

Creditworthiness Business Practices

(Title Page)

Version Notes

(To be completed)

Introduction

(To be completed)

Executive Summary

(To be completed)

Business Process and Practices

A. Overview

Scope:

The procedures ~~/and~~ processes described in these Model Business Practices apply to credit risks existing between a Supplier and a Distribution Company in the course of serving ~~Retail Access~~ retail access Customers, including one or more of the following:

- Risks associated with one party voluntarily (i.e., not when required by the Applicable Regulatory Authority) doing the billing and receiving payments for the other party when Consolidated Billing is utilized;
- Risks associated with the Supplier's purchase of distribution services for resale to its ~~customers~~ Customers under Single Retail Supplier Billing;
- Risks associated with the Distribution Company being the party that provides replacement energy when a Supplier defaults; and
- Risks associated with receiving payment for other services one party provides another.

Risks relating to wholesale transactions between a Supplier and a Distribution Company are ~~not addressed~~ excluded ~~in these Model Business Practices~~, such as:

- Provision of transmission or upstream transportation and related ancillary services by a Distribution Company;
- Imbalance/settlement risk between a Supplier and a Distribution Company, where the Distribution Company is the effective provider of imbalance service; and
- Purchase and sale of energy ~~/and/or~~ capacity for resale.

Risks to ~~customers~~ Customers resulting from a Supplier's failure or withdrawal from the market are also ~~excluded~~ not addressed (e.g., contract prices, prepayments, deposits).

Principles

| Creditworthiness procedures should be efficient to minimize the time and effort required by the parties to start and/or maintain a working relationship.

The evaluation process and methodology for determining credit limits and risk exposure should be reflected in the applicable Governing Documents.

The procedures and criteria used to perform a re-evaluation of creditworthiness should be the same as used for the initial determination.

Definitions *(Note: Red-lining of definitions is not up-to-date—see Glossary Subcommittee results)*

Applicable Regulatory Authority: The state regulatory agency or other local governing body that provides oversight, policy guidance, and direction to any parties involved in the process of providing energy to ~~Retail Access~~retail access Customers through regulations and orders.

Applicant: The party seeking credit from another party.

Billing Party: The party performing billing services for one or more parties.

Business Day: Monday through Friday excluding Federal Banking Holidays for transactions in the U.S., and similar holidays for transactions occurring in Canada and Mexico. ~~Monday through Friday except holidays observed by banks in the Creditor's location.~~

Cash Deposit: Money provided by one party to the other to secure performance of an agreement or compensate for possible loss or damage.

~~**Certificate of Incumbency**~~**Certificate of Authority (Secretary Certificate):** ~~A document attesting to the name and signature of the officers authorized to sign the Guaranty.~~ A document attesting to the name(s) and signature(s) of the officer(s) authorized to execute a particular instrument.

Challenge: The Applicant's request for a review of the Creditor's creditworthiness determination made shortly after that determination.

Confidential Information: Nonpublic information concerning the financial condition of the Applicant, or any of the Applicant's affiliates, that is disclosed to the Creditor by or on behalf of the Applicant or Applicant's affiliates.

Consolidated Billing: The billing option in which the Distribution Company / Utility or Supplier renders a Customer bill consolidating the energy, transmission / transportation and distribution charges of the Distribution Company / Utility and the Supplier, for which a single payment from the Customer is expected. ~~The process by which the Distribution Company / Utility or Supplier renders a Customer bill consolidating the energy, transmission / transportation and distribution charges of the Distribution Company / Utility and the Supplier, for which a single payment from the Customer is expected. The Billing Party produces a Customer bill consolidating the energy, transmission and distribution related charges of the Distribution Company and the Supplier, for which a single payment from the Customer is expected.~~

Credit Application Form: The Creditor's form for obtaining identification and financial data about an Applicant.

Creditor: The party granting credit to another party.

Cure Period: A period of time specified in a contract allowing a defaulting party to rectify the default, during which time the Creditor would not be allowed to exercise its remedies.

Customer: Any entity that takes gas and/or electric service for its own consumption.

Distribution Company: A regulated entity that constructs and maintains the distribution facilities which deliver energy to the Customer. A regulated entity that constructs, maintains and operates the distribution facilities which deliver energy to the Customer.

Dual Billing: The billing option in which the Distribution Company / Utility and Supplier, each assuming the role of a Billing Party, render separate Customer bills, each containing charges for the energy, transmission/transportation or distribution services provided by that party, for which separate payments from the Customer are expected. The process by which the Distribution Company / Utility and Supplier render separate Customer bills for the products and services each provides.

Event-driven Reconsideration: A re-evaluation of an Applicant's creditworthiness performed in response to a Material Change in its credit rating or financial condition.

Governing Documents: Documents that determine the interactions among parties, including but not limited to: regulatory documents (e.g., tariffs, rules, regulations), contractual agreements, and Distribution Company / Utility operational manuals. Documents that determine the interactions among parties, such as: regulatory documents (e.g., tariffs, rules, regulations), contractual agreements, and Distribution Company/Utility operational manuals.

