



Date: October 14, 2008
To: Board of Directors
From: Clifton Karnei, Chair, Finance & Audit Committee
Subject: Approval of Market Participant (MP) Guarantee Agreements

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: October 21, 2008

Agenda Item No.: 9b

Issue:

ERCOT Staff respectfully requests that the ERCOT Board of Directors (Board) approve revised versions of the ERCOT standard form Market Participant (MP) Guarantee Agreement and Foreign MP Guarantee Agreement.

Background/History:

In February 2008, the Finance & Audit (F&A) Committee asked ERCOT Staff to work with outside counsel in reviewing and proposing changes to the MP Guarantee Agreements with the intent of strengthening the documents. The F&A Committee also asked that the Credit Work Group (CWG) review and provide comments on any ERCOT Staff proposed changes. That same month, ERCOT Legal submitted a proposed redline draft of the MP Guarantee Agreement to the CWG. The CWG created a CWG-Subgroup to work with ERCOT Legal and outside counsel on changes to the MP Guarantee Agreement. After multiple draft versions, the CWG approved a new MP Guarantee Agreement and Foreign MP Guarantee Agreement in September 2008.

The new MP Guarantee Agreements are attached hereto as follows:

- **Attachment A:** ERCOT Market Participant Guarantee Agreement
- **Attachment B:** ERCOT Foreign Market Participant Guarantee Agreement

Key Factors Influencing Issue:

Although the current Board-approved versions of the MP Guarantee Agreements are adequate, stronger versions are recommended to clarify guarantor obligations and to avoid disputes if ERCOT were forced to make a demand under the MP Guarantee Agreements. ERCOT Legal originally proposed changes to the MP Guarantee Agreements on the following subject areas: (a) express affirmations of ownership or benefit by the guarantor; (b) expansion of the scope of guaranteed obligations; (c) changes in the operation of the Credit Support Amount; (d) general waivers of defenses by the guarantor; (e) an enhanced demand funding mechanism; (f) limitation of termination provision; (g) expanded representations and covenants by the guarantor; and (h) limitations on assignments. After several rounds of Market Participant



comments and conversations, a majority of ERCOT's original proposals were deleted, revised or restricted into the new versions approved by the CWG and before this Board for review and approval.

Overall, the new versions approved by the CWG incrementally improve the current Board-approved versions of the MP Guarantee Agreements. The new versions more accurately reflect the current operation of the ERCOT marketplace and expectations of ERCOT and Market Participants. Additionally, the new versions more closely reflect current practice with respect to guarantees under Texas law. However, the new versions of the MP Guarantee Agreements are still not as valuable as either cash deposits or letters of credit of similar amounts.

Alternatives:

1. Do nothing and continue to use the current Board-approved MP Guarantee Agreements.
2. Instruct ERCOT Staff to work further with the CWG toward versions that more closely reflect the original proposed redline draft submitted by ERCOT Legal.

Conclusion/Recommendation:

Approve the new versions of the Market Participant Guarantee Agreement and Foreign Market Participant Guarantee Agreement.



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

WHEREAS, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to approve revisions to the standard form guarantee agreement for U.S. company guarantors and the standard form guarantee agreement for foreign company guarantors.

NOW, THEREFORE, BE IT RESOLVED, that the Market Participant Guarantee Agreement, which is attached hereto as Attachment A is 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.

RESOLVED FURTHER, that the Foreign Market Participant Guarantee Agreement, which is attached hereto as Attachment B is hereby authorized and approved in each and every aspect to be accepted by ERCOT as the standard form guarantee agreement for qualified foreign company guarantors utilized pursuant to Section 16.2.5.1.2(1) of the ERCOT Protocols.

CORPORATE SECRETARY'S CERTIFICATE

I, Michael G. Grable, Corporate Secretary of ERCOT, do hereby certify that, at its October, 21, 2008 meeting, the ERCOT Board of Directors passed a motion approving the above Resolution by a vote of _____.

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

Michael G. Grable
Corporate Secretary