To: Finance and Audit (F&A) Committee
Human Resources and Governance (HR&G) Committee
From: Bill Magness, ERCOT Vice President, General Counsel and Corporate Secretary
Date: November 11, 2013
Re: F&A Committee Item No. 10 – Existing and New User Fees Issues;
HR&G Committee Item No. 4.4 – User Fees

Background:

In 2011, the PUC authorized the ERCOT Board to approve "reasonable user fees for services provided by ERCOT to any market participant or other entity." Since that time, the Board has used this authority to change existing fees or implement new ones.

During meetings in 2012, the F&A Committee discussed the appropriate process for advancing user fee proposals, as well as the development of an overall policy on when ERCOT user fees would be appropriate. In March 2013, ERCOT staff presented to the F&A Committee a proposed policy for when user fees will be requested. While the F&A Committee was not asked to make a decision on the proposed policy, the policy was favorably received.

Since the F&A Committee review of the policy, ERCOT Legal has included the new policy as part of the planned revisions to the Board Policies & Procedures (BPP). The HR&G Committee agreed to take up the BPP changes after the completion of the recent revision process for the ERCOT Bylaws. The proposed changes to the BPP are before HR&G and the Board for votes at the November 2013 Board and Committee meetings.

The proposed BPP language on user fees (which is included as Section X in the proposed BPP revisions being presented separately to the HR&G Committee) is as follows:

X. Board Policy on Approval of User Fees

10.1 User Fees Approval Process. The Board may authorize ERCOT to charge reasonable user fees for services provided by ERCOT to any market participant or other entity. A new user fee must be approved by the Board pursuant to the Revision Request process set forth in Section 21 of the Protocols. User Fees charged by ERCOT must be identified in the ERCOT Fee Schedule included in the Protocols.

10.2 New User Fee Criteria. The Board retains the full authority to adopt user fees for services provided by ERCOT, including fees currently included in the Protocols, but establishes the following policy guidelines for establishing user fees which are not currently included in the Protocols:

10.2.1 Material Impact. A new user fee should produce revenue in excess of $1,000,000.00, or materially improve ERCOT operations.

10.2.2 Incremental Revenues. The revenues recovered by a new user fee should be incremental to revenue recovered through the System Administration Fee.

10.2.3 Limited Beneficiaries. A new user fee should be for a service that benefits a relatively few discrete Market Segments or Market Participants rather than providing general benefit to most Market Segments or Market Participants.

The proposed policy language has been approved for presentation to the Board by ERCOT executive management, and was presented to the Technical Advisory Committee (TAC) at its November 7, 2013 meeting. ERCOT staff believe the policy has the following benefits:

- Establishes a clear policy for the exercise of the Board's authority to establish user fees;
- Provides a specific avenue for stakeholder input by requiring new fees be examined through the Protocol revision process before coming to the Board for approval; and
- Ensures that the amount of any fee, and the methodology for calculating it, is clearly and consistently captured for any new user fee, so all entities subject to the fee understand how and when ERCOT will charge the fee.

Concurrent with the internal discussions of the user fee policy, ERCOT identified two fees included in the Protocols that are not accompanied by a specific fee amount or approved methodology for calculating the fee. The Protocol language is identified below:

Risk Management Verification Fee	Protocol 16.16.3(12)	ERCOT shall assess a fee to eligible Counter-Parties for all or part of the costs of verifying the risk management framework for specified Counter-Parties.
Provision of Data to Individual MPs	Protocol 17.4	Where answering the request imposes a burden or expense on ERCOT, the data may be provided on the condition that a reasonable contribution to ERCOT for its cost incurred is made by the requesting Market Participant according to the ERCOT service fee schedule posted on the MIS Public Area.

If the Board adopts the user fee policy proposed in the BPP revisions, changes in user fees will require consideration in the Protocol revision process. In order to establish specific fee amounts for Protocol Sections 16.16.3(12) and 17.4, ERCOT staff would file Nodal Protocol Revision Requests (NPRRs) proposing fee amounts and methodologies (which ultimately would be reflected in the ERCOT Fee Schedule as well as in Protocols language).

Before filing such NPRRs, however, ERCOT staff seeks direction from the F&A and HR&G Committees on whether the better course is to: (a) file the NPRRs that add the fee amounts and methodologies; or (b) file NPRRs that eliminate the user fees currently approved for Protocol Sections 16.16.3(12) and 17.4.

Issues for Consideration by the F&A and HR&G Committees:

(1) ERCOT requests guidance from the F&A and HR&G Committees on the language of the proposed policy on Board approval of user fees;

(2) ERCOT requests guidance from the F&A and HR&G Committees on whether ERCOT staff should file NPRRs to establish specific fee amounts and methodologies for Protocol Sections 16.16.3(12) and 17.4 or, alternatively, file NPRRs to remove the user fee provisions currently in those sections of the Protocols;

(3) ERCOT requests that the HR&G Committee vote to recommend that the ERCOT Board approve the proposed changes to the BPP addressing Board approval of user fees.