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| NPRR Number | [1033](http://www.ercot.com/mktrules/issues/nprr1033) | NPRR Title | Clarification of Financial Security Interest Payment and Withholding Processes Upon Termination of Market Participant Standard Form Agreement |
| Date Posted | | July 20, 2020 | |
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| Requested Resolution | | Normal | |
| Nodal Protocol Sections Requiring Revision | | 16.11.3, Alternative Means of Satisfying ERCOT Creditworthiness Requirements  16.11.7, Release of Market Participant’s Financial Security Requirement | |
| Related Documents Requiring Revision/Related Revision Requests | | None | |
| Revision Description | | This Nodal Protocol Revision Request (NPRR) specifies that ERCOT will not pay interest on Cash Collateral (a form of Financial Security, as defined in Protocol Section 16.11, Financial Security for Counter-Parties) when a Market Participant’s Standard Form Market Participant Agreement (“SFA”) has been terminated and ERCOT has determined that Financial Security is no longer needed to cover potential future obligations of the terminated Market Participant.  In addition, this NPRR clarifies ERCOT’s processes for holding Financial Security of a terminated Market Participant and specifies the amount of Financial Security that ERCOT will hold following termination of a Market Participant’s SFA. | |
| Reason for Revision | | Addresses current operational issues.  Meets Strategic goals (tied to the [ERCOT Strategic Plan](http://www.ercot.com/content/wcm/lists/144926/ERCOT_Strategic_Plan_2019-2023.pdf) or directed by the ERCOT Board).  Market efficiencies or enhancements  Administrative  Regulatory requirements  Other: (explain)  *(please select all that apply)* | |
| Business Case | | This NPRR specifies that ERCOT does not have an obligation to pay interest on Cash Collateral balances that belong to former Market Participants upon ERCOT’s determination that Financial Security is no longer necessary to cover the terminated Market Participant’s potential future obligations.  ERCOT holds Financial Security following termination of a Market Participant’s SFA with ERCOT to account for resettlements for potential future obligations arising from, for instance, disputes in the Alternative Dispute Resolution (ADR) process or litigation. Given that resolution of disputes can extend months or years, ERCOT may hold Financial Security for a significant period of time following a Market Participant’s termination.  Consequently, when ERCOT determines that Financial Security is no longer needed to cover potential future obligations of a terminated Market Participant, the contact information on file with ERCOT for that Market Participant may be outdated, and on occasion the Market Participant is no longer a valid legal entity. In these cases, under the current Protocols, such Financial Security continues to accrue interest despite ERCOT’s determination that it is no longer necessary. This NPRR proposes to cease the calculation of interest on Cash Collateral for a terminated Market Participant when ERCOT determines that there is no longer a need for such funds.  In addition, this NPRR clarifies the process for holding Financial Security of a terminated Market Participant, and specifies the amount of Financial Security ERCOT will hold to fulfill potential future obligations subsequent to termination. Clarifying how ERCOT retains Financial Security, and clarifying the amount of Financial Security that ERCOT will hold following termination of a Market Participant’s SFA, will provide ERCOT and Market Participants with greater certainty around the process. | |

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| Sponsor | |
| Name | Mark Ruane |
| E-mail Address | [mruane@ercot.com](mailto:mruane@ercot.com) |
| Company | ERCOT |
| Phone Number | 512-248-3000 |
| Cell Number |  |
| Market Segment | Not Applicable |

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| **Market Rules Staff Contact** | |
| **Name** | Phillip Bracy |
| **E-Mail Address** | [Phillip.Bracy@ercot.com](mailto:Phillip.Bracy@ercot.com) |
| **Phone Number** | 512-248-6917 |

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| Market Rules Notes |

Please note that the following NPRR(s) also propose revisions to the following section(s):

* NPRR1023, Change to CRR Reposession Process
  + Section 16.11.7

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| Proposed Protocol Language Revision |

16.11.3 Alternative Means of Satisfying ERCOT Creditworthiness Requirements

(1) If a Counter-Party is required to provide Financial Security under these Protocols, then it may do so through one or more of the following means:

(a) Another Entity may give a guarantee to ERCOT, if ERCOT has set an Unsecured Credit Limit for the Entity under Section 16.11.2, Requirements for Setting a Counter-Party’s Unsecured Credit Limit. ERCOT shall value the guarantee based on the guarantor’s Unsecured Credit Limit and other obligations the guarantor has under these Protocols or other contracts with ERCOT.

(i) The guarantee must be given using one of the ERCOT Board-approved standard guarantee forms. No modifications are permitted.

(ii) Guarantees are subject to a limit of $50 million of guarantees per Counter-Party and an overall limit of $50 million per guarantor for all ERCOT Counter-Parties.

(iii) For foreign guarantees, the guarantor must also meet the following standards:

(A) The country of domicile for the foreign guarantor must:

(1) Maintain a sovereign rating greater than or equal to AA with Fitch or S&P or Aa2 with Moody’s;

(2) If the ratings are below those in item (a)(iii)(A)(1) above, but greater than or equal to A with Fitch or S&P or A2 with Moody’s, then the sovereign rating would qualify if the country had a ceiling rating of AAA with Fitch or S&P or Aaa with Moody’s; and

(3) Must have reciprocity agreements with the U.S. regarding enforcement and collection of guarantee agreements.

(B) The foreign guarantor must:

(1) Provide to ERCOT annual audited financial statements, prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP) or International Accounting Standards (IAS) and semi-annual unaudited financial statements;

(2) Provide a guarantee in one of the standard form documents approved by the ERCOT Board of Directors for foreign Entities. No modifications are permitted; and

(3) Provide an opinion letter from a law firm unaffiliated with the Counter-Party or guarantor affirming that the guarantee agreement is enforceable in the U.S. and in the jurisdiction of the corporate guarantor’s domicile.

