



## Filing Receipt

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**PUC DOCKET NO. 52709**

<b>COMPLIANCE FILING FOR DOCKET</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>NO. 52321 (APPLICATION OF</b>	<b>§</b>	
<b>ELECTRIC RELIABILITY COUNCIL</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF TEXAS, INC. FOR A DEBT</b>	<b>§</b>	
<b>OBLIGATION ORDER PURSUANT TO</b>	<b>§</b>	
<b>CHAPTER 39, SUBCHAPTER M, OF</b>	<b>§</b>	
<b>THE PUBLIC UTILITY</b>	<b>§</b>	
<b>REGULATORY ACT)</b>	<b>§</b>	

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.’S  
COMPLIANCE FILING REGARDING REPLENISHMENT OF FINANCIAL REVENUE  
AUCTION RECEIPTS**

**COMES NOW**, Electric Reliability Council of Texas, Inc. (ERCOT) and respectfully submits to the Public Utility Commission of Texas (Commission) the report, required under Ordering Paragraph 45B of the Commission’s Debt Obligation Order in Docket No. 52321,<sup>1</sup> regarding ERCOT’s plan for replenishment of the financial auction receipts that were used by ERCOT to temporarily reduce amounts short paid to Market Participants during and after Winter Storm Uri.<sup>2</sup>

**I. BACKGROUND**

In February 2021, a series of extreme winter storms commonly referred to as “Winter Storm Uri” resulted in outages, deratings, and fuel-supply issues at many of the Generation Resources within the ERCOT region. The demand for power exceeded supply for multiple days, necessitating that load be involuntarily shed to protect the integrity of the ERCOT system. During this period, wholesale prices for electricity in the ERCOT markets were much higher, and some wholesale Market Participants defaulted on their payment obligations under the ERCOT Protocols. Due to these payment defaults, ERCOT was unable to fully pay Qualified Scheduling Entities

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<sup>1</sup> Docket No. 52321, *Application of Electric Reliability Council of Texas, Inc. for a Debt Obligation Order Pursuant to Chapter 39, Subchapter M, of the Public Utility Regulatory Act*, Debt Obligation Order at 64, Ordering Paragraph 45B (Oct. 14, 2021) (hereinafter, the Debt Obligation Order).

<sup>2</sup> Throughout this pleading, ERCOT refers to “Market Participants” for readability. Please note that ERCOT only transacts with Market Participants that are registered with ERCOT as a Qualified Scheduling Entity (QSE) and/or a Congestion Revenue Right Account Holder. Under the ERCOT Protocols, a QSE is responsible for settling payments and charges with ERCOT on behalf of all Load-Serving Entities and Resource Entities that the QSE represents. *See* Docket No. 52321, the Debt Obligation Order at 14, Finding of Fact 3.

(QSEs) and Congestion Revenue Right (CRR) Account Holders (CRRAHs) who were due payments for the services provided during Winter Storm Uri.

On February 21, 2021, the Commission directed ERCOT to use its discretion under the ERCOT Protocols to help resolve financial obligations between wholesale Market Participants and ERCOT.<sup>3</sup> The use of available CRR funds was explicitly addressed in the Commission's Order.<sup>4</sup> On February 26, 2021, ERCOT exercised this discretion to reduce the amount of short payments applicable to the Period of Emergency<sup>5</sup> to Market Participants by applying \$800 million in CRR auction revenue funds held by ERCOT.<sup>6</sup> This action was taken to protect the overall integrity of the wholesale electric market.<sup>7</sup>

After Winter Storm Uri, the Legislature authorized different forms of financing to "serve[] the public purpose of preserving the integrity of the electricity market in the ERCOT power region."<sup>8</sup> In Subchapter M of PURA Chapter 39,<sup>9</sup> the Legislature established a process by which ERCOT sought approval of a Debt Obligation Order authorizing financing of the Default Balance, which was defined by statute to include: (1) amounts owed to ERCOT by competitive wholesale Market Participants from the Period of Emergency that otherwise would be or have been uplifted to other wholesale Market Participants; (2) financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale Market Participants related to the Period of Emergency (the CRR Funds); and (3) reasonable costs incurred by a state agency or ERCOT to implement a debt obligation order, including the cost of retiring or refunding existing debt.<sup>10</sup>

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<sup>3</sup> Project No. 51812, *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols (Feb. 21, 2021).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> The Period of Emergency began 12:01 a.m., February 12, 2021, and ended 11:59 p.m., February 20, 2021. PURA § 39.602(4).

