

Market Participant Comments to July 20, 2009 Draft of Proposed Bylaws for Legally Separate Texas Regional Entity

ERCOT Luminant Brazos CPS TCPA AEP

BYLAWS
OF
TEXAS REGIONAL ENTITY, INC.

(A Texas Non-Profit Corporation)

Approved on _____, 2009

Table of Contents

	Page
Article I. Definitions	1
Article II. Purpose.....	3
Article III. Membership	4
Article IV. Board of Directors	7
Article V. Meetings of Members of the Corporation	10
Article VI. Meetings of the Board of Directors	11
Article VII. Officers	12
Article VIII. Reliability Standards Development Committee	13
Article IX. Member Representatives Committee	13
Article X. Other Committees and SubCommittees.....	16
Article XI. Budgets and Funding	16
Article XII. Amendments to the Bylaws	18
Article XIII. Indemnification; Procedure; Dissolution	18
Article XIV. Conflicts of Interest.....	19
Article XV. Books and Records; Audit; Fiscal Year.....	20

**ARTICLE I.
DEFINITIONS**

Section 1. Definitions. The capitalized terms used in these Bylaws of Texas Regional Entity, Inc. (the "Corporation" or "Texas RE"), shall have the meanings set forth below, or if not set forth below, shall have the meanings given them in the NERC Rules of Procedure.

(a) "Affiliate" means any company controlling, controlled by or under common control with the entity under consideration, and includes any company (i.e., any commercial enterprise) in any of the following relationships: (i) a company that directly or indirectly owns or holds at least five percent of the voting securities of another company, (ii) a company in a chain of successive ownership of at least five percent of the voting securities of another company, (iii) a company which shares a common parent with or is under common influence or control with another company or (iv) a company that actually exercises substantial influence or control over the policies and actions of another company. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in Texas RE shall not create an affiliation with Texas RE.

(b) "Board" means the Board of Directors of the Corporation.

(c) "Bulk Power System" or "BPS" means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and facilities generating electric energy as needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

(d) "Commission" or "FERC" means the Federal Energy Regulatory Commission.

(e) "Delegated Authority" means the authority delegated by NERC to the Corporation to propose and enforce NERC Reliability Standards and perform other reliability-related activities in the ERCOT Region under the Delegation Agreement executed by NERC and the Corporation and approved by FERC, pursuant to Section 215 of the Federal Power Act (16 U.S.C. §824n).

(f) Delegation Agreement means the agreement between the Corporation and NERC and approved by the Commission which describes the Delegated Authority and may be amended from time to time.

(g) "Electric Reliability Organization" or "ERO" means the organization that is certified by the Commission pursuant to Section 39.3 of its regulations, and has received recognition by appropriate regulatory authorities in Canada and Mexico, as applicable, to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries and that has entered into a delegation agreement with the Corporation pursuant to which the Electric Reliability Organization delegates enforcement authority for Reliability Standards for the Bulk Power System in the ERCOT Region. NERC was certified as the ERO on July 20, 2006.

Comment [A1]: Brazos comments that the Affiliate definition would prohibit DPs from joining if it has a TO as an Affiliate. (Which is normal for co-ops.) Brazos asks about DPs in JROs where one entity (TO) is registered as responsible for other DPs. (Only NERC registered entities included.)

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Comment [A2]: TCPA Comments: Should the Substantive Rule Definition here (25.5 (3)), instead of redefining it? This really gives the BOD of the TRE significant power in determining an affiliate relationship.

(h) "ERCOT Region" means the geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

(i) "Independent Director" means a person who is not (a) an officer or employee of the Corporation; (b) a NERC Registered Entity or Member or an officer, director, or employee of a Member of the Corporation; or (c) an officer, director, or employee of any company or entity that would reasonably be perceived as having a direct financial interest in the outcome of Board decisions and who does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a Director, as more specifically described in Article IV of these Bylaws.

(j) "Member" means a member of the Corporation pursuant to Article II of these Bylaws.

(k) "PUCT" means the Public Utility Commission of Texas.

(l) "NERC" means North American Electric Reliability Corporation, the entity certified by FERC as the ERO on July 20, 2006.

(m) "NERC Rules of Procedure" means the Rules of Procedure that are adopted by NERC and approved by the Commission.

(n) "Regional Entity" means an entity with a Delegation Agreement with NERC, as ERO, including the following organizations, in addition to Texas Regional Entity: Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), ReliabilityFirst Corporation (RFC), Southeastern Electric Reliability Council (SERC), Southwest Power Pool (SPP), and Western Electricity Coordinating Council (WECC).

(o) "Registered Entity" means an entity that is registered with NERC and listed on the NERC Compliance Registry (available at www.nerc.com).

(p) "Reliability Standard" means a requirement to provide for Reliable Operation of the Bulk-Power System, which is approved by NERC and the Commission, pursuant to Section 215 of the Federal Power Act and all amendments thereto. This term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk-Power System.

Regional Reliability Standard – should be defined here

(q) "Reliable Operation" means operating the elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of the Bulk Power System will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

(r) "Sector" means a group of Members of the Corporation that are Bulk Power System owners, operators, or users, as defined in Article III, Section 4 of these Bylaws. Each Sector shall constitute a class of Members for purposes of Chapter 22 (Nonprofit Corporations) of the Texas Business Organizations Code.

Comment [A3]: TCPA suggests an additional Definition.

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**ARTICLE II.
PURPOSE**

Section 1. General Purpose. The purpose of the Corporation is to preserve and enhance reliability in the ERCOT Region. In furtherance of this goal, the Corporation will:

(a) Perform Reliability Standards development, compliance monitoring, compliance enforcement, and other related activities as a Regional Entity, pursuant to 16 U.S.C. §824n, in accordance with the Corporation’s Delegation Agreement with NERC;

(b) Carry out other activities as set forth in the Delegation Agreement, the NERC Rules of Procedure, or as otherwise required or requested by NERC, in support of the Delegated Authority, including but not limited to organization registration and certification, reliability assessment and performance analysis, training and education, and situational awareness and infrastructure security;

(c) Perform ~~non-statutory~~ compliance monitoring and reporting of the ERCOT Protocols and Operating Guides (“Protocol Compliance”), as authorized by the Public Utility Commission of Texas and allowed by NERC and FERC; and

(d) Engage in any other lawful act or activity that is not in conflict with the Corporation’s duties as a Regional Entity and for which non-profit corporations may be organized under the Texas Non-Profit Corporations Act.

Section 2. Non-Profit Corporation. The Corporation is a Texas non-profit corporation.

Section 3. Geographic Area. The Corporation will perform its operations primarily within the ERCOT Region. The ERCOT Region includes 200,000 square miles, 85% of Texas load, and 75% of Texas land area (does not include the Panhandle, El Paso area, and 2 areas of East Texas). The ERCOT Region includes the following Texas cities and towns: Dallas, Ft. Worth, Houston, San Antonio, Austin, Paris, Tyler, Nacogdoches, Lufkin, Bryan, College Station, Corpus Christi, Harlingen, Brownsville, Laredo, Brownwood, San Angelo, Abilene, Midland, Odessa, Fort Stockton, Monahans, Snyder, Vernon, Wichita Falls, Denton, Garland, Greenville, Waco, Temple, Killeen, Weatherford, and Graham, and does not interconnect synchronously across state lines to import or export power with neighboring reliability regions.

Comment [A4]: Luminant believes that with the separation of TRE from ERCOT that the TRE should shed the distraction of non-statutory responsibilities and further concentrate on its statutory mission which involves development, compliance monitoring, compliance enforcement, and other activities related to NERC reliability standards.

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Comment [A5]: TCPA : remove Protocol compliance activities.

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**ARTICLE III.
MEMBERSHIP**

Section 1. Members. The Corporation is a membership corporation. Membership in the Corporation is voluntary and is open to any **company or entity** that is a user, owner or operator of the ERCOT Region Bulk Power System, registers with the Corporation as a Member, maintains its registration in accordance with this Article III, and complies with the other conditions and obligations of membership specified in these Bylaws. All Members must **qualify** and be registered in **one of the Sectors** defined in Article III, Section 4. Membership in the Corporation is not a condition to participating in the development or consideration of proposed Regional Standards.

