP Obligation Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOBLP _{mp}	MWh	<i>Uplift PTP Obligation Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
UWSLTOT _{mp}	MWh	<i>Uplift Metered Energy for Wholesale Storage Load at bus per Market Participant</i> —The monthly sum of Market Participant <i>mp</i> 's Wholesale Storage Load (WSL) energy metered by the Settlement Meter which measures WSL.
MEBL _{mp, r, b}	MWh	<i>Metered Energy for Wholesale Storage Load at bus</i> —The WSL energy metered by the Settlement Meter which measures WSL for the 15-minute Settlement Interval represented as a negative value, for the Market Participant <i>mp</i> , Resource <i>r</i> , at bus <i>b</i> .

[NPRR1012: Insert the variables below upon system implementation of the Real-Time Co-Optimization (RTC) project:]

UDAASOAWD _{mp}	MWh	<i>Uplift Day-Ahead Ancillary Service Only Award per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's Ancillary Service Only Offers awarded in DAM, where the Market Participant is a QSE assigned to the registered Counter-Party.
DARUOAWD _{mp, h}	MW	<i>Day-Ahead Reg-Up Only Award per Market Participant</i> —The Reg-Up Only capacity quantity awarded in the DAM to the Market Participant <i>mp</i> for the hour <i>h</i> .
DARDOAWD _{mp, h}	MW	<i>Day-Ahead Reg-Down Only Award per Market Participant</i> —The Reg-Down Only capacity quantity awarded in the DAM to the Market Participant <i>mp</i> for the hour <i>h</i> .
DARROAWD _{mp, h}	MW	<i>Day-Ahead Responsive Reserve Only Award per Market Participant</i> —The RRS Only capacity quantity awarded in the DAM to the Market Participant <i>mp</i> for the hour <i>h</i> .
DANSOAWD _{mp, h}	MW	<i>Day-Ahead Non-Spin Only Award per Market Participant</i> —The Non-Spin Only capacity quantity awarded in the DAM to the Market Participant <i>mp</i> for the hour <i>h</i> .
DAECROAWD _{mp, h}	MW	<i>Day-Ahead ERCOT Contingency Reserve Service Only Award per Market Participant</i> —The ECRS Only capacity quantity awarded in the DAM to the Market Participant <i>mp</i> for the hour <i>h</i> .

Variable	Unit	Definition
[NPRR917: Insert the variables “USOGTOT_{mp}”, “RTMGSOGZ_{mp, p, i}”, and “OFSOG_{mp, gsc, b}” below upon system implementation:]		
USOGTOT _{mp}	MWh	<i>Uplift Real-Time Settlement Only Generator Site per Market Participant</i> —The monthly sum of Real-Time energy produced by Settlement Only Generators (SOGs) represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTMGSOGZ _{mp, p, i}	MWh	<i>Real-Time Metered Generation from Settlement Only Generators Zonal per QSE per Settlement Point</i> — The total Real-Time energy produced by Settlement Only Transmission Self-Generators (SOTSGs) for the Market Participant <i>mp</i> in Load Zone Settlement Point <i>p</i> , for the 15-minute Settlement Interval. MWh quantities for Settlement Only Distribution Generators (SODGs) and Settlement Only Transmission Generators (SOTGs) that opted out of nodal pricing pursuant to Section 6.6.3.9, Real-Time Payment or Charge for Energy from a Settlement Only Distribution Generator (SODG) or a Settlement Only Transmission Generator (SOTG), will also be included in this value.
OFSOG _{mp, gsc, b}	MWh	<i>Outflow as measured for an SODG or SOTG Site</i> —The outflow as measured by the Settlement Meter(s) at Electrical Bus <i>b</i> for SODG or SOTG site <i>gsc</i> represented by the Market Participant <i>mp</i> .
<i>cp</i>	none	A registered Counter-Party.
<i>mp</i>	none	A Market Participant that is a non-defaulting QSE or CRR Account Holder.
<i>j</i>	none	A source Settlement Point.
<i>k</i>	none	A sink Settlement Point.
<i>a</i>	none	A CRR Auction.
<i>p</i>	none	A Settlement Point.
<i>i</i>	none	A 15-minute Settlement Interval.
<i>h</i>	none	The hour that includes the Settlement Interval <i>i</i> .
<i>r</i>	none	A Resource.
[NPRR917: Insert the variables “gsc” and “b” below upon system implementation:]		
<i>gsc</i>	none	A generation site code.
<i>b</i>	none	An Electrical Bus.

- (3) The uplifted short-paid amount will be allocated to the Market Participants (QSEs or CRR Account Holders) assigned to a registered Counter-Party based on the pro-rata share of MWhs that the QSE or CRR Account Holder contributed to its Counter-Party’s maximum MWh activity ratio share.
- (4) Any uplifted short-paid amount greater than \$2,500,000 must be scheduled so that no amount greater than \$2,500,000 is charged on each set of Default Uplift Invoices until ERCOT uplifts the total short-paid amount. ERCOT must issue Default Uplift Invoices at least 30 days apart from each other.

- (5) ERCOT shall issue Default Uplift Invoices no earlier than 90 days following a short-pay of a Settlement Invoice on the date specified in the Settlement Calendar. The Invoice Recipient is responsible for accessing the Invoice on the MIS Certified Area once posted by ERCOT.
- (6) Each Default Uplift Invoice must contain:
- (a) The Invoice Recipient's name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due or Payable – the aggregate summary of all charges owed by a Default Uplift Invoice Recipient;
 - (d) Run Date – the date on which ERCOT created and published the Default Uplift Invoice;
 - (e) Invoice Reference Number – a unique number generated by the ERCOT applications for payment tracking purposes;
 - (f) Default Uplift Invoice Reference – an identification code used to reference the amount uplifted;
 - (g) Payment Date and Time – the date and time that Default Uplift Invoice amounts must be paid;
 - (h) Remittance Information Details – details including the account number, bank name, and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and
 - (i) Overdue Terms – the terms that would apply if the Market Participant makes a late payment.
- (7) Each Invoice Recipient shall pay any net debit shown on the Default Uplift Invoice on the payment due date whether or not there is any Settlement and billing dispute regarding the amount of the debit.

9.19.2 Payment Process for Default Uplift Invoices

- (1) Payments for Default Uplift Invoices are due on a Bank Business Day and Business Day basis in a two-day, two-step process as detailed in this Section 9.19.2.

9.19.2.1 Invoice Recipient Payment to ERCOT for Default Uplift

- (1) The payment due date and time for the Default Uplift Invoice with funds owed by an Invoice Recipient is 1700 on the fifth Bank Business Day after the Default Uplift Invoice

date, unless fifth Bank Business Day is not a Business Day. If the fifth Bank Business Day is not a Business Day, then the payment is due by 1700 on the next Bank Business Day after the fifth Bank Business Day that is also a Business Day.

- (2) All Default Uplift Invoices due, with funds owed by an Invoice Recipient, must be paid to ERCOT in U.S. Dollars (USDs) by Electronic Funds Transfer (EFT) in immediately available or good funds (i.e., not subject to reversal) on or before the payment due date.

9.19.2.2 ERCOT Payment to Invoice Recipients for Default Uplift

- (1) Subject to the availability of funds as discussed in paragraph (2) below, uplifted funds received from Default Uplift Invoices must be paid by ERCOT to short-paid Invoice Recipients by 1700 on the next Bank Business Day after payments are due for that Default Uplift Invoice under Section 9.19.2.1, Invoice Recipient Payment to ERCOT for Default Uplift, subject to ERCOT's right to withhold payments under Section 16, Registration and Qualification of Market Participants, or pursuant to common law unless that next Bank Business Day is not a Business Day. If that next Bank Business Day is not a Business Day, the payment is due on the next Bank Business Day thereafter that is also a Business Day.
- (2) ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit to each short-paid Invoice Recipient for same day value the amounts determined by ERCOT to be available for payment to that short-paid Invoice Recipient under paragraph (1)(d) of Section 9.19, Partial Payments by Invoice Recipients.
- (3) Any short payments of Default Uplift Invoices must be handled under Section 9.19, Partial Payments by Invoice Recipients.

9.19.3 Default Uplift Supporting Data Reporting

- (1) ERCOT shall post once each month on the MIS Certified Area, the Maximum MWh Activity (MMA), Maximum MWh Activity Total (MMATOT), Maximum MWh Activity Ratio Share (MMARS), and the Counter-Party level components of MMA calculation as defined in paragraph (2) of Section 9.19.1, Default Uplift Invoices. Each month's report shall be updated with Final and True-Up Settlement data when ERCOT's systems contain the necessary information to complete the report with the updated data.

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which the security was due; however, failure to notify the Counter-Party's representatives or contact that the required security was not received does not prevent ERCOT from exercising any of its other rights under this Section.

- (b) At the same time ERCOT notifies the Counter-Party that is the QSE, ERCOT may notify each LSE and Resource represented by the Counter-Party that the LSE or Resource may be required to designate a new QSE if its current QSE fails to increase its Financial Security.
 - (c) ERCOT is not required to make any payment to that Counter-Party unless and until the Counter-Party increases its Financial Security, including any Secured Collateral required. The payments that ERCOT will not make to a Counter-Party include Invoice receipts, CRR revenues, CRR credits, reimbursements for short payments, and any other reimbursements or credits under any other agreement between the Market Participant and ERCOT. ERCOT may retain all such amounts until the Counter-Party has fully discharged all payment obligations owed to ERCOT under the Counter-Party Agreement, other agreements, and these Protocols.
 - (d) ERCOT may reject any bids or offers in a CRR Auction from the Counter-Party until it has increased its Financial Security, including any Secured Collateral required. ERCOT may reject any bids or offers from the Counter-Party in the DAM until it has increased its Financial Security.
- (7) If a Counter-Party increases its Financial Security as required by ERCOT by the deadline in paragraph (6)(a) above, then ERCOT may notify each LSE and Resource represented by the Counter-Party.
- (8) If a Counter-Party increases its Financial Security as required by ERCOT by the deadline in paragraph (6)(a) above, then ERCOT shall release any payments held.

16.11.6 Payment Breach and Late Payments by Market Participants

- (1) It is the sole responsibility of each Market Participant to ensure that the full amounts due to ERCOT, or its designee, if applicable, by that Market Participant, are paid to ERCOT by the applicable time and date specified in the Protocols. If no time is specified in the Protocols for a particular type of payment, then payment must be made by the close of the Bank Business Day on which payment is due.
- (2) If a Market Participant receives separate Invoices for Subordinate QSE or various CRR Account Holder activity, netting by the Market Participant of the amounts due to ERCOT with amounts due to the Market Participant among those Invoices for payment purposes is not permitted. The amounts due to ERCOT on the separate Invoices for each Market Participant must be paid by the applicable time and date specified in the Protocols. If a Market Participant does not pay the full amount due to ERCOT for all such Invoices by the required time, ERCOT shall deduct any and all amounts due and unpaid from any

amounts due to the same Market Participant before allocating short payments to other Market Participants.

- (3) The failure of a Market Participant to pay when due any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any Agreement with ERCOT, is a Late Payment and constitutes an event of “Payment Breach.” For purposes of designating a Late Payment, ERCOT shall consider multiple Invoices unpaid when due on a single Business Day by a single Market Participant as constituting one Late Payment. Any Payment Breach by a Market Participant under any agreement with ERCOT is a Default under all other agreements between ERCOT and the Market Participant unless cured within one Bank Business Day after ERCOT delivers to the Market Participant written notice of the Payment Breach.
- (4) Upon a Payment Breach, ERCOT shall immediately attempt to contact the Market Participant’s Authorized Representative and/or Credit Contact named in the Counter-Party Credit Application telephonically to inform the Market Participant of the Payment Breach, and demand payment of the past due amount. ERCOT shall also provide the Market Participant with written notice of the Payment Breach via email. Upon a Payment Breach, ERCOT may impose remedies for Payment Breach, as set forth in Section 16.11.6.1, ERCOT’s Remedies, in addition to any other rights or remedies ERCOT has under any agreement, these Protocols or at common law.
- (5) If a Market Participant makes a payment (or a partial payment, if allowed by these Protocols) or satisfies a collateral call to ERCOT after the required due date and time, or if a short-paid Invoice is settled by a draw on available security greater than the amount of Market Participant’s cash collateral held in excess of that required to cover its TPE (“Excess Collateral”), then that payment will be deemed a “Late Payment.”
- (6) For purposes of assessing if a payment is a Late Payment, the time of receipt of a payment will be determined as follows:
 - (a) For cash payments, the timestamp for when funds are credited to ERCOT’s bank account, or;
 - (b) For non-cash Financial Security,
 - (i) The timestamp of the email or facsimile, if the required documentation is delivered to ERCOT by email or facsimile, or;
 - (ii) The timestamp of the delivery receipt, if the required documentation is mailed or physically delivered to ERCOT.
- (7) ERCOT may, in its sole discretion, and upon a Market Participant’s showing that the failure to pay when due was not within the control of the Market Participant, deem that a failure to pay when due was neither a Payment Breach nor a Late Payment.
- (8) ERCOT shall track the number of Late Payments received from each Market Participant in each rolling 12-month period for purposes of imposing the Late Payment remedies set

forth in Section 16.11.6.2, ERCOT's Remedies for Late Payments by a Market Participant.

16.11.6.1 ERCOT's Remedies

- (1) In addition to all other remedies that ERCOT has under any agreement, common law or these Protocols, for Payment Breaches or other Defaults by a Market Participant, ERCOT has the following additional remedies.

16.11.6.1.1 No Payments by ERCOT to Market Participant

- (1) ERCOT is not required to make any payment to a Market Participant unless and until the Market Participant satisfies the Payment Breach by paying the past due amount in full, including amounts due under Section 16.11.6.1.3, Aggregate Amount Owed by Breaching Market Participant Immediately Due. The payments that ERCOT will not make include Invoice receipts, CRR Auction revenues, CRR credits, reimbursements for short payments and any other reimbursements or credits under any and all other agreements between ERCOT and the Market Participant. ERCOT shall retain all such amounts, and may apply all withheld funds toward the payment of the delinquent amount(s), until the Market Participant has fully paid all amounts owed to ERCOT under any agreements and these Protocols. If the Market Participant should fail to pay the full amount due within the cure period, ERCOT may apply all funds it withheld toward the payment of the delinquent amount(s).

16.11.6.1.2 ERCOT May Draw On, Hold or Distribute Funds

- (1) Upon a Payment Breach, ERCOT, at its option, without notice to the Market Participant and in its sole discretion, may immediately, or at any time before the Market Participant pays the past due amount in full, including amounts due under Section 16.11.6.1.3, Aggregate Amount Owed by Breaching Market Participant Immediately Due, draw on, hold or distribute to other Market Participants any Financial Security or other funds of the Market Participant in ERCOT's possession. If the funds drawn exceed the amount applied to any Payment Breach, then ERCOT may hold those funds as Financial Security.

16.11.6.1.3 Aggregate Amount Owed by Breaching Market Participant Immediately Due

- (1) ERCOT shall aggregate all amounts due it by the Market Participant under any agreement with ERCOT and these Protocols into a single amount to the fullest extent allowed by law. The entire unpaid net balance owed to ERCOT by the Market Participant, at ERCOT's option, and its sole discretion, is immediately due and payable without further notice and demand for payment. Any such notice and demand for payment are expressly waived by the Market Participant.

16.11.6.1.4 *Repossession of CRRs by ERCOT*

- (1) ERCOT, at its sole discretion, may repossess CRRs held by a Market Participant with a Payment Breach or other Default. ERCOT shall effect that repossession by sending a written notice to the Market Participant of the repossession and by removing the CRRs from the Market Participant's CRR account. CRRs that settle in the same calendar month as the repossession but subsequent to the effective date of the repossession shall be voided. The Market Participant will neither be charged, nor entitled to credit, for the voided CRRs in the DAM Settlement. ERCOT shall offer a portfolio of CRRs containing all of the remaining unvoided repossessed CRRs, with each repossessed CRR in its existing configuration, in a one-time auction to Market Participants (other than the Market Participant(s) in Payment Breach or other Default) for sale to the highest bidder with a positive bid price for the entire portfolio. PTP Options with Refund and PTP Obligations with Refund will be voided and will not be included in the portfolio of repossessed CRRs available in the one-time auction. ERCOT shall offset net revenues from that sale against amounts owed to ERCOT by the Market Participant. If revenues from the sale exceed amounts owed to ERCOT then the excess shall be remitted to the Market Participant. If ERCOT receives no positive bids for the portfolio of CRRs in the one-time auction, ERCOT shall void all of the repossessed CRRs.

