



Date: June 2, 2020
To: Board of Directors
From: Chad V. Seely, Vice President, General Counsel and Corporate Secretary
Subject: Call for Special Meeting of ERCOT Corporate Members

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: June 9, 2020

Item No.: 5

Issue:

Whether the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) should call a Special Meeting of ERCOT's Corporate Members for votes as soon as reasonably practicable to: (1) approve proposed amendments to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), and (2) elect three Unaffiliated Director candidates after the selection of such candidates by the Nominating Committee for recommendation to the Corporate Members, all of which are subject to Public Utility Commission of Texas (PUCT) final approval.

Background/History:

Relevant Bylaws Provisions

Section 3.7(b) of the Bylaws permits the Board to call a Special Meeting of Corporate Members. With respect to Bylaws amendments, Section 13.1(c) provides that the Board has discretion to call a Special Meeting of Corporate Members to vote thereon. Additionally, with respect to Unaffiliated Director candidates, Section 4.3(b)(3) provides that "[t]he Nominating Committee or its subcommittee shall interview the qualified candidates; and the Nominating Committee shall select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval."

Bylaws Amendments

At its meeting on June 9, 2020, the Board is expected to consider ERCOT staff's recommendation to amend the Bylaws, including the definition of "urgent matters," the description of the allowable teleconference technology for meetings, section heading updates and correction of scrivener's errors. The Board may accept this recommendation and approve the Bylaws amendment proposal for recommendation and presentation to the ERCOT Corporate Members, subject to approval by the PUCT.

Unaffiliated Director Candidates

The Nominating Committee has been considering candidates to fill the upcoming Unaffiliated Director vacancies that will occur upon the expiration of the third and final terms of Craven Crowell, Karl Pfirrmann and Judy Walsh on December 31, 2020. At its meeting on June 8, 2020, in an effort to limit the number of potential concurrent

Unaffiliated Director vacancies, the Nominating Committee may select candidates to fill two of the seats while still continuing future consideration of possible candidates to fill the third Unaffiliated Director seat. Also at its meeting on June 8, 2020, the Nominating Committee is expected to consider the expiration of Terrence J. “Terry” Bulger’s first term on March 29, 2021. Mr. Bulger has provided timely notice of his intent to seek re-election for his second term, beginning on March 30, 2021. In relation to Mr. Bulger’s upcoming term expiration, the Nominating Committee may select a candidate for presentation to the ERCOT Corporate Members, subject to PUCT final approval.

Approval of Corporate Members

The next regularly-scheduled meeting of the Corporate Members is not anticipated to be held until the Annual Meeting of Corporate Members (Annual Meeting) on December 8, 2020. In order to mitigate potential operational risks to ERCOT, ERCOT Legal recommends against waiting until the Annual Meeting for Corporate Member approval of the proposed amendments to the Bylaws and election of the Unaffiliated Director candidates. If these matters were submitted for Membership approval in December 2020, this timing would delay Commission approval likely until several months into 2021, even with expedited Commission consideration. Delaying Commission approval of the Bylaws amendments would limit the ability of the Board and its committees to act at meetings via teleconference (which is necessary in light of the current situation caused by the Coronavirus 2019 (COVID-19) pandemic) on certain matters that, if action was otherwise delayed, may result in operational, regulatory, legal, organizational or governance risk. Moreover, if the Corporate Members did not elect any Unaffiliated Director candidates selected by the Nominating Committee to fill the three vacancies expected to be created December 31, 2020 until the Annual Meeting, and because any Unaffiliated Director candidates elected by Corporate Members may not be seated until approved by the Commission, there would be three Unaffiliated Director vacancies beginning January 1, 2021, until Commission approval of candidates to fill those seats.

As such, in order to have the Bylaws amendments become effective prior to the August 11, 2020 Board meeting or as soon as possible thereafter, and in order to facilitate Commission approval of Unaffiliated Director candidates before December 31, 2020, ERCOT Legal recommends that the Board call a Special Meeting of Corporate Members to approve the Bylaws amendments, as well as to elect three Unaffiliated Director candidates selected by the Nominating Committee, as soon as practicable and prior to the Annual Meeting on December 8, 2020.

Key Factors Influencing Issue:

- Sections 3.7(b) and 13.1(c) of the Bylaws give the Board discretion to call Special Meetings of the Corporate Members for consideration of, among other things, amendments to the Bylaws and Unaffiliated Director candidates.
- Section 4.2 of ERCOT’s Bylaws provides that the Board should be comprised, in part, of five Unaffiliated Directors.

- Three Unaffiliated Director seats are expected to become vacant upon the expiration of Mr. Crowell's, Mr. Pfirrmann's and Ms. Walsh's third and final terms on December 31, 2020.
- Mr. Bulger is an Unaffiliated Director and his first term expires on March 29, 2021.
- It is in the best interest of the Corporate Members, ERCOT, and the market for the Bylaws amendments to be considered by the Corporate Members as soon as practicable after approval by the Board.
- Submitting the Bylaws amendments for Membership approval at the Annual Meeting in early December 2020 would delay Commission approval until after several additional Board meeting cycles, even with expedited Commission consideration.
- Submitting Unaffiliated Director candidates selected by the Nominating Committee for Membership approval at the Annual Meeting in early December 2020 would delay Commission approval until after December 31, 2020, when three vacancies would be created and in very close timing with the expiration of Mr. Bulger's term on March 29, 2021.

Conclusion/Recommendation:

ERCOT staff recommends that the Board call a Special Meeting of ERCOT's Corporate Members as soon as reasonably practicable for votes to approve amendments to the Bylaws and to elect three Unaffiliated Director candidates after the selection of such candidates by the Nominating Committee for recommendation to the Corporate Members, all of which are subject to PUCT final approval.



ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
BOARD OF DIRECTORS RESOLUTION

WHEREAS, after due consideration of the alternatives, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to call a Special Meeting of the ERCOT Corporate Members as soon as reasonably practicable for votes to: (A) approve proposed amendments to the *ERCOT Amended and Restated Bylaws* (Bylaws), including the definition of “urgent matters,” the description of the allowable teleconference technology for meetings, section heading updates and correction of scrivener’s errors; and (B) elect Unaffiliated Director candidates, Terrence J. “Terry” Bulger, (Name of Selected Candidate 1) and (Name of Selected Candidate 2), to serve on the ERCOT Board who were selected by the Nominating Committee of the Board for recommendation to the ERCOT Corporate Members, all of which are subject to Public Utility Commission of Texas (PUCT) final approval;

THEREFORE, BE IT RESOLVED, that the Board hereby calls a Special Meeting of ERCOT’s Corporate Members as soon as practicable for votes to: (A) approve proposed amendments to the Bylaws after the Board recommendation for such approval; and (B) elect Unaffiliated Director candidates, Terrence J. “Terry” Bulger, (Name of Selected Candidate 1) and (Name of Selected Candidate 2) who were selected by the Nominating Committee of the Board for recommendation to the ERCOT Corporate Members, all of which are subject to PUCT final approval.

CORPORATE SECRETARY’S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its June 9, 2020 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of June, 2020.

Vickie G. Leady
Assistant Corporate Secretary