



ERCOT Finance & Audit Committee Meeting
7620 Metro Center Drive, Austin, Texas
Met Center, Conference Room 206
June 20, 2011; 12:00pm – 2:00pm*

Item #	Agenda Item Type	Description/Purpose/Action Required	Presenter	Time
		Call Open Session to order and announce proxies	Jorge Bermudez	12:00pm
1.	Vote	Approve general session minutes (5/16/11)	Jorge Bermudez	
2.	Discussion	Review preliminary 2012-2017 budget highlights	Misti Hancock	
3.	Vote	Recommend revision of ERCOT security screening study fee	Dan Woodfin	
4.	Discussion	Commodities Exchange Act exemption	Mark Ruane	
5.	Vote	Recommend changes to standard forms of Letter of Credit and Market Participant Guarantee Agreements	Chad Seely	
6.	Vote	Recommend corrected effective date for revised Investment Corporate Standard – approved May 2011	Mike Petterson	
7.	Discussion	Quarterly Committee education on accounting developments	Freddy Wolff	
8.	Discussion	Review Committee briefs	Mike Petterson	
9.	Discussion	Future agenda items	Mike Petterson	
10.		Other business	Mike Petterson	
		Convene to Executive Session	Jorge Bermudez	
11.	Vote	Approve executive session minutes (5/16/11)	Jorge Bermudez	
12.	Discussion	12a. Internal Audit status report	Bill Wullenjohn	
	Discussion	12b. Update on timeline for 2012 Internal Audit plan	Bill Wullenjohn	
	Discussion	12c. Update on Internal Audit Staffing for 2011	Bill Wullenjohn	
	Discussion	12d. Discussion of Internal Audit Staffing for 2012	Bill Wullenjohn / Trip Doggett	
	Discussion	12e. EthicsPoint update	Bill Wullenjohn	
13.	Discussion	Contract, personnel, security, compliance, risk management, litigation and regulatory matters	Jorge Bermudez	
		Reconvene to Open Session		
		Adjourn meeting	Jorge Bermudez	2:00pm

** Background material is enclosed or will be distributed prior to meeting. All times shown in the agenda are approximate.
The next Finance & Audit Committee Meeting will be held Monday, July 18, 2011, at ERCOT, 7620 Metro Center Drive, Austin, Texas 78744, in Room 206.*

1. Approval of General Session Minutes

Jorge Bermudez

Approval of General Session Minutes

- Vote 5/16/11



**DRAFT GENERAL SESSION MINUTES OF
THE FINANCE & AUDIT COMMITTEE MEETING
OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

Electric Reliability Council of Texas, Inc.
7620 Metro Center Drive (Room 206) - Austin, Texas 78744
May 16, 2011 at 12:30 p.m.

Pursuant to notice duly given and after determination by the Committee Chairman that a quorum was present, the meeting of the Finance and Audit (F&A) Committee of the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) convened on the above-referenced date.

General Session Attendance

Committee Members:

Director	Affiliation	Segment
Bermudez, Jorge (Vice Chairman)	Unaffiliated	Unaffiliated Director
Crowder, Calvin	American Electric Power Service Corporation	Investor Owned Utility
Dreyfus, Mark	Austin Energy	Municipal
Espinosa, Miguel	Unaffiliated	Unaffiliated Director
Fehrenbach, Nick	City of Dallas	Commercial Consumer
Karnei, Clifton (Chairman)	Brazos Electric Power Cooperative	Cooperative
Zlotnik, Marcie	StarTex Power	Independent Retail Electric Provider

Guest Board Members and Segment Alternates:

Director	Affiliation	Segment
Bivens, Danny	Office of Public Utility Counsel	Alternate Representative for Sheri Givens – Residential Consumer (Beginning with Agenda Item 2)
Brown, Jeff	Shell Energy North America	Segment Alternate – Independent Power Marketer
Doggett, Trip	ERCOT	President and Chief Executive Officer (CEO) (Beginning with Agenda Item 2)
Doll, Laura	Unaffiliated	Unaffiliated Director (Beginning with Agenda Item 2)
Gresham, Kevin	E.ON Climate & Renewable NA LLC	Segment Alternate – Independent Generator (Beginning with Agenda Item 2)



Helton, Bob	International Power America Services	Independent Generator
Patton, Dr. A.D.	Unaffiliated	Unaffiliated Director (Beginning with Agenda Item 2; except Agenda Item 4)
Ryall, Jean	Constellation Energy	Independent Power Marketer (Beginning with Agenda Item 4)

Other Guests:

Anderson, Ken	Public Utility Commission of Texas – Commissioner (Beginning with Agenda Item 2)
Cobos, Lori	ERCOT Associate Corporate Counsel
Cleary, Mike	ERCOT Senior Vice President and Chief Operating Officer
Hancock, Misti	ERCOT Manager of Budget and Financial Analysis
Leady, Vickie	ERCOT Assistant General Counsel and Assistant Corporate Secretary
Magness, Bill	ERCOT Vice President, General Counsel and Corporate Secretary
Manning, Chuck	ERCOT Vice President of Human Resources and Chief Compliance Officer
Morgan, Richard	ERCOT Vice President and Chief Information Officer
Petterson, Mike	ERCOT Vice President of Finance and Treasury
Ruane, Mark	ERCOT Vice President of Credit and Enterprise Risk Management
Saathoff, Kent	ERCOT Vice President of Grid Operations and System Planning
Swanson, Leslie	ERCOT Treasury Manager
Wullenjohn, Bill	ERCOT Director of Internal Audit
Yager, Cheryl	ERCOT Director of Credit

Clifton Karnei, F&A Committee Chairman, determined a quorum was present and called the F&A Committee meeting to order at approximately 12:30 p.m. Chairman Karnei announced that there were no proxies and addressed the following Agenda Items in the order below.

Approval of April 18, 2011 General Session Minutes (Agenda Item 1)

Chairman Karnei entertained a motion to approve the April 18, 2011 F&A Committee General Session Meeting Minutes (Minutes).

Miguel Espinosa moved to approve the Minutes as presented. Calvin Crowder seconded the motion. The motion passed by unanimous voice vote with no abstentions.

Dodd-Frank Act Exemption (Agenda Item 2)

Bill Magness provided the Committee members with a status update on exemption issues related to the Dodd-Frank Act and responded to comments and questions from the Committee members. Chairman Karnei then announced that a vote on this item would be taken when the General Session was reconvened after Executive Session.



Annual Review and Recommendation of Board Approval of the Investment Corporate Standard (Agenda Item 3)

Leslie Swanson provided the Committee members with an overview of the revised Investment Corporate Standard, noting that a sixty (60)-day extension of the current standard was needed to be able to open additional accounts as necessary, and responded to questions and comments from the Committee members. After discussion among the Committee members, Chairman Karnei called for a motion to recommend Board approval of the revised Investment Corporate Standard with modifications to No. 1 and 2 in Section 6 (Investment Constraints) of the standard that provide as follows:

1. No more than 10% of the portfolio shall be invested in any single Qualified Institution, provided that in no event shall investments in any single Qualified Institution exceed \$50M.
2. No more than 10% of the portfolio shall be invested in any single money market fund, provided that in no event shall investments in any single money market fund exceed \$50M.

Marcie Zlotnik moved to approve the Investment Corporate Standard as presented with the suggested modifications. Nick Fehrenbach seconded the motion. The motion passed by unanimous voice vote with no abstentions.

Periodic Investment Report (Agenda Item 4)

Ms. Swanson provided the Committee members with the Periodic Investment Report and responded to questions and comments from the Committee members.

Credit Update (Agenda Item 5)

Cheryl Yager provided the Committee members with a Credit Update and responded to comments and questions from the Committee members.

Review Preliminary 2012 Budget Preparation Schedule (Agenda Item 6)

Misti Hancock presented the preliminary 2012 Budget Preparation Schedule to the Committee members. No comments or questions were voiced by the Committee members. Chairman Karnei recommended that the F&A Committee meeting in July start at an earlier time and include a “working lunch” to allow the Committee members to focus on the 2012 budget.

Committee Briefs (Agenda Item 7)

Mike Petterson noted that the Committee Briefs were included in the meeting materials. No questions or comments were voiced by the Committee members.

Future Agenda Items (Agenda Item 8)

Mr. Petterson noted that the following items would be presented for consideration at next month’s F&A Committee meeting:

- Review of proposed 2012 budget, including discussion of debt structure;
- Report on new accounting and financial reporting developments;
- Follow-up discussion on Dodd-Frank Act exemption issues; and
- Approval of the revised Generation Interconnection fee.



Other Business (Agenda Item 9)

There was no other business considered at this time.

Convene to Executive Session (Agenda Items 10 through 12)

Chairman Karnei adjourned the meeting into Executive Session at approximately 1:47 p.m. and reconvened General Session at approximately 3:06 p.m.

Vote on Matters from Executive Session (Agenda Item 13)

Chairman Karnei called for motions on two voting matters from Executive Session.

Mark Dreyfus made a motion that the F&A Committee recommend Board approval of ERCOT making regulatory filings at the Commodity Futures Trading Commission (CFTC) as necessary to seek an exemption under CEA Section (4)(c). Jorge Bermudez seconded the motion. The motion passed by unanimous voice vote with no abstentions.

Mr. Espinosa made a motion that the F&A Committee recommend Board approval of ERCOT's initiation of a request for an Internal Revenue Service (IRS) Letter Ruling regarding ERCOT's contemplation of a CFTC exemption. Mr. Crowder seconded the motion. The motion passed by unanimous voice vote with no abstentions.

Adjournment

Chairman Karnei adjourned the F&A Committee meeting at approximately 3:08 p.m.

Committee materials and presentations from the meeting are available on ERCOT's website at:
http://www.ercot.com/committees/board/finance_audit/

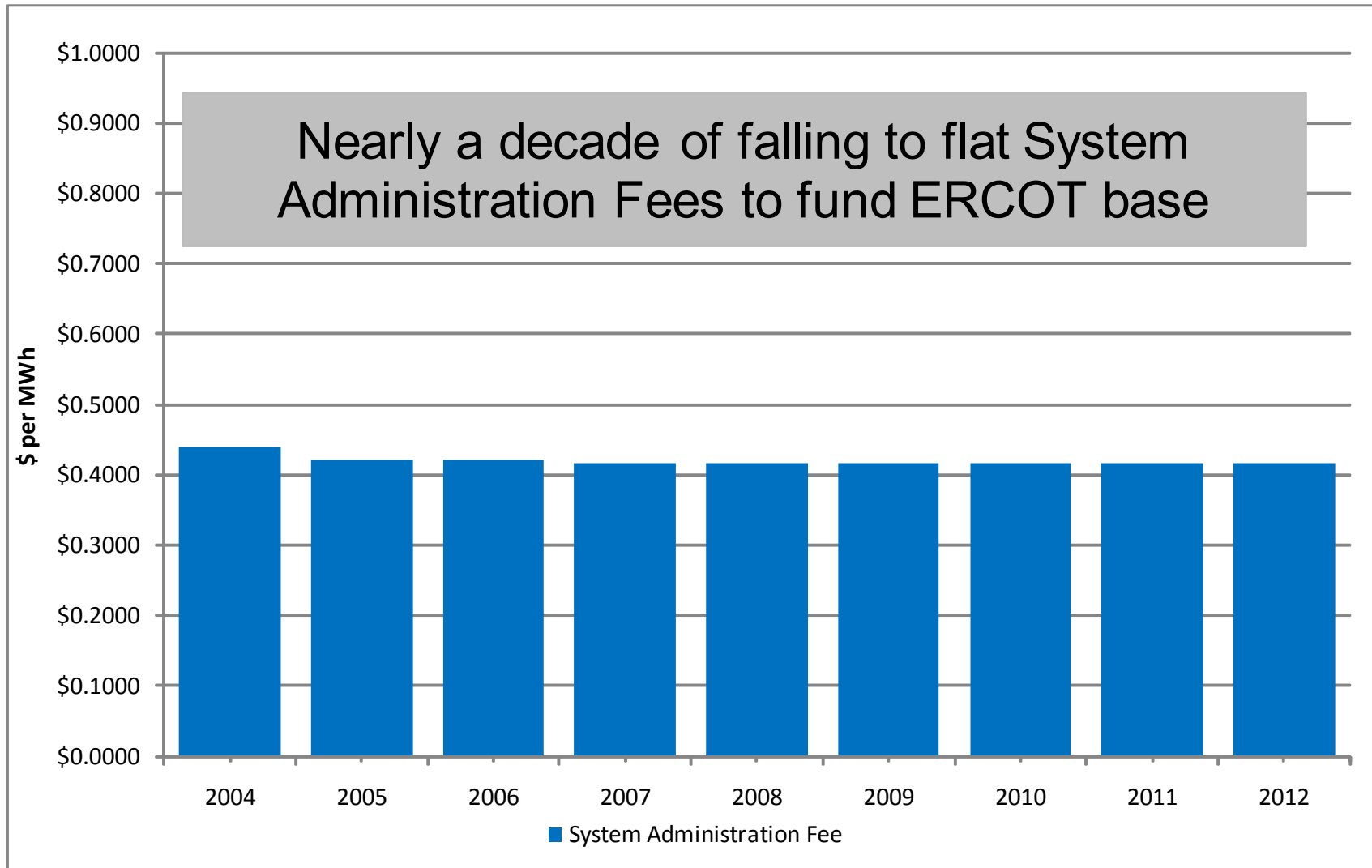
Lori Cobos
Committee Secretary

2. Review Preliminary 2012-2017 Budget Highlights

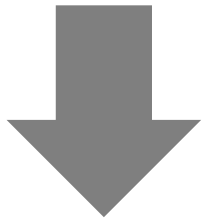
Misti Hancock

- System Administration Fee - \$0.4171 per MWh
 - 9 years of falling to flat funding of ERCOT base operations
- Nodal Surcharge - \$0.375 per MWh
 - Nodal implementation cost paid off nearly one year early
- Projects
 - \$15 + million per year dedicated for priority projects to enhance system reliability and market operations
- Long-term outlook
 - Fees reduced more than 40 percent
 - Outstanding debt reduced by more than 75 percent

2. Review Preliminary 2012-2017 Budget Highlights Historical System Administration Fee

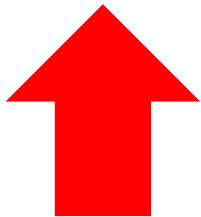


2. Review Preliminary 2012-2017 Budget Highlights Requirement Changes 2011 Budget vs. 2012 Budget



Downward Fee Pressure.....

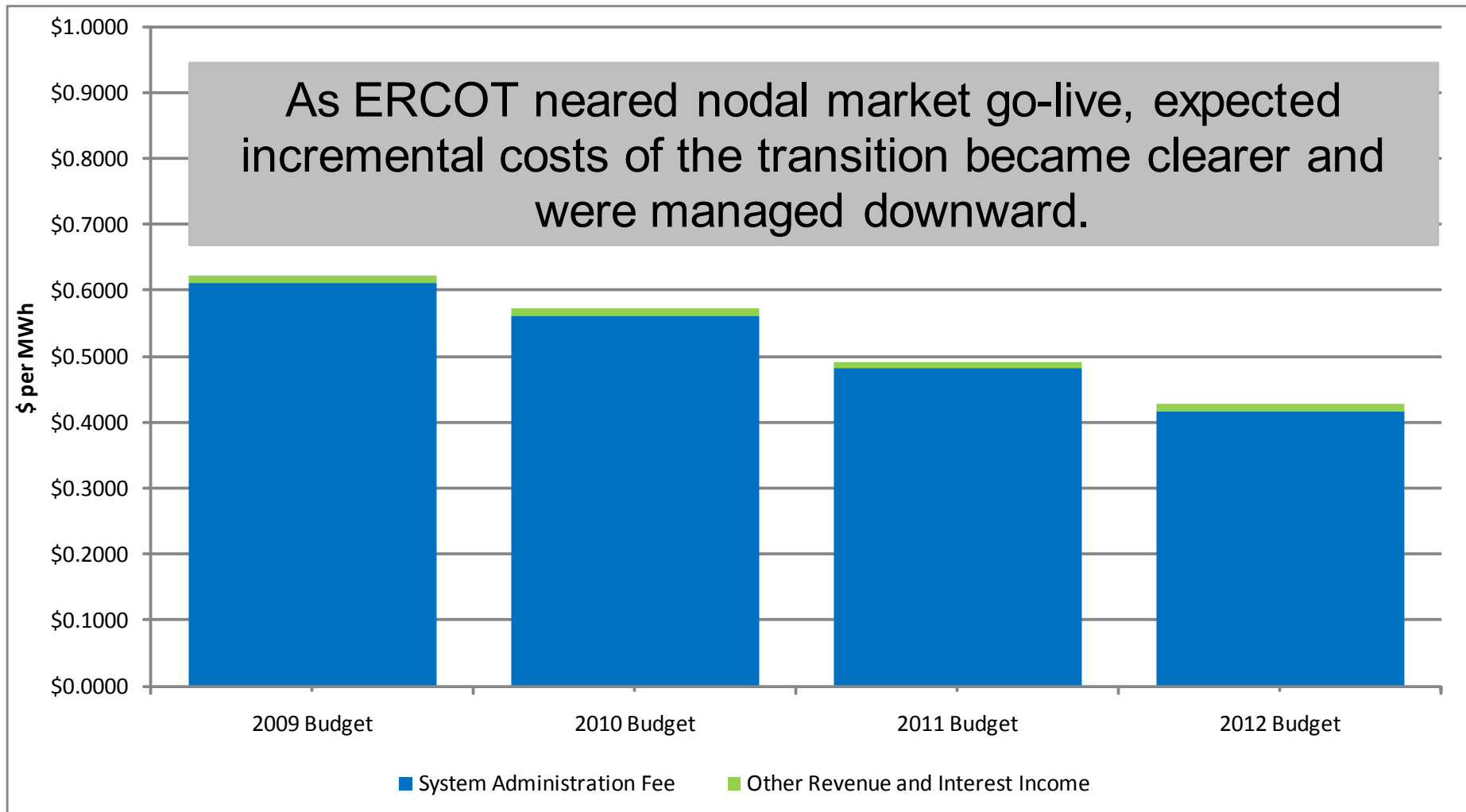
- Increased MWh consumption
- Reduced Project Portfolio



Upward Fee Pressure.....