16.11.6.1.5 *Declaration of Forfeit of CRRs*

- (1) At ERCOT's sole discretion, if it does not receive full payment on the due date of a CRR Auction Invoice, may declare any of the CRR bids cleared and Pre-Assigned Congestion Revenue Rights (PCRRs) allocated to the Market Participant forfeited. ERCOT shall effect that forfeiture by sending a written notice to the Market Participant of the forfeiture and of not delivering the CRRs or PCRRs to the Market Participant's CRR account. ERCOT shall either (a) offer all forfeited CRRs, with each forfeited CRR in its existing configuration, in a one-time auction to Market Participants (other than the Market Participant(s) in Payment Breach or other Default) for sale to the highest bidder with a positive bid price or (b) ERCOT shall make the related capacity available in subsequent CRR Auctions. Revenue from that sale shall be considered as CRR Auction revenue and distributed to QSEs based on Load Ratio Share as specified in Section 7.5.7, Method for Distributing CRR Auction Revenues.
- (2) ERCOT may also, at its sole discretion, honor any of the offers from Market Participants that were cleared in the CRR Auction by removing the CRRs from the Market Participant's CRR account. ERCOT shall offset net revenues due to the Market Participant from CRRs offered and cleared against amounts owed to ERCOT by the Market Participant.

16.11.6.1.6 *Revocation of a Market Participant's Rights and Termination of Agreements*

- (1) ERCOT may revoke a breaching Market Participant's rights to conduct activities under these Protocols. ERCOT may also terminate the breaching Market Participant's agreements with ERCOT.

- (2) If ERCOT revokes a Market Participant's rights or terminates the Market Participant's agreements, then the provisions of Section 16.2.5, Suspended or Terminated Qualified Scheduling Entity – Notification to LSEs and Resource Entities Represented, and Section 16.2.6.1, Designation as an Emergency Qualified Scheduling Entity or Virtual Qualified Scheduling Entity, apply.
- (3) If a breaching Market Participant is also an LSE (whether or not the Default occurred pursuant to the Market Participant's activities as an LSE), then:
 - (a) Within 24 hours of receiving notice of the Payment Breach, the Market Participant shall provide to ERCOT all the information regarding its ESI IDs set forth in the ERCOT Retail Market Guide; and
 - (b) On revocation of some or all of the Market Participant's rights or termination of the Market Participant's agreements and on notice to the Market Participant and the Public Utility Commission of Texas (PUCT), ERCOT shall initiate a Mass Transition of the Market Participant's ESI IDs pursuant to Section 15.1.3.1, Mass Transition Process, without the necessity of obtaining any order from or other action by the PUCT.
- (4) After revocation of its rights or termination of its Agreement with ERCOT, the Market Participant will remain liable for all charges or costs associated with any continued activity related to the Counter-Party's relationship with ERCOT and any expenses arising from the consequences of such termination or revocation.

16.11.6.2 ERCOT's Remedies for Late Payments by a Market Participant

- (1) If a Market Participant makes any Late Payments, and even if ERCOT does not immediately implement the above-referenced remedies for any Payment Breach by a Market Participant, the Market Participant is subject to the actions enumerated in this Section.
- (2) This Section does not waive ERCOT's right to impose remedies for Payment Breach, as set forth in Section 16.11.6.1, ERCOT's Remedies, in addition to any other rights or remedies ERCOT has under any agreement, these Protocols, or at common law, for any Payment Breach by the Market Participant in each rolling 12-month period for purposes of imposing the Late Payment remedies set forth in this Section.

16.11.6.2.1 First Late Payment in Any Rolling 12-Month Period

- (1) For the first Late Payment in any rolling 12-month period, ERCOT shall take Level I Enforcement action, as described in Section 16.11.6.2.5, Level I Enforcement.
- (2) ERCOT shall send written notice to the Market Participant's Authorized Representative and/or Credit Contact via email, advising the Market Participant of the action required under Level I Enforcement.

16.11.6.2.2 Second Late Payment in Any Rolling 12-Month Period

- (1) For the second Late Payment in any rolling 12-month period, ERCOT shall take Level II Enforcement action, as described in Section 16.11.6.2.6, Level II Enforcement.:
- (2) ERCOT shall send written notice to the Market Participant's Authorized Representative and/or Credit Contact via email, advising the Market Participant of the action required under Level II Enforcement.

16.11.6.2.3 Third Late Payment in Any Rolling 12-Month Period

- (1) For the third Late Payment in any rolling 12-month period, ERCOT shall take Level III Enforcement action, as described in Section 16.11.6.2.7, Level III Enforcement.
- (2) ERCOT shall send written notice to the Market Participant's Authorized Representative and/or Credit Contact via email, advising the Market Participant of the action required under Level III Enforcement, and informing the Market Participant that a fourth Late Payment in any rolling 12-month period shall result in ERCOT taking action under Section 16.11.6.1.6, Revocation of a Market Participant's Rights and Termination of Agreements.

16.11.6.2.4 Fourth Late Payment in Any Rolling 12-Month Period

- (1) For the fourth Late Payment resulting from a Payment Breach in any rolling 12-month period, ERCOT shall take action under Section 16.11.6.1.6, Revocation of a Market Participant's Rights and Termination of Agreements.

16.11.6.2.5 Level I Enforcement

- (1) Under Level I Enforcement, ERCOT shall notify the Market Participant to comply with one of the following requirements:
 - (a) If the Market Participant has not provided Financial Security, the Market Participant shall now provide Financial Security, within two Bank Business Days, in an amount at or above 110% of the amount of the Market Participant's TPE less the Unsecured Credit Limit; or any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region, whichever applies.
 - (b) If the Market Participant has already provided Financial Security, the Market Participant shall increase its Financial Security, within two Bank Business Days, to an amount at or above 110% of its TPE less the Unsecured Credit Limit or any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region, whichever applies.

- (2) Increased Financial Security requirements under this Section remain in effect for a minimum of 60 days and remain in effect thereafter until ERCOT, at its sole discretion, determines to reduce such Financial Security requirements to the normally applicable levels.

16.11.6.2.6 Level II Enforcement

- (1) Under Level II Enforcement, ERCOT shall notify the Market Participant that the Market Participant shall provide Financial Security, within two Bank Business days, in the form of a cash deposit or letter of credit, as chosen by ERCOT at its sole discretion, at 115% of the Market Participant's TPE less the Unsecured Credit Limit or for any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region.
- (2) Increased Financial Security requirements under this Section remain in effect for a minimum of 60 days and remain in effect thereafter until ERCOT, at its sole discretion, determines to reduce such Financial Security requirements to the normally applicable levels.

16.11.6.2.7 Level III Enforcement

- (1) Under Level III Enforcement, ERCOT shall notify the Market Participant that the Market Participant shall provide Financial Security within two Bank Business Days at 120% of the Market Participant's TPE less the Unsecured Credit Limit or for any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region. Required Financial Security in excess of TPE must be in the form of a cash deposit.
- (2) Increased Financial Security requirements under this Section remain in effect for a minimum of 90 days and remain in effect thereafter until ERCOT, at its sole discretion, determines to reduce such Financial Security requirements to the normally applicable levels.

16.11.7 Release of Market Participant's Financial Security Requirement

- (1) Following the termination of a Market Participant's Standard Form Market Participant Agreement, ERCOT shall retain Financial Security to cover potential future obligations of the terminated Market Participant. These obligations may include, but are not limited to, Resettlement Statements, Final or True-Up Settlements, and Default Uplift Invoices.
- (2) Required Financial Security for potential future obligations of a terminated Market Participant will be the maximum of the Counter-Party's TPE, as applicable, or \$5,000.
- (3) If a terminated Market Participant elects to withdraw non-cash Financial Security following termination, and ERCOT determines that Financial Security continues to be

EXHIBIT B



K. Ogleman Affidavit Plea to Jurisdiction and Abatement.docx

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E-Signature Summary

E-Signature 1: Kenan Ogelman (KO)

April 15, 2021 09:08:28 -8:00 [7DC884EECF92] [136.62.178.35]
Kenan.Ogelman@ercot.com (Principal) (Personally Known)

E-Signature Notary: Amy L Loera (ALL)

April 15, 2021 09:08:28 -8:00 [47382ABC43D3] [99.189.72.129]
amy.loera@ercot.com

I, Amy L Loera, did witness the participants named above electronically sign this document.



CAUSE NO. D-1-GN-21-001227

THE CITY OF DENTON,

Plaintiff,

v.

ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC. *et al.*,

Defendants.

§
§
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§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

AFFIDAVIT OF KENAN OGELMAN

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

1. My name is Kenan Ogelman. I am competent to make this affidavit, and I have personal knowledge of the statements made in this affidavit.

2. I am Electric Reliability Council of Texas, Inc.’s (“ERCOT”) Vice President of Commercial Operations. In my position, I oversee all aspects of ERCOT’s market operations, settlement and retail operations, and market design and development functions. I have been personally involved in ERCOT’s efforts during and after Winter Storm Uri to ensure the orderly functioning of the wholesale power market in the ERCOT Region, including ERCOT’s efforts to remedy potential market instability caused by the failure of many ERCOT Market Participants to pay their settlement invoices to ERCOT in full.

3. Among ERCOT’s chief functions is to serve as a clearinghouse for market transactions in the wholesale market for the ERCOT region, ensuring that electricity production, scheduling, and downstream delivery to consumers are timely and accurately accounted for among market participants. ERCOT is revenue neutral and does not profit from its activities as the Independent Systems Operator for the ERCOT region.

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4. As a condition to participation in the ERCOT market, Market Participants are required to, among other things, sign a Standard Form Market Participant Agreement with ERCOT and agree to comply with all ERCOT Protocols and Operating Guides. A true and correct copy of the City of Denton's (the "City") Standard Form Market Participant Agreement is attached hereto as Exhibit 1. ERCOT's Protocols, which provide the framework for the administration of the ERCOT market, were developed through a collaborative effort with all segments of Market Participants, including consumers, cooperatives, independent generators, independent power marketers, independent retail electric provides, investor-own utilities, and municipally-owned utilities. The City has been a Market Participant for over twenty years as a member of the municipally-owned utilities ("MOU") market segment. During that time, the City has participated in the development of the Protocols, including the short-payment and Default Uplift Invoice Protocols. Denton Municipal Electric had an employee serving as a representative for the MOU market segment on ERCOT's Protocol Revision Subcommittee ("PRS") between the years 2004 and 2020. In that time, the City has directly participated in at least 15 recommendations to approve Nodal Protocol Revision Requests ("NPRR") directly relating to the short-payment or Default Uplift Invoice Protocols, including as recently as May 15, 2020, when the PRS recommended approval of NPRR 1021, which shortened the Default Uplift Invoice issuance timeline from 180 days to 90 days. The City voted to recommend approval of NPRR 1021. True and correct copies of the PRS' Report and record vote on NPRR 1021 and other recommendations for approvals of NPRRs are attached hereto as Exhibit 2.

5. In the wake of Winter Storm Uri, certain ERCOT Market Participants who owed money to ERCOT began failing to make all required payments to ERCOT. On February 26, 2021, Market Participants failed to make required payments to ERCOT totaling approximately \$2.12



billion, which was about 17% of the total amount owed. After taking every reasonable attempt to collect payment from each short-paying Market Participant, drawing on available financial security, offsetting the shorted amount against amounts owed, and applying \$800 million from an ERCOT revenue account, ERCOT was required to initiate the procedure mandated by ERCOT Protocol Section 9.19(1)(d) by which ERCOT reduces payments to all Settlement Invoice Recipients owed monies from ERCOT. As a result, almost every ERCOT Market Participant who was owed money by ERCOT except for the City of Denton (the “City”) received reduced payments totaling approximately \$1.3 billion. Exhibit 3 is a true and correct copy of the Market Notice issued by ERCOT on February 26, 2021 advising ERCOT Market Participants of the initiation of the short-payment procedure mandated by Section 9.19(1)(d) of the ERCOT Protocols. If the City had been included in the short-payment procedure required by the ERCOT Protocols, its payment would have been reduced by approximately \$8 million (though that number would now be less as the City would have already been paid some of that money as explained below). However, because the City was excluded from the short-payment procedure based on a February 25, 2021 Temporary Restraining Order, it received full payment and many other Market Participants that were owed money had to absorb the City of Denton’s obligation.

6. The same thing happened on Monday, March 1, 2021, when ERCOT Market Participants who owed money to ERCOT again failed to make required payments totaling approximately \$345 million. ERCOT was required to again initiate the required short-payment procedure. As a result, hundreds of Market Participants—that is, again, almost every ERCOT Market Participant who was owed money by ERCOT except the City—received reduced payments totaling approximately \$345 million. Exhibit 4 is a true and correct copy of the Market Notice issued by ERCOT on March 1, 2021 advising Market Participants of the initiation of the short-



payment procedures. Had the City been included in the short-payment procedures on March 1, the City's payment would have been reduced by approximately \$2.7 million. Because the City was excluded from the short-payment procedure, it received full payment from ERCOT.

7. Since March 1, 2021, there have been other days in which Market Participants who owed money to ERCOT have failed to pay money owed resulting in reduced payments to Market Participants that were owed money. Additionally, ERCOT has since collected money that was previously owed resulting in money being paid to those entities who previously had their payments reduced, thus reducing the aggregate short payment. As of April 9, 2021, the aggregate amount of the market short payments related to Winter Storm Uri is approximately \$2.9 billion. Exhibit 5 is a true and correct copy of a Market Notice that ERCOT issued with the current amounts. This number is subject to change as ERCOT collects or receives money for amounts previously owed.

8. On February 24, 2021, before the Temporary Restraining Order, there was a market shortfall of approximately \$11.8 million from invoices issued by ERCOT on February 18, 2021. Exhibit 6 is a true and correct copy of a Market Notice that ERCOT issued for that shortfall. As required by the Protocols, the City's payment was reduced on February 24, 2021. Since that time, the City has been repaid a portion of the amount that its payment was reduced because money was later collected for a portion of the invoices not previously paid.

9. Because the City was excluded from the short-payment procedure, many other ERCOT Market Participants that were owed money, including other MOUs like the City, had to absorb the City's obligation, and received an even larger payment reduction, thereby increasing the financial pressure on all of those ERCOT Market Participants. Each day that the City has been excluded, and continues to be excluded, from compliance with the short-payment procedures requires the ERCOT Market Participants that are owed money to compensate for the City's failure



to accept its agreed upon payment reduction. As of April 12, 2021, the total amount of the City's short-payment obligation that has been absorbed and compensated for by other Market Participants totals approximately \$9.5 million. Exhibit 7 is a true and correct copy of a Market Notice that ERCOT issued with the current amounts of the City's avoided payment reductions. The current amount is less than the sum of reduced payments from February 16 and March 1 because ERCOT has collected money since that time which has been paid back to Market Participants—and would have been paid back to the City if it had participated in the payment reductions.

