



Control Number: 54985



Item Number: 10

DOCKET NO. 54957 RECEIVED

**PROCEEDING TO DETERMINE
APPROPRIATE METHOD TO
DISTRIBUTE DISGORGED FUNDS
FROM DOCKET NO. 54957**

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§ PUBLIC UTILITY COMMISSION
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ORDER

This Order addresses Commission Staff's petition proposing an appropriate method to distribute the \$23,462.53 in excess revenues that the Commission ordered the City of Austin dba Austin Energy to disgorge in Docket No. 54957.¹ The Electric Reliability Council of Texas, Inc. (ERCOT) proposed a method for distribution of the disgorged revenues and Commission Staff recommends approval of the method proposed by ERCOT. The Commission approves the distribution method proposed by ERCOT and recommended by Commission Staff to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Affected Entities

1. Austin Energy is a municipally owned utility providing electric service under certificate of convenience and necessity number 30001.
2. Austin Energy is a qualified scheduling entity (QSE) registered with the ERCOT.
3. ERCOT is certified by the Commission to act as the independent organization in the ERCOT power region, ensuring that electricity production and delivery are accurately accounted for among the wholesale buyers and sellers in the power region.
4. In Docket No. 54957, the Commission found that Austin Energy had, on a number of occasions in 2021, failed to properly telemeter the correct resource status codes to ERCOT and, as a result of such failures, Austin Energy received \$23,462.53 more revenue than it should have.

¹ Settlement Agreement Relating to City of Austin dba Austin Energy's Violation of PURA § 39.151(j); 16 TAC §§ 25.503(e)(3), (f)(2), and (f)(6); and ERCOT Nodal Protocols § 6.4.6(1), Related to Scheduling and Operation of Generation Resources, Docket No. 54957, Order (June 15, 2023).

5. A list of the entities affected by Austin Energy's overcollection of revenues was provided by Commission Staff as an attachment to the petition in this matter.

Docket No. 54957

6. In Docket No. 54957, the Commission ordered the disgorgement of \$23,462.53 in excess revenues from Austin Energy in connection with violations of PURA² § 39.151(j), 16 Texas Administrative Code (TAC) § 25.503(e)(3), (f)(2), and (f)(6), and ERCOT Nodal Protocols § 6.4.6(1).
7. The Commission ordered Austin Energy to disgorge the excess revenues to ERCOT.
8. ERCOT must distribute the excess revenue to affected wholesale electric market participants either in proportion to their load during the intervals when the violation occurred or by a different, appropriate distribution method.
9. The Commission determined it is appropriate to adopt a method to distribute the disgorged excess revenues from Austin Energy using a method that differs from the default method specified in 16 TAC § 22.246(k).
10. The Commission further directed Commission Staff to open the present docket to determine the appropriate method to distribute the disgorged excess revenues.

Commission Staff's Petition

11. On July 10, 2023, ERCOT provided to Commission Staff a memo in which it proposed an appropriate method to distribute the excess revenues disgorged by Austin Energy as required in Docket No. 54957. In the memo, ERCOT describes its proposed distribution method as *Distribution Option 2*.
12. On July 17, 2023, Commission Staff filed the petition in this proceeding in which it recommends approval of ERCOT's proposed distribution method. ERCOT's July 10, 2023 memo is attached to Commission Staff's petition.
13. Commission Staff requested that the Commission require ERCOT to file in this proceeding at least 30 days before it is to be served, a draft of the communication required by 16 TAC § 22.246(k)(1) to be included at the time ERCOT distributes the disgorged excess revenues,

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

so that Commission Staff may review and provide a recommendation on the sufficiency of the notice.

14. Commission Staff recommended that the Commission not require affected wholesale market participants receiving disgorged excess revenues to demonstrate how the amounts were used to reduce the costs for fees incurred by retail electric customers according to 16 TAC § 22.246(k)(2), because the total amount of disgorged excess revenue to be distributed among the affected market participants is too small to warrant such a requirement.

Proposed Method to Distribute Disgorged Excess Revenues

15. Using the distribution method proposed by ERCOT and recommended by Commission Staff, ERCOT will:
 - a. identify the load ratio share from the most recent market settlement that was utilized for the issuance of invoices for the impacted intervals of the operating days;
 - b. calculate the amount due to each QSE by multiplying the disgorged dollar amount for each interval by the load ratio share for that interval;
 - c. send a miscellaneous invoice to all affected QSEs; and
 - d. pay the amounts owed to the affected QSEs as reflected on the invoices. If a QSE that is eligible for a distribution, or the counter-party for that QSE, has failed to pay when due any payment or financial security obligation owed to ERCOT or its designee, if applicable, then ERCOT will withhold the distribution payment and apply it toward the amounts owed by the QSE or the counter-party for the QSE.
16. No person contested the distribution method proposed by ERCOT and recommended by Commission Staff in this matter.
17. No affiliates of Austin Energy will receive any of the excess revenues disgorged by Austin Energy as ordered in Docket No. 54985.