(b) The Counter-Party may give an unconditional, irrevocable letter of credit naming ERCOT as the beneficiary. ERCOT may, in its sole discretion, reject the letter of credit if the issuer is unacceptable to ERCOT or if the conditions under which ERCOT may draw against the letter of credit are unacceptable to ERCOT.

(i) The letter of credit must be given using the ERCOT Board-approved standard letter of credit form.

(ii) Letters of credit must be issued by a bank or other financial institution that is acceptable to ERCOT, with a minimum rating of A- with S&P or Fitch or A3 with Moody’s.

(iii) Letters of credit are subject to an overall limit per letter of credit issuer for all ERCOT Counter-Parties as determined below:

| If the issuing entity has | | Then |
| --- | --- | --- |
| Long-Term or Issuer Rating | | Maximum letter of credit issuer limit as a percentage of Tangible Net Worth of issuer |
| S&P or Fitch | Moody’s |
| AAA | Aaa | 1.00% |
| AA+ | Aa1 | 0.95% |
| AA | Aa2 | 0.90% |
| AA- | Aa3 | 0.85% |
| A+ | A1 | 0.80% |
| A | A2 | 0.75% |
| A- | A3 | 0.70% |
| Below A- | Below A3 | Not accepted |

(A) Each letter of credit issuer limit is also subject to an overall limit of $750 million per issuer.

(B) Each Bank Business Day, ERCOT will issue a report of each letter of credit issuer detailing the issuer’s dollar amount of the letters of credit currently issued to ERCOT, the issuer’s computed aggregate concentration limit, and the unused capacity under that limit. Market Participants may inquire of ERCOT about intra-day changes to the amount of posted letters of credit.

(C) If a letter of credit issuer limit is breached, Counter-Parties utilizing that issuer will be notified and no new letters of credit from the issuer will be accepted while the limit remains breached.

(D) After four months of the limit in breach, ERCOT will no longer accept new letters of credit or amendments to existing letters of credit from that issuer.

(E) Letters of credit held as collateral at the time of an issuer limit breach will not be rejected.

(F) ERCOT in its sole discretion may authorize exceptions to these limits.

(G) Revisions to the issuer limit calculation in this Section will be recommended by the Technical Advisory Committee (TAC) and approved by the ERCOT Board. ERCOT shall update parameter values on the first day of the month following ERCOT Board approval unless otherwise directed by the ERCOT Board. ERCOT shall provide a Market Notice prior to implementation of a revised parameter value.

(c) The Counter-Party may give a surety bond naming ERCOT as the beneficiary.

(i) The surety bond must be signed by a surety acceptable to ERCOT, in its sole discretion and must be in the form of ERCOT’s standard surety bond form approved by the ERCOT Board. No modifications to the form are permitted.

(ii) The surety bond must be issued by an insurance company with a minimum rating of A- with S&P or Fitch or A3 with Moody’s.

(iii) Surety bonds are subject to a limit of $10 million per Counter-Party per insurer and an overall limit of $100 million per insurer for all ERCOT Counter-Parties.

(d) The Counter-Party may deposit Cash Collateral with ERCOT with the understanding that ERCOT may draw part or all of the deposited cash to satisfy any overdue payments owed by the Counter-Party to ERCOT. The Cash Collateral may bear interest payable directly to the Counter-Party, but any such arrangements may not restrict ERCOT’s immediate access to the cash.

(i) Interest on Cash Collateral will be calculated based on Counter-Party average Cash Collateral balances. Interest is not paid on Cash Collateral balances held by ERCOT where, in accordance with paragraph (4) of Section 16.11.7, Release of Market Participant’s Financial Security Requirement, the Counter-Party’s Standard Form Market Participant Agreement has been terminated and ERCOT has determined that no obligations remain owing or will become due and payable.

(ii) Once per year, ERCOT will:

(A) Return interest earned on a Counter-Party’s Cash Collateral to the Counter-Party if the amount of interest earned is greater than $50; or

(B) Retain interest earned on a Counter-Party’s Cash Collateral as additional Cash Collateral if the amount of interest earned is less than or equal to $50.

(iii) ERCOT has a security interest in all property delivered by the Counter-Party to ERCOT from time to time to meet the creditworthiness requirements, and that property secures all amounts owed by the Counter-Party to ERCOT.

16.11.7 Release of Market Participant’s Financial Security Requirement

(1) Following the termination of a Market Participant’s Standard Form Market Participant Agreement, ERCOT shall retain Financial Security to cover potential future obligations of the terminated Market Participant. These obligations may include, but are not limited to, Resettlement Statements, Final or True-Up Settlements, and Default Uplift Invoices.

(2) Required Financial Security for potential future obligations of a terminated Market Participant will be the maximum of the Counter-Party’s TPE, as applicable, or $5,000.

(3) If a terminated Market Participant elects to withdraw non-cash Financial Security following termination, and ERCOT determines that Financial Security continues to be necessary to cover potential future obligations, then the terminated Market Participant must provide ERCOT with Cash Collateral in the amount determined by ERCOT under this section before ERCOT will return or release the non-cash Financial Security to the terminated Market Participant.

(4) Upon ERCOT’s sole determination that no sums remain owed or are necessary to cover potential future obligations to ERCOT by the terminated Market Participant, ERCOT shall return or release any Financial Security held by ERCOT to the terminated Market Participant.