<sup>6</sup> Docket No. 52321, ERCOT's Application for a Debt Obligation Order, Direct Testimony of Kenan Ögelman at 36.

<sup>7</sup> *Id.*

<sup>8</sup> PURA § 39.601(c).

<sup>9</sup> Act of May 30, 2021, 87th Leg., R.S., ch. 908 (HB 4492), §§ 2-5, 2021 Tex. Gen. Laws 908 (codified at PURA §§ 39.601-.609 (subchapter M)).

<sup>10</sup> PURA § 39.602(1).

In its application, ERCOT explained that the total amount of money for the three categories of costs in the Default Balance exceeded \$800 million, which was the cap established by statute.<sup>11</sup> Therefore, ERCOT sought, *inter alia*, (1) a Debt Obligation Order authorizing ERCOT to finance the full \$800 million permitted by statute, and (2) a Commission determination regarding the appropriate allocation of funds to the three categories of costs.<sup>12</sup>

In October 2021, the Commission approved ERCOT's application for a Debt Obligation Order. In the Order, the Commission's decisions included approving ERCOT's proposed prioritization for refunding the three categories of costs: first paying ERCOT's upfront costs to implement the Debt Obligation Order, then paying amounts owed to ERCOT by competitive wholesale Market Participants, and finally using the remainder to replenish the CRR Funds.<sup>13</sup> Because the replenishment of the CRR Funds was the last priority and the costs eligible for inclusion in the Default Balance exceeded the \$800 million statutory cap on the securitizable amount, the Commission also instructed ERCOT to report on a plan for full replenishment of the CRR Funds if they were not replenished through the securitization authorized in the Debt Obligation Order.<sup>14</sup>

## **II. THE CRR FUNDS REPLENISHMENT**

Since the issuance of the Debt Obligation Order, ERCOT has fully replenished the formerly outstanding CRR Funds. Below, ERCOT provides a summary table and descriptions of the steps that ERCOT took towards full replenishment. The steps consisted of applying funds that had been recovered or withheld from Market Participants with relevant payment breaches, applying funds recovered from Denton Municipal Electric (Denton) after dissolution of a temporary restraining order, applying the Subchapter M proceeds that remained after paying the other two categories of eligible costs that were prioritized before the CRR Funds, returning funds associated with an over-estimation of closing costs, applying funds that had been reserved to retire or refund existing debt

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<sup>11</sup> Docket No. 52321, ERCOT's Application for a Debt Obligation Order at 5 (July 16, 2021).

<sup>12</sup> *Id.* at 6-8.

<sup>13</sup> Docket No. 52321, the Debt Obligation Order at 52, Ordering Paragraph 2A referring to Finding of Fact 16A.

<sup>14</sup> *Id.* at 64, Ordering Paragraph 45B.

that proved unnecessary,<sup>15</sup> and applying amounts paid by Brazos Electric Power Cooperative, Inc. (Brazos) under its court-approved plan of reorganization.

### **Summary of CRR Funds Replenishment**

Original Amount of CRR Funds	\$ (800,000,000.00)
Replenishment from funds recovered or withheld from Market Participants with Period of Emergency Payment Breaches – Apr. through Sep. 2021	\$ 27,895,327.13
Replenishment from funds recovered from Denton – June 2021	\$ 6,790,517.72
Replenishment from remaining balance of Subchapter M proceeds – Nov. 2021	\$ 490,353,417.59
Replenishment from refund from closing costs – Feb. 2022	\$ 15,000.00
Replenishment from unused Existing Debt Retirement Reserve – Aug. 2022	\$ 50,000,000.00
Replenishment from funds recovered in Brazos First Payment – Nov. 2022	\$ 224,945,737.56
2022 End of Year Balance	\$ -

