

## 2005 ERCOT Bylaws Review Suggested and Required Changes

### *Governance and Administrative Enhancements; Compliance with SB 408*

ITEM	SECTION(S) AFFECTED	DESCRIPTION OF SUGGESTED CHANGE OR ISSUE	COMMENTS
<b><u>I. Changes Discussed by the Board</u></b>			
1	2.1, 3.4, 4.3(a)	Permit trade associations comprised of members that meet the current definition of Commercial Consumers to join ERCOT as a Corporate Member and pay an Annual Fee less than the \$2,000 Fee currently required for Corporate Members. With respect to the Commercial Consumer Board and TAC seats, relax the requirement that Board members and TAC members must be employees of a Corporate Member. Allow the Commercial Consumers to elect Board and TAC representatives as is the practice for Industrial Consumers and other Segments.	<p>1. Commercial Consumers have not been active in ERCOT. Changes are needed to encourage participation.</p> <p>2. Language should exclude “sham” trade associations created solely for the purpose of gaining ERCOT membership. Screening criteria will need to be developed.</p> <p>3. Eligible trade associations should be limited to those that represent the interests of Commercial Consumers.</p>
2	2.17, 4.2, 4.3(e), 13.6	Eliminate the current practice of seating Board Alternates and the use of proxies by Board members.	<p>1. The practice of allowing Board alternates (Segment Alternates and Designated Alternates) is very unusual in the corporate world and cumbersome.</p> <p>2. Some corporations do not allow Board members to use proxies.</p> <p>3. Eliminating alternates (and proxies) would encourage attendance by regular Board members.</p>
3	4.3(b)	Sitting Independent Board members should be allowed to participate in the selection of new Independent Board members. Current section 4.5(b) was written prior to the time that the ERCOT Board included Independent Board members.	The section needs to be updated to reflect the presence of Independent Board members and allow their participation.
4	13.10	Revise or delete the sunset provision contained in the current Bylaws.	

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<b><u>II Compliance with SB 408 (effective September 1, 2005)</u></b>			
5	4.3	<p><b><i>Revised PURA §39.151 (effective Sept. 1, 2006):</i></b></p> <p>(g) The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:</p> <p>(1) the chairman of the commission as an ex officio nonvoting member;</p> <p>(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;</p> <p>(3) the chief executive officer of the independent organization as an ex officio voting member;</p> <p>(4) six market participants elected by their respective market segments to serve one-year terms, with:</p> <p>(A) one representing independent generators;</p> <p>(B) one representing investor-owned utilities;</p> <p>(C) one representing power marketers;</p> <p>(D) one representing retail electric providers;</p> <p>(E) one representing municipally owned utilities; and</p> <p>(F) one representing electric cooperatives</p> <p>(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term</p> <p>(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term; and</p> <p>(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms</p> <p>(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).</p>	<p><i>This provision is not effective until September 1, 2006.</i> The detailed process for selection of Market Participant Board Members is currently set forth in the Board Policies and Procedures. Some portion of this process should be moved to the Bylaws in order to comply with this requirement.</p> <p>The Bylaws must also be updated to reflect the revised Board membership and requirement that the Chair be an Unaffiliated Director. The Board has committed to selecting the new Unaffiliated Directors by the end of 2005 and select a new Unaffiliated Chair by September 1, 2006.</p>
6	4.6, 13.8	<p><b><i>New PURA §39.1511(a):</i></b> Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for</p>	<p>Currently, the ERCOT Bylaws provide access to Board meetings for <i>members</i> and other ERCOT procedures provide for public access to meetings. The section should be revised to</p>

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		the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.	clarify access by the public to Board meetings and Board committee meetings except for appropriate executive session issues, conforming language as set forth in SB 408. The list of items eligible for executive session discussion in SB 408 is not limited and should be expanded in the Bylaws to include other types of information normally protected by the Texas Open Meetings Act.
7	4.6	<b>New PURA §39.1511(b):</b> The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.	Revise the section to reflect the wording of the new statute.
8	8.2	<b>New PURA §39.1512:</b> (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter. (b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made. (c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.	The statute does not require these duties to be in the Bylaws, but at least some incorporation and reference would be useful to ensure consistent application. The Ethics Agreement should also comport with these requirement.  Legislative history indicates that "direct interest" is not intended to include matters of general benefit to an entire market segment.
9		<b>New PURA §39.1515</b> (e) In adopting rules governing the standards for funding the market monitor, the	A Bylaws provision is not required for creation of a Board subcommittee, but it could