Section 2. Registration as a Member. Any **company/entity** that is eligible to be a Member of the Corporation in accordance with Article III, Section A may become a Member by completing and submitting to the secretary of the Corporation a membership registration on a form prescribed by the Corporation. The Member shall designate one representative and an alternative representative with authority to receive notices, cast votes, and execute waivers and consents on behalf of the Member. The secretary of the Corporation shall maintain a current roster of the Members of the Corporation including each Member's designated representative and alternative representative. From time to time, the Board shall establish a date by which Members shall submit their registration renewals. All Members shall be required to renew their registrations annually and within 30 calendar days of a request by an officer of the Corporation, using a registration renewal form prescribed by the Corporation. The secretary of the Corporation shall remove from the roster of Members of the Corporation any Member that has not submitted a registration renewal within 30 days following a date established by the Corporation. The secretary shall inform any Member that is removed from the roster of Members of such removal, by sending notice to such former Member's last known address on the records of the Corporation.

Section 3. Obligations and Conditions of Membership.

(a) Members must agree to promote, support, and comply with Reliability Standards, **comply with the ERCOT region market rules,** and assist the Corporation in its compliance with the terms and provisions of the Corporation's Delegation Agreement with NERC. Each Member shall agree, in writing, to accept the responsibility to comply with policies of NERC and the Corporation as set forth in their respective certificates of formation, bylaws, rules of procedure, and Reliability Standards, as applicable, as from time to time adopted, approved, or amended.

(b) As an additional condition of membership in the Corporation, each Member shall be required to execute an agreement with the Corporation, in a form to be specified by the Corporation, that such **company/entity** will hold all Directors, officers, employees, and agents of the Corporation, as well as volunteers participating in good faith in the activities of the Corporation, harmless for any injury or damage caused by any act or omission of any director, officer, employee, agent, or volunteer in the course of performance of his or her duties on behalf of the Corporation, other than for willful acts of misconduct.

(c) Consistent with applicable laws and regulations, Members must share nonproprietary information at the Corporation's request as necessary for the furtherance of the Corporation's activities and consistent with NERC, PUCT, or any other applicable rules relating to confidentiality.

Comment [A6]: Brazos asks if it was intentionally to prohibit individuals from joining. Asks if OPUC can perhaps represent interest of individuals.

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Comment [A7]: Brazos questions if it is reasonable to require registration in only one sector if entity is registered in multiple sectors – like co-ops. States the entities have substantial interests in the transmission and generation sectors. Seeks more appropriate solution for sector voting and membership.

Comment [A8]: Luminant wants removed – per previous comment about Protocol compliance.

Section 4. Membership Sectors. Each Member shall elect to be assigned to one of the following membership Sectors:

(a) **System Coordination and Planning [Or, alternatively ISO]:** A ~~company~~entity that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), ~~Transmission Service Provider (TSP)~~, or Interchange Authority (IA).

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(b) **Transmission:** A ~~company~~entity that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), ~~and/or~~ Transmission Operator (TOP), **and/or Transmission Service Provider (TSP).**

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(c) **Distribution:** A ~~company~~entity that is registered with NERC as a Distribution Provider (DP) and is not registered as a TO and has no Affiliates that are registered as a TO.

(d) **Generation:** A ~~company~~entity that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).

(e) **Load-Serving and Marketing:** A ~~company~~entity that is registered with NERC as a Load Serving Entity (LSE), a Purchasing-Selling Entity, or any newly defined NERC Function for demand response.

(f) **BPS Owner, Operator or User:** A ~~company~~entity that is an owner, user, or operator of the ERCOT Region Bulk Power System but is not registered with NERC for any NERC Function and has no Affiliates that are Members.

(g) **Governmental/Regulatory:** A representative of the Public Utility Commission of Texas **and a representative of the Office of Public Utility Counsel.**

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Comment [A9]: OPUC questions if it should have membership and a vote in this Sector instead of or in addition to the ex officio Director role.

Section 5. Participation.

(a) There is only one level of Membership, and no company or entity may simultaneously hold more than one Membership.

(b) Members must qualify in and join a Sector. If any ~~company~~entity does not qualify in any other Sector but is an owner, user, or operator of the ERCOT Region Bulk Power System, it may belong to the BPS Owner, Operator or User Sector.

(c) A Member that is **eligible** for more than one Sector **may join only one** Sector **and it must be the most appropriate Sector for its business interests. Any disputes regarding appropriateness of a Member's Sector will be decided by a majority vote by the Board.**

Comment [A10]: CPS requests a Sector for Municipal Utilities to allow them to vote appropriately for their multiple registrations for one legal entity.

Comment [A11]: Brazos questions this restriction for munis and co-ops with multiple registrations for one legal entity. Possibly add municipal and/or coop Sector or allow membership in 2 or more Sectors or allow split votes for the multiple sectors?

(d) A company or entity that is an Affiliate of a Member may hold a separate membership in a different Sector (except for the BPS Owner Operator, User Sector), so long as the legal entities have different NERC Compliance Registry Numbers under which they are currently registered for the applicable NERC Function.

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(e) A Member must continue to vote in the same Sector for a minimum of one year or until it is no longer eligible to remain in such Sector, and it must give notice to the Corporate secretary when it elects or is required to change Sectors.

(f) The Board may review the Sector qualification of any Member and may determine that a Member does not qualify for, and require them to change Sectors.

(g) A Member who is no longer eligible or not in good standing may not vote on any matters that require membership.

Section 6. Membership Fees. Members must pay an annual Membership Fee of \$250, to offset the expenses of membership qualification, coordination, and meetings, unless the Board waives the fee for any Member for good cause shown. The Board may agree to change the amount or frequency of the Membership Fee, from time to time, by majority vote.

Section 7. Term of Membership. Membership in the Corporation must be renewed on an annual basis and will only be retained as long as a Member meets its respective qualifications, obligations, and conditions of membership as set forth in these Bylaws. Membership is conditioned on the annual payment of Membership Fees, unless the Membership Fees are waived by the Board for good cause shown, as determined in the Board's sole discretion.

Section 8. Removal. No Member or Member representative may be sanctioned, expelled or suspended and no membership in the Corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. The Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member following notice to the Member and exercise of appropriate due process procedures and a determination by the Board in its sole discretion that in its judgment the Member has violated its obligations and responsibilities to the Corporation. In the event that the Board does not adopt procedures, the following procedures shall apply:

(a) Written notice. Written notice of intent to terminate, expel, suspend or sanction a Member shall be delivered at least twenty (20) days in advance of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by facsimile (receipt confirmed), e-mail (receipt confirmed) or first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in the Corporation's records.

(b) Hearing. An opportunity shall be provided for the Member receiving such notice to be heard by the Board at the hearing, orally and in writing. The Member shall be entitled to have counsel present, and to participate in the hearing, at its own expense, and to present and cross-examine any witnesses.

(c) Liability. A Member which has been sanctioned, expelled, terminated or suspended shall remain liable to the Corporation for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.

(d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, may be submitted to the Board in writing within one year after the effective date of the expulsion, suspension, sanction or termination. If the Board determines to hear such challenge, it shall notify the Member and such proceeding will be subject to the hearing requirements described in subsection (b) above of this Section 8.



Comment [A13]: Luminant believes a standard should be provided to demonstrate when actions might be appropriate. Note, this is language from the ERCOT bylaws.

Section 9. Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of the Corporation at any time upon written notice to the chief executive officer or president, whereupon it shall cease to be a Member, and its representatives shall cease to be entitled or obligated to participate in the activities of the Board or any activities requiring membership.

Section 10. Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board will reinstate the Membership unless the ~~company~~entity does not meet the Membership qualifications set forth in these Bylaws.

ARTICLE IV. BOARD OF DIRECTORS

Article IV.

Section 1. Board of Directors. ~~The business and affairs of the Corporation shall be managed by the Board.~~ The Board shall consist of (i) ~~five~~ Independent Directors who are nominated and elected in accordance with the requirements and procedures specified in this Article IV (the "Independent Directors"); (ii) the Chairman of the PUCT or another PUCT Commissioner designated by the Chairman, as an *ex officio* non-voting member; (iii) Texas Public Counsel, from the Office of Public Utility Counsel, as an *ex officio* non-voting member, representing the interests of residential and small commercial electricity consumers; and (iv) the CEO of the Corporation as an *ex officio* non-voting member. Each Director, excluding the non-voting members of the Board, shall have one (1) vote on any matter brought before the Board for a vote. All Directors are expected to serve the public interest and to represent the reliability concerns of the entire ERCOT Region Bulk Power System.