Guarantor: The entity that agrees to guarantee the Applicant's financial obligations, recognizing that such entity will be ultimately obligated to meet the Creditor's creditworthiness requirements. The issuer of a Guaranty.

Guaranty: A formal assurance of the Guarantor's obligation to pay up to a fixed amount to the beneficiary, upon certain conditions contained in that guaranty being met. An obligation to pay the unpaid obligations of a third party Applicant to a Creditor upon certain conditions being met.

Letter of Credit: A letter issued by a bank authorizing the bearer to draw a stated amount of money from the issuing bank, its branches, or other associated banks or agencies, provided that the terms of the letter are met. A letter issued by a bank authorizing the beneficiary to draw up to a stated amount of money from the issuing bank, its branches, or other associated banks or agencies, provided that the drawing conditions of the letter are met.

Material Change: Any change in the Applicant's (or Guarantor's) financial or other condition that might reasonably affect the amount of **unsecured** credit extended to that Applicant or may impact the Applicant's ability to perform on its obligations.

Non-Billing Party: The party whose charges are being combined into a statement (or invoice) prepared and rendered by another party.

Pay As You Get Paid Method: The payment A processing method in by which the Billing Party forwards payment to the Non-Billing Party for the Non-Billing Party charges only after receiving payment.

Prepayment: Money provided by one party to the other to pay for goods or services not yet rendered, ~~to secure performance of an agreement or compensate for possible loss or damage.~~

Security Interest in Collateral: A right, title, claim, or share in assets that exists by contract as security for payment or performance of an obligation that is acceptable to the creditor.

Single Retail Supplier Billing: The billing option in which the Supplier renders a Customer bill for all energy, transmission/transportation, and distribution related charges. The Supplier purchases or otherwise acquires energy, transmission/transportation and distribution services, and therefore all charges on the bill are Supplier charges. A single payment from the Customer is expected.

Supplier: Persons engaged in the competitive sale of energy to end-users.

Surety Bonds: ~~An insurance policy that covers payments to the principal in the event that the other party does not perform under the contract. An obligation of a third party that covers payments to the Creditor in the event that the Applicant fails to meet its obligations.~~

Switch Request: A request from a Supplier to switch a Customer to begin receiving service from that Supplier.

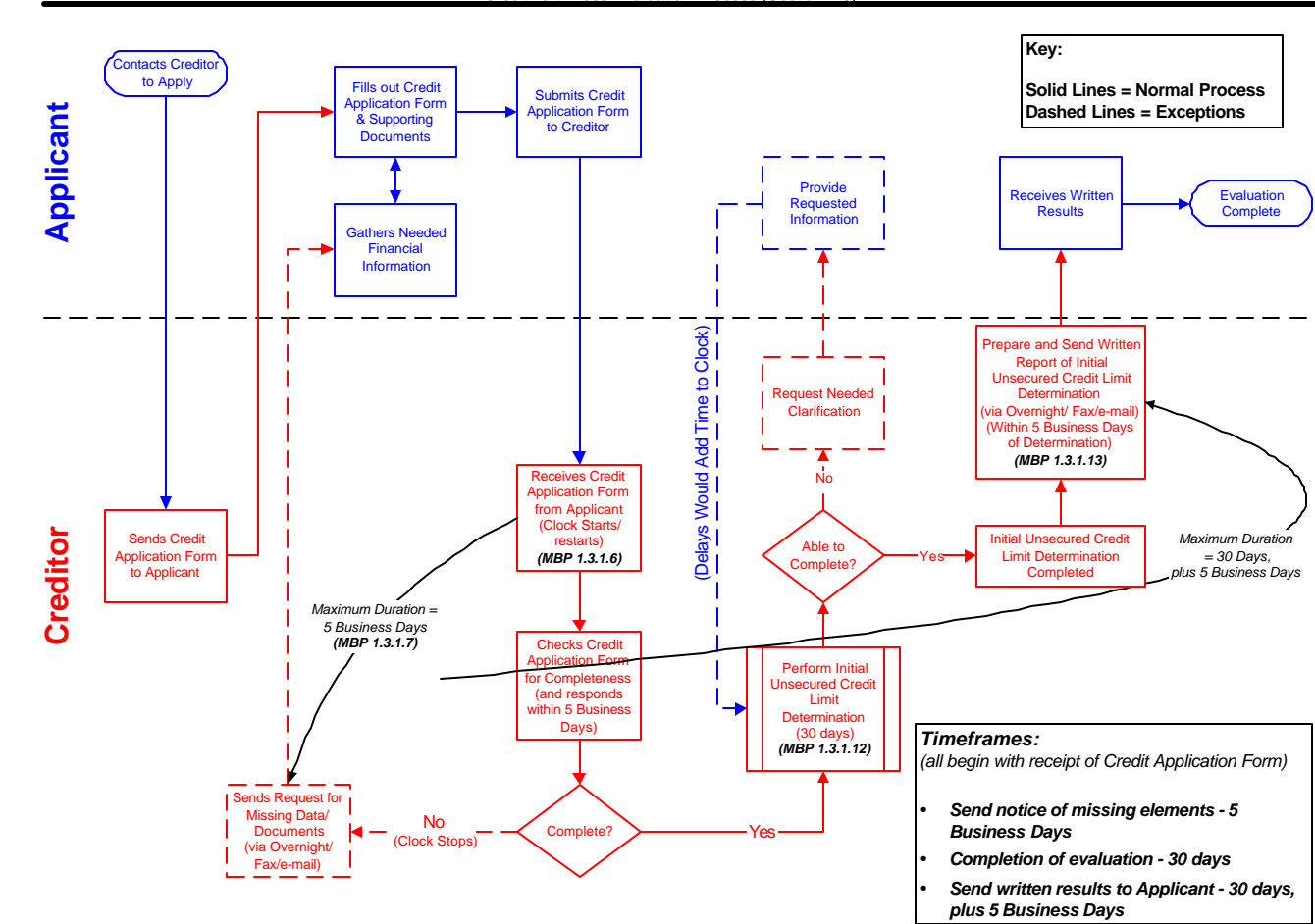
Utility: A regulated entity which provides distribution services, regulated generation and/or transmission services in a given area.

