



# MEMO

**Date:** March 8, 2005  
**To:** Board of Directors  
**From:** Margaret Pemberton, General Counsel and Corporate Secretary  
**Subject:** Forms for Guarantee Agreements and Letters of Credit

## **Issue for the ERCOT Board of Directors**

**ERCOT Board of Director Meeting Date:** March 15, 2005

**Agenda Item No.:** 8a

### **Issue:**

ERCOT and the Credit Working Group request the ERCOT Board of Directors' approval of updated versions of the following ERCOT standard forms: (1) QSE Guarantee Agreement for U.S. company guarantors, (2) QSE Foreign Guarantee Agreement for foreign company guarantors, (3) TCR Guarantee Agreement for U.S. company guarantors, (4) TCR Foreign Guarantee Agreement for foreign company guarantors and (5) Letter of Credit.

### **Background/History:**

Based upon the recommendation of the Credit Working Group and outside counsel, ERCOT would like to update various standard forms utilized by Market Participants to ERCOT's credit requirements. Sections 16.2.5.1.2(1) and (2) of the Protocols requires that QSEs must provide corporate guarantees and letters of credit for QSEs in the form approved by the ERCOT Board.

Recently, several Market Participants requested changes to these standard Board-approved forms. ERCOT invited these Market Participants to meet with the Credit Working Group to discuss proposed changes and draft language. ERCOT's outside counsel also reviewed and approved the proposed revised forms.

The revised forms, in redline format, are attached as Attachments A through E.

The Credit Working Group recommended several clarifications as well as the major changes summarized below:

1. All revised guarantee agreements include language providing for the guarantor to succeed to any rights of the QSE under the QSE Agreement and the Protocols. The revised language in the guarantee agreements also provides that the guarantor does not waive or release any rights of subrogation, reimbursement or contribution, but provides that the guarantor's rights of subrogation and reimbursement are



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subordinate to the rights and claims of ERCOT.

2. All revised guarantee agreements remove the guarantor's obligation of performance, clarifying that guarantor has only the obligation of payment.
3. The revised QSE and TCR Foreign Guarantee Agreements for foreign company guarantors require the guarantor to have a registered agent in Texas and allow written notification of change of address or registered agent.
4. The revised Letter of Credit has updated terminology and requires any ERCOT successor to attach copies of official documents proving its legal status as successor.

The Finance and Audit Committee plans to review the proposed changes at its meeting on March 15, 2005.

**Key Factors Influencing Issue:**

Market Participants desired changes to the standard form. These proposed changes are acceptable to ERCOT Staff.

**Alternatives:**

- Continue to use current credit forms.
- Approve the revised forms.

**Conclusion/Recommendation:**

ERCOT Staff and the Credit Working Group recommend that the Board approve the Resolution attached below.

**RESOLUTION OF  
THE BOARD OF DIRECTORS OF  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

March 15, 2005

WHEREAS, the board of directors (the “Board”) of Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (the “Company”) deems it desirable and in the best interests of the Company to approve revisions to the standard QSE Guarantee Agreement for U.S. company guarantors, the standard QSE Foreign Guarantee Agreement for foreign company guarantors, the standard TCR Guarantee Agreement and the standard Letter of Credit;

NOW, THEREFORE, BE IT RESOLVED, that the revisions to the ERCOT Guarantee Agreement, which are attached hereto as Attachment A are hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified U.S. company guarantors utilized pursuant to Section 16.2.5.1.2(1) of the ERCOT Protocols; and

RESOLVED, that the revisions to the ERCOT Foreign Guarantee Agreement, which are attached hereto as Attachment B are hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified foreign companies utilized pursuant to Section 16.2.5.1.2(1) of the ERCOT Protocols; and

RESOLVED, that the revisions to the ERCOT TCR Guarantee Agreement, which are attached hereto as Attachment C are hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified TCR guarantors utilized pursuant to Section 16.8.1.5.3(a) of the ERCOT Protocols; and

RESOLVED, that the revisions to the ERCOT TCR Foreign Guarantee Agreement, which are attached hereto as Attachment D are hereby authorized and approved in each and every respect to be accepted by ERCOT as the standard form guarantee agreement for qualified foreign TCR guarantors utilized pursuant to Section 16.8.1.5.3(a) of the ERCOT Protocols; and

RESOLVED, that the revisions to the ERCOT Letter of Credit, which are attached hereto as Attachment E are hereby authorized and approved in each and every respect to be accepted by ERCOT as a standard form letter of credit utilized pursuant to Section 16.2.5.1.2(2) of the ERCOT Protocols.