



## **Filing Receipt**

**Filing Date - 2023-09-19 09:10:51 AM**

**Control Number - 53267**

**Item Number - 56**

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**APPLICATION OF AEP TEXAS INC. FOR APPROVAL OF A  
WHOLESALE DISTRIBUTION SERVICE DISTRIBUTED  
GENERATION TARIFF**

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**SOAH ORDER NO. 4  
DENYING MOTION TO LIFT ABATEMENT**

Upon the parties'<sup>1</sup> agreed motion, this proceeding was abated beginning October 28, 2022, to allow the Public Utility Commission of Texas (Commission) to consider pending projects, specifically Project No. 54224,<sup>2</sup> and to possibly adopt rules concerning distributed energy resources (DERs) and cost recovery for service

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<sup>1</sup> The parties to this proceeding include AEP Texas, Inc. (AEP Texas), Commission staff (Staff), Hunt Energy Network L.L.C. (HEN), Broad Reach Power LLC (Broad Reach), and SMT McAllen LLC (SMT McAllen).

<sup>2</sup> *Cost Recovery for Service to Distributed Energy Resources (DERS)*, Project No. 54224.

to DERs. The issues to be considered in the Commission's pending projects regarding DERs overlap with AEP Texas' requested relief in the current docket.<sup>3</sup> The parties' decision to abate the current docket aligns with Commissioner James Glotfelty's position to initiate Project No. 54224 so that issues regarding DERs and any related cost recovery are not addressed "in a piecemeal fashion through contested cases which increases the potential for contradictory policies."<sup>4</sup>

At this time, AEP Texas, Inc. (AEP Texas) seeks to lift the abatement and proceed with a contested case because it contends there has been little to no movement in Project No. 54224 for approximately 10 months and the Commission's enactment of a rule addressing cost recovery from DERs is neither certain or imminent.<sup>5</sup> AEP Texas points to a provision in the parties' agreed motion to abate which provides that "[t]he abatement may be lifted on motion of any party that concludes this proceeding should move ahead to address AEP Texas' application."<sup>6</sup> Staff supports AEP Texas' motion to lift abatement and the procedural schedule AEP Texas proposed on September 6, 2023.<sup>7</sup>

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<sup>3</sup> SOAH Order No. 3 (Oct. 28, 2022).

<sup>4</sup> *Revision of Wholesale Electric Market Design*, Project No. 52373, Memorandum filed by Commissioner Glotfelty (Mar. 30, 2022).

<sup>5</sup> See AEP Texas Inc.'s Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule (Aug. 25, 2023); AEP Texas' Reply to HEN/Broad Reach and SMT's Opposition to Lifting Abatement (Sept. 6, 2023).

<sup>6</sup> Agreed Motion to Abate Proceeding (Oct. 27, 2022).

<sup>7</sup> Revised Procedural Schedule (Sept. 6, 2023).

SMT McAllen, HEN, and Broad Reach (collectively, the Intervenors) contest AEP Texas' motion and request that the abatement continue until the Commission resolves Project No. 54224 because: (1) the basis for the abatement still applies; (2) the Commission's consideration of Project No. 54224 is merely on hold until the technical requirements in Project No. 54233<sup>8</sup> are completed as those requirements may inform the Commission's decision in Project No. 54224; (3) waiting to proceed with this case until there is regulatory certainty through the completion of Project No. 54224 is more efficient and avoids conflicting rulings between the Commission's final order in this proceeding and any adopted substantive DERs-related rule; and (4) the continuation of abatement will not prejudice AEP Texas because it has a May 24, 2022 relate back date; thus, upon the Commission's final order in this case, AEP Texas can become whole by initiating a surcharge to customers for the period between the relate back date and the final order date.<sup>9</sup>

It is understandable that AEP Texas wishes to lift the approximate 10-month abatement and move forward notwithstanding the pending status of Project No. 54224. However, the Administrative Law Judges (ALJs) find there is a greater benefit to maintaining abatement and withholding a contested case in this proceeding until the completion of Project No. 54224, as argued by the Intervenors. Specifically, maintaining the abatement is prudent because the Commission has indicated action will occur soon regarding Project No. 54233 in November 2023, which should lead to action in Project No. 54224, and because the granted relate back date offers AEP Texas protection from an extended abatement

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<sup>8</sup> *Technical Requirements and Interconnection Processes for Distributed Energy Resources (DERs)*, Project No. 54233.

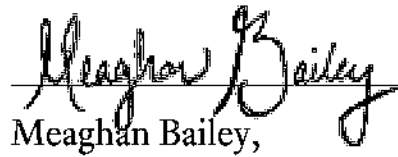
<sup>9</sup> See SMT McAllen LLC's Response to AEP Texas Inc.'s Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule (Sept. 1, 2023); Hunt Energy Network, L.L.C. and Broad Reach Power LLC's Response in Opposition to AEP Texas's Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule (Sept. 1, 2023).

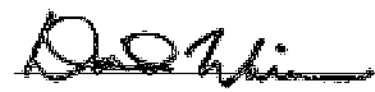
period. Accordingly, AEP Texas' motion to lift the existing abatement and adopt a procedural schedule is **DENIED**.<sup>10</sup>

Notwithstanding the ruling above, this Order is not intended to effectuate an indefinite abatement in this case or to prohibit AEP Texas or any other party from requesting to lift the abatement at a later date once there is more clarity regarding the Commission's anticipated actions regarding Project Nos. 54233 and 54224.

**Signed September 19, 2023**

ALJ Signature(s):

  
Meaghan Bailey,  
Administrative Law Judge

  
Daniel Wiseman,  
Administrative Law Judge

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<sup>10</sup> 16 Tex. Admin. Code § 22.202(c).