Section 2. Independent Directors. The Independent Directors shall be elected, shall have the qualifications specified, and shall serve in the manner provided in this Section.

(a) Qualifications:

(1) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering, bulk power systems, or law; regulation of utilities; and/or risk management.

(2) Independence of any NERC registered entity or any ERCOT Region Market Participant or Electric Reliability Council of Texas, Inc. Requirements of independence include but are not limited to the following:

(i) Independent Directors and the immediate family (any spouse, mother, father, sibling, or dependent, and any spouse of mother, father, or sibling and including any step and adoptive parents, siblings or children) and household members of Independent Directors and their spouses shall not have current or recent status (within the last two years) as a director, officer or employee of an ERCOT Region NERC Registered Entity or ERCOT Region Market Participant.

(ii) Independent Directors and immediate family and household members of Independent Directors shall not have current or recent status (within the last six months) as a director, officer or employee of a non-ERCOT Region NERC Registered Entity.

Comment [A14]: TCPA suggests that we add The business and affairs of the Corporation shall be managed by the Board. Specific functions of the Board shall include, but not be limited to:

- (a) govern the Corporation and oversee all of its activities;
- (b) establish and oversee all organizational groups;
- (c) approve, revise and enforce Reliability Standards utilizing a fair, open, balanced and inclusive process;
- (d) establish compliance monitoring procedures and requirements, and sanctions for non-compliance consistent with applicable NERC Rules;
- (e) establish and approve an annual budget for submission to NERC;
- (f) hire the Corporation's president and approve his or her salary;
- (g) annually at the first regular Board meeting following the annual meeting of Members, elect a Chair ("Chair") and a Vice-Chair from among the directors on the Board; and
- (h) establish Board Committees.

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Comment [A15]: TCPA requests only 3 independent directors to save money.

Comment [A16]: AEP suggests a hybrid board that includes Segment members as a better option, and refers to the other regional entity as examples. Only 1 RE has an independent board and the other 6 have hybrid or stakeholder only. Recommends stakeholder directors for (1) understanding of complexities; (2) close interaction with stakeholders will strengthen collaborative partnership between members and the board, (3) responsiveness of members.

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Comment [A17]: TCPA opposes having Public Counsel as a director.

(iii) Independent Directors and immediate family and household members of Independent Directors shall not have direct business relationships, other than retail customer relationships, with any NERC Registered Entity or Market Participant.

(iv) To the extent that an Independent Director or his or her spouse, dependent child, or any other household member owns stocks or bonds of NERC Registered Entities or Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.

(v) Independent Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a Board member, including the Delegated Authority.

(vi) Other criteria as approved by the Board.

(b) Term. Except for the initial and originally elected Directors, the term for Independent Directors shall be staggered three year terms. An Independent Director may be elected for up to three consecutive terms. Notwithstanding the foregoing, the initial Directors, who are seated for formation of the Corporation will serve only until the first membership meeting of the Corporation, which term shall not exceed six (6) months. If an initial Director is qualified to be an Independent Director and elected by the membership, such Director's initial term shall not be counted for purposes of ~~that~~ term limits. For the originally elected Directors, two positions will have three year terms, two positions will have two year terms and one position will have a one year term. The terms of ex officio directors will not expire.

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(c) Selection.

(1) Except as described below with respect to the selection of Independent Directors to serve as initial Directors upon formation of the Corporation, The the Board shall appoint, on an annual basis, or more frequently if needed in the event of a special election pursuant to this subsection, a nominating committee (the "Nominating Committee") to recommend candidates (i) to succeed the Independent Directors whose terms expire during the current year and (ii) to serve the remainder of the term of any Independent Director who ceased to serve as a Director subsequent to the last annual election of Directors. The Nominating Committee shall consist of the Management Director, the ex officio Directors, and those Independent Directors whose terms do not expire during the current year and such number of other persons with such qualifications as the Board shall specify, provided that the Independent Directors shall constitute a majority of the members of the Nominating Committee. In order to provide for the selection of Independent Directors to be seated as initial Directors upon formation of the Corporation, the Nominating Committee shall consist of the Management Director, the ex officio Directors and the Independent Directors of the ERCOT Board of Directors.

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Comment [A18]: Texas RE suggests another option to resolve the issue noted by Brazos – add a balanced group of members – one from each Sector - to the non-expiring independents on the nominating committee to ensure membership input into the directors. (The membership does confirm all directors.)

Comment [A19]: Brazos questions whether this nominating committee structure will work (when 3 directors expire).

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Comment [A20]: Luminant proposes these changes to Section 2(c) in order to provide for a selection process for the initial Directors. At present, the propose By-laws do not seem to provide for such a process.

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(2) The Nominating Committee will retain an executive search firm to locate and present candidates with the required qualifications, as set forth in Article IV, Section 2(a).

(3) The Nominating Committee shall interview the qualified candidates and select and nominate, by at least a two-thirds majority, qualified candidate(s) consistent with the objectives that the Board as an entirety reflects expertise in the areas of technical electric operations and reliability, legal, senior

corporate leadership, financial, risk management, and regulatory matters, and familiarity with regional system operation issues in the ERCOT Region to present to the Membership for its approval. With respect to the selection of Independent Directors for service as initial Directors upon formation of the Corporation, the Nominating Committee shall, following the interview process, select such Independent Directors that shall serve as initial Directors upon formation of the Corporation.

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(4) Except with respect to the selection of Independent Directors to serve as initial Directors upon formation of the Corporation, The the Membership shall vote by Sector as described in Article V in favor or against the proposed Independent Director(s). A proposed Independent Director that is approved by a majority of the Sectors shall become an Independent Director.

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(d) Director Voting Weights. All voting Directors shall have a single vote each.

(e) Alternates and Proxies. Independent Directors may designate another Independent Director as a proxy if unable to attend a Board meeting. Ex officio Directors may designate a selected proxy or an alternate representative who may attend meetings in the absence of such Director.

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Section 3. Appointment of Management Director. The president and chief executive officer (CEO) of the Corporation shall serve as the Management Director of the Corporation, effective as of the date of his or her appointment by the Board as CEO of the Corporation in accordance with these Bylaws, to serve until such time that he or she ceases to hold the position of CEO. No action of the Members of the Corporation shall be required in connection with the appointment of the CEO as the Management Director of the Corporation.

Section 4. Chair and Vice Chair. Annually, the Board shall elect from the Board's membership, by resolution of the Board, a Chair and a Vice Chair. The Chair shall be one of the Independent Directors.

Section 5. Vacancies and Removal. Should any vacancy on the Board arise from the death, resignation, retirement, disqualification, or removal from office of any Director, or from any other cause, such vacancy shall be filled by electing a Director at the next annual election of Directors to fill the remainder, if any, of the term of the departed Director. Provided, that the Board by resolution may in its discretion call a special election to fill any such vacancy for the remainder, if any, of the term of the departed Director. A Director may be removed with or without cause at any time by whomever had the right to appoint such Director (for *ex officio* Directors), or for the elected Independent Directors, by an affirmative vote of sixty percent (60%) of the Members. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner.

Section 6. Committees of the Board. The Board shall by resolution create and appoint all committees of the Board as the Board deems necessary to perform its responsibilities. All committees of the Board shall have such duties as are prescribed and delegated by the Board. Committees to which any of the authority of the Board to manage the Corporation is delegated must have at least two members, and a majority of the members of the committee must be Directors.

**ARTICLE V.
MEETINGS OF MEMBERS OF THE CORPORATION**

Section 1. Annual and Other Meetings of Members.

(a) An annual meeting of the Members for the election of Directors and to conduct such other business as may come before the meeting shall be held on or about December 1 of each year or as soon thereafter as is reasonably practicable.

(b) Meetings of Members of the Corporation may be called for any purpose or purposes by resolution of the Board, by the chair of the Board, the CEO or the secretary of the Corporation, or by a number of Members constituting at least ten (10) percent of all Members on the roster of Members maintained by the secretary of the Corporation, which number shall include Members in at least three of the Sectors. Meetings of Members shall be held at the principal office of the Corporation or at such other place fixed by the Board as shall be specified in the notice of meeting. Meetings shall be called upon written notice of the time, date, place, and purposes of the meeting given to all Members on the roster of Members maintained by the secretary of the Corporation not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. Only Members in good standing with the Corporation, as determined by the Board, have the right to vote at any meeting of the Members. Further, if at any point a Member no longer meets the qualifications for the Sector of which it is a member, the Entity may immediately elect to become a member in any Sector for which it does qualify.

