



Ethical Responsibilities of ERCOT Board Service

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Board Strategic Planning Meeting
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ERCOT Amended and Restated Articles of Incorporation (revised 4 January 2001)

No liability for any act or omission, except for:

- A breach of the duty of loyalty (to ERCOT and/or Members);
- An act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
- A transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- An act or omission for which the liability of a director is expressly provided by statute.

Texas Non-Profit Corporation Act: No liability if acting in good faith, with ordinary care, and in a manner reasonably believed to be in ERCOT's best interest.

ERCOT Amended and Restated Bylaws

(revised 18 September 2007)

Unaffiliated Director Restrictions:

- No recent (two years) service as a director, officer or employee of a Market Participant or its Affiliates
- No direct business relationships with a Market Participant or its Affiliates
 - Also applies to household and family (spouse, parent, parent's spouse, child or sibling, including step and adoptive relations)
 - Retail customer relationships are OK
- No owning Market Participant stocks or bonds
 - Unless placed in a blind trust
 - Also applies to household and family (see above)
- No relationship “that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member”

Potential Conflicts of Interest (Section 9.2)

- Actual or potential conflicts of interest of the Director or his employer
 - Affirmative duty to disclose to the Board
 - Where they directly or indirectly affect any matter before the Board
- Direct interest in a matter of the Director, his employer, or a person in whom the Director has a substantial financial interest
 - Must recuse himself from deliberations and actions on the matter
 - Must abstain from any vote and not otherwise participate in a decision on the matter
 - An interest that is common to the Director's Market Segment, or a general interest of some or all Market Participant Directors, is not a direct interest
 - Identical language appears in PURA 39.1512
- Do not accept a loan *from* ERCOT
- But it is OK to loan money *to* ERCOT
 - With full disclosure, fair treatment, written terms, and Board approval finding the loan to be in ERCOT's best interests
 - Steve Byone, sbyone@ercot.com, 512-225-7012

Thou Shalt Not:

- Violate the Bylaws
- Violate a binding obligation of ERCOT without Board permission
- Act with intent to harm ERCOT or its operations
- Improperly benefit from the operation of ERCOT
- Misuse ERCOT's assets, directly or indirectly
- Wrongfully transfer or dispose of ERCOT property
- Misuse ERCOT's name or any trademark or trade name adopted by ERCOT
- Wrongfully disclose ERCOT's or a Member's confidential information
- Cause ERCOT or a Member to become FERC-jurisdictional

Ethics Agreement for Directors and Segment Alternates (revised 17 October 2006)

- Memorializes many of the Articles of Incorporation and Bylaw ethical duties
- Must be signed annually
- By reference to ERCOT's Investment Policy, requires Directors to fully disclose the following relationships with a bank or financial institution that would otherwise be a Qualified Institution:
 - Officer
 - Director
 - Owner (or beneficial-interest holder) of more than 10% of the stock

Public Utility Regulatory Act § 39.1511

(revised 1 September 2005)

- Meetings must be open to public attendance **and** commentary
 - Including seven days notice of meeting and agenda
 - Shorter notice ok for “urgent” matters
- Executive Session permissible for “sensitive matters such as”:
 - Confidential Personnel Information
 - Contracts
 - Lawsuits
 - Competitively Sensitive Information
 - Grid-Security Information
- Bylaw 4.6(e) adds further examples of “sensitive matters”:
 - Deliberation of Purchase of Real Property
 - Receipt of Legal Advice

Fiduciary Duties

- Duty of Care
 - Reasonably prudent and informed?
- Duty of Loyalty
 - Reasonable belief of action in ERCOT's best interest?
- Duty of Disclosure
 - Actual or apparent conflicts of interest put on the table?
- Duty of Good Faith/Obedience
 - Faithful to ERCOT's mission?

Fiduciary Duties: How to Achieve Them

- Design governance structures to fulfill duties effectively and efficiently
 - Evaluating senior staff; planning for succession; approving large expenditures and transactions; ensuring transparency and integrity of financial disclosures and controls; and overseeing legal and regulatory compliance
- Make governance structures and practices transparent
 - Disclosing structures and practices and explaining the rationale for them is key
- Ensure the competency and commitment of the **Board**
 - What is the appropriate mix of experiences and skill sets?
 - Do Directors have the time and support needed for meeting prep, staying abreast of relevant issues, staff consultations, and crisis management
- Strive for objectivity in Board decisions
 - Stakeholders are everywhere, and everyone has a point of view
 - Key Question: Is the decision faithful to ERCOT's mission?
- Communicate
 - Engage stakeholders in dialogue about corporate-governance and strategy issues

Antitrust Law

Antitrust Don'ts and Do's

Don't:

- Give competitively sensitive information to competitors
- Discuss intentionally disadvantaging competitors
- Discuss shutting out suppliers, competitors, or customers
- Discuss agreements to allocate customers, markets, or geographic areas among competitors
 - Exception: If done pursuant to a law, rule, or Protocol

Do:

- Discuss reliability, market design, grid operations, reliability, system planning, market operations, reliability, Protocols, PRRs, regulatory concerns, and reliability
- Consider changes that promote reliability and market improvements, even if there will be winners and losers among Market Participants
 - **But**, disadvantaging certain Market Participants must not be the intent

QUESTIONS?