- Reduced Carry Forward & Extraordinary Revenue
- Increased HW/SW Maintenance for Nodal Systems
- Increased Vendor Services for Proprietary Systems
- Increased Base Operations Cost of Labor

2. Review Preliminary 2012-2017 Budget Highlights – Progression of Expected Base Operating Costs, Nodal Go-Live + 1 Year

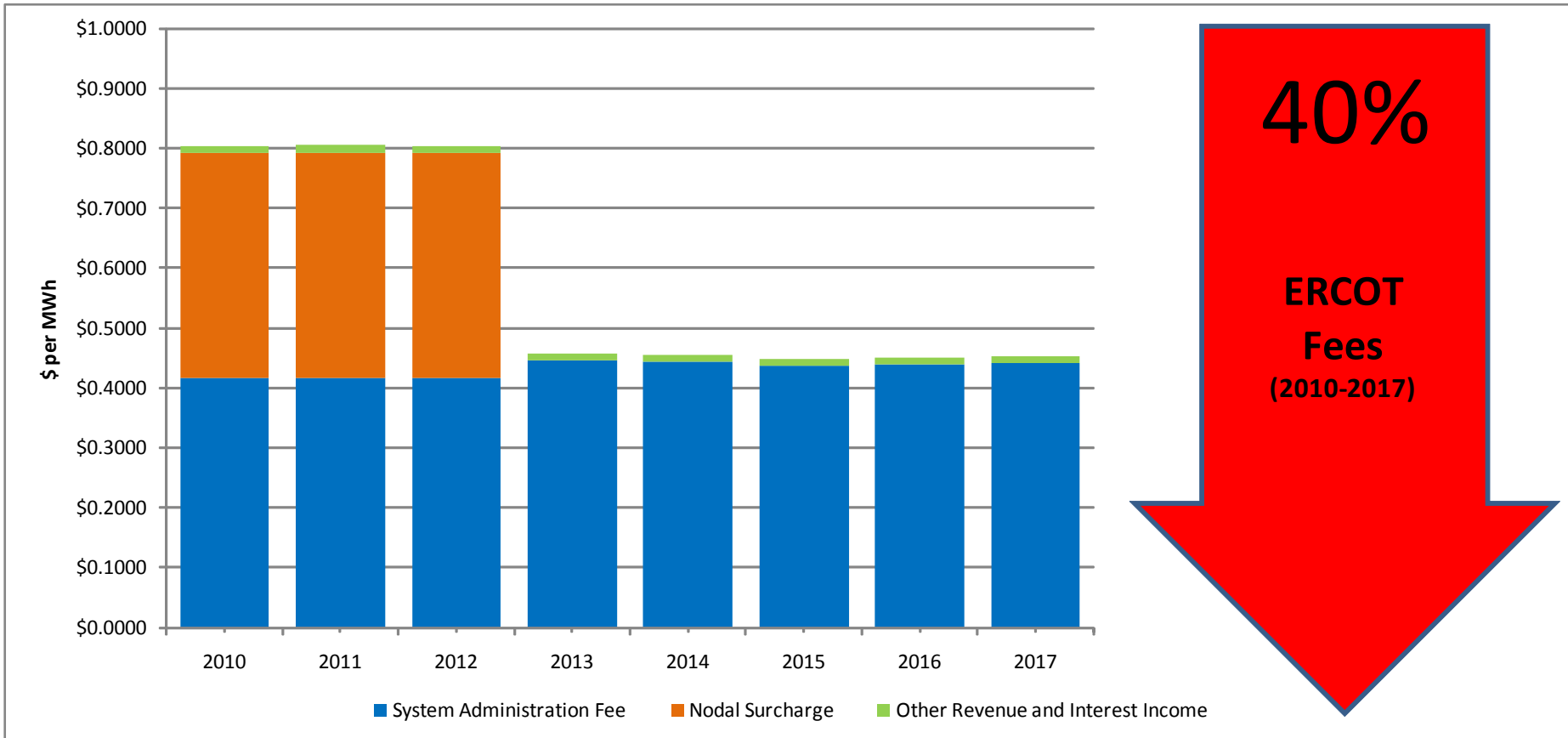


2. Review Preliminary 2012-2017 Budget Highlights Annual Project Budgets

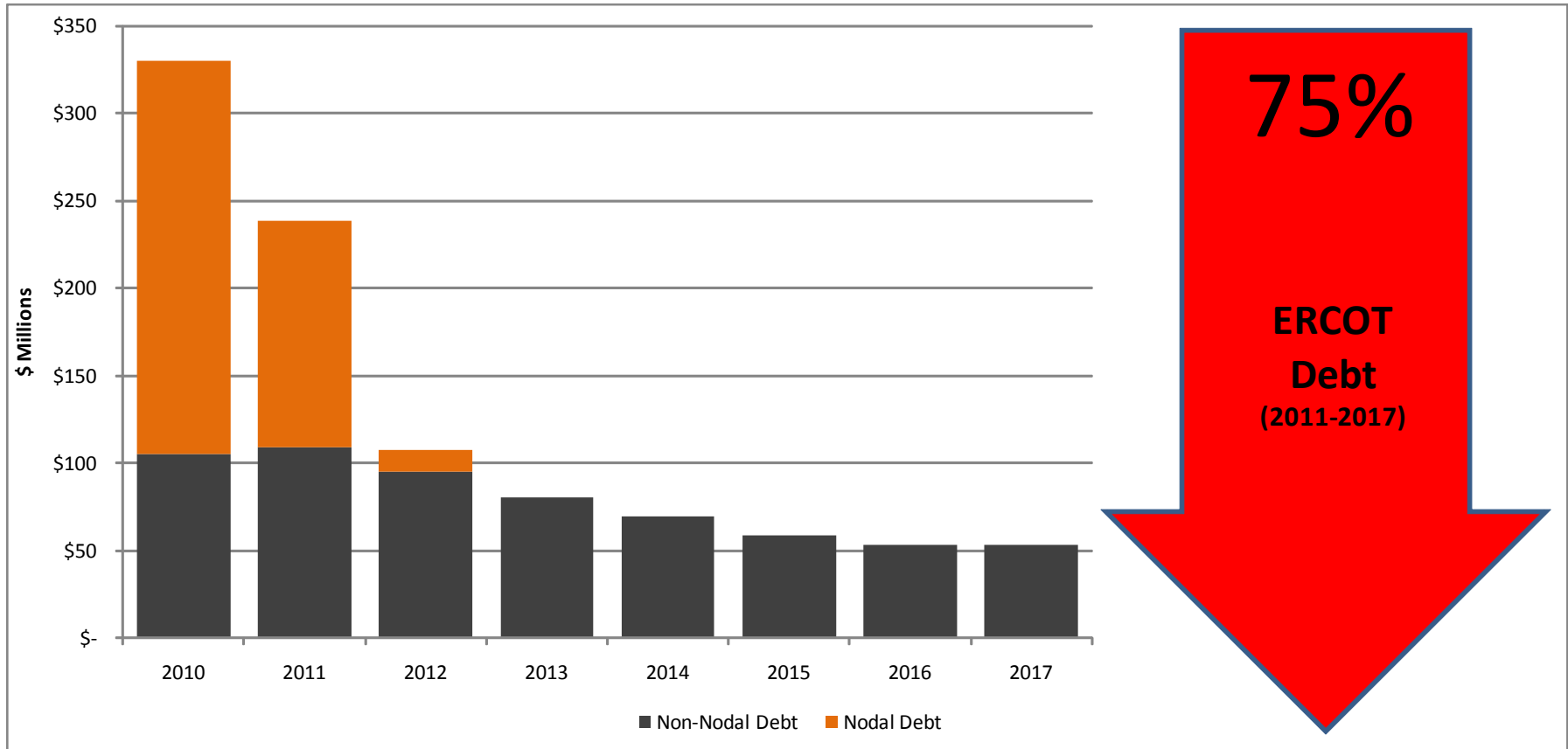
- **\$15 + million per year dedicated for priority projects to enhance system reliability and market operations**

Budget Year	Preliminary Project Budget
2012	\$15.0 million
2013	\$15.0 million
2014	\$20.0 million
2015	\$20.0 million
2016	\$25.0 million
2017	\$25.0 million

2. Review Preliminary 2012-2017 Budget Highlights Long-Term Outlook of Total Fees



2. Review Preliminary 2012-2017 Budget Highlights Long-Term Outlook of Outstanding Debt



2. Review Preliminary 2012-2017 Budget Highlights – Recap Misti Hancock

- Maintaining Flat System Administration Fee
- Nodal Program Recovery Completed Early
- \$15M Project Portfolio to Enhance Reliability & Systems
- Long-term Outlook
 - 40% Fee Reduction
 - 75% Outstanding Debt Reduction

Detailed Schedules

2. Review Preliminary 2012-2017 Budget Highlights 2012 Base Operations Staffing Requirements

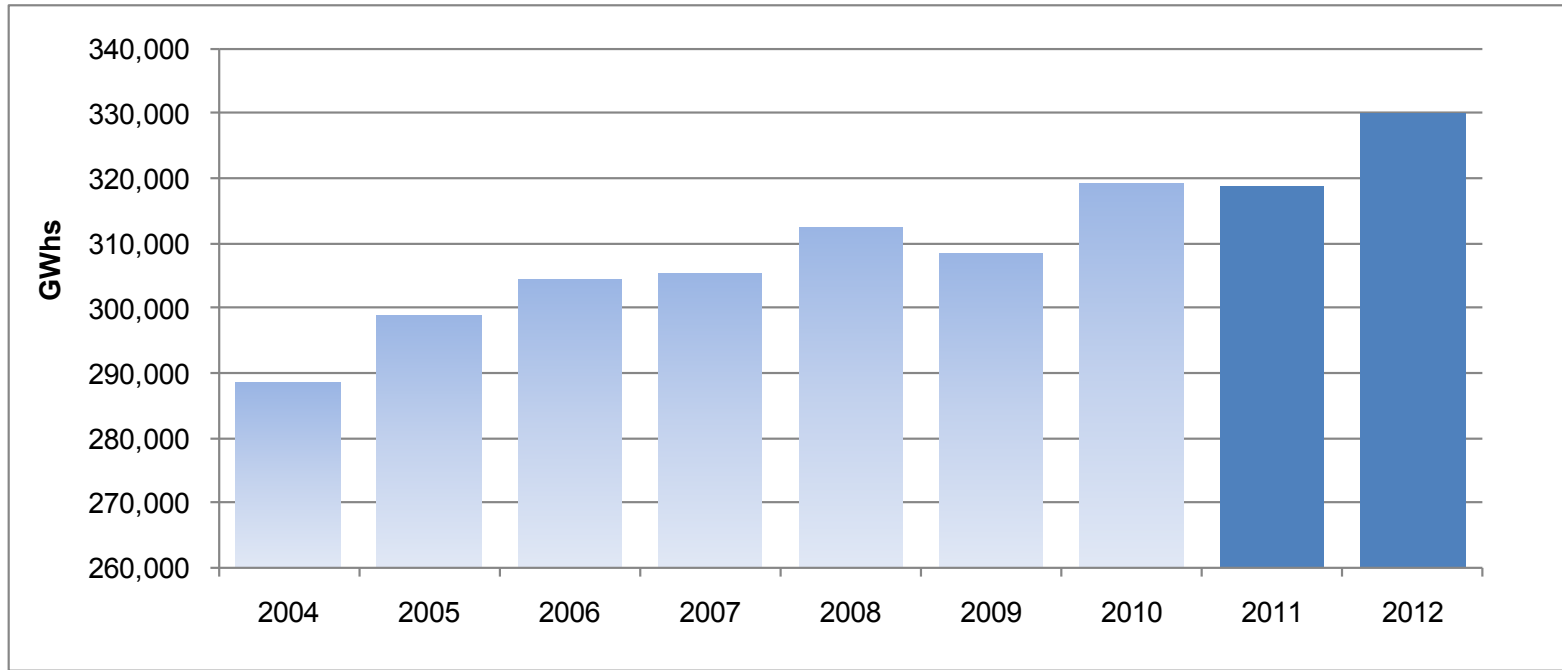
2011 Base Operations	584
Plus: Incremental staff associated with PRRs and NPRRs	5
Less: Efficiencies Obtained	<u>(16)</u>
2012 Base Operations	573

- Staffing for steady-state in Nodal Market
- Right people with the right skills in the right positions at the right cost
 - 2% Merit
 - 1% Other Salary Adjustments

2. Review Preliminary 2012-2017 Budget Highlights Revenue Requirements

(\$ Thousands)	2011 Budget	2012 Preliminary Budget	2013 Projected Budget	2014 Projected Budget	2015 Projected Budget	2016 Projected Budget	2017 Projected Budget
ERCOT O&M Expense							
Labor	70,307	73,915	75,762	77,657	79,598	81,588	83,628
Equipment & Tools	881	796	813	830	847	865	883
Outside Services	2,973	6,751	6,893	7,038	7,185	7,336	7,490
Utility, Maintenance, & Facilities	12,599	12,053	12,306	12,564	12,828	13,097	13,372
Hardware & Software License & Maint.	9,861	15,447	15,772	16,103	16,441	16,786	17,139
Employee Expenses	1,021	1,041	1,063	1,085	1,108	1,131	1,155
Other Expenses	3,610	3,457	3,530	3,604	3,680	3,757	3,836
Subtotal - O&M Expense	101,252	113,460	116,139	118,881	121,687	124,560	127,503
Debt Service	29,715	29,193	29,193	29,193	29,193	29,193	29,193
Revenue Funded Projects	16,758	6,000	6,000	8,000	8,000	10,000	10,000
Subtotal - Revenue Requirement	147,725	148,653	151,332	156,074	158,880	163,753	166,696
Less: Other Revenue	4,006	3,900	3,982	4,066	4,151	4,238	4,327
Less: Extraordinary Item Revenue	5,000	-	-	-	-	-	-
2010 Carry Forward	14,420	-	-	-	-	-	-
2011 Carry Forward	-	10,885	-	-	-	-	-
Subtotal - Revenue Requirement from System	124,299	133,868	147,350	152,008	154,729	159,515	162,369
Subtotal - System Administration Fee	\$ 0.4004	\$ 0.4056	\$ 0.4339	\$ 0.4315	\$ 0.4264	\$ 0.4286	\$ 0.4293
NERC Dues	11,975	12,226	12,483	12,745	13,013	13,286	13,565
NERC Electric Reliability Organization fee	(11,975)	(12,226)	(12,483)	(12,745)	(13,013)	(13,286)	(13,565)
Protocol Services	2,466	999	1,029	1,051	1,073	1,095	1,118
Market Monitoring	2,700	2,800	2,859	2,919	2,980	3,043	3,107
Subtotal - Mandated Costs	5,166	3,799	3,888	3,970	4,053	4,138	4,225
Subtotal - System Administration Fee - Mandated	\$ 0.0166	\$ 0.0115	\$ 0.0114	\$ 0.0113	\$ 0.0112	\$ 0.0111	\$ 0.0112
Total - Revenue Rqmt from System Admin Fee	129,465	137,667	151,238	155,978	158,782	163,653	166,594
ERCOT System Administration Fee	\$ 0.4171	\$ 0.4171	\$ 0.4453	\$ 0.4427	\$ 0.4376	\$ 0.4397	\$ 0.4405
GWh	310,410	330,034	339,616	352,294	362,841	372,150	378,178
Total Base Project/Data Center/Facility Capital	41,896	15,000	15,000	20,000	20,000	25,000	25,000
Total ERCOT Spending Authorization	190,004	173,678	176,703	184,789	187,946	196,177	199,486

2. Review Preliminary 2012-2017 Budget Highlights Historical Load Trend and Forecast



Fiscal Year	Actual	Projected	% Growth/Decline
2004	288,291,328		1.16%
2005	298,782,420		3.64%
2006	304,373,763		1.87%
2007	305,482,175		0.36%
2008	312,401,084		2.26%
2009	308,277,758		-1.32%
2010	319,097,400		3.51%
2011		318,876,379	-0.07%
2012		330,033,592	3.50%

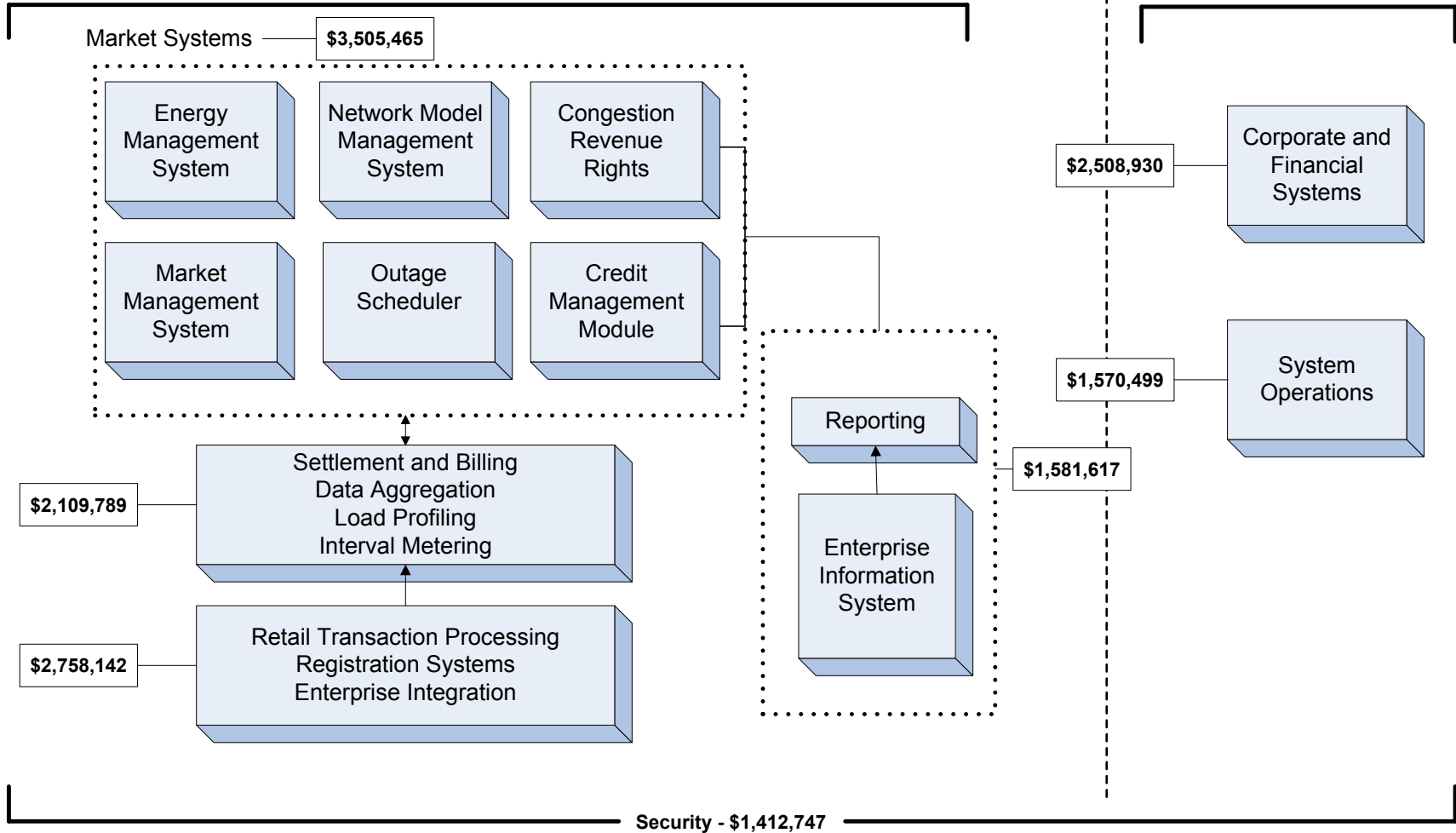
**AVG
1.66%**

2. Review Preliminary 2012-2017 Budget Highlights 2012 Hardware and Software License and Maintenance

ERCOT 2012 Hardware & Software Support/Maintenance Budget = \$15,447,189
Preliminary

ERCOT Production Systems

ERCOT Corporate Systems



2. Review Preliminary 2012-2017 Budget Highlights 2012 Project Portfolio

- **Key Areas of Focus (Project Categories)**
 - Regulatory
 - Required by Legislature, PUCT, NERC, FERC or legal ruling
 - Technical Foundation
 - Required maintenance and upgrades
 - Technical evolution and performance
 - Systemic growth
 - Business Strategy
 - Market driven enhancements and efficiencies
 - ERCOT strategic initiatives
 - Efficiencies & Enhancements
 - Internally driven operational improvements
 - Enhanced customer service

2. Review Preliminary 2012-2017 Budget Highlights 2012 Project Portfolio

Project Category	Target Funding	Projects Started in Previous Years	New 2012 Projects
Technical Foundation	\$ 6,500,000	4	7
Business Strategy	5,950,000	5	15
Efficiencies & Enhancements	2,050,000	2	9
Regulatory	1,600,000	2	1
Total	\$ 16,100,000	13	32

- ERCOT will manage within the projected \$15M project funding allocation.
- As active projects move through the project lifecycle and new projects are considered for initiation, they will be reassessed for criticality, cost/benefit and resource availability against other projects in the portfolio.

