

**Date:** June 8, 2009  
**To:** Texas RE Board of Directors  
**From:** Larry Grimm, Texas RE CEO and CCO  
**Subject:** Approval of Legal Separation of Texas Regional Entity

**Texas Regional Entity Board of Directors Meeting Date:** June 15, 2009

**Agenda Item No.:** 5c

**Issue:**

Whether Texas Regional Entity (Texas RE) should be legally separated from Electric Reliability Council of Texas, Inc. (ERCOT).

---

**Background/History:**

In response to the Energy Policy Act of 2005, in May 2007, the ERCOT Board of Directors voted to create Texas RE as an independent and functionally separate division of ERCOT. The Amended and Restated Bylaws incorporating this change to the ERCOT structure were approved by the Public Utility Commission of Texas in September 2007. To further separate and distinguish Texas RE from ERCOT, in July 2008, the Texas RE Board of Directors approved the Texas Advisory Committee, comprised of the Unaffiliated Directors, the PUC Board Chair, and the Public Counsel from the Office of Public Utility Counsel, to review and make recommendations to the Texas RE Board regarding budget, compensation, and other administrative matters.

Over the past year, the Board has discussed whether Texas RE should remain an independent division or whether it should be separated into a legally separate entity. If the Board authorizes the separation of Texas RE from ERCOT, Texas RE staff can begin the steps needed to create a new legal entity and seek required approvals for an Amended Delegation Agreement and Business Plan & Budget with NERC. Texas RE staff needs guidance about the Board's intentions regarding separation and a possible timetable therefor.

---

**Key Factors Influencing Issue:**

With Texas RE as a functionally independent division of ERCOT:

- Texas RE's administrative costs have been less as a division of ERCOT than if Texas RE had been a separate legal entity
- Texas RE Directors have a conflict of interest that is difficult to manage:
  - Texas RE determines ERCOT ISOs compliance with NERC standards and prosecutes any enforcement actions against ERCOT ISO that ERCOT ISO might dispute
  - Texas RE makes registration decisions that ERCOT ISO might dispute
  - The Texas RE and ERCOT Directors have fiduciary duties to both Texas RE and ERCOT
- The ERCOT Bylaws and Budget are reviewed by FERC and substantial portions of the Bylaws cannot be modified without FERC approval
- Texas RE is not allowed to vote on NERC matters as a regional entity (because only one of affiliated entities may vote, and ERCOT ISO votes in the NERC ISO/RTO Sector)
- FERC has questioned Texas RE's affiliation with ERCOT ISO

- NERC prohibits regional entities from leading compliance activities of or enforcement actions against affiliated entities
- Any penalties paid by ERCOT ISO must go to offset the NERC (instead of the Texas RE) budget

**Alternatives:**

- Approve the legal separation of Texas RE from ERCOT.
  - Don't approve the legal separation of Texas RE from ERCOT at this time.
- 

**Conclusion/Recommendation:**

Texas RE respectfully requests the Board approve the legal separation of Texas RE, with the goal of separating on January 1, 2010, and permit Texas RE to take the acts needed to begin the implementation of a separate legal entity.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
TEXAS REGIONAL ENTITY, A DIVISION OF  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

, 2009

WHEREAS, the Board of Directors (“Board”) of Texas Regional Entity, a division of the Electric Reliability Council of Texas, Inc. (ERCOT), a Texas non-profit corporation, has determined it to be desirable and in the best interest of Texas Regional Entity to become a separate legal entity from ERCOT; and

WHEREAS, the Board has determined it to be desirable and in the best interest of Texas Regional Entity to have the new separate legal entity implemented by January 1, 2010 or as soon thereafter as reasonably practicable;

THEREFORE be it RESOLVED, that the Board hereby approves that the legal separation of Texas Regional Entity from ERCOT; a new legal entity and to legally separate from ERCOT;

BE it FURTHER RESOLVED that Texas Regional Entity staff is hereby authorized to immediately take such steps as are needed to create a new legal entity, Delegation Agreement, and needed supplemental Business Plan(s) and Budget(s) and to obtain all required approvals from the Public Utility Commission of Texas, North American Electric Reliability Corporation, and Federal Energy Regulatory Commission to permit the separation of Texas Regional Entity from ERCOT.

CORPORATE SECRETARY’S CERTIFICATE

I, Susan Vincent, Corporate Secretary of Texas Regional Entity, do hereby certify that, at the June 15, 2009 Texas Regional Entity Board of Directors Meeting, the Board of Directors of Texas Regional Entity approved the above referenced resolution. The motion passed by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this            day of            , 2009.

\_\_\_\_\_  
Susan Vincent  
Corporate Secretary