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		commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions.	be added.
<b>III. <u>Changes Suggested by Stakeholders</u></b>			
10	3.1(a), 4.2, 5.1(a)(1)	Aggregators are currently allowed to join ERCOT in the Independent REP Segment. Aggregator participation has been low and Aggregator interests do not always align well with REP interests.	1. The Bylaws could create a separate membership classification for Aggregators instead of the current practice of including Aggregators in the Independent REP Segment. 2. Legislation prevents limit ERCOT from adding additional Segments and/or Board seats.
11	2.12	Reduce the number of pole-miles of transmission that an entity must own in order to be eligible to join ERCOT as an IOU.	This would allow Cap Rock to qualify for membership in this Segment.
12	None	The Board has discussed the need to evaluate the allocation of duties among the Board committees.	1. This issue could be addressed in the Board Procedures. 2. Adding more Board committees could create additional scheduling and logistics problems. Regardless of the number of committees, the same Board members will be tasked with the work of the Board.
13	4.11, 4.12, 5.4	The Board's involvement in reliability matters, such as NERC activities, should be defined. Reconcile ERCOT responsibilities under oversight imposed by federal energy legislation (if passed) (NERC/FERC/ERO) when compared to PURA and SB 408 (PUCT).	These issues could be addressed in the Board Procedures.
14	4.12	The Board has discussed a review of Sarbanes Oxley requirements as an industry standard and whether some elements should be added to ERCOT Board governance.	This issue could be addressed in the Board Procedures.
15	12.1(d)	Currently, amendments to the Bylaws are approved by the Board and then submitted to the Corporate Members for enactment. The Independent Board members are involved in approving the Bylaws at the Board level, but have no role in the enactment process carried out by the Corporate Members.	Independent Board members should participate in the amendment approval process at the membership level, perhaps by allowing the Independent Board members to vote as an additional Segment.

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16	3.1(b)	Require members of all segments except consumers to maintain PUC registration or certification as required by PURA.	NEW
<b>IV. Clean Up Changes Suggested by ERCOT Staff</b>			
17	4.6	Expand persons who can call a special meeting of the Board to include the Chair, Vice Chair, and the CEO or his designee.	Given the additional prescription on Board meeting procedure, it would be prudent have some flexibility in calling special meetings of the Board, which will have expanded notice requirements.
18	5.2	Remove provisions allowing TAC to submit budget requests to ERCOT – rewrite to allow recommendations. Modify provisions regarding the effectiveness of guidelines as applicable upon TAC approval.	These provisions are a vestige of past practice and is no longer needed; however, a reference to the ability to make recommendations on the ERCOT budget matters and referencing TAC's role in approving technical requirements would be appropriate.
19	5.3	Change normal notices of TAC meeting to one week; removal of redundant provision on quorum.	Revised meeting provision is consistent with the Board process.
20	9.1	Allow ERCOT to reimburse Unaffiliated and Consumer Directors for expenses related to training activities. Suggest making provision to allow reimbursement for registration, travel, lodging and related expenses for those Directors.	It is in ERCOT's best interests to have Directors that are well prepared to undertake their fiduciary and oversight duties for ERCOT, and training supports that goal.
21	12.1	Membership approval of Bylaws amendments – clarify that the Board may seek approval from members without calling a meeting.	Approval by the Members of Bylaws amendments can be made without a meeting currently, but that requires the Board having to approve an exception to the current process that assumes a meeting. As in the current circumstances, it is reasonable to recognize that Member approval without meeting is sometimes appropriate.
22	13.6, 13.7	The current rule on Board and TAC is that only abstentions reduce the number of votes needed for action – but vacancies in positions should not count towards the requirement for action.	Confirmation of the current practice to reduce the number needed for action by vacancies for the Board and TAC would help avoid confusion on this issue.