2. Review Preliminary 2012-2017 Budget Highlights 2012 Project Portfolio

Project Category	2012 Rank	Project	2012 Budget
Technical Foundation	1	Data Center Migration	\$100k-\$250k
Technical Foundation	2	Minor Cap - Critical	\$500k-\$1M
Technical Foundation	3	Information Lifecycle Mgmt Phase 2	\$500k-\$1M
Technical Foundation	4	Settlement Upgrade	\$1M-\$2M
Technical Foundation	5	Oracle 11g Upgrade	\$1M-\$2M
Technical Foundation	6	EMS Upgrade	\$1M-\$2M
Technical Foundation	7	Enterprise DW Platform Transition	\$500k-\$1M
Technical Foundation	8	Job Scheduling Upgrade v8	\$100k-\$250k
Technical Foundation	9	Siebel Upgrade	\$250k-\$500k
Technical Foundation	10	NMMS Upgrade	\$100k-\$250k
Technical Foundation	11	DC Growth & Asset Replacement	\$500k-\$1M

2. Review Preliminary 2012-2017 Budget Highlights 2012 Project Portfolio

Project Category	2012 Rank	Project	2012 Budget
Business Strategy	1	TXSET4.0	\$250k-\$500k
Business Strategy	2	SCR760 - Information Model Mgr & Topology	\$1M-\$2M
Business Strategy	3	Cyber Security Project #1	\$50k-\$100k
Business Strategy	4	Cyber Security Project #2	<\$50k
Business Strategy	5	TSAT Wind Model	\$100k-\$250k
Business Strategy	6	PRR830/NPRR269 - Reactive Power Capability	\$250k-\$500k
Business Strategy	7	Demand Response (Look Ahead SCED)	\$500k-\$1M
Business Strategy	8	Facilities Project	\$1M-\$2M
Business Strategy	9	Cyber Security Project #3	\$500k-\$1M
Business Strategy	10	Cyber Security Project #4	\$500k-\$1M
Business Strategy	11	NPRR347 - Single Daily Invoice	\$50k-\$100k
Business Strategy	12	NPRR260 - MIS Secure Access	\$100k-\$250k
Business Strategy	13	TML Transition to MIS	\$100k-\$250k
Business Strategy	14	Cyber Security Project #5	\$100k-\$250k
Business Strategy	15	Planning Site Transition to MIS	\$100k-\$250k
Business Strategy	16	NPRR222 - Half Hour Start Clawback	<\$50k
Business Strategy	17	NPRR326 - Adjust RT SPP Calc.	<\$50k
Business Strategy	18	NPRR272 - Quick Start Resources	\$100k-\$250k
Business Strategy	19	NPRR207 - Unit Deselection	\$50k-\$100k
Business Strategy	20	MarkeTrak Upgrade/Enhancements	\$500k-\$1M

2. Review Preliminary 2012-2017 Budget Highlights 2012 Project Portfolio

Project Category	2012 Rank	Project	2012 Budget
Efficiencies/Enhancements	1	Incremental Update Capability - Phase 1	\$100k-\$250k
Efficiencies/Enhancements	2	MP Online Data Entry - Phase 1	\$500k-\$1M
Efficiencies/Enhancements	3	CMS and MIR replacement	\$250k-\$500k
Efficiencies/Enhancements	4	ERCOT Website Enhancements	\$250k-\$500k
Efficiencies/Enhancements	5	Macomber Map NERC SA/Compliance Enhancements	\$250k-\$500k
Efficiencies/Enhancements	6	IGRID Implementation	<\$50k
Efficiencies/Enhancements	7	Contingency Functionality Enhmts.	<\$50k
Efficiencies/Enhancements	8	SMTNET Improvements	\$50k-\$100k
Efficiencies/Enhancements	9	MP Communications Tool	\$50k-\$100k
Efficiencies/Enhancements	10	Smartphone Interface ("MyGrid")	\$100k-\$250k
Efficiencies/Enhancements	11	OA Grid Health Operator View	<\$50k
Regulatory	1	REC Enhancements	\$500k-\$1M
Regulatory	2	CFTC Compliance	\$100k-\$250k
Regulatory	3	Compliance Software Tool	\$500k-\$1M

3. Recommend Revision of ERCOT Security Screening Study Fee: Current Status – Dan Woodfin

- ERCOT is required to perform a screening study for new Generation Resources requesting connection to the ERCOT transmission system per PUCT Substantive Rules Section 25.198 (c)
- ERCOT charges a fee for performing this study
- The current fee, in place since 2004, ranges from \$1,000 to \$5,000 depending upon the MW capacity of the generation project
- The table to the right shows the number of screening studies performed each year since 2004:
- The number of requests is expected to increase from the 2010 volume due to completion of CREZ lines and tightening reserve margins

Year	Number of Requests
2004	19
2005	44
2006	99
2007	106
2008	94
2009	81
2010	55
2011 (thru 6/9)	35
Expected On-Going	75-100

3. Recommend Revision of ERCOT Security Screening Study Fee: Background and Update – Dan Woodfin

- Under PUCT’s new rule on ERCOT oversight, ERCOT Board can approve User Fees, such as the Screening Study fee
- Proposed the concept of increasing fee at April F&A meeting; received good feedback and some questions
- Since the April F&A Meeting:
 - Have updated estimates presented at April meeting, which had been based on previous fee case filing preparation
 - Have collected estimates from other ISOs on their average Feasibility Study costs, as requested

ISO A	Avg. \$5,000; Range \$1,000-50,000; Allocation of Batch Studies
ISO B	Range \$8,000-10,000; Allocation of Batch Studies
ISO C	Avg. \$5000; Allocation of Batch Studies
ISO D	Outsourced to consultant paid by gen. (Canada)

3. Recommend Revision of ERCOT Security Screening Study Fee: Proposed Fee Structure – Dan Woodfin

- The proposed fee schedule is:

Project Size	Fee
<= 150 MW	\$5,000
> 150 MW	\$7,000

- New fee schedule would be more inline with current costs
- New fee is consistent with fees charged by other ISOs for similar work
- \$15/MW Full Interconnection Study ERCOT fee, payable at time of full interconnection study request, may be increased to account for additional ERCOT work related to subsynchronous interaction screening, requirements tracking and validation

3. Recommend Revision of ERCOT Security Screening Study Fee: Cost Estimate – Dan Woodfin

- The following table shows a cost estimate for performing screening studies that is the basis for the fee:

Per Interconnect	Loaded Rate (\$/Hr)	Hours		Cost	
		Sum		Large	Small
Interconnect Size:		Large	Small	Large	Small
Labor Hours (loaded rate)	60	49.5	32.5	\$2,970	\$1,950
Management and Legal Review (33% of Labor Hours @ loaded rate)	87	16.3	10.7	\$1,421	\$933
Labor Subtotal				\$4,391	\$2,883
Facilities Charge				\$481	\$316
Admin				\$763	\$501
IT Support Charge				\$488	\$320
Overhead Sub Total				\$1,732	\$1,137
ERCOT Total Cost				\$6,123	\$4,020
Compare to Consultant Rate (Rate at same # of hours)	150	65.8	43.2	\$9,875	\$6,484

4. Commodities Exchange Act Exemption: Summary

Mark Ruane

As authorized by the Board in May, ERCOT plans to seek a Commodity Exchange Act exemption from the CFTC. ERCOT is working with the other ISOs/RTOs on specific compliance terms and filing requirements.

- Expected issues raised by implementing changes that may be necessary to receive the exemption
- Third party Central Counter-Party proposal
- Next steps

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

- 1. ERCOT becomes central counter-party (CCP)**
- 2. Setting criteria for market participation**
- 3. Reduced settlement window for real-time market**
- 4. Two-day limit to 'cure' collateral calls**
- 5. Elimination of unsecured credit for CRR market**
- 6. Limitation on unsecured credit of \$50 million**
- 7. Disallowance of netting between CRR and non-CRR markets**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

1. ERCOT becomes central counter-party (CCP)

- **Expected to enhance ERCOT's position in bankruptcy due to clarification of ability to enforce set-off rights. Most practical of the options possible after FERC Order 741.**
- **Operational costs associated with changes to Protocols, Standard Form Agreement, and certain debt covenants.**
- **ERCOT is preparing to seek IRS confirmation that this will not impact 501(c) tax-exempt status.**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

1. ERCOT becomes central counter-party (CCP)

- **No decision to date on establishment of a separate legal entity for transacting (e.g. PJM Settlements)**
- **Potential change in accounts to reflect gross positions**
 - **Other ISOs/RTOs likely to or are using net basis**
 - **Require clarification of impact in bankruptcies**
 - **Potential costs associated with additional testing by external auditors**
- **Discussions will be started with banks, ratings agencies and noteholders to inform and address issues**
- **There are no indications to date that assumption of the CCP role materially increases ERCOT's risk profile**
- **Consultations underway with PUCT staff**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

2. Setting eligibility criteria for market participation

- **FERC left the initial development of market participation criteria to the ISOs/RTOs, but with the expectation that standards would address:**
 - Expertise in risk management and ISO/RTO markets
 - Ability to respond to ISO/RTO direction
 - Adequate capitalization

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

2. Setting criteria for market participation

- **Individual ISOs/RTOs are developing criteria through their respective stakeholder processes.**
 - Management certification - Annual officer certification attesting to
 - Sufficiency of risk management capabilities
 - Written policies, procedures and controls
 - Framework to identify the risks to which the participant is exposed
 - In some cases, requirements for appropriate segregation of duties and use of specified risk metrics
 - Expertise in an ISO/RTO market
 - Participants must have traders complete market training
 - Traders in financial products must attend product-specific training
 - New applicants must complete training prior to participation
 - ERCOT will be developing training requirements with stakeholders and PUCT

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

2. Setting criteria for market participation

- Ability to respond to ISO direction
 - Adequate operating procedures and technical abilities to respond

- Adequate capitalization
 - \$1 million tangible net worth (parent level), or
 - \$10 million in assets, or
 - Up to \$500,000 in additional collateral requirements for participants not meeting capitalization standards
 - There is considerable variation in the ISO/RTO proposals with respect to the final point, with generally lower requirements for non-FTR activity

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

2. Setting criteria for market participation

- **Failure to meet criteria or provide information would constitute default**
- **Some differences in specific proposals, e.g.**
 - Specific review of policies and controls
 - Investment grade rating
 - Third party transacting
 - Use of specific risk metrics and methodologies
 - PJM proposes tariff language specifying that false or incomplete statements could lead to enforcement action and/or civil or criminal legal action
 - Potential exception items:
 - Adverse information
 - Ratings downgrade
 - Restatement of financials
 - Default in another organized market
- **Supplemented by informational disclosures**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

2. Setting criteria for market participation – Risk impacts

- **CFTC and FERC staff have indicated that risk management rules will require some degree of verification by the ISO/RTO of Market Participant risk management capabilities, however there is no specific proposal in this respect.**
- **Impacts:**
 - Compliance monitoring
 - Management of additional collateral
 - Protocol revisions
 - Potential system upgrades
 - Provision of training for market participants
- **ERCOT will be discussing participation criteria with stakeholders and PUCT as requirements become clearer.**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

3. Reduced settlement window for real-time market

- **Day Ahead Market is already compliant with expected 14-day settlement and payment requirement**
- **NPRR347 (Counter-Party Invoice and Single Daily Settlement Invoice) is expected to bring approximately 82% of settlement days for Real Time market activity within a 16 day window**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

3. Reduced settlement window for real-time market

- **We are considering ways to further shorten the Real Time settlement and payment period. For example,**
 - **Reducing one day from settlement time line and one day from the payment period would result in 88% of operating days being settled within a 14 day window.**
- **Potential impacts**
 - **Automated Clearing House (ACH) payment timing**
 - **Maintaining data integrity in the settlements process**
 - **Protocol revisions required**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

4. Two-day limit to 'cure' collateral calls

- **ERCOT believes it is already compliant with this provision**
- **No material risk impact anticipated from this provision**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

5. Elimination of unsecured credit for CRR market

- **At May 31, 2011, a total of 64 counterparties have unsecured credit available either directly or indirectly through guarantees. Of the 38 entities that also have CRR activity, 15 have CRR activity that would require collateral (remaining 23 have credits from CRR activity)**
- **Elimination of unsecured credit in the CRR market**
 - Would increase collateral requirements by approximately \$4.0 million for CRR FCE (as of May 31, 2011)
 - ERCOT expects a more significant dollar impact when CRR auctions extend beyond monthly auctions
 - Likely will also have an impact on MPs in the CRR Auctions
- **Protocol and system changes are needed to implement this provision**
- **Operational risk entailed by this change is manageable**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

6. Limitation on unsecured credit of \$50 million

- **At May 31, 2011, fifteen counterparties have unsecured credit, either directly or indirectly through guarantees, in excess of \$50 million (across all markets) for a total of \$1.057 billion. The related Total Potential Exposure (TPE) for these entities is \$157 million.**
- **Based on activity and balances as of May 31, 2011, reducing the cap to \$50 million would reduce unsecured credit for these entities by approximately \$307 million to \$750 million.**
- **Operational risk entailed by this change is manageable.**

4. Commodities Exchange Act Exemption: Expected Conditions of CFTC CEA Exemption

7. Disallowance of netting between CRR and non-CRR markets

- **Currently netting between CRR and non-CRR markets is restricted to counterparties from whom ERCOT has a first priority security interest or who are either an Electric Cooperative or an Entity created under TWC § 222.001.**
- **As of May 31st, only 11 Counter-Parties or approximately 5% of CPs are allowed to net between CRR and non-CRR markets.**
- **Operational risk entailed by this change is manageable.**

Any additional risks identified as the exemption application process progresses will be communicated to the Board, the PUCT, and Market Participants as they arise.

4. Commodities Exchange Act Exemption: Third Party Central Counter-party

- **ERCOT staff have met with NASDAQ-OMX to discuss NASDAQ's proposal to act as a third party central counter-party on behalf of ERCOT**
- **Under the proposal NASDAQ would act as the counter-party in all ERCOT market transactions**
- **No fees to either side**
- **As proposed, ERCOT would continue to:**
 - Execute all credit, invoicing and settlement functions
 - Provide market services
 - Administer market Protocols
- **NASDAQ will not take on risk positions**
- **Structure intended to be similar to PJM – PJM Settlements relationship**

4. **Commodities Exchange Act Exemption: Third Party Central Counter-party**

- **NASDAQ intends to offer joint NASDAQ / ERCOT market participants the option to avail of netting with NASDAQ OTC market receivables (not forward exposures)**
- **Identified risk issues:**
 - Lack of clarity with respect to position set-off in the event of bankruptcy if ERCOT and third party OTC receivables are netted.
 - Can ISO functions as mandated under PURA be delegated?
 - Use of ERCOT personnel may lead to a situation where the private benefit to NASDAQ may be deemed to exceed the public benefit of the proposed NASDAQ arrangement.
 - Tax exemption issues with a not-for-profit entity subcontracting material activities to a for-profit organization.

4. Commodities Exchange Act Exemption: Next Steps

Mark Ruane

- **Discussions regarding CEA exemption application are ongoing in stakeholder meetings**
 - Credit Working Group Meeting
 - May 25th 2011
 - June 9th 2011
 - Technical Advisory Committee Meeting
 - June 2nd 2011
 - CFTC Credit Workshop
 - June 16th 2011

4. Commodities Exchange Act Exemption: Next Steps

Mark Ruane

- **PUCT discussion at June 17, 2011 Open Meeting (Project No. 39484)**
- **CFTC staff has proposed a timeline contemplating ISO/RTO exemption filings in early July**
- **Based on July filings, publication of proposed exemption order anticipated late July – early August**
- **Final exemption order publication expected end of October**
- **IRS briefing paper prepared in cooperation with other ISOs/RTOs**
- **Filing of IRS submission expected in July**
- **IRS determination expected prior to end of year**

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

Last year, the Finance & Audit (F&A) Committee requested that ERCOT Staff conduct a review of the Market Participant (MP) Guarantee Agreement to ensure that the standard form document adequately protects ERCOT's and MPs' interests.

In addition to formatting and non-substantive changes, ERCOT Staff recommends the following substantive changes to standard forms of the Letter of Credit and MP Guarantee Agreement:

Letter of Credit (LOC)

1. Broader demand and presentation language for drawing down on the LOC.
2. Additional time for Beneficiary (ERCOT) to present when Issuing Bank is not open for business on the expiration or termination date of the LOC.
3. Evergreen provision – automatically extended and renewed for one (1) year unless Beneficiary given sixty (60) days prior notice.
4. Corporate debt rating provision – Beneficiary may demand payment of the entire Amount of the LOC if Issuing Bank's corporate debt rating falls below that required by the ERCOT Protocols (Creditworthiness Standards).
5. Termination provision – Issuing Bank may terminate the LOC with sixty (60) days written notice. Beneficiary may demand payment within thirty (30) days before termination date if MP fails to replace the LOC.