Process Flow Diagrams (Not Reviewed by SUIS yet)

1. Determining Initial Unsecured Credit Limit

Determining Initial Unsecured Credit Limit - Process Flow

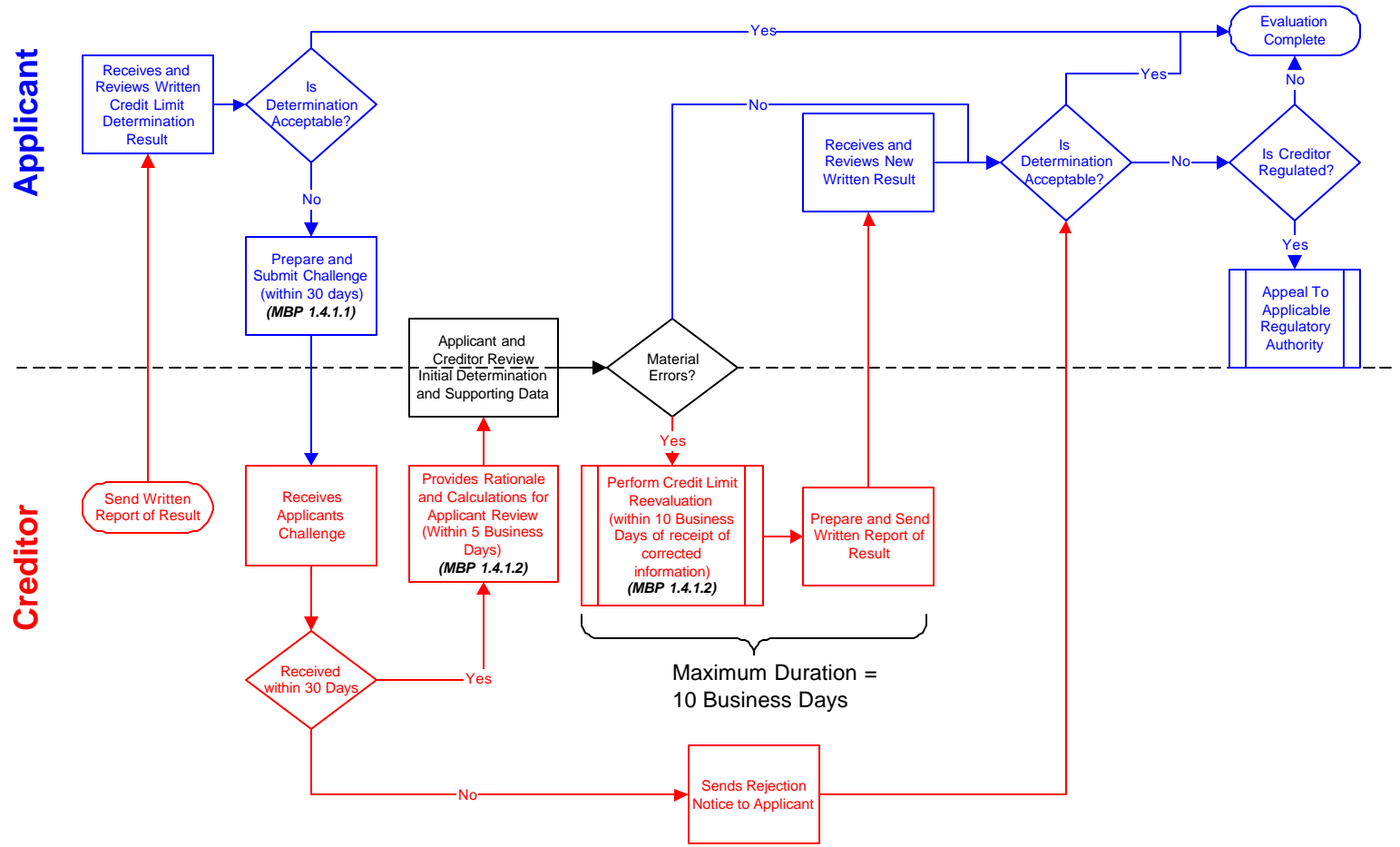
Creditworthiness Evaluation Process (Section 1.3)



