Date: June 14, 2011
To: Board of Directors
From: Jorge Bermudez, Vice Chair, Finance & Audit (F&A) Committee
Subject: Approval of Modifications to Standard Forms of Letter of Credit and Market Participant (MP) Guarantee Agreements

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: June 21, 2011
Agenda Item No.: 10c

Issue:
The F&A Committee of the ERCOT Board of Directors (Board) requests that the Board approve revised versions of the standard forms of Letter of Credit, MP Guarantee Agreement and Foreign MP Guarantee Agreement (collectively, MP Guarantee Agreements).

Background/History:
Pursuant to Protocol Section 16.11.3, *Alternative Means of Satisfying ERCOT Creditworthiness Requirements*, if a Counter-Party is required to provide Financial Security, then it may do so through one or more of the following means: (1) guarantee; (2) an unconditional, irrevocable letter of credit; (3) surety bond; and (4) cash. Items 1 – 3 are standard forms approved by the Board.

Last year, the F&A Committee asked ERCOT Staff to work with outside counsel on a regular basis in reviewing and, if necessary, proposing changes to MP Guarantee Agreements with the intent of adequately protecting ERCOT's and MPs' interests. The F&A Committee also asked that the Credit Work Group (CWG) participate in the review process. ERCOT Staff included the standard form Letter of Credit in the review process since the last version was approved by the Board in October 2007. After working with MPs and consulting with outside counsel for several months, ERCOT Staff submitted proposed redline drafts of the Letter of Credit and MP Guarantee Agreements to the CWG on May 25, 2011 for approval.

The primary substantive changes for the standard form Letter of Credit include the following: (1) broader demand and presentation language; (2) additional time for Beneficiary to present when Issuing Bank is not open for business on expiration/termination date; (3) addition of an evergreen provision; (4) addition of a corporate debt rating provision; and (5) addition of a termination provision. Other formatting and non-substantive changes were recommended as well.

The primary substantive changes for the standard form MP Guarantee Agreements include the following: (1) clarified additional Guarantor expressed waiver provisions; (2) addition of an evergreen provision; (3) addition of a Substitute Collateral provision; (4) added additional Guarantor representations and warranties; (5) added additional Guarantor covenant to provide financial information when requested; and (6) clarified assignment rights. Other formatting and non-substantive changes were recommended as well.

Through an email vote which concluded on June 3, 2011, the CWG approved the revised versions of the standard form Letter of Credit and MP Guarantee Agreements.

The new Letter of Credit and MP Guarantee Agreements are attached hereto as follows:

- **Attachment A:** Letter of Credit
- **Attachment B:** ERCOT Market Participant Guarantee Agreement (General Use)
- **Attachment C:** ERCOT Market Participant Guarantee Agreement (3rd Party)
- **Attachment D:** ERCOT Foreign Market Participant Guarantee Agreement (General Use)
- **Attachment E:** ERCOT Foreign Market Participant Guarantee Agreement (3rd Party)

Key Factors Influencing Issue:

Although the current Board-approved versions of the Letter of Credit and MP Guarantee Agreements are adequate, these revised versions are recommended to provide MPs more flexibility in managing their financial security without weakening ERCOT's position. Overall, the new versions improve the current Board-approved versions of the Letter of Credit and MP Guarantee Agreements.

Alternatives:

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

Conclusion/Recommendation:

Approve the proposed revised versions of the Letter of Credit and Market Participant Guarantee Agreements.

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

WHEREAS, after due consideration of the alternatives, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to approve revisions to the standard forms of the Letter of Credit and Market Participant Guarantee Agreements for US company Guarantors and Foreign company Guarantors.

THEREFORE, BE IT RESOLVED, that that the standard form Letter of Credit, which is attached hereto as Attachment A is hereby authorized and approved in each and every respect to be accepted by ERCOT in accordance with the ERCOT Protocols.

RESOLVED FURTHER, that the Market Participant Guarantee Agreement (General Use Version), which is attached hereto as Attachment B is hereby authorized and approved in each and every aspect to be accepted by ERCOT as the standard form guarantee agreement for qualified US company Guarantors in accordance with the ERCOT Protocols.

RESOLVED FURTHER, that the Market Participant Guarantee Agreement (3rd Party Version), which is attached hereto as Attachment C is hereby authorized and approved in each and every aspect to be accepted by ERCOT as the standard form guarantee agreement for qualified US company Guarantors in accordance with the ERCOT Protocols.

RESOLVED FURTHER, that the Foreign Market Participant Guarantee Agreement (General Use Version), which is attached hereto as Attachment D is hereby authorized and approved in each and every aspect to be accepted by ERCOT as the standard form guarantee agreement for qualified Foreign company Guarantors in accordance with the ERCOT Protocols.

RESOLVED FURTHER, that the Foreign Market Participant Guarantee Agreement (3rd Party Version), which is attached hereto as Attachment E is hereby authorized and approved in each and every aspect to be accepted by ERCOT as the standard form guarantee agreement for qualified Foreign company Guarantors in accordance with the ERCOT Protocols.

CORPORATE SECRETARY'S CERTIFICATE

I, Bill Magness, Corporate Secretary of ERCOT, do hereby certify that, at its June 21, 2011 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of June, 2011.

_____
Bill Magness
Corporate Secretary