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

MP Guarantee Agreement

1. Clarified additional expressed waiver provisions, such as right to receive notice of changes to Agreement or ERCOT Protocols and any claim for setoff. (Section 5)
2. Evergreen provision – automatically extended and renewed for one (1) year unless at least sixty (60) days prior to the expiration date Guarantor sends written notice to ERCOT. (Section 9)
3. Substitute Collateral provision – Agreement may be automatically terminated by Guarantor if an LOC is posted in respect of the Obligations of MP. (Section 9)
4. Added additional Guarantor representations and warranties, such as financial condition of Guarantor, default status, and subrogation to the payment of the Obligations. (Section 10)
5. Added additional Guarantor covenant to provide ERCOT with any and all financial information when requested. (Section 11)
6. Assignment rights – clarified ERCOT's written consent prior to Guarantor assignment of its rights and obligations under Agreement. (Section 22).

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

Joint Credit Work Group (CWG) / Market Credit Work Group (MCWG) Participation

January 30, 2011:

ERCOT Staff sent out email notice to CWG/MCWG asking for comments and proposed changes to standard forms.

February 16, 2011:

MPs submitted comments and proposed changes to standard forms.

February 23, 2011 and March 30, 2011:

ERCOT Staff discussed timeline and proposed changes at Joint CWG/MCWG meeting.

May 1, 2011:

ERCOT Staff sent out first working version drafts with proposed changes to standard forms to CWG/MCWG.

May 4, 2011:

ERCOT Staff discussed proposed changes to standard forms at Joint CWG/MCWG meeting.

May 11, 2011:

ERCOT Staff held conference call with interested parties to discuss scope of proposed changes to standard forms.

May 13, 2011:

MPs submitted additional comments and proposed changes to standard forms.

May 25, 2011:

ERCOT staff discussed final proposed changes at Joint CWG/MCWG meeting.

May 27, 2011:

ERCOT Staff distributes all documents to CWG for an email vote.

June 3, 2011:

Segment Votes – 3 Yes, 1 No (Investor Owned Utilities)

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

Final Points

CWG Members who voted “No” continue to recommend changes that would weaken ERCOT’s position, such as elimination of all waivers, lessen thirty (30) day notice to terminate, choice of governing law other than Texas, etc.

The following standard forms have been revised and are included herein as Attachments A – E.

1. Letter of Credit
2. Market Participant Guarantee Agreement (General Use Version)
3. Market Participant Guarantee Agreement (3rd Party Version)
4. Foreign Market Participant Guarantee Agreement (General Use Version)
5. Foreign Market Participant Guarantee Agreement (3rd Party Version)

Next Steps

ERCOT Staff recommends that the F&A Committee approve the revised versions identified above and make such recommendation for approval to the ERCOT Board of Directors as new standard forms for use by the market.

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

Letter of Credit attached as separate document



**IRREVOCABLE AND UNCONDITIONAL
STANDBY LETTER OF CREDIT**

“Market Participant Applicant”:

[Name]
[Address]

“Amount”: _____ U.S. Dollars
~~Expiration Date:~~

“Date of Issuance”: _____

“Issuing Bank”:

[Name]
[Address]
[Phone]
[Fax]

“Beneficiary”:

Electric Reliability Council of Texas, Inc. (~~“ERCOT”~~)
~~Attn: Finance~~ Credit
7620 Metro Center Drive
Austin, Texas 78744
~~Attn: Finance~~
Facsimile No. -(512) 225-7020

To ~~Whom It May Concern~~ Beneficiary:

~~We~~ The undersigned Issuing Bank hereby ~~establish~~ establishes in your favor, effective immediately, ~~our~~ an Irrevocable and Unconditional Standby Letter of Credit No. _____ (**“Letter of Credit”**) ~~which~~ in the amount of _____ U.S. Dollars.

This Letter of Credit is available for payment upon ~~your advice of demand at sight at our counters~~ at: _____, upon demand to the attention of _____ by telephone at _____, or upon demand by fax at _____ and presentation to us (a) at sight at our counters, or (b) by fax of the following: (i) your written demand for payment containing the text of Exhibit I attached hereto, and (ii) your statement containing the text of Exhibit II-, Exhibit IV, Exhibit V, or Exhibit VI attached hereto. If presentation is made by facsimile, original documents will be delivered to us at the address stated above.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the ~~amount specified above~~Amount specified above. Partial drawings shall reduce the Amount thereafter available for drawing under this Letter of Credit.

Upon presentation to us in conformity with the foregoing, we will, not later than the close of business on ~~the~~itsour next local banking day after ~~such~~ presentation, but without any other delay whatsoever, irrevocably and without reserve or condition issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in Austin, Texas—up to the Amount of this Letter of Credit.

We agree that if, on the expiration or termination date of this Letter of Credit, ~~the~~our office specified above is not open for business, for any reason whatsoever (including without limitation an event under Article 36 of the UCP (Force Majeure)), this Letter of Credit will be duly honored if the specified ~~statements~~documents are presented by you within ~~three~~ (thirty) (30) full banking days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Market Participant Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued ~~otherwise, other~~ than at our instance, by a court of competent jurisdiction which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Market Participant Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence.

We further agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this Letter of Credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this Letter of Credit.

The ~~Except as stated~~ ~~amount~~ herein, payment is not subject to any condition or qualification. The only documents required to be presented for payment are Exhibit I and one of the following: Exhibit II, Exhibit IV, Exhibit V, or Exhibit VI. Our obligation under this Letter of Credit shall be our individual obligation and in no way is contingent upon reimbursement with respect thereto.

The stated Amount of this Letter of Credit may be increased or decreased, ~~and the expiration date of this Letter of Credit may be extended~~, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Market Participant Applicant or any other person relating to this Letter of Credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the

issuance of and any drawing(s) against this Letter of Credit shall be for the account of and paid by the Market Participant Applicant. All of the rights of ERCOT set forth above herein shall inure to the benefit of your ERCOT's successors and assigns. In this connection, in the event of a drawing made by a party other than ERCOT, such drawing must be accompanied by the following signed certification:

The undersigned does hereby certify that _____ **[drawer]** _____ is the successor by operation of law to ERCOT, a beneficiary named in [Name of Issuing Bank] Letter of Credit No. _____ and we attach herewith copies of official documents proving our legal status as successor.

[Name and Title]

The initial term of this Letter of Credit shall be one year from the Date of Issuance. It is a condition of this Letter of Credit that it shall be automatically extended and renewed without amendment for one (1) additional calendar year after the initial term, or one (1) additional calendar year after any renewal term, unless at least sixty (60) days prior to the end of the initial term or sixty (60) days prior to the end of the renewal term we notify ERCOT by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the address/facsimile number for ERCOT set forth above that we elect not to consider this Letter of Credit extended and renewed for any such period. In the event that we timely notify you in writing that we elect not to renew this Letter of Credit, you may at any time within thirty (30) days before the end of the initial term or within thirty (30) days before the end of the renewal term demand payment of the entire Amount of this Letter of Credit upon presentation of (a) your written demand for payment containing the text of Exhibit I attached hereto, and (b) your statement containing the text of Exhibit IV attached hereto. The demand rights in this paragraph are in addition to any other rights under this Letter of Credit.

It is a condition of this Letter of Credit that we shall maintain a corporate debt rating not less than that required by the ERCOT Protocols. In the event that we do not maintain the minimum corporate debt rating required by the ERCOT Protocols, you may demand payment of the entire Amount of this Letter of Credit upon presentation of (a) your written demand for payment containing the text of Exhibit I attached hereto, and (b) your statement containing the text of Exhibit V attached hereto. The demand rights in this paragraph are in addition to any other rights under this Letter of Credit.

This Letter of Credit may be terminated by us on sixty (60) days written notice by sending ERCOT notification by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the address/facsimile number for ERCOT set forth above that we elect to terminate this Letter of Credit which notice shall contain the following statement:

[Name of Issuing Bank] hereby notifies you that
~~Except so far as otherwise expressly stated herein, this~~ Irrevocable and Unconditional Standby Letter of Credit No. _____ (**“Letter of Credit”**) in the amount of _____ U.S. Dollars dated _____ issued by [Name of Issuing Bank] in your favor for the account of [Name of Market Participant Applicant] will terminate sixty (60) days following your receipt of this Notice of Termination.

In the event that we notify you in writing that we elect to terminate this Letter of Credit, you may at any time within thirty (30) days before the termination date demand payment of the entire Amount of this Letter of Credit upon presentation of (a) your written demand for payment containing the text of Exhibit I attached hereto, and (b) your statement containing the text of Exhibit VI attached hereto. The demand rights in this paragraph are in addition to any other rights under this Letter of Credit.

Notwithstanding our ability to terminate this Letter of Credit on the terms set forth above, this Letter of Credit is irrevocable and unconditional.

This Letter of Credit may not be assigned or transferred by us.

Except so far as otherwise is stated herein, this Letter of Credit shall be subject to and governed by the “Uniform Customs and Practices for Documentary Credits,” UCP 600 International Chamber of Commerce, 2007 Revision (the “UCP”), in effect on the date of issuance of this Letter of Credit. This Letter of Credit shall also be governed by the laws of the State of Texas to the extent that the terms of the UCP are not applicable; provided that, in the event of any conflict between the UCP and Texas law, the UCP shall control. To the extent the terms of this Letter of Credit are inconsistent with the provisions of the UCP and/or Texas law, the terms of this Letter of Credit shall govern.

Yours faithfully,

ISSUING BANK

(Name of Issuing Bank)

By: _____

Title: _____

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated: _____, _____

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$_____ by deposit to our account no. _____ at [Name of [Issuing](#) Bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit No. _____ dated _____, _____ in the amount of \$_____ established by you in our favor for the account of _____ as the Market Participant Applicant.

DATED: _____, _____.

Electric Reliability Council of Texas, Inc.

By: _____

Title: _____

EXHIBIT II

STATEMENT OF AMOUNT DUE

Re: Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated: _____, _____

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. _____
dated _____, _____ in the amount of \$_____ established by you in our favor for the
account of _____.

We hereby certify to you that \$_____ is due and owing to us by the Market
Participant Applicant, under and in accordance with the ERCOT Protocols.

DATED: _____, _____.

Electric Reliability Council of Texas, Inc.

By: _____

Title: _____

EXHIBIT III

AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated: _____, _____

Beneficiary:

Market Participant Applicant:

Electric Reliability Council of Texas, Inc. (ERCOT)
7620 Metro Center Drive
Austin, Texas 78744
Attn: [FinanceCredit](#)

[Name and Address]

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ _____ to a new stated amount of \$ _____ ~~or by extending the expiration date to _____ from _____.~~ All other terms and conditions of the Irrevocable and Unconditional Letter of Credit remain unchanged.

This amendment is effective only when accepted by ERCOT, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

[Name of Issuing Bank]

By: _____

Title: _____

ACCEPTED:

Electric Reliability Council of Texas, Inc.

By: _____

Title: _____

Date: _____

EXHIBIT IV

STATEMENT REGARDING ISSUER'S NONRENEWAL

Re: Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated: _____,

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. _____
dated _____, _____ in the amount of \$ _____ established by you in our favor for the
account of _____.

We hereby certify to you that ERCOT has not received an extension or replacement of said Letter
of Credit and/or other acceptable replacement collateral from Market Participant Applicant in
accordance with the ERCOT Protocols.

DATED: _____.

_____ Electric Reliability Council of Texas, Inc.

_____ By:

_____ Title:

EXHIBIT V

STATEMENT REGARDING ISSUER RATING

Re: Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated: _____,

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. _____
dated _____, _____ in the amount of \$ _____ established by you in our favor for the
account of _____.

We hereby certify to you that Issuing Bank has not maintained a corporate debt rating required by
the ERCOT Protocols and Market Participant Applicant has failed to replace the Letter of Credit in a
manner acceptable to ERCOT and/or provide other acceptable replacement collateral from Market
Participant Applicant in accordance with the ERCOT Protocols.

DATED: _____,

Electric Reliability Council of Texas, Inc.

By: _____

Title: _____

EXHIBIT VI

STATEMENT REGARDING TERMINATION

Re: Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated: _____, _____

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit No. _____
dated _____, _____ in the amount of \$ _____ established by you in our favor for the
account of _____.

We hereby certify to you that ERCOT received notice that the Letter of Credit will be terminated.
We further certify that Market Participant Applicant has failed to replace the Letter of Credit in a manner
acceptable to ERCOT and/or provide ERCOT with other acceptable replacement collateral in accordance
with the ERCOT Protocols.

DATED: _____, _____.

_____ Electric Reliability Council of Texas, Inc.

_____ By:

_____ Title:

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

**Market Participant Guarantee Agreement (General Use Version)
attached as separate document**



MARKET PARTICIPANT GUARANTEE AGREEMENT

This MARKET PARTICIPANT GUARANTEE AGREEMENT (this “Guarantee”) is made by the undersigned entity (together with its permitted successors and assigns, the “Guarantor”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “ERCOT”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

Recitals

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement”) as the same may be modified through the procedure ~~for modifying ERCOT Protocols described set forth~~ in the ERCOT Protocols, ~~“Agreement”~~) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “Participant”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. The value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of ERCOT entering into the Agreement and Guarantor executing and delivering this Guarantee, is reasonably worth at least as much as the liability and obligation of Guarantor hereunder, and the extension of credit to Participant pursuant to the Agreement has or may reasonably be expected to benefit the Guarantor directly or indirectly.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

Agreements

Section 1. In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the express provisions of Sections 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the punctual payment when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise any and all of the Obligations. As used in this Guarantee, the term “Obligations” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due ~~or~~ and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time ~~in~~ by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) ~~contemplated to be paid now or hereafter due and owing~~ by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term "**Debtor Relief Laws**" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

Section 2. Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time:

(a) the then-applicable Credit Support Amount (as defined below); plus

(b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus

(c) Expenses (as defined below).

For purposes of this Guarantee, the term "**Credit Support Amount**" shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor ~~and~~ ERCOT.

Section 3. Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is a continuing guarantee ~~for~~of payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay, at or before 5:00 P.M. Central Prevailing Time on the second Business Day (as such term is defined in the ERCOT

Protocols) immediately following the issuance of written demand by ERCOT to Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

Section 4. If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

Section 5. Except as otherwise set forth in this Guarantee, Guarantor hereby expressly waives:

(a) any right to ~~revoke~~terminate this Guarantee with respect to the Obligations except as set forth in Section 9 below;

(b) any right to receive notice of any renewal, extension, modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

(c) any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations; ~~€~~

(d) if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against ~~the~~ collateral pledged by Guarantor; ~~€~~

(e) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud;

(f) promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee; ~~e~~

(g) any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times; ~~and f~~

(h) any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets); ~~and~~ and

(i) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations, and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

Section 6. The obligations of Guarantor hereunder are absolute and unconditional irrespective of:

(a) the invalidity or unenforceability of the Agreement; ~~i~~

(b) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant; ~~i~~

(c) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud; ~~i~~

(d) any substitution, release or exchange of any other guaranty of or security for any of the Obligations; ~~i~~

(e) the existence or terms of any other agreements between Guarantor and any party, including Participant; and

(f) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances: (except as otherwise set forth in this Guarantee).

Section 7. All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

Section 8. All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand.

Section 9. The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below—and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) a written notification of termination given by Guarantor to ERCOT—~~at the address shown below.~~ Such termination, or

(ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form

determined by ERCOT in accordance with the ERCOT Protocols (the “Substitute Collateral”).

Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. ~~Guarantor~~Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT’s confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with sSection 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies to all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by ~~notification of nonrenewal, non-extension, or termination, or by expiration of the term;~~ and

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

Section 10. Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof, that:

——(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws); and the person executing this AgreementGuarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this AgreementGuarantee;

——(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor’s organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

——(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) ~~and~~ has full power and authority to enter into, and to perform its obligations under, this Guarantee;

——(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor’s performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor’s filing with the Securities and Exchange Commission;

_____(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

_____(f) ***NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM;***~~and~~

_____(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; and

(j) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee.

Section 11. Guarantor hereby further covenants and agrees to ERCOT that:

_____(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein;~~and~~

_____(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT.

Financial information shall include, at a minimum: most recent tax return, a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT; and

(c) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

Section 12. This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, other than the conflicts of laws principles thereof. Guarantor, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) waives, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) agrees that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in Section 12 are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing as required pursuant to Section 23 below; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee.

Section 13. If any provision or any part of any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 14. From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to

carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

Section 15. Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

Section 16. The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

Section 17. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

Section 18. All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account as designated by written notice to Guarantor, whether through demand for payment or otherwise.

Section 19. EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE

REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 20. Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys' fees, that may be incurred by ERCOT in attempting to cause satisfaction of Guarantor's liability under this Guarantee ("Expenses").

Section 21. All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the partiesParties are as set forth on the signature page of this Guarantee.

Section 22. This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT, and any. Any purported assignment or delegation absent suchERCOT'S written consent is void, except for an assignment and delegation.

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever formentity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise to the satisfaction of ERCOT in its sole discretion. Upon written acknowledgment of said assumption in accordance with the foregoing to the satisfaction of. Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

Section 23. No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

Section 24. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

<signature page follows>

Participant: _____

_____ [Name of Participant]

a _____

[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: _____, 200__.

“CREDIT SUPPORT AMOUNT:” is \$ _____

EXECUTED by GUARANTOR this ____ day of _____, 20__:

[Name of Guarantor]

Address: _____

a _____

[Type of entity/jurisdiction of organization]

Telephone: _____

Facsimile: _____

By: _____

Name: _____

Title: _____

ACCEPTED by ERCOT this ____ day of _____, 20__:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

Address: 7620 Metro Center Drive

Austin, Texas 78744

[For notice and payment]

By: _____

Name: _____

Telephone: _____

Title: _____

Facsimile: 512.225.7020

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

**Market Participant Guarantee Agreement (3rd Party Version)
attached as separate document**



MARKET PARTICIPANT GUARANTEE AGREEMENT

This MARKET PARTICIPANT GUARANTEE AGREEMENT (this “*Guarantee*”) is made by the undersigned entity (together with its permitted successors and assigns, the “*Guarantor*”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “*ERCOT*”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

Recitals

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement”) as the same may be modified through the procedure ~~for modifying ERCOT Protocols described set forth~~ in the ERCOT Protocols, “*Agreement*”) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “*Participant*”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. Pursuant to that certain INSERT TITLE OF AGREEMENT (“*Reimbursement Agreement*”), Guarantor has contracted with Participant for the express purpose of providing this Guarantee for the benefit of ERCOT.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

Agreements

Section 1. In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the express provisions of Sections 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the punctual payment when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise any and all of the Obligations. As used in this Guarantee, the term “*Obligations*” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due ~~or~~ and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time ~~in~~ by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) ~~contemplated to be paid now or hereafter due and owing~~ by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term "**Debtor Relief Laws**" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

Section 2. Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time: (a) the then-applicable Credit Support Amount (as defined below); plus (b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus (c) Expenses (as defined below). For purposes of this Guarantee, the term "**Credit Support Amount**" shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor and ERCOT.

