



Date: February 12, 2008
To: Board of Directors
From: Mike Grable, General Counsel
Subject: Financial statement requirements prior to February 1, 2008

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: February 19, 2008

Agenda Item No.: 9(a)

Issue: Whether ERCOT staff should require Market Participants to provide out-of-date financial statements or waive that requirement.

Background/History: In mid-2007, ERCOT determined it had not been strictly enforcing the requirement in Protocol § 16.2.8 that:

...each QSE *and* its guarantor, if any, shall provide to ERCOT:

(1) quarterly unaudited financial statements no later than sixty (60) days after the close of each of the issuer's fiscal quarters; and

(2) annual audited financial statements no later than one hundred twenty (120) days after the close of each of the issuer's fiscal year;.... (emphasis added)

As ERCOT began taking steps toward enforcing that requirement, Market Participants clarified their desire (through PRR 744) that financial statements be provided only for each QSE *or* its guarantor.

At its January 2008 meeting, the Board of Directors approved PRR 744, which changed the requirement per Protocol Section 16.2.8 for Qualified Scheduling Entities (QSEs) *and* their guarantors to provide financial statements to ERCOT. This PRR became effective February 1, 2008 for all financial statements required to be provided after that date. However, the Protocols clearly state that PRRs are effective only prospectively. Therefore, Market Participants who did not comply with the requirement prior to February 1, 2008 are – technically – in breach of their Standard Form Market Participant Agreement with ERCOT.

Some Market Participants who were required by Protocol § 16.2.8 to provide financial statements in 2007 have not done so and have expressed concern that it would be costly to go back and prepare financial statements and obtain audit opinions for those historical periods and, further, that such efforts would be to collect stale information with only limited value.

Market Participants have expressed concern about: (1) being considered in breach of their Standard Form Market Participant Agreements with ERCOT and (2) what enforcement action might take place for non-compliance with the Section 16.2.8 requirements prior to February 1, 2008.

ERCOT would prefer not to take action against Market Participants not meeting the financial statement requirement as it existed in Section 16.2.8 prior to February 1, 2008, but seeks Board



guidance. ERCOT *does* expect to fully enforce Protocol Section 16.2.8 requirements, as revised, going forward.

Key Factors Influencing Issue: Financial information related to fiscal years ended 2006 and the quarterly updates through 2007 are of only marginal value given that 2007 year-end data becomes available in the next few months. This is a one-time event due to the recent change enacted by PRR744.

Alternatives:

- 1) Direct ERCOT Staff to take action against Market Participants for breach of their Standard Form Market Participant Agreements with ERCOT (SFAs) regarding Protocol § 16.2.8 as it existed before PRR744.
- 2) Direct ERCOT Staff to exercise its discretion to waive any Market Participant breaches of their SFAs regarding Protocol § 16.2.8 as it existed before PRR744.

Conclusion/Recommendation:

ERCOT recommends that the Board of Directors direct ERCOT Staff to exercise its discretion to waive action against Market Participants for breach of their SFAs regarding Protocol § 16.2.8 as it existed before PRR744.



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

WHEREAS, during the year 2007, some Market Participants in the ERCOT Region did not provide financial statements as required by ERCOT Protocols Section 16.2.8 as it existed before being amended on February 1, 2008; and

WHEREAS, the Electric Reliability Council of Texas, Inc. (ERCOT) Board of Directors (Board) believes it is not advisable to require those Market Participants to compile and provide that data to ERCOT at this time; and

WHEREAS, the Board deems it desirable and in ERCOT's best interest to instruct ERCOT staff to exercise its discretion to waive Market Participant breaches of their SFAs regarding Protocol § 16.2.8 as it existed before PRR744; therefore be it:

RESOLVED, that ERCOT staff should exercise its discretion to waive Market Participant breaches of their Standard Form Market Participant Agreements with ERCOT regarding Protocol §16.2.8 as it existed before Protocol Revision Request 744.

CORPORATE SECRETARY'S CERTIFICATE

I, Michael G. Grable, Corporate Secretary of Electric Reliability Council of Texas, Inc., a Texas nonprofit corporation (ERCOT), do hereby certify that, at its February 19, 2008 meeting, the ERCOT Board of Directors passed a motion approving the above Resolution by a vote of [REDACTED].

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2008.

Michael G. Grable
Corporate Secretary