#### ***a. Funds recovered or withheld from Market Participants with Payment Breaches***

Under the ERCOT Protocols, in the event of a Payment Breach by a Market Participant, ERCOT may withhold payments to that Market Participant for Invoice credits, CRR Auction revenues, reimbursements for short payments, etc.<sup>16</sup> Accordingly, after Winter Storm Uri, ERCOT withheld certain payments to Market Participants with Payment Breaches. These withholdings were the first actions taken towards replenishment of the CRR Funds. Additionally, under delegated authority from the Commission, ERCOT entered into payment plans with some Market Participants with Payment Breaches under which the Market Participants paid outstanding Invoices under agreed time frames that varied from the timelines that usually apply under the ERCOT Protocols.<sup>17</sup> Beginning in April 2021, ERCOT replenished some CRR Funds with withheld payments and payment plan receipts in order to improve CRR liquidity. From April through September 2021, ERCOT applied towards the CRR Funds a total of approximately \$ 27.9 million of withheld funds or funds recovered under payment plans that were associated with

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<sup>15</sup> *Id.* at 17, Finding of Fact 13A.

<sup>16</sup> ERCOT Nodal Protocols § 16.11.6.1.1.

<sup>17</sup> Project No. 51812, Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols (Feb. 21, 2021).

February 26, 2021, the day on which ERCOT had accessed the \$800 million in CRR auction revenue funds to preserve the integrity of the ERCOT markets.

***b. Funds recovered from Denton***

On February 25, 2021, the City of Denton sought and obtained a Temporary Restraining Order (TRO) against ERCOT on behalf of its municipally owned utility. Among other things, the TRO prohibited ERCOT from requiring Denton to pay any Default Uplift Invoice, short-pay statement, or any other obligation under Section 9.19 of the ERCOT Protocols.<sup>18</sup> To comply with the TRO and the ERCOT Protocols, ERCOT began making payments from ERCOT operating funds or allocating amounts that would have been charged to Denton absent the TRO, to other Market Participants that were due payments. These activities began with Invoices dated February 23, 2021, which were due for payout on February 26, 2021 (the first day after entry of the TRO).

On June 4, 2021, a Travis District Court issued an order granting ERCOT's plea to the jurisdiction and dismissing Denton's civil action against ERCOT.<sup>19</sup> Consequently, the TRO against ERCOT was dissolved, ERCOT stopped allocating Denton's share of short payments to other Market Participants, and ERCOT issued Invoices to Denton for short payments that previously had not been allocated to Denton due to the TRO. After Denton timely paid those Invoices, ERCOT used approximately \$6.8 million of the amount recovered from Denton to partially replenish the CRR Funds.

After application of the funds recovered or withheld from Market Participants with Payment Breaches (discussed in the prior section) and the funds recovered from Denton, the CRR Funds totaled approximately \$765.3 million.

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<sup>18</sup> *The City of Denton v. Electric Reliability Council of Texas, et al.*, No. 21-1421-16, Temporary Restraining Order (16th Judicial Dist., Denton County, Tx., Feb. 25, 2021) available at [https://www.ercot.com/services/comm/mkt\\_notices/W-C041221-01](https://www.ercot.com/services/comm/mkt_notices/W-C041221-01) as an attachment to ERCOT Market Notice, *W-C041221-01 Denton Municipal Electric - Temporary Restraining Order* (Apr. 12, 2021).

<sup>19</sup> *The City of Denton v. Electric Reliability Council of Texas, et al.*, No. 21-001227 (353rd Judicial Dist., Travis County, Tx., June 4, 2021) available at [https://www.ercot.com/services/comm/mkt\\_notices/M-C041621-02](https://www.ercot.com/services/comm/mkt_notices/M-C041621-02) as an attachment to ERCOT Market Notice, *M-C041621-02 City of Denton v. ERCOT et al. - Dismissal of Claims* (July 1, 2021).