Section 3. Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is a continuing guarantee ~~for of~~ payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay, at or before 5:00 P.M. Central Prevailing Time on the second Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not

relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

Section 4. If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

Section 5. Except as otherwise set forth in this Guarantee. Guarantor hereby expressly waives:

(a) any right to ~~revoke-terminate~~ this Guarantee with respect to the Obligations except as- set forth in Section 9 below;

(b) any right to receive notice of any renewal, extension, modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

~~(b)~~ any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

~~(c)~~ if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against ~~the-~~collateral pledged by Guarantor;

(e) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud;

~~(d)~~ promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person

liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

~~(eg)~~ any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times; ~~and~~

~~(fh)~~ any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets).

(i) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

Section 6. The obligations of Guarantor hereunder are absolute and unconditional irrespective of:

~~(a)~~ the invalidity or unenforceability of the Agreement~~;~~

~~(b)~~ the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant~~;~~

~~(c)~~ any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud~~;~~

~~(d)~~ any substitution, release or exchange of any other guaranty of or security for any of the Obligations~~;~~

~~(e)~~ the existence or terms of any other agreements between Guarantor and any party, including Participant~~;~~ and

(f) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances: (except as otherwise set forth in this Guarantee).

Section 7. All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise (a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations and (b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

Section 8. All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand.

Section 9. The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) a written notification of termination given by Guarantor to ERCOT at the address shown below, or

(ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the "Substitute Collateral").

Such termination Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. Guarantor Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT's confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies to all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by ~~notification of nonrenewal, non-extension, or termination, or by expiration of the term;~~ and

(d)- Notwithstanding any other provision in this Guarantee, this Guarantee shall automatically continue in effect or shall be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

Section 10. Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof that:

(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws); and the person executing this Guarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this Guarantee;

(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor's organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) ~~and~~ has full power and authority to enter into, and to perform its obligations under, this Guarantee;

(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor's performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

(f) **NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY**

REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE OF ERCOT, EMPLOYEE, AGENT, OR REPRESENTATIVE IN WAIVING SUCH A CLAIM; ~~and~~

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; and

(g) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee.

Section 11. Guarantor hereby further covenants and agrees to ERCOT that:

(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein; ~~and~~

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Financial information shall include, at a minimum: most recent tax return, a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT; and

(bc) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

Section 12. This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, other than the conflicts of laws principles thereof. Guarantor, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) waives, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) agrees that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in Section 12 are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing as required pursuant to Section 23 below; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee.

Section 13. If any provision or any part of any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 14. From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT,

including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

Section 15. Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

Section 16. The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

Section 17. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

Section 18. All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account as designated by written notice to Guarantor, whether through demand for payment or otherwise.

Section 19. EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE

REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 20. Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys' fees, that may be incurred by ERCOT in attempting to cause satisfaction of Guarantor's liability under this Guarantee ("*Expenses*").

Section 21. All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the ~~parties~~ Parties are as set forth on the signature page of this Guarantee.

Section 22. This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

~~—~~ (b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT, ~~and any~~ Any purported assignment or delegation absent ~~such~~ ERCOT's written consent is void, ~~except for an assignment and delegation.~~

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form entity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. to the satisfaction of ERCOT in its sole discretion. Upon written acknowledgment of said assumption in accordance with the foregoing to the satisfaction of Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

Section 23. No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

Section 24. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

<signature page follows>

Participant: _____

| _____ [Name of Participant]

a _____

[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: _____, 20____.

|

“CREDIT SUPPORT AMOUNT” is \$ _____

EXECUTED by GUARANTOR this ____ day of _____, 20__:

[Name of Guarantor]

Address: _____

a _____
[Type of entity/jurisdiction of organization]

Telephone: _____

Facsimile: _____

By: _____
Name: _____
Title: _____

ACCEPTED by ERCOT this ____ day of _____, 20__:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

Address: 7620 Metro Center Drive
Austin, Texas 78744
[For notice and payment]

By: _____
Name: _____
Title: _____

Telephone: _____
Facsimile: 512.225.7020

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

Foreign Market Participant Guarantee Agreement (General Use Version) attached as separate document



FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT

This FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT (this “*Guarantee*”) is made by the undersigned entity (together with its permitted successors and assigns, the “*Guarantor*”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “*ERCOT*”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

Recitals

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement” as the same may be modified through the procedure ~~for modifying ERCOT Protocols described set forth~~ in the ERCOT Protocols, “*Agreement*”) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “*Participant*”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. The value of the consideration and benefit received and to be received by Guarantor, directly or indirectly, as a result of ERCOT entering into the Agreement and Guarantor executing and delivering this Guarantee, is reasonably worth at least as much as the liability and obligation of Guarantor hereunder, and the extension of credit to Participant pursuant to the Agreement has or may reasonably be expected to benefit the Guarantor directly or indirectly.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

Agreements

Section 1. In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the express provisions of Sections 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the punctual payment when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise any and all of the Obligations. As used in this Guarantee, the term “*Obligations*” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due ~~or~~ and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time ~~in~~ by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) ~~contemplated to be paid now or hereafter due and owing~~ by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence. For purposes of this Guarantee, the term "***Debtor Relief Laws***" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

Section 2. Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time: (a) the then-applicable Credit Support Amount (as defined below); plus (b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus (c) Expenses (as defined below). For purposes of this Guarantee, the term "***Credit Support Amount***" shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor and ERCOT.

Section 3. Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is a continuing guarantee ~~for of~~ payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay, at or before 5:00 P.M. Central Prevailing Time on the second Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement

of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

Section 4. If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

Section 5. Except as otherwise set forth in this Guarantee. Guarantor hereby expressly waives:

(a) any right to ~~revoke-terminate~~ this Guarantee with respect to the Obligations except as set forth in Section 9 below;

(b) any right to receive notice of any renewal, extension modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

~~(bc)~~ any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

~~(ed)~~ if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against ~~the~~ collateral pledged by Guarantor;

(e) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud;

~~(fd)~~ promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

~~(eg)~~ any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies

Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times; ~~and~~

~~(h)~~ any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets); ~~and~~

(i) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

-In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

Section 6. The obligations of Guarantor hereunder are absolute and unconditional irrespective of:

- (a) the invalidity or unenforceability of the Agreement;~~;~~
- (b) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant;~~;~~
- (c) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud;~~;~~
- (d) any substitution, release or exchange of any other guaranty of or security for any of the Obligations;~~;~~
- (e) the existence or terms of any other agreements between Guarantor and any party, including Participant;~~;~~ and
- (f) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances- (except as otherwise set forth in this Guarantee).

Section 7. All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise (a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations and (b) Guarantor may not exercise any rights it may

acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

Section 8. All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand.

Section 9. The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later.

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) -a written notification of termination given by Guarantor to ERCOT ~~at the address shown below. Such termination, or~~

(ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the "Substitute Collateral").

Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. ~~Guarantor Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT's confirmation of receipt of the Substitute Collateral;~~

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies to all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by ~~notification of nonrenewal, non-extension, or termination, or by expiration of the term; and~~

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

Section 10. Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof that:

(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws); and the person executing this Guarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this Guarantee;

(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor's organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) ~~and~~ has full power and authority to enter into, and to perform its obligations under, this Guarantee;

(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor's performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

(f) ***NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM; ~~and~~***

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the

ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; and

(gj) Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee.

Section 11. Guarantor hereby further covenants and agrees to ERCOT that:

(a) Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein; ~~and~~

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Financial information shall include, at a minimum: most recent tax return, a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT; and

(bc) Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

Section 12. This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, other than the conflicts of laws principles thereof.

Guarantor, for itself and its successors and assigns, hereby irrevocably agrees:

(a) (i) to submit to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) to waive, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein, or at the address of its Process Agent (as defined in Section 25 hereof). Nothing

herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in Section 12 are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing as required pursuant to Section 23 below; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee; or, alternatively,

(b) to resolve any dispute relating in any manner to this Guarantee through binding arbitration. Arbitration proceedings shall be conducted pursuant to the International Arbitration Rules of the American Arbitration Association (AAA) in effect at the time the dispute first arises, by one (1) or three (3) arbitrator(s) appointed in accordance with such Rules within ten (10) calendar days of submission of the dispute. The number of arbitrators forming the arbitral panel shall be mutually agreed upon by the parties, but if they cannot agree, then the AAA shall determine same. The arbitration shall be held in such city as is agreed upon by the parties, but if they cannot agree, then such arbitration shall be held in Austin, State of Texas, United States of America. The arbitration shall be conducted simultaneously in English and in the primary language of Guarantor. The English version of this Guarantee shall be the controlling document in the arbitration proceeding. The procedural laws of the civil district courts of the State of Texas, U.S.A. shall govern the arbitral proceeding regardless of the situs of the arbitration. The arbitral panel shall set a limited time period and establish procedures designed to reduce the cost and time for discovery, while allowing the parties an adequate opportunity, in the discretion of the arbitral panel, to discover relevant information from opposing parties about the subject matter of the dispute. The arbitral panel shall award actual damages to the prevailing party, but may not award any special, indirect, punitive or consequential damages nor reasonable attorneys' fees and arbitration costs to either party. The arbitral award shall fully and finally settle the dispute. Recognition and enforcement of the arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judgment upon the award may be entered in any court in any country, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the law of such jurisdiction may require or allow. Each party shall bear its own costs and fees, including, but not limited to its share of any arbitration fees, unless otherwise ordered by the arbitrator(s).

BY AGREEING TO BINDING ARBITRATION, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS GUARANTEE.

Section 13. If [any provision or any part of](#) any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 14. From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

Section 15. Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

Section 16. The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

Section 17. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. [Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.](#)

Section 18. Each of Guarantor and ERCOT hereby agrees that:

(a) All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account as designated by written notice to Guarantor, whether through demand for payment or otherwise.

(b) All references in this Guarantee to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America. If, for the purposes of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction in connection with this Guarantee, it becomes necessary to convert into any other currency (such other currency being referred to as the "**Judgment Currency**") an amount due in any currency ("**Obligation Currency**") other than the Judgment Currency

under this Guarantee, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the State of Texas or in the courts of any other jurisdiction that would give effect to such conversion being made on such date, or, the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this paragraph being hereinafter referred to as the “*Judgment Conversion Date*”). If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding sentence, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, Guarantor shall pay such additional amount (if any and in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. The term “rate of exchange” in this paragraph means the spot rate of exchange at which ERCOT would, on the relevant date at or about 12:00 noon, be prepared to sell the Obligation Currency against the Judgment Currency.

Section 19. EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 20. Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys'-attorneys' fees, that may be incurred by ERCOT in attempting to cause satisfaction of Guarantor's-Guarantor's liability under this Guarantee (“*Expenses*”).

Section 21. All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including

facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the ~~parties~~ Parties and the Guarantor's email address are as set forth on the signature page of this Guarantee. Such information regarding a party may be changed by such party by written notice to the other party. In addition, Guarantor shall maintain, at all times, a registered agent in Texas (the "Process Agent"). Guarantor hereby irrevocably appoints its Process Agent as its true and lawful agent and attorney-in-fact in its name, place and stead to accept such service of any and all writs, processes and summonses. Guarantor further agrees that the failure of its Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon. Guarantor consents and agrees that such service shall constitute in every respect, valid and effective service. Guarantor's Process Agent in Texas is set forth on the signature page of this Guarantee, and Guarantor shall provide ERCOT with written notification of any change of its Process Agent or the address thereof.

Section 22. This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT, ~~and any~~ Any purported assignment or delegation absent ~~such~~ ERCOT's written consent is void, ~~except for an assignment and delegation~~

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate ~~of~~ all of the Guarantor's rights and obligations hereunder ~~in whatever form the Guarantor determines may be appropriate~~ to a partnership, corporation, trust or other ~~organization in whatever form entity~~ that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, ~~to the satisfaction of ERCOT in its sole discretion. Upon written acknowledgment of said assumption in accordance with the foregoing to the satisfaction of~~ Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

Section 23. No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

Section 24. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

<signature page follows>

Participant: _____
| _____ [Name of Participant]
a _____
[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: _____, 20____.

“CREDIT SUPPORT AMOUNT:” is \$ _____

EXECUTED by GUARANTOR this ____ day of _____, 20__:

[Name of Guarantor]

Address: _____

a _____
[Type of entity/jurisdiction of organization]

Telephone: _____

By: _____
Name: _____
Title: _____

Facsimile: _____
Email Address: _____

Guarantor’s Process Agent in Texas:

By: _____

Name: _____

Title: _____

Address: _____

ACCEPTED by ERCOT this ____ day of _____, 20__:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

Address: 7620 Metro Center Drive
Austin, Texas 78744
[For notice and payment]

By: _____
Name: _____
Title: _____

Telephone: _____
Facsimile: 512.225.7020

5. Recommended Changes to Standard Forms of Letter of Credit and Market Participant Guarantee Agreements

**Foreign Market Participant Guarantee Agreement (3rd Party Version)
attached as separate document**



FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT

This FOREIGN MARKET PARTICIPANT GUARANTEE AGREEMENT (this “*Guarantee*”) is made by the undersigned entity (together with its permitted successors and assigns, the “*Guarantor*”) in favor of ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. (together with its successors and assigns, “*ERCOT*”). The Guarantor and ERCOT shall be referred to herein collectively as “Parties”.

Recitals

A. ERCOT has entered into a Standard Form Market Participant Agreement (hereinafter the “Agreement” as the same may be modified through the procedure ~~for modifying ERCOT Protocols described set forth~~ in the ERCOT Protocols, “*Agreement*”) with the Market Participant identified on the signature page hereof (together with its permitted successors and permitted assigns, the “*Participant*”).

B. Pursuant to the Agreement and the related ERCOT Protocols (as such term is defined in the Agreement), ERCOT may extend credit to Participant from time to time.

C. It is expressly agreed and understood by and among Participant, ERCOT and Guarantor that: (1) the execution and delivery to ERCOT of this Guarantee is a condition precedent to ERCOT entering into the Agreement, the continuation of transactions with Participant pursuant to the Agreement and the extension of credit to Participant pursuant to the Agreement and the related ERCOT Protocols, (2) ERCOT has relied, and will continue to rely, upon this Guarantee and the terms and representations herein in entering into transactions as contemplated by the Agreement and the related ERCOT Protocols, and (3) ERCOT would not enter into the Agreement, or otherwise enter into or continue transactions with Participant, without this Guarantee.

D. Pursuant to that certain INSERT TITLE OF AGREEMENT (“*Reimbursement Agreement*”), Guarantor has contracted with Participant for the express purpose of providing this Guarantee for the benefit of ERCOT.

E. In connection with the foregoing, Guarantor desires to guarantee to ERCOT the prompt and full payment of the Obligations (as defined below) upon the terms and conditions contained in this Guarantee.

Agreements

Section 1. In consideration of credit heretofore or hereafter granted by ERCOT to Participant pursuant to the Agreement or the related ERCOT Protocols, Guarantor hereby unconditionally, absolutely and, subject to the express provisions of Sections 9 and 20 hereof, irrevocably guarantees to ERCOT, as a primary obligor and not as a surety, the punctual payment when due (subject to any grace period applicable to the Obligations (as defined below)), whether on a scheduled date, by lapse of time, by acceleration of maturity, or otherwise any and all of the Obligations. As used in this Guarantee, the term “*Obligations*” means, collectively:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due ~~or~~ and owing by Participant to ERCOT pursuant to, or arising under, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time ~~in~~ by ERCOT;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys' fees) ~~contemplated to be paid now or hereafter due and owing~~ by Participant pursuant to the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Participant, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Participant to ERCOT in order to maintain the Agreement and the ability to conduct business with ERCOT notwithstanding the continuing right of Participant to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the ERCOT Protocols; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Participant to ERCOT described in clauses (a) through (c) of this sentence.

For purposes of this Guarantee, the term "**Debtor Relief Laws**" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

Section 2. Notwithstanding the foregoing, the maximum amount of the Obligations for which Guarantor shall be liable personally hereunder shall not exceed the sum of the following from time to time:

(a) the then-applicable Credit Support Amount (as defined below); plus

(b) interest in respect of the Obligations (to the extent permitted by applicable state law, the Agreement, the ERCOT Protocols or any of the ERCOT market and operating guides) for periods after the date on which written demand is made for payment hereunder by ERCOT; plus

(c) Expenses (as defined below).

For purposes of this Guarantee, the term "**Credit Support Amount**" shall mean the amount designated as such on the signature page to this Guarantee as the same may be increased or decreased by written agreement between the Guarantor ~~and~~ ERCOT.

Section 3. Guarantor is liable for the full payment of the Obligations, subject to the express limitations provided in Section 2, as a primary obligor. This is a continuing guarantee ~~for of~~ payment and not of collection. Guarantor acknowledges and agrees that Guarantor may be required to pay the Obligations in full without assistance or support from Participant or any other person. Guarantor agrees that if all or any part of the Obligations shall not be punctually paid when due, whether on the scheduled payment date, by lapse of time, by acceleration of maturity or otherwise, Guarantor shall pay, at or before 5:00 P.M. Central Prevailing Time on the second Business Day (as such term is defined in the ERCOT Protocols) immediately following the issuance of written demand by ERCOT to Guarantor, the amount due on the Obligations to ERCOT in accordance with the terms hereof. ERCOT may, but shall have no

obligation to, make such demand(s) at any time coincident with or after the time for payment of all or part of the Obligations, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Guarantor in any respect of its obligations under this Guarantee. Guarantor hereby waives any condition or requirement with respect to any such demand under this Guarantee, and Guarantor agrees that Guarantor's obligations hereunder are absolute and immediate without requirement of presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived), except as may expressly be required hereunder.

