

Control Number: 39865



Item Number: 1

Addendum StartPage: 0

DOCKET NO. 39865

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PETITION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., FOR APPROVAL OF REVISION TO DOCKET NO. 32686 *ORDER NUNC PRO TUNC* § PUBLIC UTILITY COMMISSION OF TEXAS §

PETITION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR APPROVAL OF REVISION TO DOCKET NO. 32686 ORDER NUNC PRO TUNC

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and respectfully requests that the Commission approve a revision to its *Order Nunc Pro Tunc*, issued June 13, 2007, in Docket No. 32686,¹ regarding the filing date for ERCOT's "accounting of the costs and revenues of implementing the Nodal market," in order to take into account Commission orders and ERCOT Board actions since the 2007 issuance of the *Order Nunc Pro Tunc*.

I. Background

1. In Docket No. 32686, the Commission approved the creation of the "nodal surcharge" as a special-purpose fee used to fund the costs of implementation by ERCOT of the Texas Nodal Market Implementation Program (TNMIP, or Nodal Program). As part of the Commission's approval of the nodal surcharge, it required the following filings after the completion of Nodal Program:

ERCOT shall file with the Commission within 12 months after the Nodal market "goes live" and again within 12 months after ERCOT stops collecting the nodal surcharge an accounting of the costs and revenues of implementing the Nodal market.²

2. At the time of the Commission's 2007 order, ERCOT did not expect to expend revenues generated by the nodal surcharge after the nodal market's "go-live" date. Therefore, the Commission and ERCOT expected that a complete accounting of nodal costs could be

¹ *Application of the Electric Reliability Council of Texas For Approval of a Nodal Market Implementation Surcharge And Request for Interim Relief*, Docket No. 32686, Order Nunc Pro Tunc (June 13, 2007).

² Docket No. 32686, *Order Nunc Pro Tunc*, at 2 (Ordering Paragraph 1c.).

provided within one year after completion of nodal go-live, with an accounting of nodal surcharge revenues to be provided after all nodal program charges (including debt service) were repaid using nodal surcharge revenues.

3. In 2010, the Commission approved a change regarding the time period in which ERCOT could utilize nodal surcharge revenues. In Docket No. 38840, ERCOT requested and the Commission approved “post-go-live utilization of nodal surcharge revenues for expenses associated with the transition to the nodal market incurred after nodal go-live on December 1, 2010 (post-go-live charges).”³ The Commission’s order authorized ERCOT to use nodal surcharge revenues through calendar year 2011 in support of post-go-live expenses associated with ERCOT’s transition to nodal operations.

4. As stated in the Commission’s order in Docket No. 38840, ERCOT’s post-go-live expenditures are “consistent with practices used on ERCOT’s other major technology-driven projects, where a project continues to accumulate costs for a period of time after the initial go-live date to ensure new systems and processes operate as intended for an extended period in a production environment.”⁴ The authorization of post-go-live stabilization funding enabled ERCOT to successfully manage issues associated with the nodal market transition during 2011 without seeking any increase in the ERCOT System Administration Fee for 2011 or 2012.

5. Also in 2010, the Commission initiated an audit of the nodal program, including the expenditures associated with it. The Commission retained Navigant Consulting (PI) LLC (Navigant), to conduct an investigation and evaluation of the design, development and implementation of the nodal program. On July 8, 2011, the Commission issued an order in Project No. 31600 requiring that “ERCOT shall pay for the audit by using nodal surcharge revenues or other appropriate revenues.”⁵

³ *Application of Electric Reliability Council of Texas for Approval of Post-Go-Live Utilization of the Texas Nodal Market Implementation Surcharge*, Order, at 1 (Dec. 20, 2010).

⁴ *Id.*, at 6 (FOF 5)

⁵ *Transition To An ERCOT Nodal Market Design*, Project No. 31600, Order, at 3 (July 8, 2011).

6. The approval of post-go-live use of the nodal surcharge during 2011, and the utilization of nodal surcharge funds to support the Navigant audit, make the December 1, 2011 date for filing the final nodal accounting impractical. The Commission's 2007 *Order Nunc Pro Tunc* was based on the expectation that ERCOT would "close the books" on all nodal expenditures as of the nodal go-live date. Subsequent developments, including the orders in Docket No. 38840 and Project No. 31600, extended that date to the end of 2011, and ERCOT submits that these circumstances require a revised deadline for filing its final accounting of nodal costs and expenditures.

