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Public Utility Commission of Texas

Memorandum

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

FROM: Darryl Tietjen, Director of Rate Regulation Division

DATE: November 8, 2021

RE: 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)*

Securitization Pricing Levels

On Friday, November 5, 2021, the Electric Reliability Council of Texas, Inc. (ERCOT) filed an issuance advice letter reflecting the proposed final pricing for \$800 million of financing for the default balance (as defined in Public Utility Regulatory Act (PURA) § 39.602(1)) authorized by the Commission in its Debt Obligation Order filed October 13, 2021.¹ The pricing reflects the specific provisions of Texas Government Code § 404.0241(b-1), which states:

The interest rate charged in connection with the debt obligations must be calculated by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of the independent organization, as defined by Section 39.602, Utilities Code, plus 2.5 percent.

In accordance with the above statutory requirements, ERCOT's issuance advice letter indicates for the \$800 million financing an initial interest rate of 2.97%, which would be effective until February 1, 2025, at which time a currently indicated reset rate of 4.12% would take effect.²

¹ *Application of the Electric Reliability Council of Texas, Inc. for a Debt Obligation Order Under PURA Chapter 39, Subchapter M, and Request for a Good Cause Exception*, Docket No. 52321, Debt Obligation Order (Oct. 14, 2021) (Debt Obligation Order). A corrected Debt Obligation Order was filed on October 14, 2021, but the only change from the October 13 order was the deletion of the word "draft" from the title and page headers in the order.

² These rates are based on the *Refinitiv TM3 Index Rates* (the statutorily mandated index) published on November 3, 2021, plus the statutory adder of 2.50%. Note that the Debt Obligation Order states on page 12 that "The final structure as described in the final issuance advice letter may incorporate an initial interest rate and amortization period, which may be reset for a subsequent interest rate and amortization period." The actual reset rate will be calculated three years hence based upon the then *Refinitiv TM3 Index Rates*, plus the statutory adder of 2.5%.

Notification of Compliance

As required by Finding of Fact 19³ and Ordering Paragraph 7A⁴ in the Debt Obligation Order, the November 5, 2021 date on which ERCOT filed its issuance advice letter was not later than the end of the first business day and no later than 24 hours after the pricing of the bonds. As also required by Ordering Paragraph 7A, ERCOT's filed issuance advice letter is in substantially the same form as the draft template attached to the Debt Obligation Order and includes the required details on the final structuring and pricing terms of the financing.

The Debt Obligation Order also requires, as set forth in Ordering Paragraph 26, that:

The Commission's designated representative must notify ERCOT and the Commission no later than 12:00 p.m. on the business day after the Commission's receipt of the issuance advice letter for each series of subchapter M bonds whether the structuring, marketing, and pricing of that series of subchapter M bonds comply with the criteria established in this Order.

Serving in the role of the Commission's designated representative, and as required by the provisions of Ordering Paragraph 26, I am informing ERCOT and the Commission that it is my opinion that the structuring, marketing, and pricing of each series of the subchapter M bonds described in the issuance advice letter that ERCOT filed on November 5, 2021 comply with the requirements of PURA and the Commission's Debt Obligation Order in Docket No. 52321.

Possible Commission Action

I also need to bring to your attention the specific provisions of the Debt Obligation Order's Finding of Fact 20, which, consistent with analogous provisions in Commission financing orders for previous securitization financings, states, in part:

The initial default charges and the final terms of the subchapter M bonds set forth in the issuance advice letter will become effective on the date of issuance of the subchapter M bonds unless prior to noon on the fourth business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.

Similarly, Ordering Paragraph 7E of the Debt Obligation Order states that:

³ Finding of Fact 19 states, in part, "Because the actual structure and pricing of the subchapter M bonds will not be known at the time this Order is issued, following determination of the final terms of the subchapter M bonds and before issuance of the subchapter M bonds, ERCOT will file in the compliance docket for this proceeding for each series of subchapter M bonds issued, and no later than 24 hours after the pricing of each series of subchapter M bonds, an issuance advice letter."

⁴ Ordering Paragraph 7A of the Debt Obligation Order states that, "Not later than the end of the first business day after the pricing of the subchapter M bonds and before the issuance of the subchapter M bonds, ERCOT, in consultation with the Commission acting through its designated representative, must file in the compliance docket for this proceeding an issuance advice letter in substantially the same form of the issuance advice letter attached as attachment A to this Order."

The initial default charges and the final terms of the subchapter M bonds set forth in the issuance advice letter are effective on the date of issuance of the subchapter M bonds. The issuance of the subchapter M bonds must not occur before the fifth business day after pricing. In addition, the issuance of the subchapter M bonds must not occur if, before noon on the fourth business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with PURA or the requirements set forth in this Order.

Further, Finding of Fact 42C of the Debt Obligation Order provides that:

BondCo will issue the subchapter M bonds on or after the fifth business day after pricing of the subchapter M bonds unless, prior to noon on the fourth business day following pricing of the bonds, the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.

Based on the provisions cited above, unless the Commission issues an order on or before noon on Wednesday, November 10, 2021 (which is the fourth business day after pricing) that the proposed issuance does not comply with PURA and the requirements of the Debt Obligation Order, the transaction will close on Friday, November 12, 2021,⁵ and the bonds will be issued.

Please note that the terms of the Debt Obligation Order are such that the charges and terms become effective automatically unless otherwise acted upon by the Commission. **Accordingly, if the Commission has no reason or cause to stop the transaction, the Commission is not required to take any specific affirmative or “positive” action for the bonds to be issued and the default charges to begin.**

I am available to answer any questions you may have regarding this transaction.

⁵ Thursday, November 11, 2021 is Veterans Day—a state and federal holiday.

