



Date: April 9, 2012
To: Board of Directors
From: Clifton Karnei, Chair, Finance & Audit (F&A) Committee
Subject: Approval of Modifications to the Standard Form Surety Bond

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: April 16-17, 2012

Agenda Item No.: 14a

Issue:

Whether the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) should approve ERCOT staff-proposed modifications or recommend and approve any other changes to the standard form Surety Bond to become effective upon approval by the Board.

Background/History:

Available Means of Financial Security Pursuant to Protocol Section 16.11.3

Pursuant to Protocol Section 16.11.3, *Alternative Means of Satisfying ERCOT Creditworthiness Requirements*, if a Counter-Party (CP) 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.

Recent History of Review of Standard Form Board Documents

At its July 2011 meeting, the Board approved modifications to the standard forms of the Letter of Credit and Market Participant Guarantee Agreements. These modifications were made based on the F&A Committee's request to ensure that these documents adequately protect ERCOT's interests. The standard form Surety Bond was not updated at that time as it was not actively used by Market Participants to provide Financial Security to ERCOT.

However, ERCOT now proposes modifications to the standard form Surety Bond to incorporate many of the same elements that are currently in the Letter of Credit and Guarantee Agreements.

ERCOT circulated a draft of the proposed modifications to the standard form Surety Bond to Credit Work Group (CWG) members and elicited comments from Market Participants, incorporating comments to the extent possible while maintaining consistency with the Letter of Credit, Guarantee Agreements and standard form Surety Bonds used by other Independent System Operators (ISOs)/Regional Transmission Organizations (RTOs). The CWG reviewed the proposed modifications at its meeting on March 28, 2012 and recommended approval of the modified standard form.

Proposed Standard Form Surety Bond

ERCOT staff respectfully proposes the standard form Surety Bond, which is provided in red-lined format with changes identified, in *Attachment A*, to become effective upon approval by the Board. The F&A Committee is expected to recommend the Board adopt, reject or amend the proposed modifications at its April 16, 2012 meeting.



Proposed Primary Changes to the Standard Form Surety Bond

The primary substantive changes for the standard form Surety Bond include the following: (1) clarified additional Surety Bond express waiver provisions; (2) addition of an evergreen provision; (3) added additional Surety representations and warranties; (4) added additional Surety covenant to provide financial information when requested; (5) clarified assignment rights; (6) update for Nodal language; and (7) reduce call period from 5 days to 2 days. Other formatting and non-substantive changes were recommended as well.

Key Factors Influencing Issue:

Although the current Board-approved version of the standard form Surety Bond is adequate, this revised version is recommended by ERCOT staff and CWG to make the current form more consistent with other Financial Security documents. Overall, ERCOT staff believes that the new version improves the current Board-approved version of the standard form Surety Bond.

Conclusion/Recommendation:

The F&A Committee is expected to review the ERCOT staff-proposed modifications at its meeting on April 16, 2012, and is expected to recommend to the Board whether any revisions should be made to the standard form Surety Bond and whether they should become effective upon approval by the Board.



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

WHEREAS, after its meeting on April 16, 2012, the Finance and Audit (F&A) Committee of the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) has recommended that the Board approved modifications to the standard form Surety Bond as set forth in *Attachment A*, effectively immediately;

WHEREAS, after due consideration of the alternatives, the Board deems it desirable and in the best interest of ERCOT to approve modifications to the standard form Surety Bond as recommended by the F&A Committee, effective immediately; and

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

CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its April 16-17, 2012 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of April, 2012.

Vickie G. Leady
Assistant Corporate Secretary