2. Challenging Initial Unsecured Credit Limit

Challenging Initial Unsecured Credit Limit - Process Flow

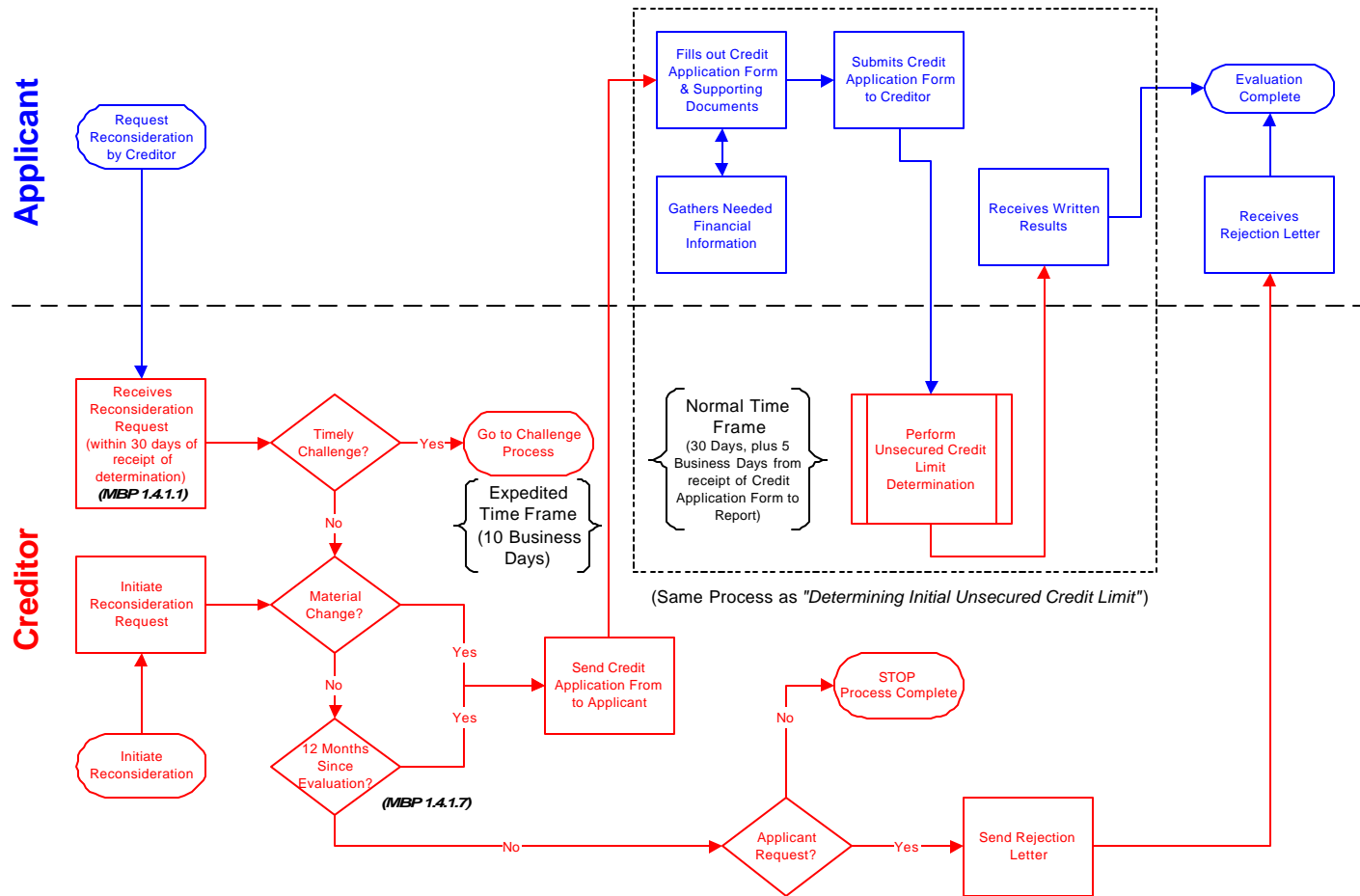
Creditworthiness Evaluation Process (Section 1.4)



3. Reconsideration of Unsecured Credit Limit

Reconsideration of Unsecured Credit Limit - Process Flow

Creditworthiness Evaluation Process (Section 1.4)



B. Model Business Practices

1.1 Overall

1.1.1 Model Business Practices

- 1.1.1.1 Either the Supplier or the Distribution Company may take on the role of Applicant or Creditor.
- 1.1.1.2 The Applicant should provide the Creditor with the telephone number, e-mail address, facsimile number and mailing address of up to two authorized representatives who are designated to receive creditworthiness communications. The Creditor should provide comparable information to the Applicant. Both the Applicant and the Creditor should promptly notify the other party of any changes in this information. Both parties should manage internal distribution of communications that are received.
- 1.1.1.3 General information concerning the evaluation process and methodology for calculating credit exposure for various risks should be publicly available so that Applicants have access to the requirements prior to making their application.