***c. Remaining Subchapter M proceeds***

On November 12, 2021, in accordance with the Debt Obligation Order, Texas Electric Market Stabilization Funding M LLC (the Issuer) issued the Texas Stabilization M Bonds in an aggregate principal amount of \$800 million.<sup>20</sup> Thereafter, ERCOT, as the servicer for the Issuer, disbursed the payments from the funding in accordance with the order of priority approved by the Commission. ERCOT first applied approximately \$57.9 million for projected costs that ERCOT had or would incur in implementing the Debt Obligation Order.<sup>21</sup> That \$57.9 million included a \$50.0 million reserve to retire existing debt, if necessary. On Business Days falling on November 15 through 23, 2021, ERCOT distributed a total of approximately \$251.7 million to QSEs and CRRAs who were owed payments due to short payments by competitive wholesale Market Participants for the Period of Emergency.<sup>22</sup> ERCOT used the remaining funds, totaling approximately \$490.4 million to partially replenish the CRR Funds. After this payment from the bond funding, the outstanding amount of the CRR Funds was approximately \$275.0 million.

***d. Refund from estimated closing costs***

Thereafter, in February 2022, ERCOT replenished \$15 thousand of CRR Funds. This amount was a refund of a small over-projection of ERCOT's closing costs for implementing the Debt Obligation Order.

***e. Unused Existing Debt Retirement Reserve***

In August 2022, ERCOT replenished an additional \$50.0 million of CRR Funds. As mentioned previously, this amount had been included in the projected ERCOT closing costs as a

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<sup>20</sup> ERCOT Market Notice, *M-A111121-01 Date set for closing on funding authorized by the Debt Obligation Order (DOO) in Public Utility Commission of Texas (PUC) Docket No. 52321 for PURA Subchapter M Default Balance Financing* (Nov. 11, 2021), available at [https://www.ercot.com/services/comm/mkt\\_notices/M-A111121-01](https://www.ercot.com/services/comm/mkt_notices/M-A111121-01).

<sup>21</sup> Docket No. 52709, *Compliance Filing for Docket No. 52321 (Application of Electric Reliability Council of Texas, Inc. for a Debt Obligation Order Pursuant to Chapter 39, Subchapter M, of the Public Utility Regulatory Act)*, ERCOT's Final Issuance Advice Letter at 7 (Nov. 5, 2021).

<sup>22</sup> E.g. ERCOT Market Notice, *W-A111121-02 Disbursement of PURA Subchapter M Funds as authorized by the Debt Obligation Order (DOO) in Public Utility Commission of Texas (PUC) Docket No. 52321* (November 15, 2021), available at [https://www.ercot.com/services/comm/mkt\\_notices/W-A111121-02](https://www.ercot.com/services/comm/mkt_notices/W-A111121-02); ERCOT Market Notice, *W-A111121-08 Disbursement of PURA Subchapter M Funds as authorized by the Debt Obligation Order (DOO) in Public Utility Commission of Texas (PUC) Docket No. 52321* (November 23, 2021), available at [https://www.ercot.com/services/comm/mkt\\_notices/W-A111121-08](https://www.ercot.com/services/comm/mkt_notices/W-A111121-08).

reserve for use in the event retiring existing debt was necessary,<sup>23</sup> because retiring existing debt proved unnecessary, the amount was used to replenish CRR Funds. After this replenishment, the outstanding amount of CRR Funds was approximately \$224.9 million.

***f. Funds Recovered in Brazos First Payment***

All of the remaining outstanding CRR Funds were attributable to short payments by Brazos, and ERCOT pursued recovery of all the short payments of Brazos in the federal bankruptcy proceeding that addressed Brazos's bankruptcy and reorganization under Chapter 11 of the United States Bankruptcy Code. On November 2, 2022, ERCOT filed a letter and presentation materials that reported to the Commission on ERCOT's settlement with Brazos regarding the adversary proceeding in which Brazos was challenging the proof of claim ERCOT had submitted in Brazos's bankruptcy proceeding.<sup>24</sup> Thereafter, ERCOT gave a live presentation to the Commission at its November 3, 2022 Open Meeting. In the filing and presentation, ERCOT reported to the Commission that among other settlement terms, ERCOT would be reimbursed, on the effective date of the bankruptcy plan, approximately \$599.7 million which represents all of the CRR Funds that were attributable to Brazos's short payments. ERCOT also reported its plan to use these funds to fully replenish the CRR Funds and use the remainder to partially pay down the Texas Stabilization M Bonds.<sup>25</sup>

