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Date: September 13, 2005
To: Board of Directors
From: Bob Kahn, Chair, H.R. & Governance Committee
Subject: ERCOT Bylaws Amendments - Approval

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: September 20, 2005

Agenda Item No.: 12c

Issue:

ERCOT Bylaws reauthorization, compliance with SB 408 and other Bylaws changes.

Background/History:

Because the ERCOT Bylaws will expire on December 31, 2005, ERCOT must reauthorize the Bylaws. The Bylaws must also be amended to comply with SB 408 (legislation amending the Public Utility Regulatory Act) to reflect required changes to Board governance and procedures. ERCOT Staff and stakeholders offered several additional changes, many of which are also recommended by the Human Resource and Governance Committee.

In support of the amendment process, ERCOT began collecting comments regarding potential Bylaws amendments starting in January 2005. On April 16, 2005, ERCOT hosted a public meeting to discuss potential amendments to the Bylaws. Based upon these initial comments, the ERCOT Board released a draft of the Bylaws for comment on July 21, 2005. ERCOT hosted another public meeting on August 5, 2005, to address additional comments received. ERCOT summarized these comments and provided them to the Board on August 16, 2005. The HR & Governance Committee then met to discuss all suggested changes and finalize its recommendations. The full review schedule is attached as Attachment C.

The proposed changes include deletion of the sunset date of the Bylaws. For compliance with SB 408, the proposed changes reflect the following:

- Addition of two Unaffiliated Directors by September 1, 2006 (Of the five Unaffiliated Directors, one must be Chairman). *The Board has expressed a commitment to seating the new Unaffiliated Board Directors and submitting them for PUCT approval by the end of the year 2005.*
- Formal inclusion of public meeting requirements (additional notice and process).
- Requiring disclosure and non-participation in matters where a Board Director has a direct conflict of interest.



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ERCOT stakeholders have suggested a number of changes to improve the current Bylaws. These changes include:

- Permitting trade associations comprised of members that meet the current definition of Commercial Consumers to join ERCOT as Corporate Members and allowing Commercial Consumers to pay lower Annual Membership Fees.
- Eliminating the current practice of seating Board Alternates.
- Allowing sitting Independent Board members to participate in the selection of new Independent Board members.
- Removing the requirement under one option of Investor Owned Utility (IOU) membership that the IOU must operate *entirely* within the ERCOT Region.
- Clearly requiring members of all segments except consumers to maintain PUC registration or certification as required by PURA.

ERCOT Staff suggested a number of cleanup items and clarifications as follows:

- Expanding persons who can call a special meeting of the Board to include the Chair, Vice Chair, and the CEO.
- Removing provisions about TAC submitting budget requests to ERCOT (make recommendations instead) and modifying provisions regarding the approval of operational guide changes.
- Changing normal notices of TAC meeting to one week (consistent with Board procedures) and removing redundant provision on establishing a quorum for TAC.
- Allowing ERCOT to reimburse Unaffiliated and Consumer Directors for expenses related to training activities.
- Clarifying that the Board may seek approval from Corporate Members to approve amendments to the Bylaws without calling a meeting.
- Clarifying that vacancies should not be counted (in the denominator) towards the requirement for action.

Attachment A summarizes all suggested Bylaws changes in the following categories: (1) items previously discussed by the Board; (2) compliance with SB 408; (3) suggestions from stakeholders; (4) clean up items suggested by ERCOT staff; and (5) items not requiring Bylaws changes. Attachment A also includes a column containing the recommendations of the ERCOT HR & Governance Committee with respect to each issue. This column includes the reasoning behind the HR & Governance Committee's recommendations.

Attachment B contains redlines showing proposed amendments for Board review and



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approval. Only changes identified as *recommended* by the HR & Governance Committee have been included in this document.

Key Factors Influencing Issue:

- ERCOT must reauthorize the Bylaws by the end of the year.
- ERCOT must comply with the requirements of SB 408.
- Additional suggested changes provide improvement, useful cleanup and clarification.

Alternatives:

Approve the proposed Bylaws revisions as reflected in Attachment B (or as modified by the Board). At a minimum, the revisions required by SB 408 should be approved.

Conclusion/Recommendation:

The HR and Governance Committee is expected to issue a formal recommendation to the Board to approve the proposed Bylaws revisions set forth in Attachment B. In order for the amendments to take effect, after Board approval, ERCOT Corporate Members must approve the proposed amendments in accordance with Article 12 of the ERCOT Bylaws.