10. While ERCOT will continue to take every reasonable attempt to collect payment from each short-paying ERCOT Market Participant, including those outlined above, if sufficient funds continue to be unavailable to pay all amounts in full to short-paid entities, ERCOT will likely be required to initiate the Default Uplift process required by Sections 9.19.1 and 9.19.2 of the Protocols. The Default Uplift process requires ERCOT to collect the outstanding amount of the short-paid amounts from Qualified Scheduling Entities (“QSE”) and Congestion Revenue Right (“CRR”) account holders and is “uplifted,” or allocated, to QSEs and CRR accounts on a pro-rata basis based on daily settlement data available in the month preceding the default. A Counter-Party is a single Entity that is a QSE and/or a CRR Account Holder. Under the Protocols, a Counter-Party includes all registrations as a QSE, all subordinate QSEs, and all CRR Account Holders by the same Entity. In this case, due to the approximate \$2.12 billion short-pay that occurred on February 26, 2021, Counter-Parties that participated in financial transactions in the ERCOT market in January 2021 would be obligated to compensate for the February 26 short-pay. In addition, the Counter-Parties that participated in financial transactions in the ERCOT market in February 2021 would be obligated to compensate for the March short-pay amounts. The procedures for calculating and administering the Default Uplift Invoices are contained Sections 9.19.1 and 9.19.2



of the Protocols. Money that is collected under the Default Uplift process Sections 9.19.1 and 9.19.2 of the Protocols is used to pay the Market Participants whose payments were reduced under Section 9.19(1)(d) of the Protocols.

11. To date, ERCOT has not initiated the Default Uplift procedure. ERCOT will not initiate the Default Uplift procedures before May 31, 2021, as the market shortfalls are being considered by the Texas Legislature.

12. The City has caused hundreds of Market Participants to incur unnecessary financial strain by being forced to compensate for the City's share of the short-payment process. There are 241 Counter-Parties that would be subject to the Default Uplift procedure based on the February and March short-pays. If the City is excluded from the Default Uplift procedure, these Market Participants would all be forced to compensate for any Default Uplift Invoice that would be issued to the City based upon its participation in the ERCOT market during January and February 2021, meaning that the Default Uplift Invoices issued to these Market Participants would increase to cover the City's share of the Default Uplift Invoice that would properly be assessed against the City under the Protocols. This would only further undermine the legally-mandated ERCOT market structure, which is designed to mitigate the impact of catastrophic market failures and provide certainty for ERCOT Market Participants by spreading out settlement risks to all ERCOT Market Participants

13. Attached as Exhibit 8 is a list of all affected Counter-Parties that ERCOT has identified at this time. These affected Market Participants have either had their payments further reduced already because of the City's exclusion from Protocol Section 9.19(1)(d) payment reductions under the Temporary Restraining Order, or they will later receive increased Default



Uplift Invoices if the City is not required to participate in the Default Uplift procedures in Section 9.19.1 and 9.19.2 of the Protocols.

14. I affirm under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT



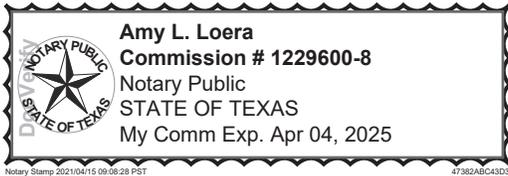
Kenan Ogelman

SUBSCRIBED and SWORN TO before me, the undersigned authority, on April 15, 2021.

This notarial act was an online notarization.



Notary Public for and in
the State of Texas



Notary Printed Name _____
My Commission expires: _____



EXHIBIT B-1

Standard Form Market Participant Agreement
between
Denton Municipal Electric
and
Electric Reliability Council of Texas, Inc.

This Market Participant Agreement ("Agreement"), effective as of the first day of April, 2015 ("Effective Date"), is entered into by and between Denton Municipal Electric, a Texas, Non-Opt In Entity ("Participant") and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT").

Recitals

WHEREAS:

A. As defined in the ERCOT Protocols, Participant is a (check all that apply):

- Load Serving Entity (LSE)
- Qualified Scheduling Entity (QSE)
- Transmission Service Provider (TSP)
- Distribution Service Provider (DSP)
- Congestion Revenue Right (CRR) Account Holder
- Resource Entity
- Renewable Energy Credit (REC) Account Holder
- Independent Market Information System Registered Entity (IMRE)

B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and

C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the "Parties") hereby agree as follows:

Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

If to Participant:

Mike Grim
Denton Municipal Electric
1659 Spencer Road
Denton, Texas 76205
Telephone: 940-349-7565
Facsimile: 940-349-7569

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.
- B. "ERCOT Protocols" shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

- A. Term. The initial term (“Initial Term”) of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a “Renewal Term”) unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement:
- (1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;
 - (2) If the “REC Account Holder” box is checked in Section A of the Recitals section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT (“Program Administrator”) for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or
 - (3) For any other reason at any time upon thirty days written notice to ERCOT.
- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

- A. Participant represents, warrants, and covenants that:
- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;
 - (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;
 - (3) Participant’s past, present and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which

its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;

- (4) Market Participant's execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Participant's performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

- (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

- (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;
- (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT's obligations, representations, warranties and covenants under this Agreement;
- (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;
- (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

- A. Participant shall comply with, and be bound by, all ERCOT Protocols.
- B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Power

Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

- A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.
- B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. [RESERVED].

Section 8. Default.

A. Event of Default.

- (1) Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT (“Payment Breach”), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) (“QSE Affiliation Breach”), shall constitute a material breach and event of default (“Default”) unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.
- (2) A material breach other than a Payment Breach or a QSE Affiliation Breach includes any material failure by Participant to comply with the ERCOT Protocols. A material breach under this subsection shall constitute an event of Default by Participant unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery of the breach notice by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.

A material breach under this subsection shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) Business Days, and Participant:

- (a) Promptly provides ERCOT with written notice of the reasons why the breach cannot reasonably be cured within fourteen (14) Business Days;
 - (b) Begins to work or other efforts to cure the breach within three (3) Business Days after ERCOT's delivery of the notice to Participant; and
 - (c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (3) Bankruptcy by Participant, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter, shall constitute an event of Default.
- (4) Except as otherwise excused herein, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a Payment Breach, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a 12-month period, the fourth such breach shall constitute a Default.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice. In the event of Participant's bankruptcy, Participant waives any right to challenge ERCOT's right to set off amounts ERCOT owes to Participant by the amount of any sums owed by Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.
- (2) Participant's Remedies for Default.

- (a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to ERCOT;
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols; and
 - (iii) Specific performance.
 - (b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.
- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8(A)(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.
- B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
- C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).
- D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM's authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):
- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
 - (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
 - (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach

pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.
- C. No Third Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 11(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within

fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.
- J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation,

order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word “shall” denotes a duty.
 - (5) The word “must” denotes a condition precedent or subsequent.
 - (6) The word “may” denotes a privilege or discretionary power.
 - (7) The phrase “may not” denotes a prohibition.
 - (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
 - (9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
 - (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
 - (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
 - (12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time.

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

By: Bill Magness

Name: Bill Magness

Title: Vice President and General Counsel

Date: January 20, 2015

Participant:

By: Mike Grimm

Name: Mike Grimm

Title: Executive Manager, Power, Legislative, and Regulatory Affairs

Date: 01/06/2014

Market Participant Name: Denton Municipal Electric

Market Participant DUNS: 071380190

EXHIBIT B-2

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NPRR Number	1021	NPRR Title	Adjustments to the Default Uplift Invoice Process
Date of Decision	May 15, 2020		
Action	Recommended Approval		
Timeline	Urgent. To implement the shortened Default Uplift Invoice issuance timeline as soon as possible to prepare for potential economic impacts from COVID-19.		
Proposed Effective Date	To be determined		
Priority and Rank Assigned	To be determined		
Nodal Protocol Sections Requiring Revision	9.19, Partial Payments by Invoice Recipients 9.19.1, Default Uplift Invoices		
Related Documents Requiring Revision/Related Revision Requests	None		
Revision Description	This Nodal Protocol Revision Request (NPRR) shortens the Default Uplift Invoice issuance timeline from 180 days to 90 days and allows ERCOT to use the best available Settlement data when calculating each Counter-Party's share of the default uplift instead of True-Up Settlement data.		
Reason for Revision	<input checked="" type="checkbox"/> Addresses current operational issues. <input type="checkbox"/> Meets Strategic goals (tied to the ERCOT Strategic Plan or directed by the ERCOT Board). <input checked="" type="checkbox"/> Market efficiencies or enhancements <input type="checkbox"/> Administrative <input type="checkbox"/> Regulatory requirements <input type="checkbox"/> Other: (explain) <i>(please select all that apply)</i>		
Business Case	When a Market Participant cannot pay their ERCOT Invoice fully, ERCOT will short-pay all Invoice Recipients that are due to receive funds from ERCOT for their market activity. If ERCOT is unable to recover short-paid funds from a defaulting Market Participant, ERCOT will recover those short-paid funds through the default uplift process. Under the current Protocols, ERCOT is prevented from		

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	issuing Default Uplift Invoices prior to 180 days. Therefore, a prolonged short-payment event would result in a substantial delay in recovery of short-paid funds which could cause cash flow issues for ERCOT Market Participants. This NPRR shortens the timeline for ERCOT to issue Default Uplift Invoices to allow for recovery of short-paid funds on a more timely basis without accelerating the timeline too much to cause financial burden on Market Participants that may be struggling. In addition, the implementation of Advanced Metering Systems (AMS) in ERCOT ensures that nearly all metered data is received prior to the Final Settlement reducing the need for the default uplift process to utilize True-Up Settlement data.
Credit Work Group Review	To be determined
PRS Decision	On 5/15/20, PRS voted unanimously via email to grant NPRR1021 Urgent status, to recommend approval of NPRR1021 as amended by the 5/11/20 ERCOT comments, and to forward NPRR1021 to TAC. All Market Segments participated in the email vote.
Summary of PRS Discussion	On 5/15/20, there was no discussion.

Sponsor	
Name	Bill Barnes
E-mail Address	bill.barnes@nrg.com
Company	Reliant Energy Retail Services LLC
Phone Number	512-691-6137
Cell Number	315-885-5925
Market Segment	Independent Retail Electric Provider (IREP)

Market Rules Staff Contact	
Name	Jordan Troublefield
E-Mail Address	jordan.troublefield@ercot.com
Phone Number	512-248-6521

Comments Received	
Comment Author	Comment Summary

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ERCOT 051120	Aligned language that is introduced in NPRR1021 with other Protocol language, specifically in paragraphs (1)(b) and (1)(c) of Section 9.19, Partial Payments by Invoice Recipients
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Market Rules Notes

None

Proposed Protocol Language Revision

9.19 Partial Payments by Invoice Recipients

- (1) If at least one Invoice Recipient owing funds does not pay its Settlement Invoice in full (short-pay), ERCOT shall follow the procedure set forth below:
 - (a) ERCOT shall make every reasonable attempt to collect payment from each short-paying Invoice Recipient prior to four hours preceding the close of the Bank Business Day Central Prevailing Time (CPT) on the day that payments by ERCOT are due to be paid to applicable Invoice Recipient(s).
 - (b) ERCOT shall draw on any available Financial Security pledged to ERCOT by each short-paying Invoice Recipient that did not pay the amount due under paragraph (a) above. If the amount of any such draw is greater than the amount of the short-paying Invoice Recipient's cash collateral held in excess of that required to cover its Total Potential Exposure (TPE) ("Excess Collateral"), then a draw on available security for a short-paying Invoice Recipient shall be considered a Late Payment for purposes of Section 16.11.6, Payment Breach and Late Payments by Market Participants. ERCOT may, in its sole discretion, hold up to 5% of Financial Security of each short-paying Invoice Recipient and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held ~~after the last True Up Statements~~ will be applied to unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1, Default Uplift Invoices.

[NPRR702: Replace paragraph (b) above with the following upon system implementation:]

- (b) ERCOT shall draw on any available Financial Security pledged to ERCOT by each short-paying Invoice Recipient that did not pay the amount due under paragraph (a) above. If the amount of any such draw is greater than the amount of the short-paying Invoice Recipient's Excess Cash Collateral, then a draw on available security for a short-paying Invoice Recipient shall be considered a Late Payment for purposes of Section 16.11.6, Payment Breach and Late Payments by Market Participants. ERCOT may, in its sole discretion, hold up to 5% of Financial Security of each short-paying Invoice Recipient and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held ~~after the last True Up Statements~~ will be applied to unpaid Invoices in conjunction with the

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default uplift process outlined in Section 9.19.1, Default Uplift Invoices.

- (c) ERCOT shall offset or recoup any amounts owed, or to be owed, by ERCOT to a short-paying Invoice Recipient against amounts not paid by that Invoice Recipient, and ERCOT shall apply the amount offset or recouped to cover short pays by that Invoice Recipient. ERCOT may, in its sole discretion, hold credit Invoices and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held ~~after the last True-Up Statement~~ will be offset or recouped against unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1.
- (d) If, after taking the actions set forth in paragraphs (a), (b) and (c) above, ERCOT still does not have sufficient funds to pay all amounts that it owes to Settlement Invoice Recipients in full, ERCOT shall deduct any applicable administrative fees as specified in Section 9.16, ERCOT System Administration and User Fees, payments for Reliability Must-Run (RMR) Services, and the Congestion Revenue Right (CRR) Balancing Account (CRRBA) from the amount received or collected and then reduce payments to all Settlement Invoice Recipients owed monies from ERCOT. The reductions must be based on a pro rata basis of monies owed to each Settlement Invoice Recipient, to the extent necessary to clear ERCOT's accounts on the payment due date to achieve revenue neutrality for ERCOT. ERCOT shall provide to all Market Participants payment details on all short pays and subsequent reimbursements of short pays. Details must include the identity of each short-paying Invoice Recipient and the dollar amount attributable to that Invoice Recipient, broken down by Invoice numbers. In addition, ERCOT shall provide the aggregate total of all amounts due to all Invoice Recipients before applying the amount not paid on the Settlement Invoice.
- (e) If sufficient funds continue to be unavailable for ERCOT to pay all amounts in full to short-paid Entities for that Settlement Invoice and the short-paying Entity is not complying with a payment plan designed to enable ERCOT to pay all amounts in full to short-paid Entities, ERCOT shall uplift short-paid amounts through the Default Uplift process described below in Section 9.19.1 and Section 9.19.2, Payment Process for Default Uplift Invoices.
- (f) When ERCOT enters into a payment plan with a short-pay Invoice Recipient, ERCOT shall post to the Market Information System (MIS) Secure Area:
 - (i) The short-pay plan;
 - (ii) The schedule of quantifiable expected payments, updated if and when modifications are made to the payment schedule; and
 - (iii) Invoice dates to which the payments will be applied.
- (g) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient before the default uplift process defined in Section 9.19.1, ERCOT shall

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allocate the collected funds to the earliest short-paid Invoice for that short-paying Invoice Recipient. ERCOT shall use its best efforts to distribute collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000 on a pro rata basis of monies owed. Subsequently collected funds that have not previously been distributed will be applied against unpaid Invoices in conjunction with the uplift process outlined in Section 9.19.1.

- (h) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient, after the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds using the same allocation method as in the default uplift process. ERCOT shall use its best efforts to distribute subsequently collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000.

9.19.1 Default Uplift Invoices

Commented [JT1]: Please note NPRR1012 also proposes revisions to this section.