Section 2. Quorum and Voting Requirements for Meetings of Members. At any meeting of the Members of the Corporation, attendance in person or by proxy by a majority of the Members in each of at least two-thirds of the Sectors on the roster of Members maintained by the secretary of the Corporation shall constitute a quorum.

(a) Members shall vote by Sector and each Sector shall have one vote.

(b) Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, actions by the Members of the Corporation shall be approved upon receipt of the affirmative vote of a majority ~~of the members at a meeting of the Members of the Sectors~~ of the Corporation at which a quorum is present, in person or by proxy. Each Sector's vote shall be determined by the affirmative vote of a majority of the members of the Sector voting at the meeting.

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Section 3. Waivers of Notice of Meetings of Members and Member Meeting Adjournments. Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of proper notice of such meeting, shall constitute a waiver of notice of the meeting by such Member. When any meeting of Members is adjourned to another time or place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and if at the adjourned meeting only such business is transacted as might have been transacted at the original meeting.

Section 4. Action Without a Meeting of Members. Any action, required or permitted to be taken at a meeting of Members, may be taken without a meeting if the ~~proposed~~ action is ~~posted to all members (via email and posting on the TRE website), and~~ consented to in writing by the minimum number of Members that would be required to approve the action at a

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meeting of the Members at which all Members were present. The voting in such a circumstance shall be performed in writing, including via email, posting on the TRE website, or other electronic means. The Members shall receive- be provided with written notice of the results within ten five (5) (10) days of the action vote, and all written responses of the Members shall be filed with the Corporate records.

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Comment [A21]: Brazos questions whether this is inconsistent with allowing the Section 4 action without a meeting. Need to resolve any language issues.

Section 5. Meetings of the Members to be Open. Notice to the public of the dates, places, and times of meetings of the Members, and all non-confidential material provided to the Members, shall be posted on the Corporation's website at approximately the same time that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourned to closed session to discuss matters of a confidential nature, including but not limited to compliance and enforcement matters, personnel matters, litigation, or commercially sensitive or critical infrastructure information of the Corporation or any other entity.

ARTICLE VI. MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Regular Meetings of the Board. Regular meetings of the Board shall be held at least quarterly. By resolution adopted at any meeting of the Board, the Board may provide for additional regular meetings that may be held as needed.

Section 2. Special Meetings of the Board. Special meetings of the Board for any purpose or purposes may be called at any time by the chair or by any two Directors. Such meetings may be held upon notice given to all Directors not less than three (3) days prior to the date of the meeting. Such notice shall specify the time, date, place, and purpose or purposes of the meeting and may be given by telephone, email or other electronic media, or by express delivery.

Section 3. Quorum and Voting Requirements for Meetings of the Board. Unless otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, (i) the quorum necessary for the transaction of business at meetings of the Board shall be a majority of the voting Directors in person or by proxy, and (ii) actions by the Board shall be approved upon receipt of the affirmative vote of a majority of the Directors present and voting in person or by proxy at a meeting at which a quorum is present.

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Section 4. Meetings of the Board to be Open. Notice to the public of the dates, places, and times of meetings of the Board, and all non-confidential material provided to the Board, shall be posted on the Corporation's website at approximately the same time that notice or such material is given to the Directors. Meetings of the Board shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the Board may meet in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to compliance and enforcement matters, personnel matters, litigation, or commercially sensitive or critical infrastructure information of the Corporation or any other entity. Any or all of the Directors or members of a Board committee, may participate in a meeting of the Board, or a meeting of a committee, in person or by proxy, by means of any communications system by which all persons participating in the meeting are able to hear each other.

Section 5. Waivers of Notice of Board Meetings and Board Meeting Adjournments. Notice of a board meeting need not be given to any Director who signs or

sends email confirming a waiver of notice, in person or by proxy, whether before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting. Notice of an adjourned board meeting need not be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and if the period of adjournment does not exceed ten (10) days.

Section 6. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board, or of any committee thereof, may be taken by the Board or by the committee without a meeting if the proposed action is posted to all members (via email and posting on the TRE website), and consented to in writing by the number of Directors or Members of the committee, as the case may be, entitled to vote on the action that would be required to approve the action at a meeting of the Board or committee with all Members of the Board or committee present. The call for action without a meeting of the Board may be initiated by the chair or by any two Directors. Notice of the proposed call for action without a meeting, and all non-confidential material provided to the Board in connection with the call for action without a meeting, shall be posted on the Corporation's website at approximately the same time day that notice of the call for action without a meeting or such material is provided to the Board. The call for action without a meeting of a committee of the Board may be initiated by the chair of the committee or by any two Members of the committee. The Directors or Members of the committee shall receive be provided with written notice of the results of such action within seven (7) days of the action vote. All written responses of the Directors shall be filed with the minutes of the Corporation, and all written responses of Members of a committee shall be filed with the minutes of such committee.

Comment [A22]: Brazos questions whether this is inconsistent with allowing the Section 4 action without a meeting. Need to resolve any language issues.

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ARTICLE VII. OFFICERS

Section 1. Selection of Officers. At a regular meeting held in accordance with Article V, Section 1 of these Bylaws, the Board shall elect a CEO and shall approve a corporate secretary and such other officers of the Corporation (collectively, the "Officers") as it shall deem necessary. The CEO shall be nominated and elected by the Board. All of the other Officers shall be selected by the CEO and approved by the Board, and all Officers shall be removed by the Board. The duties and authority of the Officers shall be determined from time to time by the Board. Subject to any such determination, the Officers shall have the following duties and authority:

Section 2. Chief Executive Officer. The CEO shall be the chief executive officer of the Corporation. He or she shall be responsible for the day-to-day ongoing activities of the Corporation and shall have such other duties as may be delegated or assigned to him or her by the chair. The CEO may enter into and execute in the name of the Corporation contracts or other instruments not in the regular course of business that are authorized, either generally or specifically, by the Board.

Section 3. Corporate Secretary. The secretary shall maintain the roster of Members of the Corporation, shall cause notices of all meetings to be served as prescribed in these Bylaws, shall keep or cause to be kept the minutes of all meetings of the Members and the Board, and shall have charge of the seal of the Corporation. The secretary shall perform such other duties and possess such other powers as are incident to his or her office or as shall be assigned to him or her by the CEO

Section 4. Chief Financial Officer. If hired and approved, a chief financial officer shall have custody of the funds and securities of the Corporation, shall keep or cause to be kept

regular books of account for the Corporation and shall have the duties normally assigned to a treasurer of a corporation. The chief financial officer shall perform such other duties and possess such other powers as are incident to his or her office or as shall be assigned to him or her by the CEO.

**ARTICLE VIII.
RELIABILITY STANDARDS ~~DEVELOPMENT~~ COMMITTEE**

Section 1. Requirement. The Corporation shall have a Reliability Standards ~~Development~~ Committee, which shall operate in accordance with the Standards Development Process as set forth in Exhibit C to the Delegation Agreement with NERC and approved by FERC. The chair and vice chair of the Standards ~~Development~~ Committee must be accepted or approved by the Board, in accordance with said Exhibit C.

**ARTICLE IX.
MEMBER REPRESENTATIVES COMMITTEE**

Section 1. Purpose of Member Representatives Committee. The Corporation shall have a Member Representatives Committee that shall provide advice and recommendations to the Board with respect to annual budgets, business plans and funding mechanisms of the Corporation; other matters relevant to reliability of the ERCOT Bulk Power System; and other matters pertinent to the purpose and operations of the Corporation. The Members Representatives Committee may create subcommittees, task forces, or working groups ("subcommittees") as it deems appropriate to study or discuss selected technical or compliance matters to make recommendations to the board as requested or required by the Board or as deemed appropriate to its purpose by the Members Representatives Committee. Because it is elected by the Members of the Corporation and not appointed by the Board, the Member Representatives Committee shall not be a standing committee of the Board of Directors of the Corporation, but is authorized to provide advice and recommendations directly to the Board.

Section 2. Composition of the Member Representatives Committee. The Member Representatives Committee shall consist of two representatives from each Sector to serve annually and will annually select a chair and vice chair for the Member Representatives Committee. The representatives of each Sector shall be officers, employees, or directors of Members in that Sector; provided however, except for a Sector that has only one Member, only one officer, employee, or director of a Member in a Sector may be a representative from that Sector. No member of the Board shall be a member of the Member Representatives Committee. The Board may by resolution create additional non-voting positions on the Member Representatives Committee on its own initiative or at the written request of any group of Members of the Corporation that believes its interests are not adequately represented on the Member Representatives Committee. There shall be no limit on the number of terms that an officer, employee, or director of a Member, may serve on the Member Representatives Committee.