Section 4. If Guarantor is or becomes liable for any indebtedness or obligations owing by Participant to ERCOT other than through this Guarantee, the liability of Guarantor for such other indebtedness shall not in any manner be impaired or affected hereby or the limits contained herein, and the rights of ERCOT hereunder shall be cumulative of any and all other rights that ERCOT may have against Guarantor. If Participant is or becomes indebted to ERCOT for any indebtedness other than the Obligations, any payment received or recovery realized upon any such other indebtedness of Participant to ERCOT may be applied, in ERCOT's sole discretion, to indebtedness of Participant to ERCOT other than the Obligations, except to the extent paid by the Guarantor specifically in respect of the Obligations or as otherwise required by Law or written agreement of ERCOT to be applied to the Obligations. This Guarantee is independent of, and shall not be limited by, any other guaranty or collateral posted by or on behalf of Guarantor, in each instance whether now existing or hereafter given. Further, Guarantor's liability under this Guarantee is in addition to any and all other liability Guarantor may have in any other capacity, including, without limitation, its capacity as a general partner or managing member of Participant.

Section 5. Except as otherwise set forth in this Guarantee, Guarantor hereby expressly waives:

(a) any right to ~~revoke-terminate~~ this Guarantee with respect to the Obligations except set forth in Section 9 below;

(b) any right to receive notice of any renewal, extension, modification, supplement or other change in the terms of the Agreement or the ERCOT Protocols;

~~(bc)~~ any right relating to the timing, manner or conduct of ERCOT's enforcement of rights against Participant's assets or any collateral from time to time pledged by, or on behalf of, Participant to secure the Obligations;

~~(ed)~~ if Guarantor and Participant (or any other person) have each pledged assets to secure the Obligations, any right to require ERCOT to proceed first against collateral pledged by Participant (or any other person) before proceeding against ~~the~~ collateral pledged by Guarantor;

(e) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud;

~~(df)~~ promptness, diligence, notice of any default, notice of nonpayment or nonperformance, notice of acceleration or intent to accelerate, acceptance or notice of acceptance

of this Guarantee, presentment, protest, notice of protest, notice of dishonor, notice of the incurring by Participant of additional indebtedness, notice of any suit or other action by ERCOT against Participant or any other person, any notice to any person liable for the obligation which is the subject of the suit or action, and all other notices and demands with respect to the Obligations and this Guarantee;

(eg) any and all rights to which it may be entitled by virtue of the laws of the State of Texas governing suretyship and guarantees, including, without limitation, any rights under Rule 31, Texas Rules of Civil Procedure, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 34 of the Texas Business and Commerce Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times; ~~and~~

(fh) any defense due to the Guarantor's failure to review the activities of Participant or any changes in the Agreement, the ERCOT Protocols or the related ERCOT market and operating guides (it being acknowledged and agreed that Guarantor bears all responsibility for monitoring the activities of the Participant in the ERCOT markets).

(i) any and all other demands and notices to Guarantor or Participant, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Guarantor agrees that (i) it is not necessary for ERCOT, in order to enforce Guarantor's payment hereunder, first to proceed against Participant or resort to any collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to ERCOT with respect to the Obligations and (ii) the Agreement, the ERCOT Protocols, and any collateral, security or obligations of any other guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Guarantor.

Section 6. The obligations of Guarantor hereunder are absolute and unconditional irrespective of:

(a) the invalidity or unenforceability of the Agreement;~~;~~

(b) the bankruptcy or insolvency of, or the effect of application of any Debtor Relief Laws to, the Participant;~~;~~

(c) any claim for setoff or any defense which Participant could assert on the Obligations, including, without limitation, force majeure, breach of contract, breach of warranty, and fraud;~~;~~

(d) any substitution, release or exchange of any other guaranty of or security for any of the Obligations;~~;~~

(e) the existence or terms of any other agreements between Guarantor and any party, including Participant;~~;~~ and

(f) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Guarantee that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances (except as otherwise set forth in this Guarantee).

Section 7. All rights of Guarantor to proceed against Participant in respect of payment hereunder, by subrogation or otherwise

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Guarantor may not exercise any rights it may acquire by way of subrogation under this Guarantee, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid. Subject to the subordination herein provided, with respect to any payments made by Guarantor to ERCOT under this Guarantee, Guarantor may succeed to any rights of Participant under the Agreement and the ERCOT Protocols. Guarantor does not waive or release any rights of subrogation, reimbursement or contribution which Guarantor may have after full and final payment of the then due and unpaid Obligations.

Section 8. All remedies, rights, powers and privileges granted to ERCOT pursuant to this Guarantee are cumulative. The exercise of any or all such rights by ERCOT shall not reduce, limit, impair, discharge, terminate, or otherwise affect the liability of Guarantor. No failure or delay by ERCOT in exercising any remedy, right, power or privilege pursuant to this Guarantee shall operate as a waiver, and any such remedy, right, power or privilege may be exercised by ERCOT at any time. No partial exercise of any such rights shall preclude further exercise or the exercise of any other remedy, right, power or privilege. No notice or demand by ERCOT upon Guarantor or any other guarantor of the Obligations shall preclude ERCOT from taking further action without notice or demand.

~~Section 9.~~ The term of this Guarantee shall be for a period of one (1) year, commencing on the date set forth below and expiring one (1) year later. -

(a) Notwithstanding the foregoing, this Guarantee shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, unless at least sixty (60) days prior to the expiration date the Guarantor sends written notice to ERCOT stating that Guarantor elects not to renew or extend this Guarantee;

(b) Notwithstanding the foregoing, this Guarantee may be terminated by Guarantor at any time by:

(i) -a written notification of termination given by Guarantor to ERCOT ~~at the address shown below,~~ or

ii) posting, or causing to be posted, in respect of the Obligations of Participant, a letter of credit in an amount and form determined by ERCOT in accordance with the ERCOT Protocols (the "Substitute Collateral").

~~Such termination~~ Termination pursuant to Section 9(b)(i) shall be effective thirty (30) days after the receipt by ERCOT of such written notification of termination. ~~Guarantor~~ Termination pursuant to Section 9(b)(ii) shall be effective upon ERCOT's confirmation of receipt of the Substitute Collateral;

(c) If Guarantor elects not to renew or extend this Guarantee in accordance with Section 9(a) or Guarantor terminates this Guarantee in accordance with Section 9(b), Guarantor shall remain liable for any Obligations hereunder arising before the effective date of nonrenewal, non-extension, or termination. Guarantor expressly agrees and acknowledges that this Guarantee applies to all Obligations arising or committed to prior to the effective date of the termination of this Guarantee, whether by ~~notification of nonrenewal, non-extension, or termination; and, or by expiration of the term.~~

(d) Notwithstanding any other provision in this Guarantee, this Guarantee shall continue in effect or shall automatically be reinstated if at any time payment, or any part thereof, made by Participant or Guarantor to ERCOT during the term of this Guarantee with respect to any of the Obligations is rescinded or set aside for any reason, or must otherwise be repaid by ERCOT as a result of application of any Debtor Relief Laws or otherwise.

Section 10. Guarantor hereby represents and warrants to ERCOT, which representations shall be deemed repeated continually during the term hereof that:

——(a) this Guarantee is duly authorized and valid, and is binding upon and enforceable against Guarantor (subject, in each instance, to the effect of applicable Debtor Relief Laws) and the person executing this Guarantee on behalf of the Guarantor has full power and authority to bind the Guarantor to this Guarantee;

——(b) the execution and delivery of, and the performance by Guarantor of its obligations under this Guarantee do not contravene or conflict with (i) any provision of the Guarantor's organizational, constituent or governing documents, or (ii) any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder;

——(c) Guarantor (i) is duly organized, validly existing, and in good standing under the laws of the state of its organization and (ii) ~~and~~ has full power and authority to enter into, and to perform its obligations under, this Guarantee;

——(d) there is no litigation pending or, to the knowledge of Guarantor, threatened, before or by any tribunal against or affecting Guarantor which seeks to limit, prevent, enjoin or delay the Guarantor's performance of its obligations under this Guarantee, except as may be disclosed by the Guarantor to ERCOT or in the Guarantor's filing with the Securities and Exchange Commission;

——(e) no bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under any Debtor Relief Laws;

——(f) ***NEITHER ERCOT NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO GUARANTOR IN ORDER TO INDUCE GUARANTOR TO EXECUTE THIS GUARANTEE, AND GUARANTOR HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT TO EXECUTE THIS GUARANTEE AND***

FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF ERCOT OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF ERCOT IN WAIVING SUCH A CLAIM; and

(g) any and all balance sheets, net worth statements, and other financial information with respect to Guarantor which have heretofore been given to ERCOT by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof;

(h) to the best of its knowledge, Guarantor is not in default under any agreements or contracts which may adversely affect Guarantor's ability to fulfill its obligations under this Guarantee;

(i) any indebtedness of Participant to Guarantor now or hereafter existing is hereby subordinated to the payment of the Obligations. As long as Participant is not in default on payment of the Obligations, Participant may make payments to Guarantor on any subordinated indebtedness in the ordinary course of business. After default by Participant on payment of the Obligations, any payments by Participant to Guarantor on account of such subordinated indebtedness shall be collected and received by Guarantor in trust for ERCOT and shall be paid over to ERCOT on account of the Obligations without impairing or releasing the obligations of Guarantor hereunder; and

~~(g)~~ Guarantor has, independently and without reliance upon ERCOT, and based upon such documents and information as Guarantor has deemed appropriate, made its own analysis and decision to enter into this Guarantee.

Section 11. Guarantor hereby further covenants and agrees to ERCOT that:

~~(a)~~ Guarantor will keep itself fully apprised of Participant's financial and business condition, and Guarantor shall be responsible, to the extent deemed necessary or advisable by Guarantor, for obtaining for itself information regarding Participant, the Agreement, the ERCOT Protocols and the ERCOT market and operating guides, and Guarantor acknowledges and agrees that ERCOT shall have no duty at any time to notify Guarantor of any information which ERCOT may have or acquire concerning Participant or to investigate or inform Guarantor of the financial or business condition or affairs of Participant or any change therein; ~~and~~

(b) Guarantor will provide ERCOT with any and all financial information required to be submitted under ERCOT's credit policy and other financial information reasonably requested by ERCOT concerning or relating to Guarantor's financial condition within twenty (20) days after such written request by ERCOT. Financial information shall include, at a minimum: most recent tax return, a balance sheet; an income and expense statement; a statement showing contingent liabilities; detailed cash flow statements; and any supporting schedules or documentation which ERCOT may require and is acceptable to ERCOT; and

~~(b)~~ Guarantor's representations, warranties, covenants, waivers and agreements set forth in this Guarantee are a material inducement to ERCOT to enter into

the Agreement and extend credit to Participant and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Participant, Guarantor, any other person, or any security for all or any part of the Obligations.

Section 12. This Guarantee is executed and delivered as an incident to a transaction(s) negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the Laws of the State of Texas, other than the conflicts of laws principles thereof.

Guarantor, for itself and its successors and assigns, hereby irrevocably agrees:

(a) (i) to submit to the non-exclusive jurisdiction of the state and federal courts in the State of Texas, (ii) to waive, to the fullest extent permitted by Law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Guarantee brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, and (iii) that any legal action or proceeding against Guarantor arising out of or in connection with this Guarantee may be brought in any one of the foregoing courts. Guarantor hereby agrees that service of process upon Guarantor may be made by certified or registered mail, return receipt requested, at its address specified herein, or at the address of its Process Agent (as defined in Section 25 hereof). Nothing herein shall affect the right of ERCOT to serve process in any other manner permitted by law or shall limit the right of ERCOT to bring any action or proceeding against Guarantor or with respect to any of Guarantor's property in courts in other jurisdictions. Any action or proceeding by Guarantor against ERCOT shall be brought only in a court located in Travis County, Texas. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Guarantor acknowledges that these waivers are a material inducement to ERCOT's agreement to enter into the Agreement, that ERCOT has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in Section 12 are irrevocable on the part of both ERCOT and Guarantor and may not be modified without the agreement of both ERCOT and Guarantor in writing as required pursuant to Section 23 below; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Guarantee; or, alternatively,

(b) to resolve any dispute relating in any manner to this Guarantee through binding arbitration. Arbitration proceedings shall be conducted pursuant to the International Arbitration Rules of the American Arbitration Association (AAA) in effect at the time the dispute first arises, by one (1) or three (3) arbitrator(s) appointed in accordance with such Rules within ten (10) calendar days of submission of the dispute. The number of arbitrators forming the arbitral panel shall be mutually agreed upon by the parties, but if they cannot agree, then the AAA shall determine same. The arbitration shall be held in such city as is agreed upon by the parties, but if they cannot agree, then such arbitration shall be held in Austin, State of Texas, United States of America. The arbitration shall be conducted simultaneously in English and in the primary language of Guarantor. The English version of this Guarantee shall be the controlling document in the arbitration proceeding. The procedural laws of the civil district courts of the State of Texas, U.S.A. shall govern the arbitral proceeding regardless of the situs of the arbitration. The arbitral panel shall set a limited time period and establish procedures designed to reduce the cost and time for discovery, while allowing the parties an adequate opportunity, in the discretion of the arbitral panel, to discover relevant information from opposing parties about the subject matter of the dispute. The arbitral panel shall award actual damages to the prevailing party, but may not award

any special, indirect, punitive or consequential damages nor reasonable attorneys' fees and arbitration costs to either party. The arbitral award shall fully and finally settle the dispute. Recognition and enforcement of the arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judgment upon the award may be entered in any court in any country, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the law of such jurisdiction may require or allow. Each party shall bear its own costs and fees, including, but not limited to its share of any arbitration fees, unless otherwise ordered by the arbitrator(s).

BY AGREEING TO BINDING ARBITRATION, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, EACH OF THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS GUARANTEE.

Section 13. If [any provision or any part of](#) any provision of this Guarantee or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Guarantee nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other persons or circumstances, as the case may be, rather shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 14. From time to time, at the reasonable request of ERCOT, Guarantor will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Guarantee; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in ERCOT's opinion, (i) to carry out more effectively the purposes of this Guarantee and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Guarantee for the benefit of ERCOT, including reaffirmation of the obligations hereunder from time to time upon the renewal hereof and the applicability of any changes in the Credit Support Amount.

Section 15. Time is of the essence in this Guarantee with respect to all of Guarantor's obligations hereunder.

Section 16. The recitals and introductory paragraphs hereof are a part hereof, form a basis for this Guarantee and shall be considered *prima facie* evidence of the facts and documents referred to therein.

Section 17. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections or Subsections or any provisions hereof. [Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Guarantee. As such, the terms of this Guarantee shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the](#)

drafting party, shall not be employed in the interpretation of this Guarantee or any amendments, modifications, or exhibits.

Section 18. Each of Guarantor and ERCOT hereby agrees that:

(a) All sums payable under this Guarantee shall be by wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to ERCOT's bank account as designated by written notice to Guarantor, whether through demand for payment or otherwise.

(b) All references in this Guarantee to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America. If, for the purposes of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction in connection with this Guarantee, it becomes necessary to convert into any other currency (such other currency being referred to as the "**Judgment Currency**") an amount due in any currency ("**Obligation Currency**") other than the Judgment Currency under this Guarantee, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the State of Texas or in the courts of any other jurisdiction that would give effect to such conversion being made on such date, or, the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this paragraph being hereinafter referred to as the "**Judgment Conversion Date**"). If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding sentence, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, Guarantor shall pay such additional amount (if any and in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. The term "rate of exchange" in this paragraph means the spot rate of exchange at which ERCOT would, on the relevant date at or about 12:00 noon, be prepared to sell the Obligation Currency against the Judgment Currency.

Section 19. EACH OF GUARANTOR AND ERCOT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTEE OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY ERCOT OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ERCOT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTEE. IT IS AGREED AND UNDERSTOOD BY EACH OF GUARANTOR AND ERCOT THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND ERCOT, AND

EACH OF GUARANTOR AND ERCOT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF GUARANTOR AND ERCOT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 20. Guarantor agrees to pay to ERCOT, upon demand, all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable third-party attorneys' fees, that may be incurred by ERCOT in attempting to cause satisfaction of Guarantor's liability under this Guarantee ("Expenses").

Section 21. All notices or other communications hereunder shall be made by hand delivery, by next day delivery service or by certified mail, return receipt requested (receipt effective upon scheduled weekday delivery day) or facsimile (receipt effective upon receipt of evidence, including facsimile evidence, that facsimile was received) to the addresses for ERCOT and Guarantor set forth on the signature page of this Guarantee. For purposes of giving any required notices hereunder, the addresses, telephone numbers, and facsimile numbers of the ~~parties~~ Parties and the Guarantor's email address are set forth on the signature page of this Guarantee. Such information regarding a party may be changed by such party by written notice to the other party. In addition, Guarantor shall maintain, at all times, a registered agent in Texas (the "Process Agent"). Guarantor hereby irrevocably appoints its Process Agent as its true and lawful agent and attorney-in-fact in its name, place and stead to accept such service of any and all writs, processes and summonses. Guarantor further agrees that the failure of its Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon. Guarantor consents and agrees that such service shall constitute in every respect, valid and effective service. Guarantor's Process Agent in Texas is set forth on the signature page of this Guarantee, and Guarantor shall provide ERCOT with written notification of any change of its Process Agent or the address thereof.

Section 22. This Guarantee shall bind the successors and assigns of Guarantor and shall inure to the benefit of ERCOT, its successors and assigns pursuant to the terms of the Agreement.

(a) ERCOT shall be permitted to assign its rights and delegate its obligations under this Guarantee, in whole or in part, without the consent of Guarantor or Participant.

~~-(b) The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without the prior written consent of ERCOT, and any~~ Any purported assignment or delegation absent ~~such~~ ERCOT's written consent is void, ~~except for an assignment and delegation.~~

(c) Subject to the written consent of ERCOT in its sole discretion, Guarantor may assign and delegate ~~of~~ all of the Guarantor's rights and obligations hereunder ~~in whatever form the Guarantor determines may be appropriate~~ to a partnership, corporation, trust or other ~~organization in whatever form~~ entity that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise ~~to the satisfaction of ERCOT in its sole discretion. Upon written acknowledgment of said assumption in accordance with the~~

~~foregoing to the satisfaction of.~~ Upon Guarantor's receipt of ERCOT's written consent and the execution by assignee of any and all documents required by ERCOT, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. If ERCOT does not consent to the assignment (which, for the avoidance of doubt, shall not constitute a default under this Guarantee), ERCOT shall provide written notice to Guarantor that it does not consent to the assignment and upon receipt of such written notice, Guarantor shall be permitted to terminate the Guarantee in accordance with Section 9(b).

Section 23. No modification of this Guarantee or waiver shall be valid unless in writing and signed by ERCOT and Guarantor and then only to the extent specifically set forth in such writing.

