



To: Human Resources and Governance Committee (Committee)
From: Susan M. Westbrook, Assistant General Counsel
Date: September 12, 2011
Re: Status of Proposed Revisions to Conflicts of Interest Corporate Standard

At the July 18, 2011 meeting of the Committee, ERCOT management submitted for the Committee's consideration two proposed revisions to ERCOT's Conflict of Interest Corporate Standard. Both revisions pertain to the scope of the prohibition on ownership of interests in Market Participants and their affiliates.

The first proposed revision was to eliminate the investment prohibition with respect to related parties over whom an employee has no control. The Committee members approved a recommendation to the Board to limit the investment prohibition to employees, their spouses and domestic partners, and dependent children. At its meeting on July 19, 2011, the Board approved this change.

The second proposed revision would permit ERCOT employees to purchase limited amounts of publicly-traded securities of Market Participants' affiliates. ERCOT staff has researched the investment prohibitions applicable to other U.S. Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) and determined that all prohibit investments in affiliates pursuant to codes of conduct, tariffs, or Federal Energy Regulatory Commission (FERC) rules. RTOs have an option to request FERC authorization to permit investment in affiliates that do not have economic or commercial interests that would be significantly affected by their actions or decisions.

ERCOT staff suggested three options for defining permissible investments in affiliates: Option 1 – a blanket authorization for ownership of less than 1% of the outstanding securities of an affiliate; Option 2 – a blanket authorization for ownership of securities of affiliates who have no economic or commercial interests that would be significantly affected by ERCOT actions; or Option 3 – case-by-case authorization for ownership of securities of affiliates who have no economic or commercial interests that would be significantly affected by ERCOT actions. ERCOT management recommended Option 3.

At its meeting on July 19, 2011, the Committee approved a recommendation to the Board to approve Option 1. However, a vote by the Board has been deferred until members of the Public Utility Commission of Texas (PUCT) have had a chance to review it and discuss any concerns. To date, the PUCT members have not had an opportunity to consider this proposed revision.



ERCOT CORPORATE STANDARD

Document Name:	CS5.18 Conflict of Interest Corporate Standard
Document ID:	CS5.18
Effective Date:	<u>January 14, 2010</u> Upon Approval
Owner:	Vice President & Chief Administrative Officer Human Resources and CCO
Governs:	ERCOT Staff
Approved:	H. B. Doggett, ERCOT Inc., Interim President & CEO

5.18.1 Purpose: Employees of the Company must conduct the Company’s business with total objectivity and shall not seek or obtain personal gain in any way detrimental to the best interests of ERCOT, in accordance with the ERCOT Code of Conduct and Ethics Corporate Standard. Because even the appearance of a conflict of interest could be detrimental to ERCOT’s reputation, employees should not take actions that could create a conflict or the appearance of a conflict of interest.

5.18.2 Definitions: As used herein, the following terms will have the meaning indicated:

“Dependent Party” means an employee’s spouse or domestic partner and their dependent child(ren).

“Related Party” means an employee’s Dependent Party, non-dependent child, parent, sibling, and any other individual who lives in the employee’s household.

5.18.3 Conflicting Interests: The following situations are examples in which an employee might show undue favoritism to any one party (market participant or supplier) or where a conflict between personal financial interests and the interests of the Company would exist. Such situations could result in discipline.

- Interest in Supplier:

- 1) Ownership or financial interest by an employee or Dependent Party ~~his/her spouse, dependent or a member of his/her household or immediate family (i.e. father, mother, children, siblings) in, or~~ income from:

- o (a) any vendor or supplier that does business with the Company or
- o (b) any person or company that is seeking to become a Company supplier, if the employee is in a position to influence the selection of the supplier.

- 2) Employment by or independent contracting services for a Company supplier by the immediate family of an employee, or his/her Related Party or Dependent Party.

- 3) An employee’s Sservice in an advisory, consulting, technical or management capacity or on the board of directors for any organization that does business with ERCOT, unless approved by management because of the benefit to ERCOT. This does not apply to ownership of less than 1% in publicly traded companies, unless the employee should be in a position to influence a contract large enough to affect the market price of the securities.

- Interest in Transaction: Any material interest of any employee or his ~~immediate family or household members~~ Dependent Party or Related Party in any transaction or proposed transaction



to which the Company or any market participant (except for the retail purchase of electricity) is, or may become, a party.

