



## Filing Receipt

**Received - 2022-06-14 12:47:24 PM**

**Control Number - 52710**

**ItemNumber - 6**

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Commissioner Will McAdams  
Commissioner Lori Cobos  
Commissioner Jimmy Glotfelty  
  
Interested Parties

**FROM:** Harika Basaran, Market Analysis  
Floyd Walker, Market Analysis

**DATE:** June 14, 2022

**RE:** Docket No. 52710 - *Compliance Filing for Docket No. 52322 (Application of Electric Reliability Council of Texas, Inc, for a Debt Obligation Order Pursuant to Chapter 39, Subchapter N, of the Public Utility Regulatory Act)*

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On July 16, 2021, the Electric Reliability Council of Texas, Inc. (ERCOT) filed an application for a debt obligation order under PURA<sup>1</sup> § 39.653 to authorize the issuance of subchapter N bonds to finance an uplift balance of up to \$2.1 billion, and to approve the assessment and collection of uplift charges to all non-exempt load-serving entities. On October 13, 2021, the Commission approved ERCOT's application and issued a Debt Obligation Order.<sup>2</sup>

The Commission is authorized under PURA § 39.661 to use any method of enforcement available under PURA Chapters 15 and 39, including revocation of certification. Commission Staff will conduct an audit of the distribution and use of debt obligation bond proceeds following the filing of initial distribution reports. Commission Staff may require a Qualified Scheduling Entity (QSE), Load Serving Entity (LSE), or ERCOT at any time to provide evidence of the distribution or use of proceeds.

ERCOT expects to begin distributing debt obligation bond proceeds on June 22, 2022. This memo describes the processes that will be used to ensure compliance with the Commission's Debt Obligation Order and PURA Chapter 39, Subchapter N.

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

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

## I. ERCOT's Debt Obligation Bond Proceeds Distribution Process

The following steps will be taken to accurately track and account for the distribution of debt obligation bond proceeds and to ensure compliance with Subchapter N and the Debt Obligation Order:<sup>3</sup>

1. ERCOT will distribute debt obligation bond proceeds to LSEs in accordance with ERCOT's Calculation of Load Ratio Share and Total Exposure (Proceeds Allocation Table)<sup>4</sup> by remitting each identified LSE's share of proceeds to its current QSE.<sup>5</sup> ERCOT will also issue a market notice to all market participants once it has begun distributing the subchapter N bond proceeds. However, if at the time of distribution, an identified LSE is no longer a wholesale market participant,<sup>6</sup> or failed to timely file a verification of its exposure in Project No. 52364, ERCOT will hold any such proceeds in a segregated account pending an order from the Commission directing the disposition of such proceeds.
2. Within five business days of receipt of the debt obligation bond proceeds, each QSE must distribute to each of its represented LSEs the amounts specified in the Proceeds Allocation Table.<sup>7</sup>
3. Within fourteen days of ERCOT's market notice, each LSE must submit to ERCOT a signed attestation in which the LSE<sup>8</sup>:
  - a. confirms that it has received from its QSE the correct amount of debt obligation bond proceeds;
  - b. specifies the total amount of proceeds that the LSE will use to refund or credit its retail customers for qualifying costs<sup>9</sup> its customers have already paid or would otherwise be obligated to pay;<sup>10</sup>

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<sup>3</sup> 16 Texas Administrative Code (TAC) § 25.503(o) (authorizing Commission Staff to "initiate an informal fact-finding review").

<sup>4</sup> ERCOT's Calculation of Load Ratio Share and Total Exposure for Load Serving Entities, *Proceeding for Eligible Entities to File an Opt-Out Pursuant to PURA § 39.653(d) and for Load-Serving Entities to File Documentation of Exposure to Costs Pursuant to the Debt Obligation Order in Docket No. 52322*, Project No. 52364 (Dec. 7, 2021); see Debt Obligation Order, Ordering Paragraph No. 80.