- (1) ERCOT shall collect the total short-pay amount for all Settlement Invoices for a month, less the total payments expected from a payment plan, from Qualified Scheduling Entities (QSEs) and CRR Account Holders. ERCOT must pay the funds it collects from payments on Default Uplift Invoices to the Entities previously short-paid. ERCOT shall notify those Entities of the details of the payment.
- (2) Each Counter-Party's share of the uplift is calculated using ~~True-Up~~ the best available Settlement data for each Operating Day in the month prior to the month in which the default occurred, and is calculated as follows:

$$\text{DURSCP}_{cp} = \text{TSPA} * \text{MMARS}_{cp}$$

Where:

$$\text{MMARS}_{cp} = \text{MMA}_{cp} / \text{MMATOT}$$

$$\text{MMA}_{cp} = \text{Max} \{ \sum_{mp} (\text{URTMG}_{mp} + \text{URTDCIMP}_{mp}),$$

$$\sum_{mp} (\text{URTAML}_{mp} + \text{UWSLTOT}_{mp}),$$

$$\sum_{mp} \text{URTQQES}_{mp},$$

$$\sum_{mp} \text{URTQQEP}_{mp},$$

$$\sum_{mp} \text{UDAES}_{mp},$$

$$\sum_{mp} \text{UDAEP}_{mp},$$

$$\sum_{mp} (\text{URTOBL}_{mp} + \text{URTOBLLO}_{mp}),$$

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$$\sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBLS}_{mp}),$$

$$\sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp})\}$$

[NPRR917: Replace the formula “MMA_{cp}” above with the following upon system implementation:]

$$\text{MMA}_{cp} = \text{Max} \{ \sum_{mp} (\text{URTMG}_{mp} + \text{URTDCIMP}_{mp}),$$

$$\sum_{mp} (\text{URTAML}_{mp} + \text{UWSLTOT}_{mp}),$$

$$\sum_{mp} \text{URTQQES}_{mp},$$

$$\sum_{mp} \text{URTQQEP}_{mp},$$

$$\sum_{mp} \text{UDAES}_{mp},$$

$$\sum_{mp} \text{UDAEP}_{mp},$$

$$\sum_{mp} (\text{URTOBL}_{mp} + \text{URTOBLLO}_{mp}),$$

$$\sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBLS}_{mp}),$$

$$\sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp}),$$

$$\sum_{mp} (\text{USOGTOT}_{mp})\}$$

$$\text{MMATOT} = \sum_{cp} (\text{MMA}_{cp})$$

Where:

URTMG_{mp} = $\sum_{p, r, i} (\text{RTMG}_{mp, p, r, i})$, excluding RTMG for RMR Resources and RTMG in Reliability Unit Commitment (RUC)-Committed Intervals for RUC-committed Resources

$$\text{URTDCIMP}_{mp} = \sum_{p, i} (\text{RTDCIMP}_{mp, p, i}) / 4$$

$$\text{URTAML}_{mp} = \max(0, \sum_{p, i} (\text{RTAML}_{mp, p, i}))$$

$$\text{URTQQES}_{mp} = \sum_{p, i} (\text{RTQQES}_{mp, p, i}) / 4$$

$$\text{URTQQEP}_{mp} = \sum_{p, i} (\text{RTQQEP}_{mp, p, i}) / 4$$

$$\text{UDAES}_{mp} = \sum_{p, h} (\text{DAES}_{mp, p, h})$$

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$$\text{UDAEP}_{mp} = \sum_{p, h} (\text{DAEP}_{mp, p, h})$$

$$\text{URTOBL}_{mp} = \sum_{(j, k), h} (\text{RTOBL}_{mp, (j, k), h})$$

$$\text{URTOBLLO}_{mp} = \sum_{(j, k), h} (\text{RTOBLLO}_{mp, (j, k), h})$$

$$\text{UDAOPT}_{mp} = \sum_{(j, k), h} (\text{DAOPT}_{mp, (j, k), h})$$

$$\text{UDAOBL}_{mp} = \sum_{(j, k), h} (\text{DAOBL}_{mp, (j, k), h})$$

$$\text{UOPTS}_{mp} = \sum_{(j, k), h} (\text{OPTS}_{mp, (j, k), h})$$

$$\text{UOBLs}_{mp} = \sum_{(j, k), h} (\text{OBLs}_{mp, (j, k), h})$$

$$\text{UOFTP}_{mp} = \sum_{(j, k), h} (\text{OFTP}_{mp, j, h})$$

$$\text{UOBLP}_{mp} = \sum_{(j, k), h} (\text{OBLP}_{mp, (j, k), h})$$

$$\text{UWSLTOT}_{mp} = (-1) * \sum_{r, b} (\text{MEBL}_{mp, r, b})$$

[NPRR917: Insert the formula “USOGTOT_{mp}” below upon system implementation:]

$$\text{USOGTOT}_{mp} = \sum_{gsc, b} (\text{OFSOG}_{mp, gsc, b}) + \sum_{p, i} (\text{RTMGSOGZ}_{mp, p, i})$$

The above variables are defined as follows:

Variable	Unit	Definition
DURSCP _{cp}	\$	<i>Default Uplift Ratio Share per Counter-Party</i> —The Counter-Party’s pro rata portion of the total short-pay amount for all Day-Ahead Market (DAM) and Real-Time Market (RTM) Invoices for a month.
TSPA	\$	<i>Total Short Pay Amount</i> —The total short-pay amount calculated by ERCOT to be collected through the Default Uplift Invoice process.
MMARS _{cp}	None	<i>Maximum MWh Activity Ratio Share</i> —The Counter-Party’s pro rata share of Maximum MWh Activity.
MMA _{cp}	MWh	<i>Maximum MWh Activity</i> —The maximum MWh activity of all Market Participants represented by the Counter-Party in the DAM, RTM and CRR Auction for a month.
MMATOT	MWh	<i>Maximum MWh Activity Total</i> —The sum of all Counter-Party’s Maximum MWh Activity.
RTMG _{mp, p, r, i}	MWh	<i>Real-Time Metered Generation per Market Participant per Settlement Point per Resource</i> —The Real-Time energy produced by the Generation Resource <i>r</i> represented by Market Participant <i>mp</i> , at Resource Node <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.

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Variable	Unit	Definition
URTMG _{mp}	MWh	<i>Uplift Real-Time Metered Generation per Market Participant</i> —The monthly sum of Real-Time energy produced by Generation Resources represented by Market Participant <i>mp</i> , excluding generation for RMR Resources and generation in RUC-Committed Intervals, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTDCIMP _{mp, p, i}	MW	<i>Real-Time DC Import per QSE per Settlement Point</i> —The aggregated Direct Current Tie (DC Tie) Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System through DC Tie <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTDCIMP _{mp}	MW	<i>Uplift Real-Time DC Import per Market Participant</i> —The monthly sum of the aggregated DC Tie Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System where the Market Participant is a QSE assigned to a registered Counter-Party.
RTAML _{mp, p, i}	MWh	<i>Real-Time Adjusted Metered Load per Market Participant per Settlement Point</i> —The sum of the Adjusted Metered Load (AML) at the Electrical Buses that are included in Settlement Point <i>p</i> represented by Market Participant <i>mp</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTAML _{mp}	MWh	<i>Uplift Real-Time Adjusted Metered Load per Market Participant</i> —The monthly sum of the AML represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQES _{mp, p, i}	MW	<i>QSE-to-QSE Energy Sale per Market Participant per Settlement Point</i> —The amount of MW sold by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQES _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Sale per Market Participant</i> —The monthly sum of MW sold by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQEP _{mp, p, i}	MW	<i>QSE-to-QSE Energy Purchase per Market Participant per Settlement Point</i> —The amount of MW bought by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQEP _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Purchase per Market Participant</i> —The monthly sum of MW bought by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAES _{mp, p, h}	MW	<i>Day-Ahead Energy Sale per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offers at Settlement Point <i>p</i> , for the hour <i>h</i> , where the Market Participant is a QSE.
UDAES _{mp}	MWh	<i>Uplift Day-Ahead Energy Sale per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offer Curves, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAEP _{mp, p, h}	MW	<i>Day-Ahead Energy Purchase per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids at Settlement Point <i>p</i> for the hour <i>h</i> , where the Market Participant is a QSE.
UDAEP _{mp}	MWh	<i>Uplift Day-Ahead Energy Purchase per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids, where the Market Participant is a QSE assigned to the registered Counter-Party.

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Variable	Unit	Definition
RTOBL _{mp, (j, k), h}	MW	<i>Real-Time Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's Point-to-Point (PTP) Obligations with the source <i>j</i> and the sink <i>k</i> settled in Real-Time for the hour <i>h</i> , and where the Market Participant is a QSE.
URTOBL _{mp}	MWh	<i>Uplift Real-Time Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations settled in Real-Time, counting the quantity only once per source and sink pair, and where the Market Participant is a QSE assigned to the registered Counter-Party.
RTOBLL _{q, (j, k)}	MW	<i>Real-Time Obligation with Links to an Option per QSE per pair of source and sink</i> —The total MW of the QSE's PTP Obligation with Links to an Option Bids cleared in the DAM and settled in Real-Time for the source <i>j</i> and the sink <i>k</i> for the hour.
URTOBLL _{q, (j, k)}	MW	<i>Uplift Real-Time Obligation with Links to an Option per QSE per pair of source and sink</i> —The monthly total of Market Participant <i>mp</i> 's MW of PTP Obligation with Links to Options Bids cleared in the DAM and settled in Real-Time for the source <i>j</i> and the sink <i>k</i> for the hour, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAOPT _{mp, (j, k), h}	MW	<i>Day-Ahead Option per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's PTP Options with the source <i>j</i> and the sink <i>k</i> owned in the DAM for the hour <i>h</i> , and where the Market Participant is a CRR Account Holder.
UDAOPT _{mp}	MWh	<i>Uplift Day-Ahead Option per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Options owned in the DAM, counting the ownership quantity only once per source and sink pair, and where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
DAOBL _{mp, (j, k), h}	MW	<i>Day-Ahead Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's PTP Obligations with the source <i>j</i> and the sink <i>k</i> owned in the DAM for the hour <i>h</i> , and where the Market Participant is a CRR Account Holder.
UDAOBL _{mp}	MWh	<i>Uplift Day-Ahead Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations owned in the DAM, counting the ownership quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OPTS _{mp, (j, k), a, h}	MW	<i>PTP Option Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Option offers with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOPTS _{mp}	MWh	<i>Uplift PTP Option Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option offers awarded in CRR Auctions, counting the awarded quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLS _{mp, (j, k), a, h}	MW	<i>PTP Obligation Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation offers with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.

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Variable	Unit	Definition
UOBSL _{mp}	MWh	<i>Uplift PTP Obligation Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation offers awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OPTP _{mp, (j, k), a, h}	MW	<i>PTP Option Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Option bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOPTP _{mp}	MWh	<i>Uplift PTP Option Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLP _{mp, (j, k), a, h}	MW	<i>PTP Obligation Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOBLP _{mp}	MWh	<i>Uplift PTP Obligation Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
UWSLTOT _{mp}	MWh	<i>Uplift Metered Energy for Wholesale Storage Load at bus per Market Participant</i> —The monthly sum of Market Participant <i>mp</i> 's Wholesale Storage Load (WSL) energy metered by the Settlement Meter which measures WSL.
MEBL _{mp, r, b}	MWh	<i>Metered Energy for Wholesale Storage Load at bus</i> —The WSL energy metered by the Settlement Meter which measures WSL for the 15-minute Settlement Interval represented as a negative value, for the Market Participant <i>mp</i> , Resource <i>r</i> , at bus <i>b</i> .

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Variable	Unit	Definition
[NPRR917: Insert the variables “USOGTOT_{mp}”, “RTMGSOGZ_{mp, p, i}”, and “OFSOG_{mp, gsc, b}” below upon system implementation:]		
USOGTOT _{mp}	MWh	<i>Uplift Real- Time Settlement Only Generator Site per Market Participant</i> —The monthly sum of Real-Time energy produced by Settlement Only Generators (SOGs) represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTMGSOGZ _{mp, p, i}	MWh	<i>Real-Time Metered Generation from Settlement Only Generators Zonal per QSE per Settlement Point</i> — The total Real-Time energy produced by Settlement Only Transmission Self-Generators (SOTSGs) for the Market Participant <i>mp</i> in Load Zone Settlement Point <i>p</i> , for the 15-minute Settlement Interval. MWh quantities for Settlement Only Distribution Generators (SODGs) and Settlement Only Transmission Generators (SOTGs) that opted out of nodal pricing pursuant to Section 6.6.3.9, Real-Time Payment or Charge for Energy from a Settlement Only Distribution Generator (SODG) or a Settlement Only Transmission Generator (SOTG), will also be included in this value.
OFSOG _{mp, gsc, b}	MWh	<i>Outflow as measured for an SODG or SOTG Site</i> —The outflow as measured by the Settlement Meter(s) at Electrical Bus <i>b</i> for SODG or SOTG site <i>gsc</i> represented by the Market Participant <i>mp</i> .
<i>cp</i>	none	A registered Counter-Party.
<i>mp</i>	none	A Market Participant that is a non-defaulting QSE or CRR Account Holder.
<i>j</i>	none	A source Settlement Point.
<i>k</i>	none	A sink Settlement Point.
<i>a</i>	none	A CRR Auction.
<i>p</i>	none	A Settlement Point.
<i>i</i>	none	A 15-minute Settlement Interval.
<i>h</i>	none	The hour that includes the Settlement Interval <i>i</i> .
<i>r</i>	none	A Resource.
[NPRR917: Insert the variables “gsc” and “b” below upon system implementation:]		
<i>gsc</i>	none	A generation site code.
<i>b</i>	none	An Electrical Bus.

- (3) The uplifted short-paid amount will be allocated to the Market Participants (QSEs or CRR Account Holders) assigned to a registered Counter-Party based on the pro-rata share of MWhs that the QSE or CRR Account Holder contributed to its Counter-Party’s maximum MWh activity ratio share.
- (4) Any uplifted short-paid amount greater than \$2,500,000 must be scheduled so that no amount greater than \$2,500,000 is charged on each set of Default Uplift Invoices until ERCOT uplifts the total short-paid amount. ERCOT must issue Default Uplift Invoices at least 30 days apart from each other.

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- (5) ERCOT shall issue Default Uplift Invoices no earlier than ~~180-90~~ days following a short-pay of a Settlement Invoice on the date specified in the Settlement Calendar. The Invoice Recipient is responsible for accessing the Invoice on the MIS Certified Area once posted by ERCOT.
- (6) Each Default Uplift Invoice must contain:
 - (a) The Invoice Recipient's name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due or Payable – the aggregate summary of all charges owed by a Default Uplift Invoice Recipient;
 - (d) Run Date – the date on which ERCOT created and published the Default Uplift Invoice;
 - (e) Invoice Reference Number – a unique number generated by the ERCOT applications for payment tracking purposes;
 - (f) Default Uplift Invoice Reference – an identification code used to reference the amount uplifted;
 - (g) Payment Date and Time – the date and time that Default Uplift Invoice amounts must be paid;
 - (h) Remittance Information Details – details including the account number, bank name, and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and
 - (i) Overdue Terms – the terms that would apply if the Market Participant makes a late payment.
- (7) Each Invoice Recipient shall pay any net debit shown on the Default Uplift Invoice on the payment due date whether or not there is any Settlement and billing dispute regarding the amount of the debit.

