

ANTITRUST COMPLIANCE GUIDELINES FOR ERCOT BOARD AND STAFF MEMBERS

I. General Information

The antitrust laws are designed to preserve and promote a free and competitive marketplace. ERCOT fully supports this goal and is committed to compliance with all antitrust laws that govern its various activities. In all matters related to ERCOT activities (including all ERCOT meetings, committee meetings, conference calls, written and email communications and informal discussions), all ERCOT Members and their employees and ERCOT market participants and their employees who participate in ERCOT activities, along with ERCOT Staff personnel and Members of the ERCOT Board of Directors (including Segment Alternates), are expected to conduct themselves in a manner that complies with the antitrust laws.

Although the antitrust laws recognize that organizations such as ERCOT make pro-competitive contributions to the economy, the fact that ERCOT is an organization that brings together market participants who may also be direct competitors presents a risk that agreements may be made which may raise antitrust concerns. The antitrust laws strictly forbid any agreement between or among competitors regarding prices, availability of service, division of markets and division of customers. The antitrust laws also forbid other types of agreements among direct competitors or entities in horizontal relationships where the effect of the agreement is to unreasonably restrain trade. ERCOT expects that all market participants, when engaging in ERCOT activities, will comport themselves appropriately and in compliance with all applicable laws, including the antitrust laws.

Violations of the antitrust laws can result in serious criminal and/or civil penalties not only for the entities involved, but also for individuals participating in the unlawful conduct. Penalties may include, among other things, treble (*i.e.*, triple) damages, significant financial penalties and court orders controlling how ERCOT and its Members do business. Moreover, antitrust lawsuits can be very costly in time, money and resources. Individuals can receive significant financial penalties and prison sentences for antitrust violations. Individuals may also be sued personally by plaintiffs in civil antitrust lawsuits and held liable for damages.

Violation of these antitrust guidelines may subject the individual(s) to various disciplinary actions, including termination of employment from ERCOT and prohibition from participation in ERCOT activities.

In view of the breadth and changing interpretation of the antitrust laws by the courts and government agencies, these guidelines are intended to alert ERCOT staff and ERCOT Members and market participants and their employees who participate in ERCOT activities to potential antitrust concerns and provide policies to be followed in connection with those activities. These guidelines do not contain a complete catalog of all potential antitrust problems. These guidelines are not intended to encourage ERCOT Staff or Board Members to serve as their own antitrust lawyers, but are designed to enable them to avoid obvious antitrust risks and to seek assistance when encountering specific situations.

All questions of interpretation, scope and application should be referred to the ERCOT Legal Department. If you witness improper or questionable conduct, or if you are present during an improper discussion in an ERCOT meeting, you should immediately raise the issue with the person in charge of the meeting so that the discussion can be

immediately terminated and, if necessary, legal advice may be sought. If you suspect that a fellow Staff member, Board Member, Member or market participant may have violated the antitrust laws, you are obligated to report the suspected violation to the ERCOT Legal Department. It is important to remember that even a passive participant in an antitrust violation may be found liable.

II. ERCOT's Purpose, Which Should Serve as a General Guide to Your Conduct

It is ERCOT's responsibility to: (a) ensure access to the transmission and distribution system for all buyers and sellers of electricity on nondiscriminatory terms, (b) ensure the reliability and adequacy of the ERCOT transmission grid, (c) ensure that information relating to a customer's choice in retail electric providers in Texas is conveyed in a timely manner to persons who need to know that information, and (d) ensure that electricity production and delivery are accurately accounted for among the generation resources and wholesale buyers and sellers in the ERCOT region. Thus, the decisions and actions of ERCOT (including its board, committees and working groups) should be undertaken for the purposes outlined above.

Of course, from time to time, the decisions and actions of ERCOT (including its Board, committees and working groups) may negatively (or positively) impact a particular entity even though such decisions were made for legitimate purposes. To the extent you have no legitimate ERCOT purpose in discussing a particular matter or undertaking a particular action (e.g., your true purpose is to disadvantage a specific competitor or to give an unfair advantage to you or your company), you must refrain from discussing the matter or suggesting a particular course of conduct that is driven by the improper motivation of proposing such advantage or disadvantage.

III. Prohibited Conduct

A. *Relationships among Competitors:* Agreements between competitors that restrain trade violate the Sherman Act and the Texas Free Enterprise and Antitrust Act. In order to have an agreement there must be at least two parties. The agreement need not be explicit. An agreement can be inferred from a course of conduct. For example, if a company exchanges its price list with a competitor, and the prices charged by the two firms become uniform, an illegal agreement can be inferred. The courts have held that the result of uniform prices is sufficient proof of an agreement even though there is no direct evidence of an actual meeting of the minds. Criminal convictions have been based on such circumstantial evidence. Just as competitors cannot directly enter into an agreement to restrain trade, they cannot enter into an agreement through the use of a third party (such as ERCOT) as a conduit, coordinator or facilitator of the improper agreement.

The following examples describe unlawful agreements among competitors:

1. Competitors cannot agree to fix prices. Any agreement between competitors that sets, or impacts prices is illegal. It is illegal even if the prices are fixed at a reasonable level or a maximum price is established. It is no defense that there is price competition which is causing losses and that the agreement to control prices saves the industry from self-destruction.