1.1.2 Datasets

None

1.1.3 Models

None

1.2 Determination of Risk Exposure

1.2.1 Model Business Practices

- 1.2.1.1 The credit exposure should be based on the dollar amount determined to be at risk and the period of time during which it remains at risk.
- 1.2.1.2 The same criteria and methodology for calculating credit exposure should be used for [all Applicants presenting a given risk](#) ~~similar risks~~, such as the risk associated with Consolidated Billing or the risks associated with providing replacement [power energy](#) when a Supplier ~~Defaults~~ [defaults](#).
- 1.2.1.3 Specific methodologies should be developed, where applicable, for each of the major types of risks that incorporate the dollar amount at risk and the period of time it remains at risk.

For Consolidated Billing, issues include:

- Total dollar amount billed;
- Whether the Billing Party assumes the Non-Billing Party's receivables or the Pay As You Get Paid method is employed; and
- When assuming receivables, typical Customer payment behavior (dollars \$ past due, percent% late, percent% uncollectable, etc.).

For risks associated with the Distribution Company providing replacement energy when a Supplier defaults, issues include:

- Responsibilities if a Supplier defaults;
- Amount of load served by the defaulting Supplier; and
- Cost of replacement energy.

For services one party provides to another, issues include:

- Total dollar amount for services provided; and
- Payment terms.

1.2.2 Datasets

None

1.2.3 Models

None

1.3 Determination of Initial ~~Unsecured~~ Credit Limit

1.3.1 Model Business Practices

- 1.3.1.1 ~~Unsecured~~ The initial credit determination, including credit limits, should be determined-established using the same criteria and methodology for all Applicants presenting a given risk, such as the risk associated with Consolidated Billing or the Distribution Company providing replacement energy when a Supplier defaults. The Creditor may consider other exposure from the Applicant beyond the specific credit limit being requested.
- 1.3.1.2 Determination of the amount of credit to extend to a particular Applicant may be based on Applicant-Creditor agreement, regulatory policy, or other Governing Documents ~~or both~~, and may include both secured and unsecured components.
- 1.3.1.3 The Creditor should make available to all Applicants a Credit Application Form that includes a checklist or other reference of required supporting financial documents.
- 1.3.1.4 The Applicant should submit to the Creditor the original and two copies of the completed Credit Application Form and three sets ~~one set~~ of the required supporting financial documents.

- 1.3.1.5 The Applicant should submit the Credit Application Form and supporting documents using a method that verifies that delivery took place, such as requiring a signature or requesting a return receipt.
- 1.3.1.6 Timelines for processing a creditworthiness evaluation should begin when the Credit Application Form, complete with all required supporting documents, is received by the Creditor.
- 1.3.1.7 The Creditor should evaluate the Applicant's Credit Application Form and all supporting financial documents for completeness and notify the Applicant of any missing elements within five (5) ~~B~~business ~~D~~days of receipt. Such notification should be in writing and specify the elements needed to complete the application. The notice should be delivered by overnight delivery, facsimile, or e-mail. The creditworthiness evaluation process timelines will be re-started when the Creditor receives the missing elements.
- 1.3.1.8 The supporting financial documents submitted with the Credit Application Form should cover ~~at least~~ a two-year period and include the most recent quarter for which financial data is available. ~~For private companies the year-end financials should be audited and include notes and debt schedules, if available.~~
- 1.3.1.9 The Applicant may present evidence of its rating level from a recognized rating agency(ies).
- 1.3.1.10 Supporting financial documents ~~requested by the Creditor~~ may include:
- Two most recent annual reports;
 - Most recent SEC Form 10-K and 10-Q and any independent auditor's letter to management or, if SEC Form 10-K is unavailable, substitute audited annual financial information (including a balance sheet, income statement, cash flow statement with notes, and any independent auditor's letter to management); ~~and~~
 - Most recent quarterly or monthly financial information (including a balance sheet, income statement, and cash flow statement with notes) accompanied by all attestations required by the SEC that the information submitted is true, correct and a fair representation of Applicant's financial condition; ~~and~~.
 - For private companies the year-end financials should be independently audited by a licensed Certified Public Accountant and include any notes to the financial statements and debt schedules. These documents should be accompanied by an attestation by the chief executive officer, chief financial officer or the owner that the information submitted is true, correct and a fair representation of Applicant's financial condition.

Review Stopped Here on July 16, 2003

1.3.1.11 When the creditworthiness requirement is being met through a Guaranty, the creditworthiness requirements that apply to the Applicant also apply to the Guarantor. In addition to submitting supporting financial documents, the Guarantor should provide documentation of the Guaranty, as applicable.

