

Determinations Committee Decision

Date:	September 09, 2011
Determinations Committee:	Americas
Meeting Date:	September 09, 2011

<b>DC Issue 2011082601:</b>	<b>Has a Bankruptcy Credit Event occurred with respect to Texas Competitive Electric Holdings Company LLC?</b>	
Question for vote	Do you agree to publish the attached statement? (See Annex.)	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	BlackRock	Yes
	BlueMountain Capital	Yes
	Citadel	Yes
	Citibank	Yes
	Credit Suisse	Yes
	D.E. Shaw	Yes
	Deutsche Bank	Yes
	Goldman Sachs	Yes
	JPMorgan	Yes
	Morgan Stanley	Yes
	PIMCO	Yes
	Société Générale	Yes
	UBS	Yes

## Annex

### STATEMENT

This Statement is published by the Americas Credit Derivatives Determinations Committee (**DC**) in accordance with Section 2.5(d)(v) of the Credit Derivatives Determinations Committees Rules (July 11, 2011 Version) in relation to Issue Number 2011082601 (the **TCEH Question**) relating to Texas Competitive Electric Holdings Company LLC (**TCEH**).

This Statement is not, and does not purport to be, binding with respect to any other determination of any DC nor does it preclude any DC from making a different determination when resolving a question similar to the TCEH Question, including any such question that relates to similar facts.

Any capitalized term used but not defined in this Statement has the meaning given to the relevant term in the 2003 ISDA Credit Derivatives Definitions, as supplemented by the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009) (the **2009 Supplement**), each as published by the International Swaps and Derivatives Association, Inc. (together, the **Definitions**).

In the submission of the TCEH Question to the Americas DC, the following questions were asked:

- (a) Has a Bankruptcy Credit Event under Section 4.2(b) occurred by virtue of TCEH's insolvency?
- (b) Did such Credit Event occur on or after the Credit Event Backstop Date?

In reaching their conclusion on the TCEH Question that no Bankruptcy Credit Event has occurred under Section 4.2(b), the members of the Americas DC took note of the following considerations (each member of the Americas DC may not have relied on all of the considerations contained in this Statement, and a member of the Americas DC may have relied on one, or any combination, of such considerations to reach its individual conclusion):

Section 4.2(b) of the Definitions provides, among other things, that a Bankruptcy occurs if a Reference Entity "...becomes insolvent...". In this circumstance, neither the arguments presented nor the Publicly Available Information submitted in support of such arguments demonstrate (a) that TCEH has become insolvent, (b) the date on which TCEH is purported to have become insolvent or (c) that any such date occurred on or after the Credit Event Backstop Date.<sup>1</sup>

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<sup>1</sup> In considering certain arguments submitted in connection with the TCEH Question, the Americas DC notes that the effect of the 60 calendar day cut-off for Credit Events in the definition of Credit Event Backstop Date introduced in the 2009 Supplement is to limit the events that can trigger settlement under a Credit Derivative Transaction (either through the effective delivery of a Credit Event Notice and Notice of Publicly Available Information or by submitting the question to a DC). Events that occur more than 60 calendar days prior to the effective delivery or submission, as applicable, cannot trigger settlement under a Credit Derivative Transaction pursuant to the terms of the 2009 Supplement. The introduction of the Credit Event Backstop Date in the 2009 Supplement was accompanied by public explanation from ISDA: "If the event occurred more than 60 days ago, it cannot be used to trigger a CDS contract" (see Big Bang FAQ, [http://www.isda.org/bigbangprot/bbprot\\_faq.html#sf4](http://www.isda.org/bigbangprot/bbprot_faq.html#sf4)).