Section 3. Election of Representatives of the Member Representatives Committee. Unless a Sector adopts an alternative election procedure, the annual election of representatives from each Sector to the Member Representatives Committee, and any election to fill a vacancy, shall be conducted in accordance with the following process, which shall be administered by the officers of the Corporation.

(a) During the period beginning no more than ninety (90) days and ending no less than fifteen (15) days prior to an annual meeting, or beginning no more than forty-five (45) days and ending no less than fifteen (15) days prior to a special meeting called in whole or in part to hold an election to fill a vacancy, nominations may be submitted for candidates for election to the Member Representatives Committee. A nominee for election as a Sector representative must be an officer, employee, or director of a Member in that Sector. No more than one nominee who is an officer, employee, or director of a Member may stand for election in any single Sector; if more than one officer, employee, or director of a Member is nominated for election from a Sector, the Member shall designate which such nominee shall stand for election. The election of representatives shall be conducted over a period of ten (10) days using an electronic process approved by the secretary of the Corporation.

(b) Each Member in a Sector shall have one vote for each Representative to be elected from the Sector in that election and may cast no more than one vote for any nominee. The nominee receiving the highest number of votes in each Sector shall be elected to one Representative position to be filled from that Sector and the nominee receiving the second highest number of votes shall be elected as the second Representative position for that Sector. To be elected on the first ballot, a nominee must receive a number of votes equal to a simple majority of the Members in the Sector casting votes in the election. If no nominee in a Sector receives a simple majority of votes cast in the first ballot, a second ballot shall be conducted which shall be limited to the number of candidates receiving the three (3) highest vote totals on the first ballot. The nominees receiving the two highest totals of votes on the second ballot shall be elected to the Representative positions for the Sector.

(c) A Sector may adopt an alternative procedure to the foregoing to nominate and elect its Representatives to the Member Representatives Committee if (i) the alternative procedure is consistent in principle with the procedures specified in the preceding paragraph of this Section, and (ii) the alternative procedure is approved by vote of at least two-thirds of the Members in the Sector, provided, however that any alternative procedure may be reviewed and disapproved by the Board.

Section 4. Chair and Vice Chair of the Member Representatives Committee.

After the annual selection of its Representatives, the Member Representatives Committee shall select a chair and vice chair from among its voting Representatives by majority vote to serve during the upcoming year. The selected chair and vice chair may not be representatives of the same Sector. The Board shall be notified of the selection of the chair and vice chair, but the selection will not be subject to approval of the Board. The chair is responsible for ensuring that minutes of the meetings are properly maintained and made available to the public, but the chair may delegate this responsibility to the vice chair or to another Representative of the Member Representatives Committee who is designated as secretary of the Member Representatives Committee.

Section 5. Vacancies on the Member Representatives Committee. In the event that any Representative of the Member Representatives Committee ceases to serve as a Representative of the Member Representatives Committee as a result of his or her death, resignation, retirement, disqualification, or removal or other cause, the Members in the Sector of which such Representative was a representative shall elect, as soon thereafter as reasonably practicable, and in accordance with the procedures in this Article IX, a new Representative to replace the Representative of the Member Representatives Committee who ceased to serve.

Section 6. Meetings of the Member Representatives Committee. The Member Representatives Committee will annually plan and hold quarterly meetings, at a time and place

determined by the Member Representatives Committee and posted on the Corporation's website. Except for closed session meetings specifically allowed by this Section, all meetings shall be open to the public. The Members Representatives Committee shall adopt such procedural rules as are needed to operate in accordance with its purpose and will include procedures for coordinating with employees of the Corporation who provide administrative support, as set forth in subsection 6(c), below.

(a) Notice to the public of the dates, places, and times of meetings of the Member Representatives Committee and any subcommittees thereof, and all non-confidential material provided to the Member Representatives Committee or any subcommittees thereof, shall be posted on the Corporation's website at approximately the same time that notice or such material is given to the Member Representatives Committee, which will normally be at least one week prior to any meeting. Meetings of the Member Representatives Committee shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the Member Representatives Committee may meet in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to confidential planning information, critical infrastructure information, or commercially sensitive information of the corporation or any other entity. Any or all Representatives of, and any other participants in, the Member Representatives Committee may participate in a meeting of the Member Representatives Committee by means of a communications system by which all persons participating in the meeting are able to hear each other.

(b) Special meetings may be called for any purpose or purposes by the chair of the Member Representatives Committee or by any three (3) Representatives of the Member Representatives Committee, which number shall include representatives from at least three Sectors, and require notice given to all Representatives of the Member Representatives Committee not less than seven (7) days prior to the date of the meeting. Such notice shall specify the time, date, place, and purpose or purposes of the meeting and may be given by telephone, facsimile, or other electronic media, or by express delivery.

(c) The Member Representatives Committee shall effectively coordinate with the employees of the Corporation and adopt procedural rules for the voting for Representatives, scheduling of meetings, and public posting of required meeting information and minutes. The chair or vice chair of the Member Representatives Committee shall provide all meeting agendas, material, minutes and other information required or desired to be posted on the Corporation's website to appropriate Corporation employees at least one business day prior to the time such information should be posted.

Section 7. Waivers of Notice of Meetings of the Member Representative Committee and Meeting Adjournments. Notice of a meeting of the Member Representatives Committee need not be given to any member of the Member Representatives Committee who signs a waiver of notice, in person or by proxy, whether before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting. Notice of an adjourned meeting of the Member Representatives Committee need not be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and if the period of adjournment does not exceed ten (10) days.

Section 8. Quorums and Voting for Meetings of the Member Representatives Committee. The quorum necessary for the transaction of business at meetings of the Member Representatives Committee shall be two-thirds of the voting members of the Member Representatives Committee attending the meeting in person or by proxy. A member of the

Member Representatives Committee may give a proxy only to a person who is an officer, employee, or director of a Member, registered in the same Sector. Each voting member of the Member Representatives Committee shall have one (1) vote on any matter coming before the Member Representatives Committee that requires a vote. Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, actions by members of the Member Representatives Committee shall be approved upon receipt of the affirmative vote of a majority of the voting members of the Member Representatives Committee present and voting at any meeting at which a quorum is present.

Section 9. Other Procedures of the Member Representatives Committee. The chair of the Board, shall preside at the initial meeting of the Member Representatives Committee, until a chair is selected in accordance with Article IX, Section 4. Except as to any matter as to which the procedure to be followed by the Member Representatives Committee is expressly set forth in these Bylaws, the Member Representatives Committee may adopt such additional procedures, not inconsistent with these Bylaws, as it deems appropriate, subject to review and disapproval by the Board.

ARTICLE X. OTHER COMMITTEES AND SUBCOMMITTEES

Section 1. Committees of the Corporation. In addition to those committees specified by these Bylaws, to which the Board shall appoint members in accordance with the requirements of these Bylaws, the Board may by resolution create standing committees of the Corporation; and may in addition by resolution appoint such committees, subcommittees, task forces and Sector-specific forums as the Board deems necessary or desirable to carry out the purposes of the Corporation. The Board shall appoint standing committees and other committees of the Corporation that are representative of Members, other interested parties, and the public, that provide for balanced decisionmaking and that include persons with outstanding technical knowledge and experience. All committees, subcommittees, task forces and Sector-specific forums shall have such scope and duties, not inconsistent with law, as are specified in these Bylaws and the Rules of Procedure of the Corporation or otherwise determined by the Board.

ARTICLE XI. BUDGETS AND FUNDING

Section 1. Compensation of the Board and Member Representatives Committee. The Board shall have the right to fix from time to time, by resolution adopted by a majority of the Directors and a majority of the Independent Directors then serving as Directors, the amount of the annual retainer fee or other compensation to be paid to the Independent Directors for their services to the Corporation, including any fees to be paid for each meeting of the Board or any Board committee attended by an Independent Director. The Board will evaluate the fee or other compensation at least every three years, to ensure that Director compensation is appropriate. No compensation shall be paid to a Management Director or any *ex officio* Director for his or her services on the Board, other than the compensation paid to the Management Director for services as CEO of the Corporation. No compensation shall be paid by the Corporation to any member of the Member Representatives Committee for their services on the Member Representatives Committee. Independent Directors shall be entitled to be reimbursed their reasonable out-of-pocket expenditures for attending meetings and conducting the business of the Corporation.

