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PROJECT NO. 52364

PROCEEDING FOR ELIGIBLE	§	PUBLIC UTILITY COMMISSION
ENTITIES TO FILE AN OPT OUT	§	
PURSUANT TO PURA § 39.653(d) AND	§	OF TEXAS
FOR LOAD-SERVING ENTITIES TO	§	
FILE DOCUMENTATION OF	§	
EXPOSURE TO COSTS PURSUANT TO	§	
THE DEBT OBLIGATION ORDER IN	§	
DOCKET NO. 52322	§	

**ORDER NO. 3
STRIKING THE NOVEMBER 12, 2021 FILING
BY MIDAMERICAN ENERGY SERVICES, LLC**

This Order strikes the pleading filed on November 12, 2021, by MidAmerican Energy Services, LLC, which it styles as a petition to change its resource affiliate status for allocation of uplift securitization proceeds.

I. Background

A. Docket No. 52322

On July 16, 2021, the Electric Reliability Council of Texas, Inc. (ERCOT) filed a petition, in Docket No. 52322,¹ to finance Winter Storm Uri uplift balances under PURA² chapter 39, subchapter N. Many dozens of entities sought to intervene as parties, and were allowed to intervene, in that proceeding. Mid-American did not seek to intervene and was not a party in Docket No. 52322. An evidentiary hearing on the merits was held in Docket No. 52322 on August 24 and 25, 2021. Extensive post-hearing briefing was submitted by the parties. Docket No. 52322 culminated with the issuance by the Commission of a Debt Obligation Order on October 13, 2021.

Among many other provisions, the Debt Obligation Order sets out the mechanism to determine the amount of proceeds a load-serving entity will receive of the \$2.1 billion in proceeds

¹ *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, Docket No. 52322, Application (July 16, 2021).*

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

resulting from the financing of the uplift balance. Specifically, the Debt Obligation Order adopted four classes of recipients:

- 1) Retail electric providers (REPs) without affiliates (unaffiliated REPs) that own generation or load resources in ERCOT and with less than \$40 million in total exposure;
- 2) Unaffiliated REPs with more than \$40 million in total exposure;
- 3) REPs with affiliates that own generation or load resources in ERCOT (affiliated REPs) and with less than \$300 million in total exposure; and
- 4) Affiliated REPs with more than \$300 million in total exposure, municipally owned utilities, and electric cooperatives.

The percentage of a load-serving entity's exposure that the entity may recover from the \$2.1 billion of proceeds depends upon which class the load-serving entity falls within. The first class is entitled to the highest recovery rate, the second class is entitled to the second-highest recovery rate, the third class is entitled to the third-highest recovery rate, and the fourth class is entitled to the lowest recovery rate.³

B. Project No. 52364

On July 28, 2021, Commission Staff opened Docket No. 52364,⁴ for the purpose of implementing the processes for (1) enabling load-serving entities to document their exposure, and (2) allowing certain entities to opt out of the uplift charges authorized in Docket No. 52322. In Order No. 1 filed on November 3, 2021, the administrative law judge (ALJ) converted the matter from a docket to a project because its sole purpose is to serve as a repository for documentation of exposure to costs included in the uplift balance and of opt-outs. On December 3, 2021, the

³ Debt Obligation Order at Findings of Fact 53-74; *see also*, Attachment C to Unopposed Stipulation and Settlement Agreement (Sep. 20, 2021)(incorporated by reference into the Debt Obligation Order).

⁴ 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.

Commission reiterated that Project No. 52364 is purely a repository for the filing of documents, and is not a fact-finding or decision-making procedure.⁵

II. Discussion

As noted above, MidAmerican filed, on November 12, 2021, a document in Project No. 52364 which it styled as a petition to change its resource affiliate status for allocation of uplift securitization proceeds. MidAmerican is unhappy with the method by which the Debt Obligation Order determines which class a load-serving entity falls within. Under the terms of the Debt Obligation Order, MidAmerican falls within the third class—an affiliated REP with less than \$300 million in total exposure. The objective of MidAmerican’s November 12, 2021 filing is to have the utility reclassified into the first class—an unaffiliated REP with less than \$40 million in total exposure.

MidAmerican concedes that it has an affiliated generation unit. It argues, however, that it should be classified as an unaffiliated REP because its affiliated generation unit did not operate during Winter Storm Uri. Alternatively, MidAmerican asks that the term “affiliated generation” be redefined in the Debt Obligation Order.

For the following reasons, the ALJ concludes that MidAmerican’s November 12, 2021 filing is baseless and must be stricken. First, the pleading has nothing to do with the subject matter of Project No. 52364, which is to serve as the repository of documentation of exposure and opt outs.

Second, Project No. 52364 does not involve any fact-finding or decision-making procedure. Therefore, there is no mechanism to address or decide the issue raised by MidAmerican.

Third, MidAmerican’s filing seeks substantive changes to the Debt Obligation Order. Therefore, it only has relevance to Docket No. 52322. The appropriate place for MidAmerican to voice its opinion as to how the Debt Obligation Order should be crafted would have been in Docket No. 52322. However, MidAmerican chose not to intervene and did not participate in that docket.

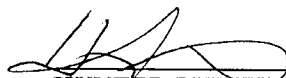
⁵ *Id.*, Order Severing Issue Into a Separate Proceeding at 1-2 (Dec. 3, 2021).

Fourth, MidAmerican seeks relief that, as a matter of law, is simply not obtainable. Under PURA § 39.652(e) and (f), the Debt Obligation Order is “irrevocable and not subject to . . . adjustment by further action of the commission after it takes effect,” and “is not subject to rehearing by the commission.”⁶ There is only one process by which the substance of the Debt Obligation Order may be legally challenged. Specifically, under PURA § 39.652(f), the Debt Obligation Order “may be reviewed by appeal by a party to the proceeding to a Travis County district court filed not later than the 15th day after the date the order is signed by the commission.”⁷ No party filed an appeal to a Travis County district court within 15 days after October 13, 2021, the date the Debt Obligation Order was issued. There no longer exists, therefore, a legal mechanism by which the Debt Obligation Order can be challenged or changed. Moreover, because MidAmerican was not a party to Docket No. 52322, it never had any legal basis for challenging the contents of the order in the first place.

For the foregoing reasons, the ALJ strikes the pleading filed on November 12, 2021, by MidAmerican.

Signed at Austin, Texas the 16th day of December 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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⁶ See also, Debt Obligation Order at Conclusions of Law 44 and 45.

⁷ See also, *id.* at Conclusion of Law 46.