For a Parental Guaranty:

- ~~Certificate of Incumbency~~Certificate of Authority of the individual signing the contract and/or ancillary documents
- Board resolution or bylaws demonstrating that the Guarantor can guarantee this type of transaction for the Applicant

For a Third-Party Guaranty:

- ~~Certificate of Incumbency~~Certificate of Authority of the individual signing the contract and/or ancillary documents
- Board resolution or bylaws demonstrating that the Guarantor can guarantee this type of transaction for the Applicant
- Agency agreement that ties the Guarantor to the Applicant

For a Foreign Guarantor:

- ~~Certificate of Incumbency~~Certificate of Authority of the individual signing the contract and/or ancillary documents
- Board resolution, or equivalent (e.g., Articles of Association/Organization), with a copy of the bylaws demonstrating that the Guarantor has the authority to enter into such a Guaranty
- Legal opinion that states a judgment for the Creditor would be enforceable in the country of the Guarantor

1.3.1.12 The Creditor should complete the creditworthiness evaluation within ~~thirty ten (30/10)~~ Business Days ~~(Reliant suggested 5 business days)~~ of receipt of all required documents.

1.3.1.13 The Creditor should provide the results of the creditworthiness evaluation to the Applicant in writing within five (5) ~~B~~business ~~D~~days of completing the evaluation. The results should be delivered by overnight delivery, facsimile, or e-mail. The notice should include the rationale for the determination of the risk exposure and ~~unsecured~~ credit limits.

1.3.2 Datasets

None

1.3.3 Models

None

1.4 Reconsideration of ~~Unsecured~~ Determination of Credit Limit

1.4.1 Model Business Practices

- 1.4.1.1 An Applicant should be granted an opportunity to challenge ~~a an initial unsecured~~ credit limit determination. The Challenge should be submitted within thirty (30) ~~days~~ calendar days of receiving the written notification of the ~~initial unsecured~~ credit limit determination.
- 1.4.1.2 The Creditor should respond to a timely Challenge within five (5) ~~business days~~ Days of receipt by providing the rationale for its determinations ~~and any calculations supporting the resulting credit limit~~. The Creditor should also review with the Applicant the data used as input to ensure there were no errors or missing data that impacted the result. If there were material errors or omissions, the Creditor should re-evaluate the Applicant's creditworthiness within ten (10) ~~business~~ Business ~~d~~Days of receipt of corrected information.
- 1.4.1.3 If the Applicant remains dissatisfied with the outcome of the creditworthiness evaluation by a Creditor who is regulated, it may elevate its Challenge to the Appropriate Regulatory Authority.
- 1.4.1.4 An Applicant should notify the Creditor of any adverse Material Change in its financial condition within three (3) ~~business~~ Ddays of such change.
- 1.4.1.5 A Creditor ~~may periodically~~ re-evaluate the creditworthiness of an Applicant ~~and also whenever~~ it becomes aware of an adverse Material Change in the Applicant's financial condition.
- 1.4.1.6 An Applicant may request an Event-Driven Reconsideration when there has been a favorable Material Change in its financial status, such as an upgrading by a major bond rating agency.
- 1.4.1.7 In addition to Event-Driven Reconsiderations, an Applicant may request a re-evaluation of its creditworthiness no more than once every twelve months.

1.4.2 Datasets

None

1.4.3 Models

None

1.5 Disqualification/Remedies

1.5.1 Model Business Practices

- 1.5.1.1 Whenever the Creditor's risk exposure exceeds the amount covered by the Applicant's security arrangements, the Creditor may immediately require additional security appropriate to the amount of additional risk exposure.
- 1.5.1.2 Whenever the Creditor's risk exposure becomes less than the amount covered by the Applicant's security arrangements, the Creditor should comply with the Applicant's request for an immediate reduction in the security held appropriate to the amount of risk exposure.
- 1.5.1.3 Requests for security, additional security or reduction of security should be in writing and delivered by overnight delivery, facsimile, or e-mail.
- 1.5.1.4 When a Creditor requests security ~~or a deposit~~Cash Deposit and the required security ~~or deposit~~Cash Deposit is not tendered within the period specified in the appropriate Governing Documents ~~(e.g., Billing Services Agreement)~~, the Creditor may begin taking actions to reduce its exposure, as allowed under the Governing Documents, including, but not limited to:
- (If the Applicant is a Supplier) Cease processing any Switch Requests that add to the Customers served by the Applicant;
 - Moving any of the Applicant's Customers currently on Applicant Consolidated Billing to Dual Billing, effective on the Customer's next normally scheduled bill;
 - Reducing the sales of any other products or services the Creditor may have been selling to the Applicant until the credit exposure no longer exceeds the Applicant's credit limit; and/or
 - Taking remedial action, including disqualification of the Applicant, as allowed by the Applicable Regulatory Authority.
- 1.5.1.5 When the Applicant is a Supplier and it can partially, but not fully, meet a request for security ~~or deposit~~Cash Deposit in the time period specified in the appropriate Governing Documents, it can avoid disqualification by reducing the risk exposure it presents to the Distribution Company to an amount commensurate with the amount of security ~~or deposit~~Cash Deposit tendered.

1.5.2 Datasets

None

1.5.3 Models

None

1.6 Security Instruments

1.6.1 Model Business Practices

- 1.6.1.1 Creditors should offer the option of one or more of the following forms of secured credit to those Applicants who do not qualify for sufficient unsecured credit for the risks that they present.