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Section 2. Preparation and Adoption of Annual Budget, Business Plan, and Funding Mechanism. The Board shall require the CEO to prepare for Board approval an adequate annual business plan and budget for the administrative and other expenses of the Corporation, including the expenditures for the fiscal year for any material special projects undertaken by the Corporation and reasonable and proper reserves and provisions for contingencies, in accordance with all NERC and Commission requirements. If the Corporation might or will be performing ~~Non-statutory~~Protocol Compliance or other activities that are not in support of the Delegated Authority ("Non-Delegation Agreement Activities") in the budget year, the Board will require that such ~~Non-statutory~~Non-Delegation Agreement activities be budgeted for separately from the activities performed pursuant to the Delegation Agreement. The Board shall further require that a funding mechanism be in place for such ~~Non-statutory~~Non-Delegation Agreement activities (pursuant to Article XI, Section 3), prior to the approval of any ~~Non-statutory~~Non-Delegation Agreement activities. The annual business plan, budget and funding mechanism of the Corporation shall be for a fiscal year commencing on January 1 and ending on December 31. Each annual business plan, budget, and funding mechanism shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose. The Board shall use reasonable efforts to approve each annual business plan, budget, and funding mechanism at a time that allows for timely submittal of the approved annual business plan, budget, and funding mechanism to the applicable regulatory authorities.

Comment [A23]: Note: Delegation Agreement requires adequate funding.

Section 3. Criteria for Non-Statutory Delegation Agreement Activities Funding Mechanisms. For any authorized ~~Non-statutory~~Delegation Agreement activities, the Board must approve a funding mechanism, which is authorized and approved by the PUCT, which funding mechanism shall recover, over the course of the fiscal year, the revenue required to fund the fiscal year Non-statutory~~Delegation Agreement~~ activities.

Comment [A24]: Luminant proposes the deletion of the non-statutory funding mechanism section as such section is not necessary given Luminant's proposal that the TRE focus only on its statutory jurisdiction.

Comment [A25]: T CPA wants Texas RE to not do Protocol Compliance. T CPA wants ERCOT ISO or PUCT to do this.

Section 4. Comments During Preparation of Annual Business Plan and Budget. In preparing the annual business plan and budget, the Board shall require that the CEO post a draft business plan and budget for review and comment by the Members of the Corporation and the Member Representatives Committee and the standing committees of the Corporation for at least ten (10) days prior to the date of the meeting of the Board at which the annual business plan and budget is to be adopted.

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Section 5. Modified or Supplemental Budgets. During the course of a fiscal year, the Board may modify any approved budget or develop and approve a supplemental budget if determined by the Board to be necessary due to such factors as a shortfall in revenues of the Corporation from projected levels, incurred or anticipated expenditures, duties, or new projects not provided for in the annual budget, or such other factors as in the judgment of the Board warrant modification of the budget for the fiscal year or development of a supplemental budget. In preparing a modified or supplemental budget, the Board shall follow the provisions of this Article XI, Section 4 to the extent practicable in the judgment of the Board in light of the urgency of the circumstances necessitating preparation and approval of the modified or supplemental budget. Each modified or supplemental budget shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose.

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Section 6. Submission of Annual Business Plans and Budgets to the Regulatory Authorities. Each annual budget, annual business plan, and annual, modified, or supplemental budget approved by the Board shall be submitted by the Corporation to the ERO and any applicable regulatory authorities for approval in accordance with its regulations, and shall not be effective until approved by the applicable regulatory authorities. If ordered to modify or remand an annual budget, business plan, or annual, modified, or supplemental funding mechanism, the Board shall promptly following such order adopt such modifications to the

business plan, budget , or funding mechanism as are required or directed by the order of the ERO and any applicable regulatory authority.

**ARTICLE XII.
AMENDMENTS TO THE BYLAWS**

Section 1. Amendments to the Bylaws. These Bylaws may be altered, amended, or repealed by a majority vote of both the Board and the Membership at respective meetings of the Board and the Members at which a quorum is present. Written notice of the subject matter of the proposed changes to the Bylaws shall be provided to the Directors and to the Members not less than ten (10) nor more than sixty (60) days prior to the date of the meeting of the Board or the Members at which the vote is to be taken. Notwithstanding the provisions of this Article XIV, the Members of the Corporation voting by Sector shall have the right to alter, amend, or repeal Bylaws adopted by the Board and to adopt new Bylaws, provided that any such alteration, amendment, or repeal or the adoption of new Bylaws is approved by vote of two-thirds of the Sectors at a meeting of Members called for that purpose, or by written consent of two-thirds of the Sectors, where the number of votes for and against the proposed alteration, amendment, repeal or adoption of Bylaws shall be determined in accordance with Article IV, Section 2. Any alteration, amendment, repeal or adoption of Bylaws shall be subject to any applicable requirements for filing with or approval by the ERO or any other applicable regulatory authority.

**ARTICLE XIII.
INDEMNIFICATION; PROCEDURE; DISSOLUTION**

Section 1. Indemnification. The Corporation shall indemnify each person who at any time shall serve, or shall have served, as an officer, Director, employee, or other corporate agent of the Corporation, is or was serving at its request as a director, officer, partner, venturer, proprietor, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise ("Indemnified Parties"), to the full extent from time to time permitted by the Texas Business Organizations Code and other applicable law. Such right of indemnification shall inure to the benefit of the legal representative of any such Indemnified Party. The foregoing indemnification shall be in addition to, and not in restriction or limitation of, any privilege or power that the Corporation may have with respect to the indemnification or reimbursement of its Indemnified Parties. The Corporation shall also pay or advance reasonable expenses incurred by an Indemnified Party in connection with a proceeding in advance of the final disposition of the proceeding upon receipt of a written affirmation by the Indemnified Party of a good faith belief that the standard of conduct necessary for indemnification under this Article XIII and the Texas Business Organizations Code has been met and a written undertaking by or on behalf of the officer, Director, or other corporate agent to repay the amount if it shall be ultimately determined that the Indemnified Party was not entitled to be indemnified by the Corporation.

(b) Limitations on Liability.

Section 1.

Section 2. Parliamentary Rules. In the absence of and to the extent not inconsistent with specific provisions in these Bylaws, meetings or other actions pursuant to these Bylaws shall be governed by procedures that the Board may, from time to time, establish by resolution.

Comment [A26]: TCPA suggests the following be added: A director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its Members, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law. TRE will check on requirements of Texas Business Org Code and requirements for a 501(c)3 director.

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Section 3. Dissolution. Upon dissolution of the Corporation, in accordance with the Certificate of Formation, the remaining assets of the Corporation after payment of debts shall be distributed in the manner determined by the Board, provided that, (i) no part of the assets shall be distributed to any Director of the Corporation, and (ii) the distribution of assets shall be consistent with the requirements of Section 501(c)(3) of the United States Internal Revenue Code of 1954.

ARTICLE XIV. CONFLICTS OF INTEREST

Section 1. Conflicts of Interest.

(a) Each ~~Independent~~ Director shall have an affirmative duty to disclose to the Board or committee (as the case may be) any actual or potential conflicts of interest of the Director that arise during his or her tenure as a director where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board. A ~~Independent~~ Director with a direct or potentially conflicting interest in a matter shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. Any disclosure of a potential conflict of interest by a Director shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, without participating in discussion of the issue raising the potential conflict, shall not constitute participation.

(b) The Corporation may not make any loan to a Director, committee member or officer of the Corporation. A Member, Director, officer, or committee member of the Corporation may not lend money to, or otherwise transact business with, the Corporation except as otherwise provided by these Bylaws, the Certificate of Formation, and applicable law. A related party transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation, provided the related party nature of the transaction is known to the Board. The Corporation may not borrow money from, or otherwise transact business with, a Member, Director, officer, or committee member of the Corporation unless the transaction is described fully in a legally binding instrument and is in the Corporation's best interests. The Corporation may not borrow money from, or otherwise transact business with, a Member, Director, officer, or committee member of the Corporation without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

Section 2. Prohibited Acts. No Member, Director, officer, or committee member of the Corporation may do any of the below-listed prohibited acts. Performance of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing as described in these Bylaws. The prohibited acts include the following:

- (a) Do any act in violation of these Bylaws.
- (b) Do any act in violation of a binding obligation of the Corporation except with the Board's prior approval.
- (c) Do any act with the intention of harming the Corporation or any of its operations.