PRR Motion: To grant NPRR1021 Urgent status, to recommend approval of NPRR1021 as amended by the 5/11/20 ERCOT comments, and to forward NPRR1021 to TAC

Tally Votes

Date: May 15, 2020

Clear

Record Vote

Prepared by: C. Phillips

PRR Email Vote

TALLY TOTAL			Total Abstentions
Voting Structure	Motion Carries		
COPS/PRR			
Segment Vote:	7.000	0.000	0
Need >50% to Pass	100.0%	0.0%	

Sector / Entity	Representative	Present	Yes	No	Abstain	
Consumers		Consumer Vote Total				
OPUC	Resi Shawnee Claiborn-Pinto	y	0.500			
Occidental Chemical Corporation	Indu Melissa Trevino	y	0.500			
Segment Vote:		2	1.000	0.000	0	
Coop						
Brazos Electric Power Cooperative	Shari Heino	y	0.500			
South Texas Electric Cooperative	Lucas Turner	y	0.500			
Segment Vote:		2	1.000	0.000	0	
Independent Generator						
Luminant Generation	Ian Haley	y	0.500			
EDP Renewables North America	David Mindham	y	0.500			
Segment Vote:		2	1.000	0.000	0	
Independent Power Marketers						
Tenaska Power Services	John Varnell	y	1.000			
Morgan Stanley	Clayton Greer					
Segment Vote:		1	1.000	0.000	0	
Independent REP						
Reliant Energy Retail Services	Bill Barnes	y	0.500			
Direct Energy	Sandy Morris	y	0.500			
Segment Vote:		2	1.000	0.000	0	
Investor Owned Utilities						
Oncor	Martha Henson	y	0.500			
AEP Service Corporation	Blake Gross	y	0.500			
Segment Vote:		2	1.000	0.000	0	
Municipal						
Denton Municipal Electric	Smith Day	y	0.500			
CPS Energy	Diana Coleman	y	0.500			
Segment Vote:		2	1.000	0.000	0	
All Sectors Voting Totals						
Segment Vote:		13	7.000	0.000	0	
TALLY TOTAL			100.0%	0.0%	0	

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NPRR Number	1021	NPRR Title	Adjustments to the Default Uplift Invoice Process
Date of Decision	May 29, 2020		
Action	Recommended Approval		
Timeline	Urgent. To implement the shortened Default Uplift Invoice issuance timeline as soon as possible to prepare for potential economic impacts from COVID-19.		
Proposed Effective Date	June 10, 2020		
Priority and Rank Assigned	Not applicable		
Nodal Protocol Sections Requiring Revision	9.19, Partial Payments by Invoice Recipients 9.19.1, Default Uplift Invoices		
Related Documents Requiring Revision/Related Revision Requests	None		
Revision Description	This Nodal Protocol Revision Request (NPRR) shortens the Default Uplift Invoice issuance timeline from 180 days to 90 days and allows ERCOT to use the best available Settlement data when calculating each Counter-Party's share of the default uplift instead of True-Up Settlement data.		
Reason for Revision	<input checked="" type="checkbox"/> Addresses current operational issues. <input type="checkbox"/> Meets Strategic goals (tied to the ERCOT Strategic Plan or directed by the ERCOT Board). <input checked="" type="checkbox"/> Market efficiencies or enhancements <input type="checkbox"/> Administrative <input type="checkbox"/> Regulatory requirements <input type="checkbox"/> Other: (explain) <i>(please select all that apply)</i>		
Business Case	When a Market Participant cannot pay their ERCOT Invoice fully, ERCOT will short-pay all Invoice Recipients that are due to receive funds from ERCOT for their market activity. If ERCOT is unable to recover short-paid funds from a defaulting Market Participant, ERCOT will recover those short-paid funds through the default uplift process. Under the current Protocols, ERCOT is prevented from		

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	issuing Default Uplift Invoices prior to 180 days. Therefore, a prolonged short-payment event would result in a substantial delay in recovery of short-paid funds which could cause cash flow issues for ERCOT Market Participants. This NPRR shortens the timeline for ERCOT to issue Default Uplift Invoices to allow for recovery of short-paid funds on a more timely basis without accelerating the timeline too much to cause financial burden on Market Participants that may be struggling. In addition, the implementation of Advanced Metering Systems (AMS) in ERCOT ensures that nearly all metered data is received prior to the Final Settlement reducing the need for the default uplift process to utilize True-Up Settlement data.
Credit Work Group Review	See 5/21/20 Credit Work Group (Credit WG) comments
PRS Decision	On 5/15/20, PRS voted unanimously via email to grant NPRR1021 Urgent status, to recommend approval of NPRR1021 as amended by the 5/11/20 ERCOT comments, and to forward NPRR1021 to TAC. All Market Segments participated in the email vote.
Summary of PRS Discussion	On 5/15/20, there was no discussion.
TAC Decision	On 5/29/20, TAC voted unanimously via email to recommend approval of NPRR1021 as recommended by PRS in the 5/15/20 PRS Report, and the Impact Analysis, with a recommended effective date of upon ERCOT Board approval. All Market Segments participated in the email vote.
Summary of TAC Discussion	On 5/29/20, there was no discussion.
ERCOT Opinion	ERCOT supports approval of NPRR1021.

Sponsor	
Name	Bill Barnes
E-mail Address	bill.barnes@nrg.com
Company	Reliant Energy Retail Services LLC
Phone Number	512-691-6137
Cell Number	315-885-5925
Market Segment	Independent Retail Electric Provider (IREP)

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Market Rules Staff Contact	
Name	Jordan Troublefield
E-Mail Address	jordan.troublefield@ercot.com
Phone Number	512-248-6521

Comments Received	
Comment Author	Comment Summary
ERCOT 051120	Aligned language that is introduced in NPRR1021 with other Protocol language, specifically in paragraphs (1)(b) and (1)(c) of Section 9.19, Partial Payments by Invoice Recipients
Credit WG 052120	Determined that NPRR1021's changes will accelerate the default uplift process to address potential cash flow issues for Market Participants if defaults occur, and therefore have positive credit implications

Market Rules Notes

None

Proposed Protocol Language Revision

9.19 Partial Payments by Invoice Recipients

- (1) If at least one Invoice Recipient owing funds does not pay its Settlement Invoice in full (short-pay), ERCOT shall follow the procedure set forth below:
 - (a) ERCOT shall make every reasonable attempt to collect payment from each short-paying Invoice Recipient prior to four hours preceding the close of the Bank Business Day Central Prevailing Time (CPT) on the day that payments by ERCOT are due to be paid to applicable Invoice Recipient(s).
 - (b) ERCOT shall draw on any available Financial Security pledged to ERCOT by each short-paying Invoice Recipient that did not pay the amount due under paragraph (a) above. If the amount of any such draw is greater than the amount of the short-paying Invoice Recipient's cash collateral held in excess of that required to cover its Total Potential Exposure (TPE) ("Excess Collateral"), then a draw on available security for a short-paying Invoice Recipient shall be considered a Late Payment for purposes of Section 16.11.6, Payment Breach and Late Payments by Market Participants. ERCOT may, in its sole discretion, hold up to 5% of Financial Security of each short-paying Invoice Recipient and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held ~~after the last True-Up Statements~~ will be applied to unpaid Invoices in

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conjunction with the default uplift process outlined in Section 9.19.1, Default Uplift Invoices.

[NPRR702: Replace paragraph (b) above with the following upon system implementation:]

- (b) ERCOT shall draw on any available Financial Security pledged to ERCOT by each short-paying Invoice Recipient that did not pay the amount due under paragraph (a) above. If the amount of any such draw is greater than the amount of the short-paying Invoice Recipient's Excess Cash Collateral, then a draw on available security for a short-paying Invoice Recipient shall be considered a Late Payment for purposes of Section 16.11.6, Payment Breach and Late Payments by Market Participants. ERCOT may, in its sole discretion, hold up to 5% of Financial Security of each short-paying Invoice Recipient and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held ~~after the last True-Up Statements~~ will be applied to unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1, Default Uplift Invoices.
- (c) ERCOT shall offset or recoup any amounts owed, or to be owed, by ERCOT to a short-paying Invoice Recipient against amounts not paid by that Invoice Recipient, and ERCOT shall apply the amount offset or recouped to cover short pays by that Invoice Recipient. ERCOT may, in its sole discretion, hold credit Invoices and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held ~~after the last True-Up Statement~~ will be offset or recouped against unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1.
- (d) If, after taking the actions set forth in paragraphs (a), (b) and (c) above, ERCOT still does not have sufficient funds to pay all amounts that it owes to Settlement Invoice Recipients in full, ERCOT shall deduct any applicable administrative fees as specified in Section 9.16, ERCOT System Administration and User Fees, payments for Reliability Must-Run (RMR) Services, and the Congestion Revenue Right (CRR) Balancing Account (CRRBA) from the amount received or collected and then reduce payments to all Settlement Invoice Recipients owed monies from ERCOT. The reductions must be based on a pro rata basis of monies owed to each Settlement Invoice Recipient, to the extent necessary to clear ERCOT's accounts on the payment due date to achieve revenue neutrality for ERCOT. ERCOT shall provide to all Market Participants payment details on all short pays and subsequent reimbursements of short pays. Details must include the identity of each short-paying Invoice Recipient and the dollar amount attributable to that Invoice Recipient, broken down by Invoice numbers. In addition, ERCOT shall provide the aggregate total of all amounts due to all Invoice Recipients before applying the amount not paid on the Settlement Invoice.
- (e) If sufficient funds continue to be unavailable for ERCOT to pay all amounts in full to short-paid Entities for that Settlement Invoice and the short-paying Entity is not complying with a payment plan designed to enable ERCOT to pay all amounts in full to short-paid Entities, ERCOT shall uplift short-paid amounts

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through the Default Uplift process described below in Section 9.19.1 and Section 9.19.2, Payment Process for Default Uplift Invoices.

- (f) When ERCOT enters into a payment plan with a short-pay Invoice Recipient, ERCOT shall post to the Market Information System (MIS) Secure Area:
 - (i) The short-pay plan;
 - (ii) The schedule of quantifiable expected payments, updated if and when modifications are made to the payment schedule; and
 - (iii) Invoice dates to which the payments will be applied.
- (g) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient before the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds to the earliest short-paid Invoice for that short-paying Invoice Recipient. ERCOT shall use its best efforts to distribute collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000 on a pro rata basis of monies owed. Subsequently collected funds that have not previously been distributed will be applied against unpaid Invoices in conjunction with the uplift process outlined in Section 9.19.1.
- (h) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient, after the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds using the same allocation method as in the default uplift process. ERCOT shall use its best efforts to distribute subsequently collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000.

9.19.1 Default Uplift Invoices

- (1) ERCOT shall collect the total short-pay amount for all Settlement Invoices for a month, less the total payments expected from a payment plan, from Qualified Scheduling Entities (QSEs) and CRR Account Holders. ERCOT must pay the funds it collects from payments on Default Uplift Invoices to the Entities previously short-paid. ERCOT shall notify those Entities of the details of the payment.
- (2) Each Counter-Party's share of the uplift is calculated using ~~True Up~~ the best available Settlement data for each Operating Day in the month prior to the month in which the default occurred, and is calculated as follows:

$$\text{DURSCP}_{cp} = \text{TSPA} * \text{MMARS}_{cp}$$

Where:

Commented [JT1]: Please note NPRR1012 also proposes revisions to this section.

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$$\text{MMARS}_{cp} = \text{MMA}_{cp} / \text{MMATOT}$$

$$\begin{aligned} \text{MMA}_{cp} = \text{Max} \{ & \sum_{mp} (\text{URTMG}_{mp} + \text{URTDCIMP}_{mp}), \\ & \sum_{mp} (\text{URTAML}_{mp} + \text{UWSLTOT}_{mp}), \\ & \sum_{mp} \text{URTQQES}_{mp}, \\ & \sum_{mp} \text{URTQQEP}_{mp}, \\ & \sum_{mp} \text{UDAES}_{mp}, \\ & \sum_{mp} \text{UDAEP}_{mp}, \\ & \sum_{mp} (\text{URTOBL}_{mp} + \text{URTOBLLO}_{mp}), \\ & \sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBLS}_{mp}), \\ & \sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp}) \} \end{aligned}$$

[NPRR917: Replace the formula “MMA_{cp}” above with the following upon system implementation:]

$$\begin{aligned} \text{MMA}_{cp} = \text{Max} \{ & \sum_{mp} (\text{URTMG}_{mp} + \text{URTDCIMP}_{mp}), \\ & \sum_{mp} (\text{URTAML}_{mp} + \text{UWSLTOT}_{mp}), \\ & \sum_{mp} \text{URTQQES}_{mp}, \\ & \sum_{mp} \text{URTQQEP}_{mp}, \\ & \sum_{mp} \text{UDAES}_{mp}, \\ & \sum_{mp} \text{UDAEP}_{mp}, \\ & \sum_{mp} (\text{URTOBL}_{mp} + \text{URTOBLLO}_{mp}), \\ & \sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBLS}_{mp}), \\ & \sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp}), \\ & \sum_{mp} (\text{USOGTOT}_{mp}) \} \end{aligned}$$

$$\text{MMATOT} = \sum_{cp} (\text{MMA}_{cp})$$

Where:

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URTMG $_{mp} = \sum_{p, r, i} (\text{RTMG}_{mp, p, r, i})$, excluding RTMG for RMR Resources and RTMG in Reliability Unit Commitment (RUC)-Committed Intervals for RUC-committed Resources

$$\text{URTDCIMP}_{mp} = \sum_{p, i} (\text{RTDCIMP}_{mp, p, i}) / 4$$

$$\text{URTAML}_{mp} = \max(0, \sum_{p, i} (\text{RTAML}_{mp, p, i}))$$

$$\text{URTQQES}_{mp} = \sum_{p, i} (\text{RTQQES}_{mp, p, i}) / 4$$

$$\text{URTQQEP}_{mp} = \sum_{p, i} (\text{RTQQEP}_{mp, p, i}) / 4$$

$$\text{UDAES}_{mp} = \sum_{p, h} (\text{DAES}_{mp, p, h})$$

$$\text{UDAEP}_{mp} = \sum_{p, h} (\text{DAEP}_{mp, p, h})$$

$$\text{URTOBL}_{mp} = \sum_{(j, k), h} (\text{RTOBL}_{mp, (j, k), h})$$

$$\text{URTOBLLO}_{mp} = \sum_{(j, k), h} (\text{RTOBLLO}_{mp, (j, k), h})$$

$$\text{UDAOPT}_{mp} = \sum_{(j, k), h} (\text{DAOPT}_{mp, (j, k), h})$$

$$\text{UDAOBL}_{mp} = \sum_{(j, k), h} (\text{DAOBL}_{mp, (j, k), h})$$

$$\text{UOPTS}_{mp} = \sum_{(j, k), h} (\text{OPTS}_{mp, (j, k), h})$$

$$\text{UOBLS}_{mp} = \sum_{(j, k), h} (\text{OBLS}_{mp, (j, k), h})$$

$$\text{UOPTP}_{mp} = \sum_{(j, k), h} (\text{OPTP}_{mp, j, h})$$

$$\text{UOBLP}_{mp} = \sum_{(j, k), h} (\text{OBLP}_{mp, (j, k), h})$$

$$\text{UWSLTOT}_{mp} = (-1) * \sum_{r, b} (\text{MEBL}_{mp, r, b})$$

[NPRR917: Insert the formula “USOGTOT_{mp}” below upon system implementation:]

$$\text{USOGTOT}_{mp} = \sum_{gsc, b} (\text{OFSOG}_{mp, gsc, b}) + \sum_{p, i} (\text{RTMGSOGZ}_{mp, p, i})$$

The above variables are defined as follows:

Variable	Unit	Definition
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TAC Report

Variable	Unit	Definition
DURSCP _{cp}	\$	<i>Default Uplift Ratio Share per Counter-Party</i> —The Counter-Party's pro rata portion of the total short-pay amount for all Day-Ahead Market (DAM) and Real-Time Market (RTM) Invoices for a month.
TSPA	\$	<i>Total Short Pay Amount</i> —The total short-pay amount calculated by ERCOT to be collected through the Default Uplift Invoice process.
MMARS _{cp}	None	<i>Maximum MWh Activity Ratio Share</i> —The Counter-Party's pro rata share of Maximum MWh Activity.
MMA _{cp}	MWh	<i>Maximum MWh Activity</i> —The maximum MWh activity of all Market Participants represented by the Counter-Party in the DAM, RTM and CRR Auction for a month.
MMATOT	MWh	<i>Maximum MWh Activity Total</i> —The sum of all Counter-Party's Maximum MWh Activity.
RTMG _{mp, p, r, i}	MWh	<i>Real-Time Metered Generation per Market Participant per Settlement Point per Resource</i> —The Real-Time energy produced by the Generation Resource <i>r</i> represented by Market Participant <i>mp</i> , at Resource Node <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTMG _{mp}	MWh	<i>Uplift Real-Time Metered Generation per Market Participant</i> —The monthly sum of Real-Time energy produced by Generation Resources represented by Market Participant <i>mp</i> , excluding generation for RMR Resources and generation in RUC-Committed Intervals, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTDCIMP _{mp, p, i}	MW	<i>Real-Time DC Import per QSE per Settlement Point</i> —The aggregated Direct Current Tie (DC Tie) Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System through DC Tie <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTDCIMP _{mp}	MW	<i>Uplift Real-Time DC Import per Market Participant</i> —The monthly sum of the aggregated DC Tie Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System where the Market Participant is a QSE assigned to a registered Counter-Party.
RTAML _{mp, p, i}	MWh	<i>Real-Time Adjusted Metered Load per Market Participant per Settlement Point</i> —The sum of the Adjusted Metered Load (AML) at the Electrical Buses that are included in Settlement Point <i>p</i> represented by Market Participant <i>mp</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTAML _{mp}	MWh	<i>Uplift Real-Time Adjusted Metered Load per Market Participant</i> —The monthly sum of the AML represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQES _{mp, p, i}	MW	<i>QSE-to-QSE Energy Sale per Market Participant per Settlement Point</i> —The amount of MW sold by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQES _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Sale per Market Participant</i> —The monthly sum of MW sold by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQEP _{mp, p, i}	MW	<i>QSE-to-QSE Energy Purchase per Market Participant per Settlement Point</i> —The amount of MW bought by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQEP _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Purchase per Market Participant</i> —The monthly sum of MW bought by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.