(put in alphabetical order)

- Prepayment
- Cash Deposit
- Letter of Credit
- Guaranty
- Surety Bonds
- Security Interest in Collateral

Such ~~credit option(s)~~ forms of secured credit should be acceptable to the Creditor ~~in accordance with standard industry practices, provided that and~~ the Creditor's acceptance should not be unreasonably withheld, ~~and in accordance with standard industry practices.~~ The Creditor and Applicant may mutually agree that the Applicant will provide other forms of security credit options.

1.6.2 Datasets

None

1.6.3 Models

None

1.7 Calling on Security

1.7.1 Model Business Practices

- 1.7.1.1 The Creditor may call upon the security posted by the Applicant as specified in applicable agreements or tariffs, or after all of the following ~~events~~ occur:

- Written notice of default is provided to the Applicant; and
- The Creditor provides notice to the Applicant of its intent to call upon the security posted by the Applicant; and; Written notice of default is provided to the Applicant; and (proposal to delete)
- ~~Payment~~ Payment or other action to cure the default is not made within the Cure Period, ~~–~~

1.7.1.2 The same criteria and methodology for establishing the appropriate length of the Cure Period should be used for all Applicants presenting a given similar risks, such as the risk associated with Consolidated Billing or an entity acting as the Default Provider, the party that provides replacement energy when a Supplier defaults.

1.7.1.3 The length of the Cure Period for various risks should be publicly available so that Applicants have access to the requirements prior to making their application. (Proposal to delete)

1.7.1.4 The Creditor may call upon the security posted by the Applicant without prior notice if the Applicant files a petition for bankruptcy (or equivalent, including the filing of an involuntary petition in bankruptcy against the Applicant, if the petition is not dismissed within 20 days calendar days).

1.7.1.5 A Distribution Company acting as the Creditor may immediately call upon the security posted by the Applicant (that is a Supplier) without prior notice if the Applicant for any reason ceases to provide energy service to all of its customers Customers within the Distribution Company's service territory.

1.7.2 Datasets

None

1.7.3 Models

None

1.8 Confidentiality

1.8.1 Model Business Practices

- 1.8.1.1 ~~The fact that an Applicant has applied for credit and the informational Confidential Information provided to the Creditor content of the~~ in the creditworthiness evaluation process should be used only for the purpose of establishing the Applicant's financial status in order to enable the parties to enter into contracts for the products/services to be provided. ~~This information should be deemed confidential, and The and the. The Confidential Information should not be subject to public disclosure publicly disclosed, except as required by the Applicable Regulatory Authority. However, the Creditor may report its historical credit experience with the Applicant to credit agencies.~~
- 1.8.1.2 When entering into the creditworthiness evaluation process the Applicant and the Creditor should execute a non-disclosure agreement, if requested by the Applicant, unless non-disclosure is provided for within ~~the other~~ Governing Documents.
- 1.8.1.3 Conditions under which a eCreditor may disclose eConfidential Information to a third party should be covered in a non-disclosure agreement or other Governing Documents.

If the Creditor is required to disclose Confidential Information to the Applicable Regulatory Authority, it will:

- ~~Notify the Applicant in writing prior to doing so, and~~
- ~~Cooperate with the Applicant in seeking a protective order or other appropriate remedy from the Applicable Regulatory Authority.~~

1.8.2 Datasets

None

1.8.3 Models *(Not Reviewed by SUIS yet)*

- 1.8.3.1 Model Non- Disclosure Agreement

MODEL NON-DISCLOSURE AGREEMENT
(Example)

This Non-Disclosure Agreement between _____ (Applicant), having offices at _____ (Address, City, State, Zip Code) (“CompanyApplicant”), and _____ (Creditor), having offices at _____ (Address, City, State, Zip Code) (“RecipientCreditor”), is effective as of this the _____ day of _____, 200__ (“Agreement”). CompanyApplicant and RecipientCreditor may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

1. "Confidential Information" means information that relates to the nonpublic financial information concerning the financial condition of the CompanyApplicant or any of the CompanyApplicant's Affiliates which and that is disclosed to the RecipientCreditor by the CompanyApplicant or any of CompanyApplicant's Affiliates. In addition, pursuant to the requirements of the ARA, the Parties may agree that Confidential Information and shall includes the name of the CompanyApplicant, the execution existence of this Agreement between the Parties, and the fact that the CompanyApplicant has asked the RecipientCreditor to evaluate its financial status. Confidential Information may not be disclosed in written or other tangible forms (including on magnetic media), or by oral, visual, or other means. The term "Affiliate" as used in this Agreement means any person or entity directly or indirectly controlling, controlled by, or under common control with a Party.

2. ~~Recipient~~The Creditor of Confidential Information may use the Confidential Information only for the purpose of evaluating the financial status of the CompanyApplicant and/or any of the CompanyApplicant's Affiliates as such status relates to a determination by Recipient the Creditor as to whether or not the Parties may enter into a written contract for the supply or delivery of electricity and/or gas.