Section 24. This Guarantee supersedes and terminates any prior guarantee to ERCOT by Guarantor on behalf of Participant.

<signature page follows>

Participant: _____

[Name of Participant]

a _____

[Type of entity/jurisdiction of organization]

Effective Date of Standard Form Market Participant Agreement: _____, 200____.

|

"CREDIT SUPPORT AMOUNT" is: \$ _____

EXECUTED by GUARANTOR this _____ day of _____, 200__:

[Name of Guarantor] Address: _____

a _____
[Type of entity/jurisdiction of organization] Telephone: _____

By: _____ Facsimile: _____
Email _____ Address: _____

Name: _____
Title: _____

Guarantor's Process Agent in Texas:

By: _____

Name: _____

Title: _____

Address: _____

ACCEPTED by ERCOT this _____ day of _____, 200__:

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. Address: 7620 Metro Center Drive
Austin, Texas 78744
[For notice and payment]

By: _____ Telephone: _____
Name: _____ Facsimile: 512.225.7020
Title: _____

6. Recommend Corrected Effective Date for Revised Investment Corporate Standard – Approved May 2011 (Vote)

Board decision template attached as separate document

<Vote>



Date: June 10, 2011
To: Board of Directors
From: Michael Petterson, Vice President of Finance and Treasury
Subject: Correction of scrivener’s error relating to the May 2011 Approval of Investment Corporate Standard

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: June 21, 2011

Agenda Item No.: XX(Legal Department will Complete)

Issue:

Whether to approve correction of a scrivener’s error relating to the May 2011 approval of ERCOT’s revised Investment Corporate Standard (the “Standard”) and thereby provide the 60-day period management requested to implement key provisions of the revised Standard.

Background/History:

The Board of Directors (Board) of ERCOT has established an Investment Corporate Standard, which is reviewed annually and updated as needed. The Board must approve any modifications to the document.

This Standard documents the guidelines and related activities approved by the Board for the investment and management of funds held by ERCOT, whether those funds arise from ERCOT operations or are held by ERCOT on behalf of the ERCOT market.

ERCOT staff reviewed the Standard and respectfully proposed several changes and clarifications which the Finance and Audit (F&A) Committee, on May 16, 2011, reviewed, amended, and recommended for Board approval. The Board adopted the recommended revisions at the May 17, 2011 Board meeting.

The Board’s action was taken with an immediate effective date; however, management believes a 60-day implementation period is essential. The transition time requested by management is primarily needed to identify, qualify, and establish contractual terms with additional financial institutions necessary to enhance diversification and reduce risk of ERCOT’s investment portfolio.

Key Factors Influencing Issue:

The key factor influencing the issue is ERCOT management’s ability to adhere to provisions of Board-approved corporate standards.

Alternatives:

1. Approve correction of a scrivener’s error relating to the May 2011 approval of ERCOT’s revised Investment Corporate Standard (the “Standard”) and thereby provide the 60-day period management requested to implement key provisions of the revised Standard;



2. Do not approve correction of the scrivener's error and recognize that ERCOT will not be able to comply with provisions of the Standard until late-July; or
3. Remand the issue to the F&A Committee with instructions.

Conclusion/Recommendation:

The F&A Committee will review this request for correction of a scrivener's error at its meeting on June 20, 2011 and is expected to recommend to the Board at the June 21, 2011 Board meeting that the record reflect approval of the time requested to implement the revised Standard.

7. Quarterly Committee Education on Accounting Developments Freddy Wolff

Accounting and financial reporting implications of CFTC exemption and central counter-party position

- **Revenue recognition - gross vs. net**

ERCOT must apply judgment to determine if collecting settlement revenue as a central counter-party represents earning revenue (gross revenue recognition) or earning a commission/fee (net revenue recognition).

ERCOT considered these common indicators of gross revenue recognition:

- Is the company the primary obligor in the arrangement?
- Does the company change the product or perform part of the service?
- Does the company have physical loss inventory risk or credit risk?
- Is the amount earned by the company variable in nature?

ERCOT also considered the impact on the relevance and reliability of ERCOT's Statement of Activities noting that gross reporting in 2010 would have resulted in an increase of \$2.3 billion to operating revenue and an equally offsetting increase to operating expense.

7. Quarterly Committee Education on Accounting Developments Freddy Wolff

- **Revenue recognition- gross vs. net (cont.)**

Based on these considerations and discussions with Ernst & Young (as well as contacts at other ISOs), ERCOT currently believes net presentation of revenue (as well as the related accounts receivable and payable) is appropriate.

Additional disclosures around revenue recognition and the structure of the ERCOT market would also be necessary in the annual financial statements.

- **Disclosure and valuation of congestion revenue rights**

If ERCOT is deemed a counter-party to the CRR Buyer and Seller by taking title to the transaction, additional disclosures may be required around these positions in ERCOT's annual financial statements, including fair value measurement and qualitative information around the CRR auctions.

- **Increased audit services and fees**

Taking title to the settlement transactions could drive an increase in ERCOT audit services and related fees around revenue recognition, settlement transactions and related controls, cash management, CRR transactions, and potential loss contingencies.

7. Quarterly Committee Education on Accounting Developments Freddy Wolff

Accounting treatment of generation interconnection fees

- **Non-refundable Fees**

- Non-refundable fees collected for generation interconnection studies are recognized as operating revenue on the Statement of Activity upon collection. The related expense is recognized in operating expense when incurred.
- For 2010, ERCOT collected \$214,000 in non-refundable generation interconnection revenue. As of May 31, 2011, ERCOT has collected \$94,000 in non-refundable generation interconnection revenue.

- **Refundable Fees**

- Prior to 2008, ERCOT also collected upfront generation connection deposits from generating entities to cover the cost of the full interconnection study. These amounts were recognized as deferred revenue on the Statement of Financial Position until the study was completed.
- Upon payment of the study to the transmission service provider, revenue would be recognized to the extent of the expense incurred. Any remaining funds would be returned to the generating entity.
- As of May 31, 2011, ERCOT has a current liability of \$537,000 related to 31 studies from years 2000-2007.

8. Committee Briefs

ERCOT Market Credit Status

as of 4/30/2011

as of 5/31/2011

Exposure in the ERCOT Market (owed to ERCOT)

QSEs that meet ERCOT Creditworthiness Standards

Ratings over BBB-

# of QSEs*	Estimated Aggregate Liability (\$)	% of EAL	Total Unsec Credit Limit / Security Posted	
14	37,605,703 *	14%	501,633,018	U
<u>QSEs that do not meet ERCOT Creditworthiness Standards</u>				
Ratings below BBB- or not rated				
75	126,367,161 *	47%	716,607,284	S
26	104,149,708 *	39%	715,898,069	S
Total Exposure	268,122,572	100%		

# of CPs*	Total Potential Exposure (\$)	% of TPE	Total Unsec Credit Limit / Security Posted	
15	35,127,442	10%	596,324,605	U
<u>QSEs that do not meet ERCOT Creditworthiness Standards</u>				
Ratings below BBB- or not rated				
69	179,323,991	49%	1,356,736,065	S
24	150,617,425	41%	737,202,271	S
Total Exposure	365,068,858	100%		

Other QSEs in the ERCOT Market (ERCOT owes)

QSEs that meet ERCOT Creditworthiness Standards

Ratings over BBB-

QSEs that do not meet ERCOT Creditworthiness Standards

Ratings below BBB- or not rated

Cash & Letters of Credit

Guarantee Agreements

Total

Total

215

218

U: For QSEs that meet ERCOT's Creditworthiness Standards, amount of unsecured credit granted.

S: For QSEs that do not meet ERCOT's Creditworthiness Standards, amount of Security posted.

Note 1: Guarantee Agreements provided to meet a QSE's collateral requirements by entities that meet ERCOT's Creditworthiness Standards.

Guarantee Agreements provided to meet financial statement requirements by entities that do not meet ERCOT's Creditworthiness Standards are not included on this schedule.

Note 2: Collateral held as of May 31, 2011 was approximately \$800 million higher than at the end of April since the Balance of Year CRR auction was still in process.

* Corrected from May F&A report

Summary Benchmark Report as of May 31, 2011

	# of CPs	Ave Gen Vol (in MWh)	Ave Load Vol (in MWh)	% CPs	% Gen Vol	% Load Vol	CP TPE (in 000's)	Low Benchmark (in 000's)	High Benchmark (in 000's)
Between High and Low									
w/ No Load and No Generation	91						4,418	2,854	11,656
w/ Load and/or Generation	72	742,826	812,754				231,850	96,775	515,342
Total	163	742,826	812,754	75%	84%	91%	236,268	99,629	526,998
Above High									
w/ No Load and No Generation	29	-	-				9,922	502	4,028
w/ Load and/or Generation	21	107,863	69,049				118,502	32,968	65,059
Total	50	107,863	69,049	23%	12%	8%	128,424	33,470	69,087
Below Low									
w/ No Load and No Generation	2	-	-				(263)	-	-
w/ Load and/or Generation	3	31,569	7,942				(7,451)	510	2,982
Total	5	31,569	7,942	2%	4%	1%	(7,714)	510	2,982
Total as of May 31, 2011	218	882,258	889,746	100%	100%	100%	356,978	133,610	599,067
Total as of April 30, 2011	215	808,045	817,112				263,987	109,404	479,978

Benchmark Assumptions

		Forward Risk Estimate				
		Volume Component			Price Component	
		Basis	# of days	Factor	Basis	Price volatility factor
Low Benchmark						
Counter-Parties - Load only	Outstanding receivable/payable - invoiced and estimated	30-day average total load volume	2	1.0	Avg real time price - floor - \$25, cap - \$50	1.0
Counter-Parties - Generation only	Outstanding receivable/payable - invoiced and estimated	30-day average total generation volume	2	0.2	Avg real time price - floor - \$25, cap - \$50	1.0
Counter-Parties - neither Load or Generation	Outstanding receivable/payable - invoiced and estimated	30-day average imbalance volume (real time activity)	2	1.0	Avg real time price - floor - \$25, cap - \$50	1.0
High Benchmark						
Counter-Parties - Load only	Outstanding receivable/payable - invoiced and estimated	Highest total load volume over past 30-days	9	1.0	Same	1.5
Counter-Parties - Generation only	Outstanding receivable/payable - invoiced and estimated	Highest total generation volume over past 30-days	6	0.2	Same	1.5
Counter-Parties - neither Load or Generation	Outstanding receivable/payable - invoiced and estimated	Highest imbalance volume over past 30-days (real time activity)	6	1.0	Same	1.5
		Highest DAM sales volume over past 30-days	2	1.0	Same	1.5

Note 1: If an entity has both load and generation volume, the greater of the two estimates is used in the Benchmark

8. Committee Brief: Investment Report Leslie Wiley

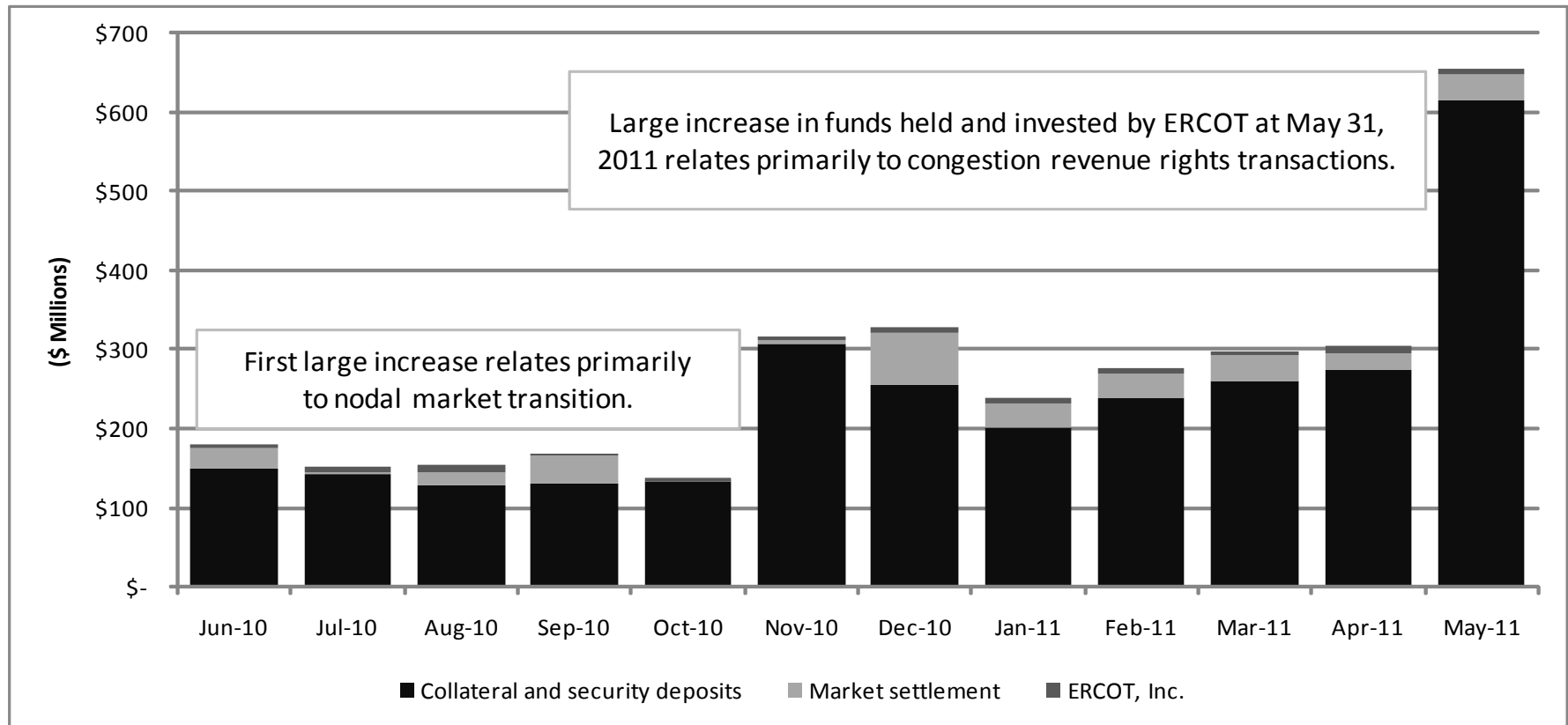
- **ERCOT has recently been out of compliance with the Investment Corporate Standard approved by the Board**
 - More than \$50 million invested in four funds for several days in May and June
- **Non-compliance is a result of two factors:**
 - Unexpectedly high value of congestion revenue rights transactions
 - Too few investment agreements with Qualified Institutions
- **Management response guided by a few concepts:**
 - Invested funds are preferable to uninvested funds
 - Treasury-only money market mutual funds are preferable to money market funds that allow investment in repurchase agreements backed by Treasury securities
 - Additional investment agreements with Qualified Institutions should be completed as quickly as possible

8. Committee Brief: Investment Report Leslie Wiley

Summary of Investments May 31, 2011

Counter Party	Treasury	Treasury and Treasury Repo	Total Invested	Percentage of Investments
	----- \$ millions -----			
Federated	\$ 78.4	\$ 49.4	\$ 127.8	19%
Fidelity	77.0	50.0	127.0	19%
Wells Fargo	77.0	50.0	127.0	19%
BlackRock	77.0	49.9	126.9	19%
Bank of America	-	49.9	49.9	8%
Invesco	-	49.2	49.2	8%
JPMorgan	-	48.0	48.0	7%
Total	\$ 309.4	\$ 346.4	\$ 655.8	100%

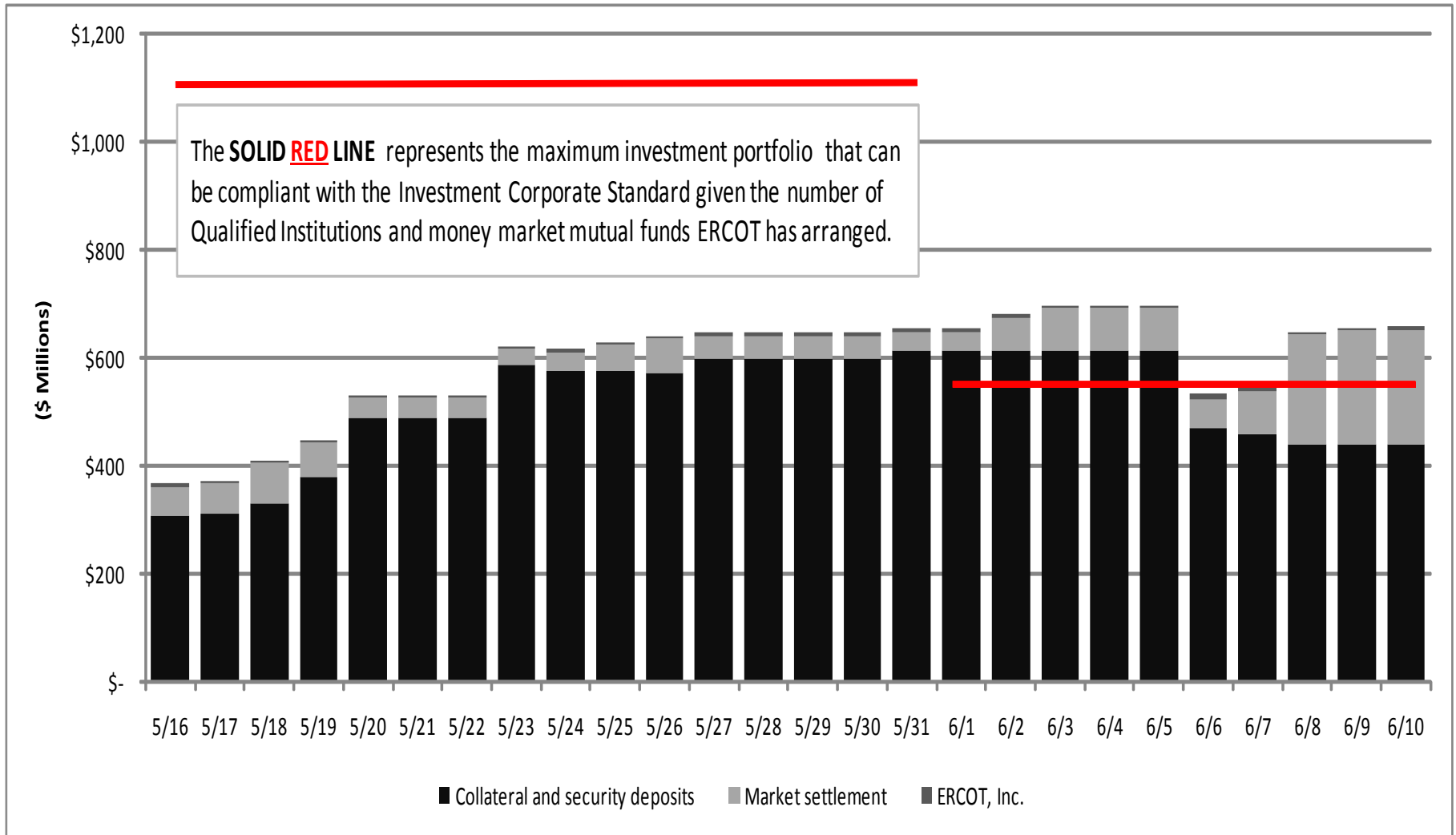
8. Committee Brief: Investment Report Leslie Wiley