<sup>5</sup> Debt Obligation Order, Ordering Paragraph No. 83 ("Upon the issuance of subchapter N bonds, BondCo must transfer the net proceeds from the sale of the subchapter N bonds to ERCOT to be remitted to *QSEs representing one or more load-serving entities* for the recovery of qualifying costs determined in accordance with this Order.") (emphasis added).

<sup>6</sup> PURA §§ 39.653(a); see also "List of Market Participants" available at <https://www.ercot.com/committees/mktparticipants/>.

<sup>7</sup> *Id.*, Ordering Paragraph No. 31 ("All QSEs must remit, consistent with this Order, the uplift charges collected from its obligated LSEs.").

<sup>8</sup> 16 TAC § 25.503(o)(5) ("A market entity subject to an informal fact-finding review . . . has an obligation to fully cooperate with the investigation, . . . and to respond to the commission staff's requests for information within a reasonable time frame as requested by the commission staff."); 16 TAC § 25.503(f)(10) ("A market participant must comply with requests for information or data by ERCOT[.].").

<sup>9</sup> "Qualifying costs" are "reliability deployment price adder charges and ancillary services costs that exceeded the commission's system-wide offer cap and were uplifted to load-serving entities based on consumption during the period of emergency." PURA § 39.651(d).

- c. specifies the total amount of proceeds that the LSE will use to fulfill payment obligations to third-party entities that provided financing to the LSE to pay its qualifying costs;<sup>11</sup>
  - d. specifies the total amount of proceeds that the LSE will use to reimburse itself for the use of its cash on hand to pay qualifying costs;<sup>12</sup>
  - e. specifies the total amount of any excess receipts that were or will be returned to ERCOT;<sup>13</sup>
  - f. attests that the LSE will maintain all debt obligation bond proceeds in a segregated account for the duration of the distribution process;<sup>14</sup> and
  - g. attests that the LSE will only use the proceeds in accordance with the law and the Debt Obligation Order.<sup>15</sup>
4. Within 30 days of distribution of proceeds from the debt obligation bond, ERCOT must file a report in Project No. 53710, *Project to Monitor Distribution and Usage of PURA Chapter 39, Subchapter N Proceeds*, informing the Commission of which LSEs failed to timely submit to ERCOT the required attestation and of which LSEs failed to provide some or all of the information required above.

## II. Debt Obligation Order Monitoring

In order to enable Commission Staff to efficiently monitor the proper usage of debt obligation bond proceeds, each LSE must take the following steps to demonstrate compliance with PURA Chapter 39, Subchapter N and the Debt Obligation Order:<sup>16</sup>

- 1. Within 30 days after its receipt of debt obligation bond proceeds, each LSE that receives proceeds must file in Project No. 53710 a distribution plan that specifies the estimated timeline to complete disposition of its debt obligation bond proceeds, which must not exceed 90 days from its receipt of the debt obligation bond proceeds.
- 2. By November 15, 2022, each LSE must file in Project No. 53710 an initial status report containing:
  - a. the actual dollar amount that the LSE refunded to its retail customers for qualifying costs;

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<sup>10</sup> PURA § 39.651(d) (“A load-serving entity that receives proceeds from the debt obligations may use the proceeds solely for the purposes of fulfilling payment obligations directly related to such costs and refunding such costs to retail customers who have paid or otherwise would be obligated to pay such costs.”).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> PURA § 39.653(e).

<sup>14</sup> *See* PURA § 39.651(d).

<sup>15</sup> *See* PURA §§ 39.651(d), 39.661.

<sup>16</sup> 16 TAC § 25.503 (o)(5) (“A market entity subject to an informal fact-finding review . . . has an obligation to fully cooperate with the investigation, . . . and to respond to the commission staff’s requests for information within a reasonable time frame as requested by the commission staff.”).