3. ~~Recipient~~The Creditor will take steps to restrict access to Confidential Information to those individuals who have a business reason for access. The Creditor will advise those individuals who have access of their obligation to comply with all applicable securities trading rules and laws, covenants that it will not, and will advise its officers, directors, employees, consultants and representatives and its affiliates and their officers, directors, employees, consultants and representatives to whom it discloses Confidential Information (“Representatives”) not to purchase, sell, or otherwise trade in any securities of CompanyApplicant or its Affiliates (or facilitate or encourage the trading of any such securities by any other person) so long as the contents of the Confidential Information constitute material, nonpublic confidential information obtained pursuant to this Agreement, and ~~has~~such information has not been publicly disclosed by CompanyApplicant through any filing with the Securities and Exchange Commission.

34. ~~Recipient~~The Creditor shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care.

5. ~~Recipient~~The Creditor shall protect such Confidential Information acknowledges that it and its Representatives owe a duty of confidence with respect to material nonpublic information of CompanyApplicant and/or CompanyApplicant's Affiliates, to the extent sufficient to preclude any duty of Companythe Applicant or Companythe Applicant's Affiliates to disclose (by reason of Regulation FD of the Securities and Exchange Commission) material nonpublic information communicated to Recipientthe Creditor or its Representatives in connection with the Confidential Information. (Proposal to delete this paragraph???)

~~6. Recipient~~The Creditor may disclose Confidential Information received hereunder to (i) its Affiliates who agree, in advance, in writing, to be bound by this Agreement, and (ii) to its employees and independent contractors, and its Affiliates' employees and independent contractors, who have a need to know, for the purpose of this Agreement, and who are bound to protect the received Confidential Information from unauthorized use and disclosure under the terms of a written agreement. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of ~~Company~~Applicant. [Is this clause already covered in paragraph 3 and is this paragraph in conflict with FERC and ARA rules?]

47. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:

- (a) Was publicly known at the time of ~~Company~~the Applicant's communication of this information thereof to ~~Recipient~~the Creditor;
- (b) Becomes publicly known, through no fault of ~~Recipient~~the Creditor, subsequent to the time of ~~Company~~the Applicant's communication of this information thereof to ~~Recipient~~the Creditor;
- ~~(b)~~(c) Was rightfully in ~~Recipient~~the Creditor's possession free of any obligation of confidence at the time of ~~Company~~the Applicant's communication of this information thereof to ~~Recipient~~the Creditor;
- ~~(e)~~(d) Is rightfully obtained by ~~Recipient~~the Creditor from third parties authorized to make such disclosure without restriction; or
- (e) Is identified by ~~Company~~the Applicant as no longer proprietary or confidential; or
- (f) Is required to be disclosed by existing laws.

58. In the event ~~Recipient~~the Creditor is required by law, regulation or court order to disclose any of ~~Company~~the Applicant's Confidential Information, ~~Recipient~~the Creditor will promptly notify ~~Company~~the Applicant in writing prior to making any such disclosure in order to facilitate ~~Company~~the Applicant seeking a protective order or other appropriate remedy from the proper authority. ~~Recipient~~The Creditor agrees not to oppose reasonable efforts by cooperate with Companythe Applicant, at CompanyApplicant's expense, in seeking such order or other remedy. ~~Recipient~~The Creditor further agrees that if ~~Company~~the Applicant is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, ~~Recipient~~the Creditor will furnish only that portion of the Confidential Information, which, in the opinion of counsel for Recipient, is legally required to be furnished, and ~~Recipient~~the Creditor will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

~~9. Confidential Information shall remain the exclusive property of the Company~~Applicant. ~~The Recipient~~Creditor agrees that Confidential Information disclosed hereunder is being received subject to the ~~Company~~Applicant's ownership rights in such Confidential Information and, further, subject to all relevant intellectual and/or proprietary property rights of the ~~Company~~Applicant. ~~The Recipient~~Creditor agrees that, at the conclusion of its review of the Confidential Information, or within five business days after ~~Company~~Applicant's request, all copies of the Confidential Information in any form whatsoever (including, but not limited to, any reports, memoranda, or other materials prepared by the ~~Recipient~~Creditor or at its discretion) will be returned to ~~Company~~Applicant or destroyed and ~~Recipient~~Creditor will, upon request, cause one of its Representatives to verify such return or destruction.

610. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

~~811.~~ This Agreement shall become effective as of the date first written above, ~~when both parties have signed below and shall expire one (1) year~~ (3) years thereafter unless extended or renewed by Parties in writing.

~~912.~~ Neither Party may assign any of its rights or obligations hereunder, except to an Affiliate or successor in interest, without the prior, written consent of the other Party, which consent shall not be unreasonably withheld.

~~4013.~~ No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

~~414.~~ This Agreement (a) is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures concerning such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; and (c) SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF (Creditor's State) WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

~~4215.~~ If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative.

(Applicant Name)
a (state and type of organization).

(Creditor Name)
a (state and type of organization).

By: (if the above entity is a Limited Partnership
enter name of its General Partner)

By: (if the above entity is a Limited Partnership
enter name of its General Partner)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____