II. Request For Revised Deadline To File Accounting of Nodal Costs and Expenditures

7. Due to the approval of post-go-live nodal stabilization funding and funding of the Navigant audit extending beyond the one-year anniversary of nodal go-live, it would be premature for ERCOT to file its final accounting of the "costs and revenues of implementing the Nodal market" by December 1, 2011.

8. Given these circumstances, ERCOT requests that the Commission revisit its 2007 Docket No. 32686 *Order Nunc Pro Tunc* to permit ERCOT to file its accounting at a point in time that is after: (a) ERCOT receives audited financial statements for 2011; and (b) the Navigant audit funded by nodal surcharge revenues is completed. At that time, ERCOT will be in a position to provide the comprehensive accounting of nodal costs that the Commission expected to receive in its 2007 order. ERCOT believes that a revised filing date of July 1, 2012 would achieve both of those objectives.

9. A change in the filing date for the "12 months after" go-live filing would not necessitate a change in the due date for the follow-on filing due "within 12 months after ERCOT stops collecting the nodal surcharge." There have been no changes in the collection method for the nodal surcharge since Docket No. 32686 that would necessitate a delay in the final accounting of the amounts collected by ERCOT from the nodal surcharge. ERCOT anticipates completing collection of the nodal surcharge in early 2013.

10. As an alternative to the July 1, 2012 filing deadline requested herein, ERCOT could file a single, consolidated post-go-live accounting proceeding. That proceeding would be filed within one year of the completion of the collection of the nodal surcharge, and would include information on both the final costs and expenditures associated with nodal go-live, as well as the final report on the amount of revenues collected from the nodal surcharge. That approach would represent more of a departure from the filing schedule included in the Docket No. 32686 *Order Nunc Pro Tunc* in 2007, but ERCOT believes it would achieve the same objectives from the perspective of accountability and transparency. Moreover, the single accounting would result in a consolidated Commission review proceeding that may prove more administratively efficient than the two proceedings called for in the *Order Nunc Pro Tunc*.

III. Identification of Applicant

11. The name and address of the Applicant is Electric Reliability Council of Texas, Inc., 7620 Metro Center Drive, Austin, Texas 78744. The name, address, telephone, and facsimile number of Applicant's authorized representative is as follows:

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IV. Notice

12. ERCOT will post its Petition for Approval of Revision to Docket No. 32686 *Order Nunc Pro Tunc* to its website at http://www.ercot.com/about/governance/legal_notices; send a copy of its Petition via first-class U.S. mail to the parties of record in Docket No. 32686, and to the parties in all other proceedings in which the Commission addressed issues regarding the nodal surcharge (Docket Nos. 35428, 36412, 36851, and 38840). ERCOT will also provide

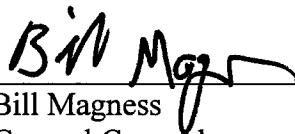
Notice of its Petition via electronic mail to ERCOT's email exploder lists of committees as follows:

- ERCOT Board of Directors and Others
- Technical Advisory Committee and Others (TAC)
- Retail Market Subcommittee (RMS)
- Wholesale Market Subcommittee (WMS)
- Reliability and Operations Subcommittee (ROS)
- Commercial Operations Subcommittee (COPS), and
- Protocol Revisions Subcommittee (PRS)

V. Conclusion

WHEREFORE, for all the reasons stated, ERCOT respectfully requests that the Commission revise the filing deadline for the "accounting of the costs and revenues of implementing the Nodal market" currently due "12 months after" nodal go-live pursuant to the *Order Nunc Pro Tunc* in Docket No. 32686. ERCOT requests that the Commission approve a revision of the filing date, from December 1, 2011 to July 1, 2012, or, alternatively, ERCOT requests that the Commission consolidate the filing currently due on December 1, 2011 with the filing due pursuant to the *Order Nunc Pro Tunc* in Docket No. 32686 on a date "within 12 months after ERCOT stops collecting the nodal surcharge."

Respectfully submitted,

By:  _____
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COUNCIL OF TEXAS, INC.

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties on October 26, 2011 in the following manner: by facsimile, email, or first-class U.S. mail.