TAC Report

Variable	Unit	Definition
DAES _{mp, p, h}	MW	<i>Day-Ahead Energy Sale per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offers at Settlement Point <i>p</i> , for the hour <i>h</i> , where the Market Participant is a QSE.
UDAES _{mp}	MWh	<i>Uplift Day-Ahead Energy Sale per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offer Curves, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAEP _{mp, p, h}	MW	<i>Day-Ahead Energy Purchase per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids at Settlement Point <i>p</i> for the hour <i>h</i> , where the Market Participant is a QSE.
UDAEP _{mp}	MWh	<i>Uplift Day-Ahead Energy Purchase per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTOBL _{mp, (j, k), h}	MW	<i>Real-Time Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's Point-to-Point (PTP) Obligations with the source <i>j</i> and the sink <i>k</i> settled in Real-Time for the hour <i>h</i> , and where the Market Participant is a QSE.
URTOBL _{mp}	MWh	<i>Uplift Real-Time Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations settled in Real-Time, counting the quantity only once per source and sink pair, and where the Market Participant is a QSE assigned to the registered Counter-Party.
RTOBLLO _{q, (j, k)}	MW	<i>Real-Time Obligation with Links to an Option per QSE per pair of source and sink</i> —The total MW of the QSE's PTP Obligation with Links to an Option Bids cleared in the DAM and settled in Real-Time for the source <i>j</i> and the sink <i>k</i> for the hour.
URTOBLLO _{q, (j, k)}	MW	<i>Uplift Real-Time Obligation with Links to an Option per QSE per pair of source and sink</i> —The monthly total of Market Participant <i>mp</i> 's MW of PTP Obligation with Links to Options Bids cleared in the DAM and settled in Real-Time for the source <i>j</i> and the sink <i>k</i> for the hour, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAOPT _{mp, (j, k), h}	MW	<i>Day-Ahead Option per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's PTP Options with the source <i>j</i> and the sink <i>k</i> owned in the DAM for the hour <i>h</i> , and where the Market Participant is a CRR Account Holder.
UDAOPT _{mp}	MWh	<i>Uplift Day-Ahead Option per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Options owned in the DAM, counting the ownership quantity only once per source and sink pair, and where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
DAOBL _{mp, (j, k), h}	MW	<i>Day-Ahead Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's PTP Obligations with the source <i>j</i> and the sink <i>k</i> owned in the DAM for the hour <i>h</i> , and where the Market Participant is a CRR Account Holder.
UDAOBL _{mp}	MWh	<i>Uplift Day-Ahead Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations owned in the DAM, counting the ownership quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.

TAC Report

Variable	Unit	Definition
OPTS _{mp, (j, k), a, h}	MW	<i>PTP Option Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Option offers with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOPTS _{mp}	MWh	<i>Uplift PTP Option Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option offers awarded in CRR Auctions, counting the awarded quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLs _{mp, (j, k), a, h}	MW	<i>PTP Obligation Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation offers with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOBLs _{mp}	MWh	<i>Uplift PTP Obligation Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation offers awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OPTP _{mp, (j, k), a, h}	MW	<i>PTP Option Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Option bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOPTP _{mp}	MWh	<i>Uplift PTP Option Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLP _{mp, (j, k), a, h}	MW	<i>PTP Obligation Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOBLP _{mp}	MWh	<i>Uplift PTP Obligation Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
UWSLTOT _{mp}	MWh	<i>Uplift Metered Energy for Wholesale Storage Load at bus per Market Participant</i> —The monthly sum of Market Participant <i>mp</i> 's Wholesale Storage Load (WSL) energy metered by the Settlement Meter which measures WSL.
MEBL _{mp, r, b}	MWh	<i>Metered Energy for Wholesale Storage Load at bus</i> —The WSL energy metered by the Settlement Meter which measures WSL for the 15-minute Settlement Interval represented as a negative value, for the Market Participant <i>mp</i> , Resource <i>r</i> , at bus <i>b</i> .

TAC Report

Variable	Unit	Definition
[NPRR917: Insert the variables “USOGTOT_{mp}”, “RTMGSOGZ_{mp, p, i}”, and “OFSOG_{mp, gsc, b}” below upon system implementation:]		
USOGTOT _{mp}	MWh	<i>Uplift Real-Time Settlement Only Generator Site per Market Participant</i> —The monthly sum of Real-Time energy produced by Settlement Only Generators (SOGs) represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTMGSOGZ _{mp, p, i}	MWh	<i>Real-Time Metered Generation from Settlement Only Generators Zonal per QSE per Settlement Point</i> — The total Real-Time energy produced by Settlement Only Transmission Self-Generators (SOTSGs) for the Market Participant <i>mp</i> in Load Zone Settlement Point <i>p</i> , for the 15-minute Settlement Interval. MWh quantities for Settlement Only Distribution Generators (SODGs) and Settlement Only Transmission Generators (SOTGs) that opted out of nodal pricing pursuant to Section 6.6.3.9, Real-Time Payment or Charge for Energy from a Settlement Only Distribution Generator (SODG) or a Settlement Only Transmission Generator (SOTG), will also be included in this value.
OFSOG _{mp, gsc, b}	MWh	<i>Outflow as measured for an SODG or SOTG Site</i> —The outflow as measured by the Settlement Meter(s) at Electrical Bus <i>b</i> for SODG or SOTG site <i>gsc</i> represented by the Market Participant <i>mp</i> .
<i>cp</i>	none	A registered Counter-Party.
<i>mp</i>	none	A Market Participant that is a non-defaulting QSE or CRR Account Holder.
<i>j</i>	none	A source Settlement Point.
<i>k</i>	none	A sink Settlement Point.
<i>a</i>	none	A CRR Auction.
<i>p</i>	none	A Settlement Point.
<i>i</i>	none	A 15-minute Settlement Interval.
<i>h</i>	none	The hour that includes the Settlement Interval <i>i</i> .
<i>r</i>	none	A Resource.
[NPRR917: Insert the variables “gsc” and “b” below upon system implementation:]		
<i>gsc</i>	none	A generation site code.
<i>b</i>	none	An Electrical Bus.

- (3) The uplifted short-paid amount will be allocated to the Market Participants (QSEs or CRR Account Holders) assigned to a registered Counter-Party based on the pro-rata share of MWhs that the QSE or CRR Account Holder contributed to its Counter-Party’s maximum MWh activity ratio share.
- (4) Any uplifted short-paid amount greater than \$2,500,000 must be scheduled so that no amount greater than \$2,500,000 is charged on each set of Default Uplift Invoices until ERCOT uplifts the total short-paid amount. ERCOT must issue Default Uplift Invoices at least 30 days apart from each other.

TAC Report

- (5) ERCOT shall issue Default Uplift Invoices no earlier than ~~180~~90 days following a short-pay of a Settlement Invoice on the date specified in the Settlement Calendar. The Invoice Recipient is responsible for accessing the Invoice on the MIS Certified Area once posted by ERCOT.
- (6) Each Default Uplift Invoice must contain:
 - (a) The Invoice Recipient's name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due or Payable – the aggregate summary of all charges owed by a Default Uplift Invoice Recipient;
 - (d) Run Date – the date on which ERCOT created and published the Default Uplift Invoice;
 - (e) Invoice Reference Number – a unique number generated by the ERCOT applications for payment tracking purposes;
 - (f) Default Uplift Invoice Reference – an identification code used to reference the amount uplifted;
 - (g) Payment Date and Time – the date and time that Default Uplift Invoice amounts must be paid;
 - (h) Remittance Information Details – details including the account number, bank name, and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and
 - (i) Overdue Terms – the terms that would apply if the Market Participant makes a late payment.
- (7) Each Invoice Recipient shall pay any net debit shown on the Default Uplift Invoice on the payment due date whether or not there is any Settlement and billing dispute regarding the amount of the debit.

TAC Motion: To recommend approval of NPRR1021 as recommended by PRS in the 5/15/20 PRS Report, and the Impact Analysis, with an effective date of upon Board approval

Tally Votes

Issue: Motion #7 re NPRR1021

Date: May 29, 2020

Prepared by: B. Albracht

Clear

Record Vote

TALLY TOTAL

Voting Structure	Motion Passes		Total Abstentions
TAC	2/3 of non-abst TAC Votes = 19		0
TAC Vote:	28	0	0
	100%	0%	

Sector / Entity	Representative	Present	Affirm	Object	Abstain
Consumers					
Office of Public Utility Counsel	Resi Shawnee Claiborn-Pinto	y	1		
	Resi Eric Goff	y	1		
City of Lewisville	Comm Phillip Boyd	y	1		
City of Eastland	Comm Chris Brewster	y	1		
CMC Steel Texas	Indu Garret Kent	y	1		
Air Liquide	Indu Bill Smith	y	1		
	Segment Vote:	6	6	0	0
Cooperatives					
Lower Colorado River Authority	John Dumas	y	1		
South Texas Electric Cooperative	Clif Lange	y	1		
Brazos Electric Cooperative	Roy True	y	1		
Golden Spread Electric Cooperative	Michael Wise	y	1		
	Segment Vote:	4	4	0	0
Indepent Generators					
ENGIE	Bob Helton				
Luminant Generation	Ian Haley	y	1		
First Solar	Colin Meehan				
Exelon	Marka Shaw (Bryan Sams)	y	1		
	Segment Vote:	2	2	0	0
Independent Power Marketers					
EDF Trading North America	Kevin Bunch	y	1		
Tenaska Power Services	Jeremy Carpenter	y	1		
Morgan Stanley	Clayton Greer	y	1		
Shell Energy	Resmi Surendran	y	1		
	Segment Vote:	4	4	0	0
Independent Retail Electric Providers					
Reliant Energy Retail Services	Bill Barnes	y	1		
Just Energy	Eric Blakey	y	1		
Direct Energy	Sandy Morris	y	1		
Demand Control 2	Shannon McClendon	y	1		
	Segment Vote:	4	4	0	0
Investor Owned Utilities					
CenterPoint Energy	Walter Bartel	y	1		
Oncor	Collin Martin	y	1		
Texas-New Mexico Power Company	Keith Nix	y	1		
AEP Service Corporation	Richard Ross	y	1		
	Segment Vote:	4	4	0	0
Municipals					
Garland Power & Light	Dan Bailey	y	1		
Denton Municipal Electric	Jose Gaytan	y	1		
Austin Energy	Alicia Loving	y	1		
CPS Energy	David Kee	y	1		
	Segment Vote:	4	4	0	0
All Sectors Voting Totals					
	Segment Vote:	28	28	0	0

EXHIBIT B-3

To: Credit; CRR; Operations; Settlements

Sent: Fri, Feb 26, 2021 04:06 PM

Subject: W-B022621-01 Short payments for failure to make Invoice payments by Market Participants

NOTICE DATE: February 26, 2021

NOTICE TYPE: W-B022621-01 Settlements

SHORT DESCRIPTION: Short payments for failure to make Invoice payments by Market Participants

INTENDED AUDIENCE: QSE and CRRAH settlement personnel

DAYS AFFECTED: Settlement Invoices due for payout on February 26, 2021

LONG DESCRIPTION: Qualified Scheduling Entities (QSEs) and Congestion Revenue Right Account Holders (CRRAHs) that are owed monies from ERCOT on Settlement Invoices due for payout on February 26, 2021, will notice that the amount of funds transferred is short of the balance payable on the Settlement Invoices. This Notice is intended to advise Market Participants that ERCOT will follow the short payment procedure in accordance with Protocol Section 9.19, Partial Payments by Invoice Recipients.

The short payment procedure is being followed because some Market Participants failed to make full payments for Settlement Invoices that were due on February 25, 2021. In accordance with Protocol Section 9.19, ERCOT has initiated the process of drawing from available Financial Security provided by short-paying Market Participants. Funds received from available Financial Security will be allocated to short-paid Invoice recipients as soon as possible. Note that the total amount of short-payments has been reduced by the application of \$800 million from CRR Auction revenue funds held by ERCOT, as authorized under the authority granted to ERCOT by Commission order on February 21, 2021, in Project No. 51812.

Per Protocol Section 9.19, ERCOT will deduct any applicable ERCOT Administrative fees, payments for Reliability-Must-Run (RMR) services, and the CRR Balancing Account from the amount received, and then reduce payments to all Invoice recipients that are owed monies. The reductions will be made on a pro rata basis of monies owed to each ERCOT creditor for this Invoice to the extent necessary to clear ERCOT's accounts on the payment date to ensure revenue neutrality for ERCOT.

Invoice Payout Date: February 26, 2021

Operating Dates: DAM 2/18/2021 through 2/21/2021

RTM Initial 2/15/2021 through
2/18/2021

RTM Final 12/27/2020 through
12/30/2020

RTM True-Up 08/24/2020 through
8/27/2020

Total Amount Short Paid: \$2,116,581,108.43

Application of CRR Auction Revenue Funds \$800,000,000.00

Net Amount Short Paid: \$1,316,581,108.43

Total Amount Paid Out to Market: \$12,554,389,666.81

CONTACT: If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number at (512) 248-3900 or contact ERCOT Client Services via email at ClientServices@ercot.com.

3/25/2021

W-B022621-01 Short payments for failure to make Invoice payments by Market Participants

If you are receiving email from a public ERCOT distribution list that you no longer wish to receive, please follow this link in order to unsubscribe from this list: <http://lists.ercot.com>.

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EXHIBIT B-4

To: Credit; CRR; Settlements

Sent: Mon, Mar 01, 2021 04:30 PM

Subject: W-B030121-01 Short Payments for Failure to Make Invoice Payments

NOTICE DATE: March 1, 2021

NOTICE TYPE: W-B030121-01 Settlements

SHORT DESCRIPTION: Short Payments for Failure to Make Invoice Payments

INTENDED AUDIENCE: QSE and CRRAH Settlement Personnel

DAYS AFFECTED: Settlement Invoices due for payout on March 1, 2021

LONG DESCRIPTION: Qualified Scheduling Entities (QSEs) and Congestion Revenue Right Account Holders (CRRAHs) that are owed monies from ERCOT on Settlement Invoices due for payout on March 1, 2021, will notice that the amount of funds transferred is short of the balance payable on the Settlement Invoices.

For Settlement Invoices with payout dates of Friday, February 26, 2021, and Monday, March 1, 2021, as authorized under the authority granted to ERCOT by Commission order on February 21, 2021, in Project No. 51812, ERCOT utilized \$800 million from CRR Auction revenue funds held by ERCOT and netted some Settlement Invoices to help protect the liquidity of the financial market in the ERCOT Region. ERCOT's use of this iterative process resulted in Settlement Invoice adjustments for invoices dated February 26, 2021 or March 1, 2021. The resulting impact is that the short pay amounts are correct over the two day period but any one single day may have discrepancies. Accordingly, some adjustments may be necessary and miscellaneous invoices will be issued to reflect such adjustments.

The cumulative total amounts, including any necessary Invoice adjustments, represent the final allocation of short payments through Invoice payout date March 1, 2021.

ERCOT initiates the short payment procedure when a Market Participant fails to make a complete payment for Settlement Invoices. In accordance with ERCOT Protocol Section 9.19, ERCOT will draw from available Financial Security provided by short-paying Market Participants. Funds received from Financial Security will be allocated to short paid Invoice Recipients as soon as possible. Furthermore, ERCOT will deduct any applicable ERCOT Administrative fees, payments for Reliability-Must-Run (RMR) services, and the CRR Balancing Account from the amount received, and then reduce payments to all Invoice Recipients owed monies. The reductions will be made on a pro-rata basis of monies owed to each ERCOT creditor to the extent necessary to clear ERCOT's accounts on the payment date to ensure revenue neutrality for ERCOT.