(d) Receive an improper personal benefit from the operation of the Corporation.

(e) Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business.

(f) Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill.

(g) Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of Corporation in the ordinary course of its business or as a reference to the Corporation or its region.

(h) Disclose any of Corporation's or Members' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.

Section 3. Loans and Guarantees. Neither participation in the activities of the Corporation nor any provision of these Bylaws or of the Certificate of Formation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of the Corporation or a guarantee by any Member of any obligation of the Corporation.

**ARTICLE XV.
BOOKS AND RECORDS; AUDIT; FISCAL YEAR**

Section 1. Access to Books and Records. All Members of the Corporation will have access to the books and records of the Corporation, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of the Corporation. If necessary to protect the confidential information of the Corporation, a Member requesting examination of the Corporation's books and records may will be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 2. Audit. At least annually, an audit of the financial statements of the Corporation shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Article XV, Section 1.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be from January 1 through the following December 31, unless otherwise established by resolution of the Board.

Comment [A27]: TCPA requests that the requirement of a purpose for the request be removed.

Comment [A28]: TCPA proposes the following additional language: A Member, or the agent or attorney of a Member, may inspect all books and records for any proper purpose at any reasonable time. Upon request, the corporation shall give the Member a statement showing the financial result of all operations and transactions affecting income and expenses during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period

Vincent, Susan

From: Seibert, Dave L.
Sent: Tuesday, August 04, 2009 4:57 PM
To: Texas Regional Entity Information
Cc: Vincent, Susan; Grable, Mike; Morais, Matthew
Subject: ERCOT's Comments to the TRE Bylaws

Follow Up Flag: Follow up
Due By: Wednesday, August 05, 2009 2:30 PM
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ERCOT has reviewed the proposed Texas Regional Entity bylaws and offers the following comments for your consideration:

1) With respect to membership qualification, ERCOT recommends that the term “company” be replaced with a less restrictive term such as “entity.” Use of the term company in the relevant sections could be interpreted as limiting the scope of membership. This recommendation relates to two sections, Article III, Section 1 which provides that “[m]embership in the Corporation is open to any company that is a user, owner or operator of the ERCOT Region Bulk Power System...” and Section 5 (a), which provides “[t]here is only one level of Membership, and no company or entity may simultaneously hold more than one Membership.” Aside from the inconsistency between the two sections, Article III, Section 1, as written, limits membership to a “company” that is a user, owner or operator of the bulk power system. This could be interpreted as excluding entities, such as government agencies, which may be contrary to the intent.

2) In Article III, Section 4, Membership Sectors, ERCOT recommends that Transmission Service Providers which are currently assigned to the Coordination and Planning Sector are more appropriately assigned to the Transmission Membership Sector. The Coordination and Planning Sector clearly applies to the ISO. By revising the bylaws as recommended herein, this will mitigate the potential for entities that are more appropriately suited for other sectors – e.g. the Transmission Membership Sector – to join the Coordination and Planning Sector and potentially undermining the effectiveness of the Coordination and Planning Sector in voting matters. Alternatively, the Coordination and Planning Sector could be renamed the ISO Sector, but the eligibility scope would still have to be appropriately restricted to ensure the effectiveness of the sector is not compromised through strategic Sector shopping.

3) ERCOT agrees with the premise contained within Article III, Section 5 (c), which provides that “[a] Member that is eligible for more than one Sector may join only one Sector.” However, ERCOT recommends revising this section to require members to register in the most appropriate Sector if they are eligible for more than one Sector (*i.e.* the Sector that is most consistent with their business interests). This will mitigate Sector shopping to promote a business interest by joining a Sector that is not the most appropriate choice solely to dilute the effectiveness of that Sector in voting matters.

4) Article V Section 2 (b) provides that “[e]xcept as otherwise provided in the Corporation’s Certificate of Formation, these Bylaws or applicable law, actions by the Members of the Corporation shall be approved upon receipt of the affirmative vote of a majority of the members at a meeting of the Members of the Corporation at which a quorum is present, in person or by proxy. Each Sector’s vote shall be determined by the affirmative vote of a majority of the members of the Sector voting at the meeting.” The first cited sentence appears to state that actions are approved based on a majority vote of all members at a meeting, unrelated to Sector voting. However, the next sentence discusses Sector voting. These are two distinct voting methods, and ERCOT seeks clarification on the voting structure that governs the actions of members in this context.

LUMINENT COMMENTS

BYLAWS
OF
TEXAS REGIONAL ENTITY, INC.

(A Texas Non-Profit Corporation)

Approved on _____, 2009

Table of Contents

	Page
Article I. Definitions	1
Article II. Purpose.....	3
Article III. Membership	3
Article IV. Board of Directors	6
Article V. Meetings of Members of the Corporation	9
Article VI. Meetings of the Board of Directors	10
Article VII. Officers	11
Article VIII. Reliability Standards Development Committee	12
Article IX. Member Representatives Committee	12
Article X. Other Committees and SubCommittees	15
Article XI. Budgets and Funding	16
Article XII. Amendments to the Bylaws	17
Article XIII. Indemnification; Procedure; Dissolution	17
Article XIV. Conflicts of Interest	18
Article XV. Books and Records; Audit; Fiscal Year.....	19

ARTICLE I. DEFINITIONS

Section 1. Definitions. The capitalized terms used in these Bylaws of Texas Regional Entity, Inc. (the "Corporation" or "Texas RE"), shall have the meanings set forth below, or if not set forth below, shall have the meanings given them in the NERC Rules of Procedure.

(a) "Affiliate" means any company controlling, controlled by or under common control with the entity under consideration, and includes any company (i.e., any commercial enterprise) in any of the following relationships: (i) a company that directly or indirectly owns or holds at least five percent of the voting securities of another company, (ii) a company in a chain of successive ownership of at least five percent of the voting securities of another company, (iii) a company which shares a common parent with or is under common influence or control with another company or (iv) a company that actually exercises substantial influence or control over the policies and actions of another company. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in Texas RE shall not create an affiliation with Texas RE.

(b) "Board" means the Board of Directors of the Corporation.

(c) "Bulk Power System" or "BPS" means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and facilities generating electric energy as needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

(d) "Commission" or "FERC" means the Federal Energy Regulatory Commission.

(e) "Delegated Authority" means the authority delegated by NERC to the Corporation to propose and enforce NERC Reliability Standards and perform other reliability-related activities in the ERCOT Region under the Delegation Agreement executed by NERC and the Corporation and approved by FERC, pursuant to Section 215 of the Federal Power Act (16 U.S.C. §824n).

(f) Delegation Agreement means the agreement between the Corporation and NERC and approved by the Commission which describes the Delegated Authority and may be amended from time to time.

(g) "Electric Reliability Organization" or "ERO" means the organization that is certified by the Commission pursuant to Section 39.3 of its regulations, and has received recognition by appropriate regulatory authorities in Canada and Mexico, as applicable, to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries and that has entered into a delegation agreement with the Corporation pursuant to which the Electric Reliability Organization delegates enforcement authority for Reliability Standards for the Bulk Power System in the ERCOT Region. NERC was certified as the ERO on July 20, 2006.

(h) "ERCOT Region" means the geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

(i) "Independent Director" means a person who is not (a) an officer or employee of the Corporation; (b) a NERC Registered Entity or Member or an officer, director, or employee of a Member of the Corporation; or (c) an officer, director, or employee of any company or entity that would reasonably be perceived as having a direct financial interest in the outcome of Board decisions and who does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a Director, as more specifically described in Article IV of these Bylaws.

(j) "Member" means a member of the Corporation pursuant to Article II of these Bylaws.

(k) "PUCT" means the Public Utility Commission of Texas.

(l) "NERC" means North American Electric Reliability Corporation, the entity certified by FERC as the ERO on July 20, 2006.

(m) "NERC Rules of Procedure" means the Rules of Procedure that are adopted by NERC and approved by the Commission.

(n) "Regional Entity" means an entity with a Delegation Agreement with NERC, as ERO, including the following organizations, in addition to Texas Regional Entity: Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), ReliabilityFirst Corporation (RFC), Southeastern Electric Reliability Council (SERC), Southwest Power Pool (SPP), and Western Electricity Coordinating Council (WECC).