Illegal price fixing agreements include: (a) an agreement among competitors establishing the price at which any one of them would sell product to an individual or group of customers; (b) an agreement among

potential bidders for some to refrain from bidding or to submit complementary bids.

Agreements that impact prices indirectly are also illegal and include: (a) an agreement between competitors to establish uniform discounts; and (b) an agreement between competitors to eliminate credit terms to all accounts.

2. Competitors cannot agree to boycott a third party. Agreements between competitors to boycott another business are illegal. For example, two competitors may not agree to refuse to sell to a customer who stocks product of a third competitor. Two competitors cannot agree to establish "industry standards" which foreclose products of a third competitor.
3. Competitors cannot agree to divide markets or customers or limit or allocate production. Agreements between competitors to divide geographic markets or customers or limit or allocate production are illegal. The agreement is illegal even if lower prices result.

B. *Monopolization and Attempts to Monopolize:* The act of monopolizing or attempting to monopolize is unlawful under the Sherman Act and the Texas Free Enterprise & Antitrust Act. A monopoly is a company with the power to raise prices at will or to exclude competitors from the market. A monopoly is not illegal under the antitrust laws but the act of becoming a monopoly or maintaining monopoly power may be. If the monopoly power is acquired or maintained by factors that are economically inevitable, it is legal. Factors that are economically inevitable include economies of scale, advantages over competitors that result from vertical integration, and advantages that result from vigorous and fair competition or superior skill and management.

C. *Specific Categories of Prohibited Conduct:* In addition to using the purposes of ERCOT outlined in part II and the discussions in parts A and B in this section as a broad guide for modeling your behavior, there are specific categories of conduct in which you should not engage in order to minimize even the appearance that you are engaging in improper conduct. In particular, each person participating in ERCOT activities, including ERCOT Staff and Board Members and all members of various ERCOT committees and working groups, should **not** engage in the following conduct when acting in their capacity as a participant in ERCOT activities except as provided for and in development of the Protocols or other PUCT rule or law:

1. Discussions about prices or price-related information, particularly internal information regarding profits, costs, and expectations for future prices or internal costs
2. Discussions about an ERCOT market participant's business, marketing or pricing strategies or plans
3. Discussions about any competitively sensitive, internal information about an ERCOT Member's or a market participant's business

4. Discussions regarding excluding or otherwise disadvantaging a competitor, this includes but is not limited to promoting protocol revisions intended to disadvantage a competitor
5. Discussions regarding the division or allocation of customers or geographic areas among competitors
6. Discussions regarding boycotting or refusing to do business with a competitor, supplier or customer

IV. Permissible Conduct

In participating in ERCOT activities, the following subjects may be discussed:

- A. Reliability of the ERCOT transmission grid, including operation and planning matters (some market participants must be excluded from some operational and planning discussions where competitive information is discussed).
- B. Issues relating to the impact of Protocols and other ERCOT procedures and processes on electricity markets and the impact of market operations and design on reliability
- C. Proposed communications or filings with the PUCT or other governmental authorities
- D. Market design, consistent with the ERCOT Protocols and as mandated by the Texas Legislature and the PUCT
- E. The internal governance, management and operations of ERCOT

V. Improper Appearances

In complying with these guidelines, it is important to avoid not only potential antitrust violations, but also any behavior that could create the appearance of impropriety or be construed as improper. ERCOT Staff and ERCOT Board Members should avoid even their mere presence at discussions of an improper nature, and shall immediately and unequivocally disassociate themselves from such discussions. Communications or correspondence should never be conducted in a concealed or surreptitious manner, and should avoid the use of careless or excessive language. Antitrust lawsuits against companies and individuals have resulted simply because the people involved have improperly described appropriate business activity in business memoranda or public statements. ERCOT's sources of competitive information and the reasons for its decisions should be clearly and consistently documented. The files of ERCOT, its Board Members, its Members, other market participants, as well as the personal records of any individual employee of either ERCOT or its Members or market participants, may be subpoenaed and subjected to intensive analysis by government authorities or private litigants.

VI. Certificate

Please execute and return the **Certificate**, attached to these Guidelines, to _____.

CERTIFICATE

I hereby certify that I have read and understand the ERCOT Antitrust Compliance Guidelines dated _____, 2003. I will comply with the antitrust laws and the policies of ERCOT as set forth and will consult with the Legal Department as recommended whenever I have questions concerning the antitrust laws as they relate to ERCOT or the antitrust policies of ERCOT.

I further certify that I am aware that my participation in or failure to report conduct that violates the antitrust laws or ERCOT's antitrust policies will subject me to disciplinary action, including dismissal.

(Signature)

(Typed name)

(Title)

(Location)

(Date)

Return this ***Certificate*** to:

ERCOT Human Resources, Tina Peterson

CERTIFICATE

I hereby certify that I have read and understand the ERCOT Antitrust Compliance Guidelines dated _____, 2003. I will comply with the antitrust laws and the policies of ERCOT as set forth and will consult with the Legal Department as recommended whenever I have questions concerning the antitrust laws as they relate to ERCOT or the antitrust policies of ERCOT.

I further certify that I am aware that my participation in or failure to report conduct that violates the antitrust laws or ERCOT's antitrust policies may subject me to sanctions up to and including removal from the Board of Directors.

(Signature)

(Typed name)

ERCOT Board Member

(Date)

Return this ***Certificate*** to:

ERCOT General Counsel, Margaret Uhlig Pemberton