Please be advised that going forward, ERCOT will include the identity of short-paying Invoice Recipients and the dollar amount attributable to the Invoice Recipient pursuant to ERCOT Protocol Section 9.7.3. Furthermore, in a subsequent Market Notice to be issued on Wednesday, March 3, 2021, ERCOT will identify any remaining short-paying Invoice Recipients on Invoices with payout dates of February 26, 2021, and March 1, 2021.

Invoice Payout Date:	2/26/2021	3/1/2021	Miscellaneous Invoices	Combined
Operating Dates:	DAM 2/18/2021 through 2/21/2021 RTM Initial 2/15/2021 through 2/18/2021 RTM Final 12/27/2020 through 12/30/2020 RTM True-Up 8/24/2020 through 8/27/2020	DAM 2/22/2021 RTM Initial 2/19/2021 RTM Final 12/31/2020 RTM True-Up 08/28/2020		
Invoice Amounts	\$ 13,870,970,776.40	\$ 1,726,122,755.36		\$ 15,597,093,531.76

Due to Market				
Total Amount Short Paid:	\$ 2,116,581,108.43	\$ 345,070,397.54		\$ 2,461,651,505.97
Application of CRR Auction Revenue Funds:	\$ 800,000,000.00	\$ -		\$ 800,000,000.00
Net Amount Short Paid:	\$ 1,316,581,108.43	\$ 345,070,397.54		\$ 1,661,651,505.97
Total Cash Paid Out to Market:	\$ 12,554,389,666.81	\$ 89,720,020.97		\$ 12,644,109,687.78
Allocation Adjustment and Recovery		\$ 867,486,720.09	\$ 423,845,616.19	\$ 1,291,332,336.28
Total Amount Paid Out to Market:	\$ 12,554,389,666.81	\$ 957,206,741.06	\$ 423,845,616.19	\$ 13,935,442,024.06

CONTACT: If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number at (512) 248-3900 or contact ERCOT Client Services via email at ClientServices@ercot.com.

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EXHIBIT B-5

To: Credit; CRR; Settlements

Sent: Fri, Apr 09, 2021 01:59 PM

Subject: M-B040921-01 Estimated Cumulative Aggregate Short Pay Amount

NOTICE DATE: April 9, 2021

NOTICE TYPE: M-B040921-01 Settlements

SHORT DESCRIPTION: Estimated Cumulative Aggregate Short Pay Amount

INTENDED AUDIENCE: QSE and CRRRAH Settlement Personnel

DAYS AFFECTED: April 9, 2021

LONG DESCRIPTION: The current estimated cumulative aggregate short pay amount is \$2,897,197,911.38. This amount reflects payments received for previously short-paid Invoices and the application of available Financial Security to short-paid balances, where available.

The following table identifies outstanding short-paying QSEs/CRRRAHs by Counter-Party and amount owed:

Counter-Party	\$ Total
BRAZOS ELECTRIC POWER CO OP INC (CP)	1,865,443,909.10
BULB US LLC (CP)	4,622,013.10
EAGLES VIEW PARTNERS LTD (CP)	1,152,199.09
ENERGY MONGER LLC (CP)	8,527,367.85
ENTRUST ENERGY INC (CP)	289,711,856.36
GBPOWER LLC (CP)	19,860,475.14
GRIDDY ENERGY LLC (CP)	28,962,255.80
GRIDPLUS TEXAS INC (CP)	1,203,326.51
HANWHA ENERGY USA HOLDINGS CORP DBA 174 POWER GLOBAL (CP)	45,525,147.14
ILUMINAR ENERGY LLC (CP)	39,858,137.31
MQE LLC (CP)	13,038,793.74
POWER OF TEXAS HOLDINGS INC VIRTUAL (CP)	16.29
RAYBURN COUNTRY ELECTRIC COOPERATIVE INC (CP)	574,032,560.15

VOLT ELECTRICITY PROVIDER LP (CP)	5,259,853.80
Total	2,897,197,911.38

The following table identifies the outstanding short pay total by Invoice due date:

Invoice Due Date	\$ Total
2/22/2021	11,033,653.08
2/23/2021	16,601,147.27
2/25/2021	1,885,992,645.45
2/26/2021	303,722,512.36
3/1/2021	722,514.09
3/2/2021	26,539.27
3/3/2021	101,729.97
3/4/2021	159,173.02
3/5/2021	23,820,612.09
3/8/2021	351,271,556.47
3/9/2021	243,896,227.14
3/10/2021	53,343,421.05
3/11/2021	18,359.13
3/12/2021	10,238.26
3/15/2021	11,788.81
3/16/2021	5,678,149.21
3/17/2021	28,782.19
3/18/2021	28,405.46
3/19/2021	561.47
3/22/2021	3,217.38
3/23/2021	5,553.30

3/24/2021	71.35
3/25/2021	7.45
3/26/2021	8,042.13
3/29/2021	4,112.64
3/30/2021	402.74
3/31/2021	3,687.27
4/1/2021	21,851.07
4/6/2021	10,434.27
4/7/2021	109,503.58
4/8/2021	563,012.41
Total	2,897,197,911.38

CONTACT: If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number at (512) 248-3900 or contact ERCOT Client Services via email at ClientServices@ercot.com.

If you are receiving email from a public ERCOT distribution list that you no longer wish to receive, please follow this link in order to unsubscribe from this list: <http://lists.ercot.com>.

dg

EXHIBIT B-6

To: Credit; CRR; Operations; Settlements

Sent: Wed, Feb 24, 2021 04:51 PM

Subject: W-A022421-01 Short payments for failure to make Invoice payments by Market Participants

NOTICE DATE: February 24, 2021

NOTICE TYPE: W-A022421-01 Settlements

SHORT DESCRIPTION: Short payments for failure to make Invoice payments by Market Participants

INTENDED AUDIENCE: QSE and CRRRAH settlement personnel

DAY AFFECTED: Settlement Invoices due for payout on February 23 and 24, 2021

LONG DESCRIPTION: Qualified Scheduling Entities (QSEs) and Congestion Revenue Right Account Holders (CRRRAHs) that are owed monies from ERCOT on Settlement Invoices due for payout on February 23 and 24, 2021, will notice that the amount of funds transferred is short of the balance payable on the Settlement Invoices. Please note that Settlement Invoices originally scheduled for payout on February 23, 2021, will be paid on February 24, 2021. This Notice is intended to advise Market Participants that ERCOT will follow the short payment procedure in accordance with Protocol Section 9.19, Partial Payments by Invoice Recipients.

The short payment procedure is being followed because some Market Participants failed to make full payments for Settlement Invoices that were due on February 23, 2021. ERCOT has initiated the process of drawing from available Financial Security provided by these short-paying Market Participants.

Per Protocol Section 9.19, ERCOT will deduct any applicable ERCOT Administrative fees, payments for Reliability-Must-Run (RMR) services, and the CRR Balancing Account from the amount received, and then reduce payments to all Invoice recipients that are owed monies. The reductions will be made on a pro rata basis of monies owed to each ERCOT creditor for this Invoice to the extent necessary to clear ERCOT's accounts on the payment date to ensure revenue neutrality for ERCOT.

Payout Date in Invoice:	February 23, 2021
Invoice Payout Date:	February 24, 2021
Operating Dates:	DAM 02/16/2021 RTM Initial 02/13/2021 RTM Final 12/25/2020 RTM Trueup 08/22/2020
Total Amount Short to Market:	\$11,752,978.62
Total Amount Paid Out to Market:	\$1,626,011,621.56

Invoice Payout Date:	February 24, 2021
Operating Dates:	DAM 02/17/2021 RTM Initial 02/14/2021 RTM Final 12/26/2020 RTM Trueup 08/23/2020
Total Amount Short to Market:	\$16,601,147.28
Total Amount Paid Out to Market:	\$2,150,514,457.93

CONTACT: If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number at (512) 248-3900 or contact ERCOT Client Services via email at ClientServices@ercot.com.

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dl

EXHIBIT B-7

To: Credit; CRR; Settlements**Sent:** Mon, Apr 12, 2021 05:33 PM**Subject:** W-C041221-01 Denton Municipal Electric - Temporary Restraining Order**NOTICE DATE:** April 12, 2021**NOTICE TYPE:** W-C041221-01 Settlements**SHORT DESCRIPTION:** Denton Municipal Electric - Temporary Restraining Order**INTENDED AUDIENCE:** QSE and CRRRAH Settlement Personnel**DAYS AFFECTED:** April 12, 2021

LONG DESCRIPTION: On February 25, 2021, the City of Denton sought and obtained a Temporary Restraining Order (TRO) on behalf of its municipally owned utility, Denton Municipal Electric (Denton). Among other things, the TRO prohibits ERCOT from taking action under Section 9.19 of the ERCOT Protocols with respect to Denton. A copy of the TRO is attached to this Market Notice. The TRO was subsequently extended, and remains in effect. A hearing on Denton's request for a temporary injunction is scheduled for April 26, 2021.

In order to comply with the ERCOT Protocols and the TRO, ERCOT has either made payments from ERCOT operating funds or allocated amounts that would be charged to Denton absent the TRO, to other Entities due payments for applicable Invoice payout days.

The following table summarizes reallocations to date to other Market Participants:

Allocated to Other Market Participants			
Invoice Date	Invoice Payout Date	Short-Pay Reallocated from Denton	Notes
02/23/2021	02/26/2021	\$6,790,517.72	Allocated in corrected 02/23/2021 balances
02/24/2021	03/01/2021	\$2,700,741.71	Allocated in payments on 3/10 Miscellaneous Invoices
03/16/2021	03/19/2021	\$159.63	Allocated in payments on 03/19/2021 Invoices
03/17/2021	03/22/2021	\$5.99	Allocated in payments on 03/22/2021 Invoices
03/18/2021	03/23/2021	\$38.96	Allocated in payments on 03/23/2021 Invoices
03/19/2021	03/24/2021	\$45.63	Allocated in payments on

			03/24/2021 Invoices
03/24/2021	03/29/2021	\$37.30	Allocated in payments on 03/29/2021 Invoices
03/25/2021	03/30/2021	\$25.71	Allocated in payments on 03/30/2021 Invoices
03/29/2021	04/01/2021	\$20.92	Allocated in payments on 04/01/2021 Invoices
03/30/2021	04/02/2021	\$65.34	Allocated in payments on 04/02/2021 Invoices
04/05/2021	04/08/2021	\$271.45	Allocated in payments on 04/08/2021 Invoices
04/06/2021	04/09/2021	\$4,452.82	Allocated in payments on 04/09/2021 Invoices
04/07/2021	04/12/2021	\$30.21	Allocated in payments on 04/12/2021 Invoices
	Total	\$9,496,413.39	

ERCOT will issue a Miscellaneous Invoice to recover amounts paid from ERCOT operating funds. The table below shows the amounts that will be recovered from QSEs and CRR Account Holders on the Miscellaneous Invoice. Charges will be assessed on a pro-rata basis on payout amounts for each Invoice payout date. Short payment amounts are subject to change, and if necessary will be adjusted in the future.

To Be Recovered on Miscellaneous Invoices:

Invoice Date	Invoice Payout Date	Short-Pay Reallocated from Denton
02/25/2021	03/02/2021	\$441.08
02/26/2021	03/03/2021	\$4.15
03/01/2021	03/04/2021	\$145.58
03/02/2021	03/05/2021	\$154.70
03/03/2021	03/08/2021	\$10,402.09
03/04/2021	03/09/2021	\$21,606.32
03/05/2021	03/10/2021	\$17,709.54
03/08/2021	03/11/2021	\$17,424.94
03/09/2021	03/12/2021	\$ 58.24

03/10/2021	03/15/2021	\$ 57.93
03/11/2021	03/16/2021	\$75.71
03/12/2021	03/17/2021	\$5,305.28
03/15/2021	03/18/2021	\$24.90
	Total	\$73,410.46

ERCOT will provide updates as necessary to keep Settlement Personnel informed regarding the impacts of the TRO.

CONTACT: If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number at (512) 248-3900 or contact ERCOT Client Services via email at ClientServices@ercot.com.

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dg

Attachment:

[Denton - Temporary Restraining Order.pdf](#) (Apr 12, 2021 – pdf)

EXHIBIT B-8

AFFECTED MARKET PARTICIPANTS

3000 ENERGY CORP (CP)
ACCENT ENERGY TEXAS LP (CP)
AKUO TRADING SAS (CP)
ALLIANCE POWER COMPANY LLC (CP)
ALTOP ENERGY TRADING TEXAS LLC (CP)
ALTUS POWER LLC (CP)
AM TRADING SOLUTIONS LLC (CP)
AMERICAN ELECTRIC POWER SERVICE CORP (CP)
AMES ENERGY LLC (CP)
AMERICAN POWERNET MANAGEMENT LP (CP)
APOLLO ENERGY CORP (CP)
APPIAN WAY ENERGY PARTNERS SOUTHCENTRAL LP (CP)
ARCTURUS POWER TRADING LLC (CP)
ARDOR ENERGY LLC (CP)
ASPIRE POWER VENTURES LP (CP)
ATNV ENERGY LP (CP)
AUTOMATED ALGORITHMS LLC 1 (CP)
AVANGRID RENEWABLES LLC (CP)
AXON ENERGY LLC (CP)
AXPO US LLC (CP)
BARTON FUND LLC (CP)
BIG BEND TRADING LLC (CP)
BIOURJA POWER LLC (CP)
BJ ENERGY LLC (CP)
BLLD LLC 1 (CP)
BOSTON ENERGY TRADING AND MARKETING LLC (CP)
BP ENERGY COMPANY (CP)
BRAZOS ELECTRIC POWER CO OP INC (CP)
BRAZOS ELECTRIC POWER CO OP INC POST (CP)
BROAD REACH POWER LLC (CP)
BROWNSVILLE PUBLIC UTILITIES BOARD (CP)
BRYAN TEXAS UTILITIES (CP)
BULB US LLC (CP)
BULL CREEK WIND LLC (CP)
CALPINE ENERGY SOLUTIONS LLC (CP)
CALPINE POWER MANAGEMENT LLC CP (CP)
CANADIAN BREAKS LLC (CP)
CASSIAN ENERGY LLC (CP)
CASTLETON COMMODITIES MERCHANT TRADING LP (CP)
CC8 LLC (CP)
CEI HOLDCO SPV LP (CP)
CENTRAL TEXAS ELECTRIC COOPERATIVE INC (CP)
CIGER TRADING TEXAS LLC (CP)
CIRRO GROUP INC (CP)

CITIGROUP ENERGY INC (CP)
CITY OF AUSTIN DBA AUSTIN ENERGY (CP)
CITY OF COLLEGE STATION (CP)
CITY OF GARLAND (CP)
CITY OF GEORGETOWN (CP)
CONOCOPHILLIPS COMPANY (CP)
CORIOLIS FORCE LLC (CP)
CORSAIR LLC (CP)
CPS ENERGY (CP)
CWP ENERGY INC (CP)
DANSKE COMMODITIES US LLC (CP)
DARBY ENERGY LLC (CP)
DC ENERGY TEXAS LLC (CP)
DIRECT ENERGY LP (CP)
DRW COMMODITIES LLC (CP)
DTE ENERGY TRADING INC CP (CP)
DUKE ENERGY RENEWABLE SERVICES LLC (CP)
DYFL POWER LLC (CP)
DYNASTY ENERGY CALIFORNIA INC (CP)
DYNASTY POWER INC (CP)
EAST TEXAS ELECTRIC COOPERATIVE INC (CP)
ECTOR COUNTY ENERGY CENTER LLC (CP)
EDF ENERGY SERVICES LLC (CP)
EDF TRADING NORTH AMERICA LLC (CP)
EDP RENEWABLES NORTH AMERICA LLC (CP)
EKAPITAL INVESTMENTS LLC (CP)
ELECTRANET QSE I LLC (CP)
ENEL TRADING NORTH AMERICA LLC (CP)
ENEL X NORTH AMERICA INC (CP)
ENERGY MONGER LLC (CP)
ENERWISE GLOBAL TECHNOLOGIES LLC (CP)
ENGELHART CTP (US) LLC (CP)
ENGIE ENERGY MARKETING NA INC (CP)
ENGIE RESOURCES LLC (CP)
ENTERGRID FUND I LLC (CP)
ENTRUST ENERGY INC (CP)
ETC ENDURE ENERGY LLC (CP)
EVERGY KANSAS CENTRAL INC (CP)
EVERGY METRO INC (CP)
EXELON GENERATION COMPANY LLC (CP)
FANTODS LLC (CP)
FAYETTE ELECTRIC COOPERATIVE INC (CP)
FMS CAPITAL LLC (CP)
FORMOSA UTILITY VENTURE LTD (CP)
FP SOUTH CAPITAL PARTNERS LLC (CP)
FPL ENERGY TEXAS LLC (CP)