Notice

18. On July 28, 2023, notice of this proceeding was provided to affected parties through a market notice issued by ERCOT.

Evidentiary Record

19. In Order No. 2 filed on September 12, 2023, the administrative law judge admitted into the record of this proceeding:
 - a. Commission Staff's petition and all attachments filed on July 17, 2023; and
 - b. Commission Staff's proof of issuance of market notice and all attachments filed on July 31, 2023.

Informal Disposition

20. More than 15 days have passed since the completion of notice provided in this docket.
21. No person filed a protest or motion to intervene.
22. Commission Staff is the only party to this proceeding.
23. No party requested a hearing, and no hearing is needed.
24. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this matter under PURA §§ 14.051, 14.054, 15.023, 15.025, and 39.151(j).
2. Austin Energy is a municipally owned utility as defined by PURA § 11.003(11).
3. Austin Energy is a QSE as defined in 16 TAC § 25.5(95) and ERCOT Nodal Protocols § 2.1.
4. ERCOT is an independent organization certified by the Commission under PURA § 39.151(c).
5. The amount of disgorged funds to be distributed to any individual wholesale market participant is too small to warrant requiring a wholesale electric market participant to report how it used distributed disgorged funds to reduce costs incurred by retail electric customers, as would otherwise be required by 16 TAC § 22.246(k)(2).
6. No affiliates, as defined by PURA and Commission rules, of Austin Energy will receive any of the excess revenues disgorged by Austin Energy as ordered in Docket No. 54985.

7. It is appropriate for ERCOT to distribute the disgorged excess revenues according to the alternative method proposed by ERCOT and recommended by Commission Staff under 16 TAC § 22.246(k).
8. Under 16 TAC § 22.246(k)(1), no later than 90 days after disgorged excess revenues are remitted to ERCOT, the monies must be distributed using the method approved in this Order, or ERCOT must, by that date, notify the Commission of the date by which the funds will be distributed. ERCOT must include within the distributed monies a communication that explains the docket number in which the Commission ordered the disgorged excess revenues.
9. Except as otherwise specified in conclusion of law 10, it is not necessary for the Commission to require affected wholesale market participants receiving disgorged excess revenues to demonstrate how the amounts were used to reduce the costs or fees incurred by retail electric customers under 16 TAC § 22.246(k)(2), nor is it necessary for ERCOT to instruct that the monies must be used to reduce the costs or fees incurred by retail electric customers under 16 TAC § 22.246(k)(1).
10. Under 16 TAC § 22.246(k)(3), any affected wholesale electric market participant receiving disgorged funds that is affiliated with Austin Energy must distribute all of the disgorged excess revenues directly to its retail customers and must provide certification under oath to the Commission that the entirety of the revenues was distributed to its retail electric customers.
11. The Commission processed this docket in accordance with the requirements of applicable statutes and Commission rules.
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. ERCOT must distribute the excess revenues disgorged from Austin Energy as identified in Docket No. 54957 using the distribution method described and approved in this Order.

2. ERCOT must, within 90 days of receipt of the \$23,462.53 in excess revenues disgorged from Austin Energy, either distribute the funds to affected wholesale market participants or notify the Commission of the proposed date of distribution by filing a pleading in the compliance docket.
3. At least 30 days before it distributes the excess revenues, ERCOT must file in the compliance docket a draft of the communication that is required by 16 TAC § 22.246(k)(1) to be included with the distributions.
4. Commission Staff must file in the compliance docket its approval or any revisions, as appropriate, to ERCOT's draft communication within 15 days of receipt.
5. Except as otherwise specified in ordering paragraph 6, an affected wholesale market participant receiving excess revenues disgorged from Austin Energy is not required to demonstrate how those funds were used to reduce the costs or fees incurred by retail electric customers.
6. Any affected wholesale electric market participant receiving disgorged funds that is affiliated with Austin Energy must distribute all of the disgorged excess revenues directly to its retail customers and must file in the compliance docket certification under oath to the Commission that all of the revenues were distributed to its retail electric customers. The certification must be filed within 30 days of receipt of disgorged funds.
7. All filings required or authorized by this Order must be made in Docket No. 55639, *Compliance Filing for Docket No. 54985 (Proceeding to Determine Appropriate Method to Distribute Disgorged Funds from Docket No. 54957)*.
8. The Commission is not constrained in any matters from requiring additional action or penalties from matters that are not resolved by this Order.
9. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 1st day of October 2023.

PUBLIC UTILITY COMMISSION OF TEXAS


KATHLEEN JACKSON, INTERIM CHAIR


WILL MCADAMS, COMMISSIONER


LORI COBOS, COMMISSIONER


JIMMY GLOTFELTY, COMMISSIONER