On November 14, 2022, the federal judge presiding over the Brazos bankruptcy proceeding approved Brazos's plan of reorganization, including the settlement with ERCOT. As a result, on December 15, 2022, ERCOT received the first payment, in the amount of approximately \$1,151.4 million, from Brazos under the plan. ERCOT issued a Market Notice the next day that included a breakdown of how ERCOT would be applying the approximately \$599.7 million that represented all the CRR Funds that were attributable to Brazos's short payments.<sup>26</sup>

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<sup>23</sup> Docket No. 52709, ERCOT's Final Issuance Advice Letter at 8.

<sup>24</sup> Project No. 52933, *CY 2022 Reports of the Electric Reliability Council of Texas*, and Project No. 52937, *CY 2022 Open Meeting Agenda Items Without an Associated Control Number*, ERCOT Letter Regarding *Brazos Electric Power Cooperative, Inc. v. Electric Reliability Council of Texas, Inc.* (Brazos Adversary Proceeding) and ERCOT Settlement Update (Nov. 2, 2022).

<sup>25</sup> *Id.* at Slides 3 and 7.

<sup>26</sup> ERCOT Market Notice, *M-A121622-01 ERCOT has received the first payment from Brazos Electric Power Cooperative, Inc. under the court-approved Amended Chapter 11 Plan of Reorganization* (Dec. 16, 2022), available at [https://www.ercot.com/services/comm/mkt\\_notices/M-A121622-01](https://www.ercot.com/services/comm/mkt_notices/M-A121622-01).



That breakdown consists of approximately \$224.9 million that ERCOT used to fully replenish the outstanding CRR Funds and approximately \$374.8 million that ERCOT would pay towards an early, optional partial redemption of the Texas Stabilization M Bonds. Stated differently, there are no longer any outstanding CRR Funds.

With the CRR Funds fully paid, ERCOT applied the remaining approximate \$374.8 million towards an early, optional partial redemption of the Texas M Bonds on February 1, 2022.<sup>27</sup> Such redemption will significantly reduce the financing cost of the Texas Stabilization M Bonds by decreasing by almost one-half the amount of outstanding principal balance owed on the Texas Stabilization M Bonds. Indeed, recently the Commission, through an administrative law judge with delegated authority, conditionally approved ERCOT's supplemental annual true-up filing which will have the effect of substantially reducing the Default Charges collected to service the bonds.

### **III. CONCLUSION**

In summary, the CRR Funds are now fully replenished. CRR Funds were replenished

- in part from April through September 2021 from recoveries or withheld payments associated with Market Participants with Period of Emergency Payment Breaches,
- in part in July 2021 from funds recovered from Denton after dissolution of a temporary restraining order,
- in part in November 2021 from funds from the issuance of the Texas Stabilization M Bonds,
- in part in February 2022 from refunds resulting from over-projection of closing costs,
- in part in August 2022 from the reserve held in event that existing debt retirement was necessary,

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<sup>27</sup> See Docket No. 52709, ERCOT's Supplemental Annual True-Up Compliance Filing, Report of Recoveries, Notice of Default Charge Adjustment, and Recalculation of Both the Initial Revenue Requirements and Default Charge Schedule Based on the Expected Optional Early Partial Redemption of the Texas Stabilization M Bonds, Series 2021 (Jan. 12, 2023); Docket No. 52709, Order No. 6, Addressing ERCOT's January 12, 2023 Supplemental True-Up Filing

- and, finally, in mid-December 2022, from the first payment by Brazos under its plan of reorganization.

ERCOT is available to answer any questions.

/s/ Chad Seely

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ATTORNEYS FOR ELECTRIC  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document will be served on all parties of record to this proceeding on March 1, 2023, by email, in accordance with Second Order Suspending Rules issued on July 16, 2020 in Project No. 50664.

/s/ Davida Dwyer