FREEPOINT COMMODITIES LLC (CP)
FRONTIER UTILITIES LLC (CP)
GBPOWER LLC (CP)
GEODESIC 1 LLC (CP)
GERDAU AMERISTEEL ENERGY INC (CP)
GESTERNOVA SA CORPORATION (CP)
GEUS (CP)
GEXA ENERGY LP (CP)
GOLDEN SPREAD ELECTRIC COOPERATIVE INC (CP)
GOLDTHWAITE WIND ENERGY LLC (CP)
GRAND OAK CAPITAL PARTNERS LP (CP)
GRANTHAM ENERGY CORPORATION (CP)
GREENE ENERGY CAPITAL SW LLC (CP)
GRIDDY ENERGY LLC (CP)
GRIDMATIC INC (CP)
GRIDPLUS TEXAS INC (CP)
GROUP628 LLC 1 (CP)
GUADALUPE VALLEY ELECTRIC CO OP INC (CP)
GUNSIGHT MOUNTAIN WIND ENERGY LLC (CP)
GUZMAN ENERGY LLC (CP)
HANWHA ENERGY USA HOLDINGS CORP DBA 174 POWER GLOBAL (CP)
HARTREE PARTNERS LP (CP)
HEBER ENERGY LLC (CP)
HEN POWER MARKETING LLC (CP)
HERITAGE POWER LLC (CP)
HERMIT ENERGY TRADING LLC (CP)
HQ ENERGY SERVICES (US) INC (CP)
ICE NGX CANADA INC (CP)
ILUMINAR ENERGY LLC (CP)
IN COMMODITIES US LLC (CP)
INERTIA POWER III LP (CP)
INITUS INVESTMENTS LLC (CP)
INTERGRID POWER LLC (CP)
ISO 2 LLC (CP)
J ARON AND COMPANY LLC (CP)
JACINTO ENERGY LLC (CP)
JP ENERGY RESOURCES LLC (CP)
JP MORGAN CHASE BANK NA (CP)
JUST ENERGY TEXAS LP (CP)
KERRVILLE PUBLIC UTILITY BOARD (CP)
KWANTIX TRADING FUND I LP (CP)
LAFAYETTE POWER LLC (CP)
LANEY ANALYTICS LLC (CP)
LANEY POWER LLC (CP)
LELAND POWER LLC (CP)
LNE POWER LLC (CP)

LONESTAR II GENERATION HOLDINGS LLC (CP)
LOWER COLORADO RIVER AUTHORITY (CP)
LQA LLC (CP)
LTSTE INVESTMENTS LLC (CP)
LUMINANT ENERGY COMPANY LLC (CP)
MACQUARIE ENERGY LLC (CP)
MACQUARIE ENERGY TRADING LLC (CP)
MAG ENERGY SOLUTIONS INC (CP)
MAGNOLIA ENERGY CAPITAL LLC (CP)
MAVERICK CREEK WIND LLC (CP)
MCADOO WIND ENERGY LLC (CP)
MERCURIA ENERGY AMERICA LLC (CP)
MERRILL LYNCH COMMODITIES INC (CP)
MET TEXAS TRADING LP (CP)
MFT ENERGY US 1 LLC (CP)
MIAMI WIND I LLC (CP)
MIDAMERICAN ENERGY SERVICES LLC (CP)
MIDWEST ENERGY TRADING EAST LLC (CP)
MITSUI AND CO ENERGY MARKETING AND SERVICES (USA) INC (CP)
MONTEREY TX LLC (CP)
MORGAN STANLEY CAPITAL GROUP INC (CP)
MP2 ENERGY LLC (CP)
MP2 ENERGY TEXAS LLC (CP)
MQE LLC (CP)
NDC PARTNERS LLC (CP)
NEW BRAUNFELS UTILITIES (CP)
NEW MEXICO ELECTRIC MARKETING LLC (CP)
NEXTERA ENERGY MARKETING LLC (CP)
NORTHERN STATES POWER COMPANY (CP)
NOVATUS ENERGY MANAGEMENT LLC (CP)
NRG POWER MARKETING LLC (CP)
NRG TEXAS POWER LLC (CP)
SOUTH TEXAS ELECTRIC COOPERATIVE INC (CP)
OCCIDENTAL POWER SERVICES INC (CP)
OKLAHOMA MUNICIPAL POWER AUTHORITY (CP)
OLD MISSION ENERGY TRADING LLC (CP)
ONE VENTURES TX LLC (CP)
ORSTED ONSHORE NORTH AMERICA LLC (CP)
ORSTED US TRADING LLC (CP)
PACIFIC SUMMIT ENERGY LLC (CP)
PATTERN ENERGY MANAGEMENT SERVICES LLC (CP)
PCS TRADING LLC (CP)
PEAK ENERGY CAPITAL LP (CP)
PEARL STREET MERCHANT ENERGY LLC (CP)
PEBBLESTONE ENERGY LLC (CP)
PENINSULA POWER LLC (CP)

PHARETRAM ENERGY SERVICES LTD (CP)
PHYSICAL SYSTEMS INTEGRATION LLC (CP)
PNT FINANCIAL LLC (CP)
PRECEPT POWER LLC (CP)
PRIORITY POWER MANAGEMENT LLC (CP)
PURE ENERGY INC (CP)
QUATTRO ENERGY LP (CP)
RAINBOW ENERGY MARKETING CORPORATION (CP)
RATTLESNAKE WIND I LLC (CP)
RAYBURN COUNTRY ELECTRIC COOPERATIVE INC (CP)
RED WOLF TX2 LLC (CP)
REDEMPTIVE POWER INC (CP)
REUEL ENERGY LLC (CP)
RHYTHM OPS LLC (CP)
ROCTOP INVESTMENTS INC (CP)
RWE RENEWABLES QSE LLC (CP)
SAN BERNARD ELECTRIC COOPERATIVE INC (CP)
SANDALWOOD POWER LLC (CP)
SANTA RITA EAST WIND ENERGY LLC (CP)
SANTA RITA WIND ENERGY LLC (CP)
SARACEN ENERGY WEST LP (CP)
SARACEN POWER LP (CP)
SCURRY COUNTY WIND II LLC (CP)
SCURRY COUNTY WIND LP (CP)
SEMPRA GAS AND POWER MARKETING LLC (CP)
SENATE WIND LLC (CP)
SESCO SOUTHWEST TRADING LLC (CP)
SHELL ENERGY NORTH AMERICA (US) LP (CP)
SHERBINO I WIND FARM LLC (CP)
SIX ONE COMMODITIES LLC (CP)
SOURCE OPERATIONS GROUP LLC (CP)
SOUTH PLAINS WIND ENERGY LLC (CP)
SP ENERGY TRADING LLC (CP)
SPARK ENERGY LLC (CP)
STANDARD NORMAL ENERGY LLC (CP)
STANTON WIND ENERGY LLC (CP)
SUSTAINING POWER SOLUTIONS LLC (CP)
SW POWER TRADING LLC (CP)
TALEN ENERGY MARKETING LLC (CP)
TALLER CUBE LLC (CP)
TEC ENERGY INC (CP)
TENASKA POWER SERVICES CO (CP)
TEXAS ELECTRIC MARKETING LLC (CP)
TEXAS ENERGY TRANSFER POWER LLC (CP)
TEXAS RETAIL ENERGY LLC (CP)
TEXPO POWER LP DBA TEXPO ENERGY (CP)

THE ENERGY AUTHORITY INC (CP)
THORDIN LLC (CP)
TIDAL ENERGY MARKETING (US) LLC (CP)
TIOS CAPITAL LLC (CP)
TOTAL GAS AND POWER NORTH AMERICA INC (CP)
TRAILSTONE ENERGY MARKETING LLC (CP)
TRANE GRID SERVICES LLC (CP)
TRANSALTA ENERGY MARKETING (US) INC 3 (CP)
TRIOLITH ENERGY FUND LP (CP)
TRUELIGHT ENERGY FUND LP (CP)
TTPA LLC (CP)
TURKEY TRACK WIND ENERGY LLC (CP)
TWIN EAGLE RESOURCE MANAGEMENT LLC (CP)
TX ACTIVE POWER INVESTMENTS LLC (CP)
UNCIA ENERGY LP SERIES E (CP)
UNIPER GLOBAL COMMODITIES NORTH AMERICA LLC (CP)
VARSITY ENERGY LLC (CP)
VBE INVESTMENTS LLC (CP)
VELOCITY AMERICAN ENERGY MASTER I LP (CP)
VERANO ENERGY TRADING LP (CP)
VIRIBUS FUND LP (CP)
VIRIDITY ENERGY SOLUTIONS INC (CP)
VITOL INC (CP)
VOLT ELECTRICITY PROVIDER LP (CP)
WAKE WIND ENERGY LLC (CP)
WEATHERFORD MUNICIPAL UTILITY SYSTEM (CP)
WOLFRAMIUM POWER LP (CP)
WOLVERINE TRADING LLC (CP)
WORLD POWER AND GAS LP (CP)
XO ENERGY TX LP (CP)
XO ENERGY TX2 LP (CP)
XO ENERGY TX3 LP (CP)

EXHIBIT C

From: [Seely, Chad](#)
To: [Jose de la Fuente](#)
Cc: [Catherine Daniels](#); [James Parker](#); [Karen Mallios](#); [Clark, Elliot](#)
Subject: RE: URGENT -- Cause No. 21-1421-16; Denton v. ERCOT
Date: Thursday, February 25, 2021 2:33:08 PM
Importance: High

Joe,

I am copying Elliot Clark at Winstead who will serve as ERCOT's counsel on this matter. Please coordinate with him on any proposed hearing. Thanks.

Chad V. Seely
General Counsel
(512) 225-7035 (Office)
(512) 825-0288 (Cell)

From: Jose de la Fuente [mailto:jdela Fuente@lglawfirm.com]
Sent: Thursday, February 25, 2021 2:29 PM
To: Seely, Chad <Chad.Seely@ercot.com>
Cc: Catherine Daniels <cdaniels@lglawfirm.com>; James Parker <jparker@lglawfirm.com>; Karen Mallios <kmallios@lglawfirm.com>
Subject: URGENT -- Cause No. 21-1421-16; Denton v. ERCOT

******* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. *******

Chad,

Please see the attached Petition just filed by the City of Denton against ERCOT and its various officials in district court in Denton County. This Petition seeks a Temporary Restraining Order – we are working with the court to schedule that hearing later today, but pretty soon. I am sending you this courtesy copy to invite your participation in that hearing. As soon as we confirm the time and participation information, I will share it with you.

You can reach me directly on my cell, 512-844-9078.

Joe de la Fuente
Chair, Litigation Practice Group
Lloyd Gosselink



JOSE E. DE LA FUENTE
Litigation Practice Group Chair
512-322-5849 Direct
512-844-9078 Cell
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
www.lglawfirm.com | 512-322-5800
[News](#) | [vCard](#) | [LinkedIn](#) | [Bio](#)

*******ATTENTION TO PUBLIC OFFICIALS AND OFFICIALS WITH OTHER INSTITUTIONS SUBJECT TO THE OPEN MEETINGS ACT *******

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From: [Jose de la Fuente](#)
To: [Clark, Elliot](#)
Cc: [Catherine Daniels](#); [Karen Mallios](#); [James Parker](#)
Subject: FW: Denton v. ERCOT Supplemental Petition 2021.02.25 (with evidence exhibits) FINAL.PDF
Date: Thursday, February 25, 2021 2:59:42 PM
Attachments: [Denton v. ERCOT Supplemental Petition 2021.02.25 \(with evidence exhibits\) FINAL.pdf](#)

Elliot,

Please see the attached supplement to the Petition just filed in the Denton v. ERCOT matter.

Joe



JOSE E. DE LA FUENTE

Litigation Practice Group Chair
512-322-5849 Direct
512-844-9078 Cell
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
[www.lglawfirm.com](#) | 512-322-5800
[News](#) | [vCard](#) | [LinkedIn](#) | [Bio](#)

From: Karen Mallios <kmallios@lglawfirm.com>
Sent: Thursday, February 25, 2021 2:56 PM
To: Jose de la Fuente <jdela Fuente@lglawfirm.com>
Subject: Denton v. ERCOT Supplemental Petition 2021.02.25 (with evidence exhibits) FINAL.PDF



KAREN W. MALLIOS

Litigation Support Specialist
512-322-5885 Direct
Lloyd Gosselink Rochelle & Townsend, P.C.
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[www.lglawfirm.com](#) | 512-322-5800
[News](#) | [vCard](#)

****ATTENTION TO PUBLIC OFFICIALS AND OFFICIALS WITH OTHER INSTITUTIONS SUBJECT TO THE OPEN MEETINGS ACT****

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From: [Jose de la Fuente](#)
To: [Clark, Elliot](#)
Subject: FW: URGENT -- Cause No. 21-1421-16; Denton v. ERCOT
Date: Thursday, February 25, 2021 3:29:10 PM
Attachments: [Judge Sherry Shipman's Zoom Meeting.msg](#)

Hearing starts now.



JOSE E. DE LA FUENTE

Litigation Practice Group Chair
512-322-5849 Direct
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Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
[www.lglawfirm.com](#) | 512-322-5800
[News](#) | [vCard](#) | [LinkedIn](#) | [Bio](#)

From: Catherine Daniels <cdaniels@lglawfirm.com>
Sent: Thursday, February 25, 2021 3:28 PM
To: James Parker <jparker@lglawfirm.com>; Jose de la Fuente <jdelafuente@lglawfirm.com>
Cc: Catherine Daniels <cdaniels@lglawfirm.com>; Karen Mallios <kmallios@lglawfirm.com>
Subject: FW: URGENT -- Cause No. 21-1421-16; Denton v. ERCOT

Zoom info attached for you to send to opposing counsel.

Cathy



CATHY A. DANIELS

Legal Secretary to José de la Fuente,
James Parker, Gabrielle Smith, and Lindsay Killeen
512-322-5854 Direct
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From: Rebecca Hobon <Rebecca.Hobon@dentoncounty.gov>
Sent: Thursday, February 25, 2021 3:26 PM
To: Catherine Daniels <cdaniels@lglawfirm.com>
Subject: RE: URGENT -- Cause No. 21-1421-16; Denton v. ERCOT

Catherine,

The Zoom link is attached for the TRO setting at 3:45pm today.

Sincerely,

Rebecca Hobon

158th District Court Administrator

Certified Court Manager (CCM) National Center for State Courts (NCSC)

158th Judicial District Court

The Honorable Steve Burgess Presiding

1450 E. McKinney Street, Floor 3

Denton, Texas 76209

[940.349.2320](tel:940.349.2320)

Rebecca.hobon@dentoncounty.gov

****Please go to: <https://dentoncounty.gov/Departments/District-Courts> for updates about COVID-19 and the courts.****

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You may review case records or court dockets at:<https://justice1.dentoncounty.gov/PublicAccess/default.aspx>

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Elliot Clark
Bar No. 24012428
eclark@winstead.com
Envelope ID: 52502052
Status as of 4/16/2021 11:06 AM CST

Case Contacts

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