

# **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 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 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 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 resulting from a Supplier's failure or withdrawal from the market are also 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.

General information ~~The concerning the~~ evaluation process and methodology for determining credit limits and risk exposure should be reflected in one or more of 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.

The definition of a Business Day should be defined in the Governing Documents and should be made publicly available, as appropriate.

## Definitions

**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 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., similar holidays for transactions occurring in Canada and Mexico, and other holidays as specified in the Governing Documents. As defined in the Governing Documents.~~

**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 Authority:** 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 or Supplier renders a Customer bill consolidating the energy, transmission / transportation and distribution 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 which provides distribution services and may provide energy and/or transmission/transportation services in a given area.

**Dual Billing:** The billing option in which the Distribution Company and the 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.

**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 operational manuals.

**Guarantor:** The issuer of a Guaranty.

**Guaranty:** 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 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 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:** The payment processing method in 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.

**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 Bond:** 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.

## **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 similar risks, such as the risk associated with Consolidated Billing or the risks associated with providing replacement energy when a Supplier 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 may include, but are not limited to:

- 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 may include, but are not limited to:

- 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 may include, but are not limited to:

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

## 1.2.2 Datasets

None

## 1.2.3 Models

None

# 1.3 *Determination of Initial Credit Limit*

## 1.3.1 Model Business Practices

- 1.3.1.1 The initial credit determination, including credit limits, should be established using the same criteria and methodology for all Applicants presenting similar risks, 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, 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 list of required supporting financial documents.
- 1.3.1.4 The Applicant should submit to the Creditor the completed Credit Application Form and 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) Business 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 a two-year period and include the most recent quarter for which financial data is 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 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);
  - 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 [current](#) financial condition.

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

For a Third-Party Guaranty:

- 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; and
- Agency agreement, [acceptable to the Creditor](#), that ties the Guarantor to the Applicant.

For a Foreign Guarantor:

- 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; and
- 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 ten (10) 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) Business 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 credit limits.

## 1.3.2 Datasets

None

### **1.3.3 Models**

None

## **1.4 Reconsideration of Determination of Credit Limit**

### **1.4.1 Model Business Practices**

- 1.4.1.1 An Applicant should be granted an opportunity to challenge a credit limit determination. The Challenge should be submitted within thirty (30) calendar days of receiving the written notification of the credit limit determination.
- 1.4.1.2 The Creditor should respond to a timely Challenge within five (5) Business Days of receipt by providing the rationale for its determination. 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 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 Applicable 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 Days of such change.
- 1.4.1.5 A Creditor may periodically re-evaluate the creditworthiness of an Applicant and also when 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 and the required security is not tendered within the period specified in the appropriate Governing Documents, 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-making~~ 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 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 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.

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

Such forms of secured credit should be acceptable to the Creditor and the Creditor's acceptance should not be unreasonably withheld. The Creditor and Applicant may mutually agree that the Applicant will provide other forms of security.

### **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 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 (proposal to delete)~~
- 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 similar risks, such as the risk associated with Consolidated Billing or an entity acting as 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~~ 1.7.1.3 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).

~~1.7.1.5~~ 1.7.1.4 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 within the Distribution Company's service territory (i.e. the Supplier has effectively withdrawn from the market).

## 1.7.2 Datasets

None

## 1.7.3 Models

None

# 1.8 Confidentiality

## 1.8.1 Model Business Practices

1.8.1.1 The Confidential Information provided to the Creditor 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. The Confidential Information should not be publicly disclosed, except as required by the Applicable Regulatory Authority.

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 other Governing Documents.

1.8.1.3 Conditions under which a Creditor may disclose Confidential Information to a third party should be covered in a non-disclosure agreement or other Governing Documents.

## 1.8.2 Datasets

None

### **1.8.3 Models**

1.8.3.1 ~~Model Non-Disclosure Agreement~~ [None](#)