



Date: February 10, 2009
To: Board of Directors
From: Clifton Karnei, Chair, Finance & Audit (F&A) Committee
Subject: Approval of Market Participant (MP) Guarantee Agreements

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: February 17, 2009

Agenda Item No.: 11c

Issue:

The F&A Committee of the ERCOT Board of Directors (Board) requests that the Board approve revised versions of the ERCOT standard form Market Participant (MP) Guarantee Agreement and Foreign MP Guarantee Agreement (collectively, MP Guarantee Agreements).

Background/History:

In February 2008, the 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. From October 2008 to January 2009, ERCOT Staff and CWG representatives had extensive discussions with the F&A Committee on key changes/issues regarding the scope of the MP Guarantee Agreements. After further instruction from the F&A Committee, ERCOT Staff revised the MP Guarantee Agreements to incorporate a waiver of substantive defenses and provisions on demand and receipt of funds.

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. Overall, the new versions strongly 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. The new versions of the MP Guarantee Agreements should be on equal footing as either cash



deposits or letters of credit of similar amounts.

Alternatives:

1. Accept the F&A Committee's recommendation and approve the proposed revised versions of the MP Guarantee Agreements.
2. Do nothing and continue to use the current Board-approved MP Guarantee Agreements.
3. Instruct ERCOT Staff to further revise the MP Guarantee Agreements based upon any additional directives from the Board.

Conclusion/Recommendation:

Approve the proposed revised versions of the Market Participant Guarantee Agreement and Foreign Market Participant Guarantee Agreement.



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

WHEREAS, 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 February, 17, 2009 meeting, the ERCOT Board passed a motion approving the above Resolution by a vote of

_____.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2009.

Michael G. Grable
Corporate Secretary