- Activity for Personal Profit or Benefit: Any activity for personal profit, undue consideration, employment or benefit which is contrary to interest of the Company or a market participant.
- Interest in Market Participant: Any involvement or interest in a member or market participant by any employee or his/her ~~spouse, dependent, or a member of his/her household or immediate family~~Dependent Party.
- Conflicting Employment: Employment of or independent contracting services by employee's ~~spouse, domestic partner, dependent or other individual living in the employee's household~~Dependent Party or Related Party by a market participant will be considered a conflict of interest unless, based upon the circumstances and as determined by the Company, in its sole discretion, the Company consents to the potential conflict in writing. An employee must ~~also~~ disclose any employment or independent contracting services by his/her ~~spouse, dependent, or a member of his/her household or immediate family~~Dependent Party or Related Party for a market participant, so that management may determine whether, based upon the employee's job responsibilities, any conflict of interest exists.
- Inappropriate Use of ERCOT Employment: The use of position, title or employment status at ERCOT to inappropriately influence for personal gain or benefit. This includes the use of ERCOT letterhead or signature line to influence individuals or companies for personal gain or benefit.
- Misuse of Company Equipment or Tools: The use of Company equipment or tools for unauthorized projects, such as:
 - Company-owned funds, services, supplies or equipment will not be used for any sort of personal gain or benefit.
 - Use of a Company provided personal computer to access or store inappropriate information.
- Professional Development and Conferences: Occasionally ERCOT employees are invited or solicited to participate in industry conferences or professional development seminars at no cost or at a reduced cost to ERCOT and the employee, because of event sponsorship by a Market Participant or ERCOT vendor. It is ERCOT's general view that participation in such conferences can be helpful in providing professional development and improving industry awareness but must be judiciously applied. If the ERCOT employee sees value to ERCOT by attending such conferences and if any part of the cost of the conference is paid for or offset by a Market Participant or ERCOT vendor, the employee may only attend if he obtains written permission to attend from the officer in charge of the area or department. Officers may choose to give permission to attend, in their discretion, but may only allow the following maximum benefit be provided to ERCOT or the employee: :
 - For speakers at the event:
 - Attendance at no charge, including any meals, hotel and travel, so long as the same benefits are provided to other similar speakers
 - For attendees who are not speakers at the event:



- Attendance at no charge, only if such attendance is provided at no charge for all attendees. Meals and refreshments that are an integral part of participation at the conference or professional development seminar are also allowed.
- Benefits to Employees: Employees may not receive from Market Participants or ERCOT vendors or consultants any (i) cash gifts, including gift cards and gift certificates of any amount or (ii) gifts, services, meals or other noncash benefits having an aggregate value in excess of \$100 per calendar year, because such benefits (“Benefits”) may affect or appear to affect the judgment of the person receiving the gift or benefit. The \$100 annual limit is per employee and not per Market Participant or ERCOT vendor or consultant. Moreover, any employee receiving any Benefit must keep a personal written record of all such Benefits, an updated copy of which must be shared with the employee’s supervisor regularly. Employees must take care to avoid even the appearance of a conflict of interest, as this could be damaging to ERCOT’s reputation or to the market. The acceptance of any meal or other benefit in excess of the \$100 annual limit requires written approval of the CEO as a management exception. Employees must otherwise pay for personal meals provided by or eaten with vendors or market participants, but employees may obtain reimbursement of the cost of such meals from ERCOT, if reimbursement is permitted by the Business Expense Reimbursement Corporate Standard. Discretion must always be used in spending the Company’s money.
- Benefits from Employees: Employees may not provide Benefits to Market Participants or ERCOT vendors or consultants, except that an occasional meal or outing with Market Participants or ERCOT vendors or consultants is permissible, and reimbursable, if (i) there is a legitimate business purpose for the meal or outing and (ii) the expense is approved by the employee’s immediate supervisor, and (iii) the employee does not exceed \$100 per meal or outing or \$250 per calendar year. The \$250 annual limit is per employee and not per Market Participant or ERCOT vendor or consultant. Moreover, any employee providing any Benefit must keep a written personal record of all such Benefits, an updated copy of which must be shared with the employee’s supervisor regularly. The provision of any meal or other benefit in excess of the \$250 annual limit requires written approval of the CEO as a management exception.
- Payment or acceptance of bribes, kickbacks or other improper payments while conducting the Company’s business is strictly prohibited. This prohibition applies to dealing with regulatory authorities and with current or potential members, market participants, suppliers, vendors, contractors, sub-contractors, representatives, consultants or other parties seeking to establish a business relationship with the Company.

An employee who is a decision-maker or influencer who hopes to obtain future employment with a particular member company, consultant, vendor or supplier does not meet the standard of independence. Accordingly, any ERCOT employee who either raises or participates in a discussion with a member, market participant, consultant, vendor or supplier of the prospect of future employment for himself (or a member of his family) is in violation of this corporate standard and is subject to appropriate disciplinary action unless he completely removes himself from the position of decision-maker or influencer with regard to such person or entity.



- If the Company finds that any employee has paid or accepted any improper gifts or payments, such employee is subject to discipline.

5.18.3 Determination of Conflicts: An employee's own judgment and sense of basic integrity should include making an evaluation of his individual interests and activities based upon this corporate standard. However, if he is uncertain as to whether a conflict is involved between his interests and those of the Company, he should discuss it with his supervisor, and Legal or Human Resources. If Legal or Human Resources believes that a conflict exists, the employee must:

- Eliminate the conflict of interest;
- Submit a written statement of the possible conflict to the Vice President & Chief Administrative Officer, Director of Audit or the Vice President, General Counsel & Corporate Secretary of ERCOT who will review and provide a written response to the employee as to the action required, if any, or
- Leave the employ of the Company.

5.18.4 Annual Report or Statement: Employees are required to submit a signed Employee Ethics Agreement in a timely manner and annually to disclose any potential conflicts. Should any such conflict exist, the employee will be notified by Human Resources or Legal. The conflict must be resolved promptly or the employee's employment with the Company will be terminated.