- b. the actual dollar amount that the LSE used to offset amounts owed by its retail customers for qualifying costs;
  - c. the actual dollar amount that the LSE used to fulfill payment obligations to third-party entities directly related to qualifying costs;
  - d. the actual dollar amount the LSE used to reimburse itself for the use of its cash on hand to pay qualifying costs;
  - e. the actual dollar amount of excess proceeds that have been remitted to ERCOT under PURA § 39.653(e); and
  - f. any amounts that are left to be distributed, and the reasons why the amounts have yet to be distributed.
3. If an LSE's initial status report contains any amount under paragraph 2(f) above, the LSE must file in Project No. 53710 a quarterly status report.<sup>17</sup> Each quarterly status report must contain the same information as the initial status report with updated amounts until the earlier of: the amount in paragraph 2(f) is zero, or November 15, 2023, including a description of the steps that have been taken to locate and issue refunds to any remaining retail customers.
  4. If on November 15, 2023, the LSE has not distributed all of its debt obligation bond proceeds, the LSE must file a final status report containing a detailed explanation of the reasons why it was unable to distribute all of its debt obligation bond proceeds, and concurrently remit the remaining funds to ERCOT under PURA § 39.653(e).

### **III. Allocation Method for Debt Obligation Bond Proceeds**

PURA § 39.651(b) specifies that the intent of the debt obligation bonds is to alleviate liquidity issues and to reduce the risk of additional defaults in the wholesale market. Additionally, PURA § 39.651(d) authorizes an LSE that receives debt obligations bond proceeds to use the funds solely for the purposes of fulfilling *payment obligations* directly related to qualifying costs and *refunding qualifying costs to retail customers* who have paid or otherwise would be obligated to pay qualifying costs.

To effectuate these provisions, the use of debt obligation bond proceeds must utilize the following order of priority:

1. Refunds or offsets to an LSE's retail customers that paid or were obligated to pay qualifying costs. If a load-serving entity is not allocated 100% of its total exposure, any refunds or adjustments to retail customer invoices must be made in an amount that is not less than an amount that is proportionate to the percentage of the load-serving entity's total exposure that was allocated to that load-serving entity.<sup>18</sup>

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<sup>17</sup> Quarterly status reports are due on each February 15, 2023, May 15, 2023, August 15, 2023, and November 15, 2023.

<sup>18</sup> Unopposed Partial Stipulation and Settlement Agreement, Docket No. 52322, at 4, ¶ 11 (Sep. 20, 2021) (“[E]ach LSE that receives securitization proceeds must: (1) provide a refund to customers for any [qualifying costs] that were passed through and have been paid by the LSE’s customers; and (2) adjust customer invoices to remove [qualifying costs] that were passed through but have not been paid by the LSE’s customers.”); Debt Obligation Order, Finding of Fact No. 76 (“The procedures specified in the agreement for entities that receive securitization proceeds

2. Fulfilment of payment obligations to third-party entities that financed payment of the qualifying costs.<sup>19</sup>
3. Reimbursement to the LSE for its payment of qualifying costs.<sup>20</sup>

#### **IV. Handling of Proceeds Withheld by ERCOT**

Commission Staff will file appropriate petitions seeking orders regarding the handling of proceeds that have been withheld by ERCOT and designated for LSEs that are no longer wholesale market participants or failed to verify exposure in Project No. 52364.

#### **V. Handling of Unclaimed Refunds to Retail Customers**

A customer that is eligible to receive a refund of amounts paid for qualifying costs may have switched LSEs or moved out of Texas after paying the qualifying costs. An LSE must use reasonable effort to locate and issue refunds to such customers. However, if it is unable to issue refunds to all impacted customers before November 15, 2023, the LSE must remit all remaining debt obligation bond proceeds to ERCOT, and provide in its final status report a detailed description of all actions taken to issue refunds to such customers.

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are necessary and appropriate to ensure that the purposes of this Order are met.”), Ordering Paragraph No. 1 (“The application of ERCOT for the issuance of a debt obligation order under PURA § 39.653, *as modified by the agreement and this Order*, is approved.”) (emphasis added).

<sup>19</sup> PURA § 39.651(d) (“A load-serving entity that receives proceeds from the debt obligations may use the proceeds solely for the purposes of fulfilling payment obligations directly related to such costs and refunding such costs to retail customers who have paid or otherwise would be obligated to pay such costs.”).

<sup>20</sup> *Id.*