Investments (at month-end)	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11
Collateral and security deposits	148.5	141.9	128.4	130.1	131.9	307.3	255.6	200.8	239.0	259.1	273.1	614.4
Market settlement	26.9	3.7	16.0	34.9	0.2	5.4	65.4	31.1	30.9	34.7	23.0	34.0
ERCOT, Inc.	4.3	7.2	8.8	1.0	5.1	4.4	6.2	7.9	7.1	4.1	9.4	7.4
Total investments	179.7	152.8	153.2	166.0	137.2	317.1	327.2	239.8	277.0	297.9	305.5	655.8

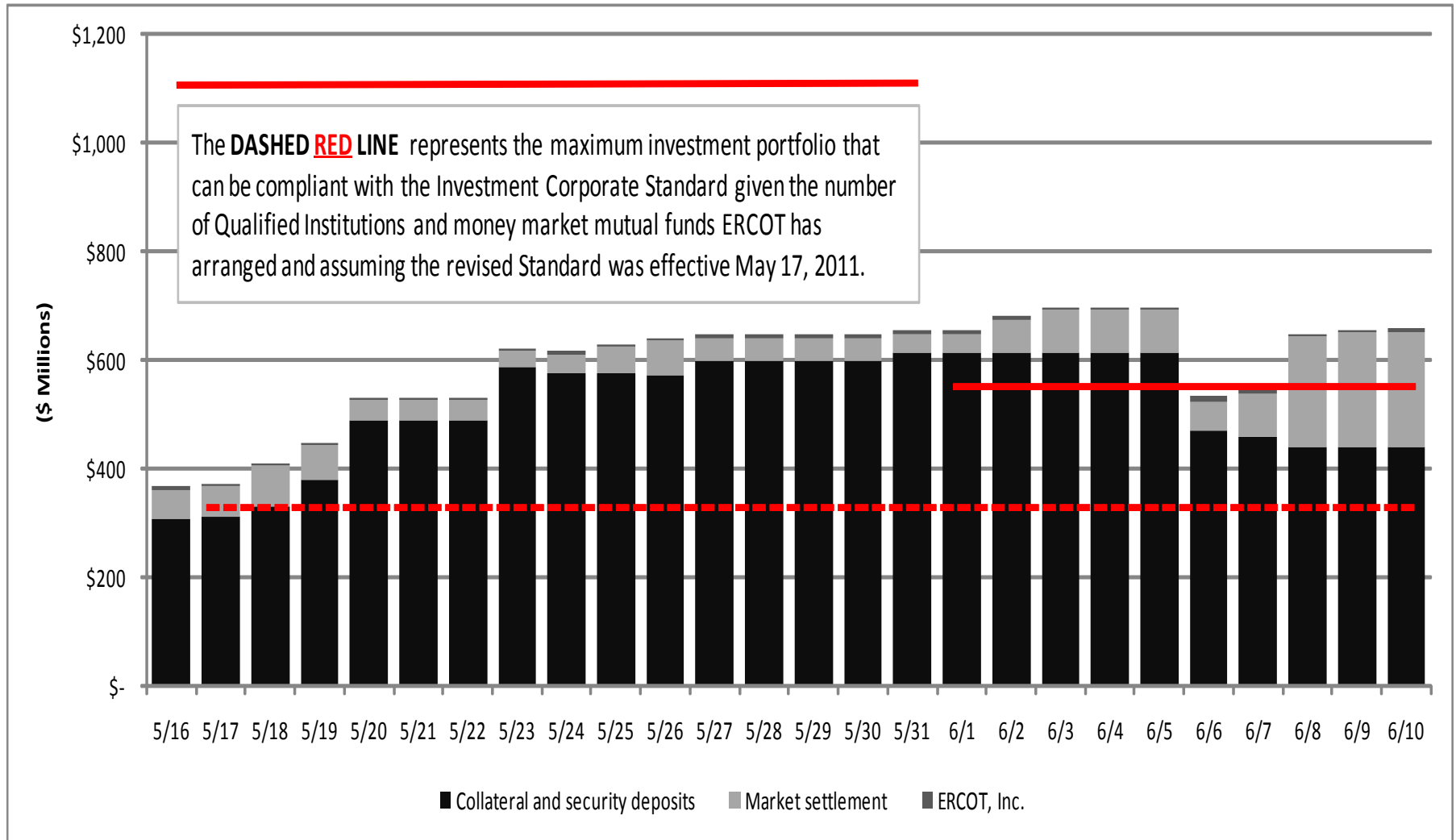
8. Committee Brief: Investment Report

Leslie Wiley

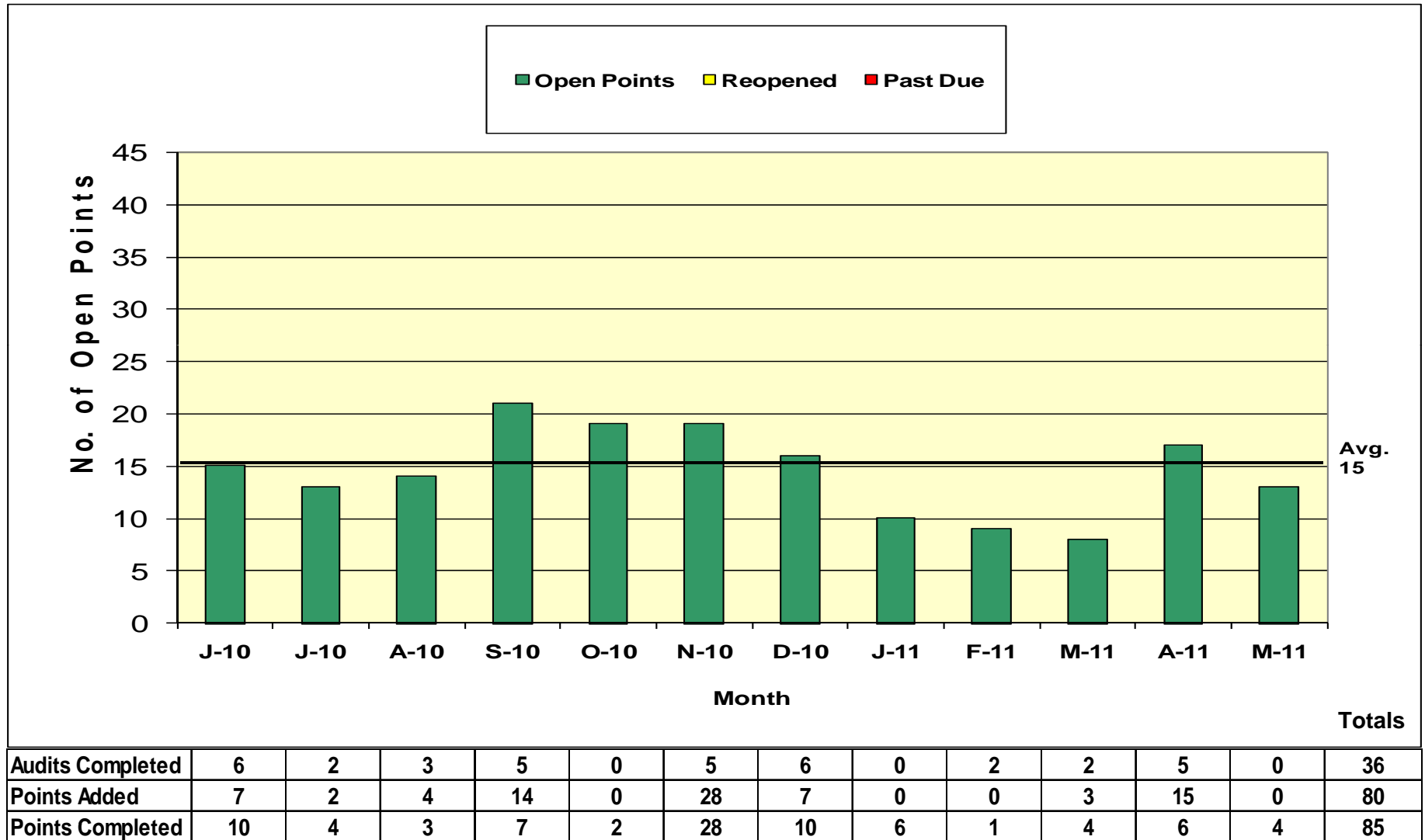


8. Committee Brief: Investment Report

Leslie Wiley



8. Committee Brief: ICMP – Status of Open Audit Points Cheryl Moseley



All audit points except one expected to be complete by 12/31/11.

8. Committee Brief: ICMP – Audits Cheryl Moseley

Audits Completed

(last 3 months)

Internal Audits

- Protocol 1.4 Required Audit – Independence
- Nodal Protocol 3.10(5) Required Audit – Consistent Information in Operations Models
- Payroll Overpayment to ERCOT Employee (Special Request)
- Allegis Resource Management
- Software/System Development Lifecycle
- Government Grant Contract Compliance
- Nodal Protocol 17.3 Required Audit – ERCOT Market Data Collection & Use

External Audits

- 2011 Type 1 SAS70 Audit (BrightLine CPAs & Associates, Inc.)
- 2010 Financial Audit (Ernst & Young, LLP)

Audits in Progress

Internal Audits

- Standard for Black Start & EILS Agreements
- Q1 2011 Fraud Auditing
- Employee Compensation and Benefit Plan Practices – HR
- ADP – Payroll & Benefits
- Assessment of Completed Projects
- Control Program & ControlPath System Evaluation

External Audits

- 2011 Type 2 SSAE 16 (SAS 70) Audit (BrightLine CPAs & Associates, Inc.)

Planned Audits

(next 3 months)

Internal Audits

- Integrated Business Application Testing
- Q2 2011 Fraud Auditing
- Enterprise Risk Management (Consulting & Advisory Services)
- Storage and Capacity Planning
- Business Continuity Plan (Including Disaster Recovery)

External Audits

- 401K Benefit Plan (Maxwell, Locke & Ritter)

8. Committee Brief: ICMP – Security Assessments Cheryl Moseley

Consultation/Analysis Reports Completed

(last 3 months)

Assessments

- None

Open Consultation/ Analysis Reviews

(in progress)

Assessments

- None

Planned Consultation/ Analysis Reviews

(next 3 months)

Assessments

- None

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
RISK MANAGEMENT EVENT PROFILE MATRIX (as of 1st May 2011)

Strategic	Operational Excellence	Market Facilitation	Grid Reliability	Reporting	Legal and Regulatory Compliance
<p> Strategy Development Corporate objective setting adequately incorporates informed stakeholder input, market realities and management expertise.</p>	<p> Performance Monitoring Clearly defined and actively monitored performance metrics linked to mission and goals - Performance status communicated and corrective action taken.</p>	<p> Market Operations Effectively manage the evolution of the wholesale and retail markets to meet the changing business environment.</p>	<p> Grid Operations Information required to operate the grid is efficiently gathered. Appropriate tools are prudently configured to efficiently operate the system.</p>	<p> Review Practices Prudent measures are taken to insure that company disclosures are properly vetted and not misleading.</p>	<p> Legal & Legislative Operations are conducted in compliance with all laws and regulations. Impacts of current and proposed legislation are understood and communicated.</p>
<p> Mission and Goals Corporate objectives and performance standards are understood and followed.</p> <p>Strategic Plan has been approved since July of 2010. Proposed 2011 KPIs under review by HR&G Committee.</p>	<p> Business Practices Business planning, processes and management standards are effective and efficient.</p>	<p> Nodal Systems Stabilization Manage the deployment and stabilization of the nodal market systems</p> <p>ERCOT working with stakeholders to address risk of exceeding 200,000 bid limit in balance of year CRR auction.</p>	<p> Planning Long-range planning methods enable efficient responses to system changes that are necessary to maintain reliability standards.</p> <p>Demand for planning studies continues to grow. ERCOT has received two awards totaling \$3.5 million to produce long-term resource and transmission planning studies in 2011. Hiring is completed. In the scoping phase of the studies. Project completion 2013. Options under review for implementation of a revised fee structure applicable to interconnection studies.</p>	<p> Disclosure Reporting and other disclosures to intended parties is timely, accurate and effective.</p>	<p> Internal Control Compliance Internal Control Compliance processes and management standards are effective, efficient, and provide stakeholders with required assurances of quality.</p> <p>A limited SAS 70 Audit was completed in January (Type I). No control issues were identified. Preliminary testing for the SSAE16 audit is underway. No issues have been identified to date.</p>
<p> Reputation Positive perceptions by stakeholders lead to less cost and greater flexibility resulting in enhanced enterprise value.</p> <p>Reassessed reputation risk as a result of February cold weather event.</p>	<p> Workforce Organization design, managerial and technical skills, bench strength and reward systems aligned with corporate goals.</p> <p>Employee retention risk likely to increase as economy continues to improve.</p>	<p> Counterparty Credit Maintain credit risk exposure for overall market within acceptable limits.</p> <p>Color remains yellow pending the review of risk factors in the Nodal market requested by F&A. Work is proceeding on the application for the CFTC exemption expected to be filed 20th June.</p>	<p> Bulk System Resources Market Participants construct and make available adequate bulk electric grid resources.</p> <p>The December update of the CDR report forecasts reserve margins in 2013 and 2016 falling below the 13.75% target reserve margin. ERCOT continues to evaluate reserve margin scenarios.</p>	<p> Communication Internal & external communications are timely and effective.</p> <p>An updated external communications plan has been issued following the February Energy Emergency Alert.</p>	<p> Industry Standards Business and operational activities in compliance with all applicable regulatory, financial & accounting requirements, standards, & directives.</p> <p>Compliance is believed to be on target for 'spot checks' of CIP compliance later in 2011.</p>
<p> Fiscal Management ISO design requires competent, prudent and cost effective provision of services.</p>	<p> Technology Infrastructure Information systems, supporting facilities and data are effectively managed and are reliable.</p>	<p> Administration, Settlement & Billing Market rules fairly applied to all participants. Accounting is timely and accurately reflects electricity production and delivery.</p>	<p> Operational Responsibility Market participant conduct their operations in a manner which facilitates consistent grid reliability.</p> <p>Operational impacts of increasing amounts of intermittent renewable generation on the system is uncertain. ERCOT has established a Resource Integration department devoted to analyzing and proposing solutions to defined issues.</p>	<p> Adequacy and Integrity Robust processes exist to support management assertions embodied within financial reports.</p>	<p> Regulatory Filings Evidence, testimony and other supporting materials are compelling and successful.</p>

Notes:

Changes to Risk Categories / Descriptions shown in **Green**

Elevated risk level indicated by

Reduced risk level indicated by downward green arrow ()

9. Future Agenda Items: Meeting Matrix Without November Meeting

Mike Petterson

- **The Finance and Audit Committee Charter establishes the responsibilities of the Committee and reason for conducting Committee meetings**
- **Committee responsibilities can be placed in two categories:**
 1. Establish policies and provide operational guidance regarding
 - Financial matters
 - Financial reporting
 - Credit management
 - Investments
 - Budget
 - Risk management
 - Debt
 - Auditing matters
 - Internal audit
 - External audit
 2. Monitor compliance to established policies and operational guidance
- **Elimination of the November meeting can be accommodated**

ERCOT

Finance and Audit Committee

2011 Annual Meeting Planner and Future Agenda Items - ASSUMING NO NOVEMBER MEETING

Task Description	Charter Page #	Month												
		J	F	M	A	M	J	J	A	S	O	N	D	
1 Elect Committee officers and designate a secretary	2 & 7	A												
2 Review and assess adequacy of Committee charter	6	A	A											
3 Review and recommend investment standard	3			A										
4 Review and recommend financial standard	3			A										
5 Handling of complaints regarding financial matters	5		A											
6 Hiring former employees of the independent auditor	4		A											
7 Review and recommend credit standard	3			A										
8 Receive periodic report on Credit Work Group activity	na											X		
9 Approve Credit Work Group Charter	na			A										
10 Appoint Credit Work Group Chair and Vice Chair	na		A											
11 Review risk policies and risk management practices	6					A								
12 Undertake annual self-evaluation	8	A												→
13 Periodic meeting with senior management	6													
14 Review and approve internal audit charter	6			A										
15 Periodic meeting with Chief Audit Executive	6 & 7	A	A	A	A	A	A							→
16 Review internal audit reports	6	A	A	A	A	A	A							→
17 Review Ethics Point issues	na	A	A	A	A	A	A							→
18 Review effectiveness of internal audit functions	6													
19 Review and approve annual internal audit plan	6													←
20 Review performance of the Chief Audit Executive	7													←
21 Recommend selection of independent auditor	4													
22 Receive independence report from independent auditor	4													
23 Periodic meeting with independent auditor	5				A									
24 Discuss audited financial statements	5				A									
25 Review and accept financial statement audit	5				A									
26 Review and recommend proposed budget	3					A	A							
27 Review and recommend debt structure	3						A							
28 Review IRS Form 990	na													
29 Review and accept 401(k) audit report	6													
30 Review and accept SSAE 16 audit report	5			A										
31 Review Committee briefs	na	A	A	A	A	A	A							→
32 Receive periodic investment report	na		A			A								→
33 Receive periodic liquidity report	na			A										
34 Quarterly Committee education on accounting developments	5			A			A							
35 Review financial institutions - market participants	6			A										
36 Receive periodic Potential Future Exposure report	na													→
37 Preapprove non-audit services	4				A									
38 Review any report by independent auditor	4	Performed on as-needed basis												
39 Review effect of regulatory accounting initiatives	5	Performed on as-needed basis												
40 Review complaints regarding financial statements	5			A	A									
41 Review press stories regarding financial statements	5	Performed on as-needed basis												
42 Periodic meeting with 401(k) auditor	na	Performed on as-needed basis												
43 Periodic meeting with SSAE 16 auditor	na	Performed on as-needed basis												
44 Review proposed audit of the nodal program	na		A											
45 Review credit procedures, practices, and judgments	na		A	A	A	A								
46 CFTC/FERC Credit Rule compliance	na				A	A	A							
47 Generation interconnection fee	na					A		A						

10. Other Business

Mike Petterson