(o) "Registered Entity" means an entity that is registered with NERC and listed on the NERC Compliance Registry (available at www.nerc.com).

(p) "Reliability Standard" means a requirement to provide for Reliable Operation of the Bulk-Power System, which is approved by NERC and the Commission, pursuant to Section 215 of the Federal Power Act and all amendments thereto. This term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk-Power System.

(q) "Reliable Operation" means operating the elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of the Bulk Power System will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

(r) "Sector" means a group of Members of the Corporation that are Bulk Power System owners, operators, or users, as defined in Article III, Section 4 of these Bylaws. Each Sector shall constitute a class of Members for purposes of Chapter 22 (Nonprofit Corporations) of the Texas Business Organizations Code.

**ARTICLE II.
PURPOSE**

Section 1. General Purpose. The purpose of the Corporation is to preserve and enhance reliability in the ERCOT Region. In furtherance of this goal, the Corporation will:

(a) Perform Reliability Standards development, compliance monitoring, compliance enforcement, and other related activities as a Regional Entity, pursuant to 16 U.S.C. §824n, in accordance with the Corporation's Delegation Agreement with NERC;

~~(b) Carry out other activities as set forth in the Delegation Agreement, the NERC Rules of Procedure, or as otherwise required or requested by NERC, in support of the Delegated Authority, including but not limited to organization registration and certification, reliability assessment and performance analysis, training and education, and situational awareness and infrastructure security;~~

~~(b) Perform non-statutory compliance monitoring and reporting of the ERCOT Protocols, as authorized by the Public Utility Commission of Texas and allowed by NERC and FERC; and~~

(c) Engage in any other lawful act or activity that is not in conflict with the Corporation's duties as a Regional Entity and for which non-profit corporations may be organized under the Texas Non-Profit Corporations Act.

Section 2. Non-Profit Corporation. The Corporation is a Texas non-profit corporation.

Section 3. Geographic Area. The Corporation will perform its operations primarily within the ERCOT Region. The ERCOT Region includes 200,000 square miles, 85% of Texas load, and 75% of Texas land area (does not include the Panhandle, El Paso area, and 2 areas of East Texas). The ERCOT Region includes the following Texas cities and towns: Dallas, Ft. Worth, Houston, San Antonio, Austin, Paris, Tyler, Nacogdoches, Lufkin, Bryan, College Station, Corpus Christi, Harlingen, Brownsville, Laredo, Brownwood, San Angelo, Abilene, Midland, Odessa, Fort Stockton, Monahans, Snyder, Vernon, Wichita Falls, Denton, Garland, Greenville, Waco, Temple, Killeen, Weatherford, and Graham, and does not interconnect synchronously across state lines to import or export power with neighboring reliability regions.

**ARTICLE III.
MEMBERSHIP**

Section 1. Members. The Corporation is a membership corporation. Membership in the Corporation is voluntary and is open to any company that is a user, owner or operator of the ERCOT Region Bulk Power System, registers with the Corporation as a Member, maintains its registration in accordance with this Article III, and complies with the other conditions and obligations of membership specified in these Bylaws. All Members must qualify and be registered in one of the Sectors defined in Article III, Section 4. Membership in the Corporation is not a condition to participating in the development or consideration of proposed Regional Standards.

Section 2. Registration as a Member. Any company that is eligible to be a Member of the Corporation in accordance with Article III, Section A may become a Member by completing and submitting to the secretary of the Corporation a membership registration on a

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form prescribed by the Corporation. The Member shall designate one representative and an alternative representative with authority to receive notices, cast votes, and execute waivers and consents on behalf of the Member. The secretary of the Corporation shall maintain a current roster of the Members of the Corporation including each Member's designated representative and alternative representative. From time to time, the Board shall establish a date by which Members shall submit their registration renewals. All Members shall be required to renew their registrations annually and within 30 calendar days of a request by an officer of the Corporation, using a registration renewal form prescribed by the Corporation. The secretary of the Corporation shall remove from the roster of Members of the Corporation any Member that has not submitted a registration renewal within 30 days following a date established by the Corporation. The secretary shall inform any Member that is removed from the roster of Members of such removal, by sending notice to such former Member's last known address on the records of the Corporation.

Section 3. Obligations and Conditions of Membership.

(a) Members must agree to promote, support, and comply with Reliability Standards, ~~comply with the ERCOT region market rules,~~ and assist the Corporation in its compliance with the terms and provisions of the Corporation's Delegation Agreement with NERC. Each Member shall agree, in writing, to accept the responsibility to comply with policies of NERC and the Corporation as set forth in their respective certificates of formation, bylaws, rules of procedure, and Reliability Standards, as applicable, as from time to time adopted, approved, or amended.

Comment [A2]: See the previous Luminant comment.

(b) As an additional condition of membership in the Corporation, each Member shall be required to execute an agreement with the Corporation, in a form to be specified by the Corporation, that such company will hold all Directors, officers, employees, and agents of the Corporation, as well as volunteers participating in good faith in the activities of the Corporation, harmless for any injury or damage caused by any act or omission of any director, officer, employee, agent, or volunteer in the course of performance of his or her duties on behalf of the Corporation, other than for willful acts of misconduct.

(c) Consistent with applicable laws and regulations, Members must share nonproprietary information at the Corporation's request as necessary for the furtherance of the Corporation's activities and consistent with NERC, PUCT, or any other applicable rules relating to confidentiality.

Section 4. Membership Sectors. Each Member shall elect to be assigned to one of the following membership Sectors:

(a) **Coordination and Planning:** A company that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), Transmission Service Provider (TSP), or Interchange Authority (IA).

(b) **Transmission:** A company that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), and/or Transmission Operator (TOP).

(c) **Distribution:** A company that is registered with NERC as a Distribution Provider (DP) and is not registered as a TO and has no Affiliates that are registered as a TO.

(d) **Generation:** A company that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).

(e) **Load-Serving and Marketing:** A company that is registered with NERC as a Load Serving Entity (LSE), a Purchasing-Selling Entity, or any newly defined NERC Function for demand response.

(f) **BPS Owner, Operator or User:** A company that is an owner, user, or operator of the ERCOT Region Bulk Power System but is not registered with NERC for any NERC Function and has no Affiliates that are Members.

(g) **Governmental/Regulatory:** A representative of the Public Utility Commission of Texas.

Section 5. Participation.

(a) There is only one level of Membership, and no company or entity may simultaneously hold more than one Membership.

(b) Members must qualify in and join a Sector. If any company does not qualify in any other Sector but is an owner, user, or operator of the ERCOT Region Bulk Power System, it may belong to the BPS Owner, Operator or User Sector.

(c) A Member that is eligible for more than one Sector may join only one Sector.

(d) A company or entity that is an Affiliate of a Member may hold a separate membership in a different Sector (except for the BPS Owner Operator, User Sector), so long as the legal entities have different NERC Compliance Registry Numbers under which they are currently registered for the applicable NERC Function.

(e) A Member must continue to vote in the same Sector for a minimum of one year or until it is no longer eligible to remain in such Sector, and it must give notice to the Corporate secretary when it elects or is required to change Sectors.

(f) The Board may review the Sector qualification of any Member and may determine that a Member does not qualify for, and require them to change Sectors.

(g) A Member who is no longer eligible or not in good standing may not vote on any matters that require membership.

Section 6. Membership Fees. Members must pay an annual Membership Fee of \$250, to offset the expenses of membership qualification, coordination, and meetings, unless the Board waives the fee for any Member for good cause shown. The Board may agree to change the amount or frequency of the Membership Fee, from time to time, by majority vote.

Section 7. Term of Membership. Membership in the Corporation must be renewed on an annual basis and will only be retained as long as a Member meets its respective qualifications, obligations, and conditions of membership as set forth in these Bylaws. Membership is conditioned on the annual payment of Membership Fees, unless the Membership Fees are waived by the Board for good cause shown, as determined in the Board's sole discretion.

Section 8. Removal. No Member or Member representative may be sanctioned, expelled or suspended and no membership in the Corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. The

Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member following notice to the Member and exercise of appropriate due process procedures and a determination by the Board in its sole discretion that in its judgment the Member has violated its obligations and responsibilities to the Corporation. In the event that the Board does not adopt procedures, the following procedures shall apply:

(a) Written notice. Written notice of intent to terminate, expel, suspend or sanction a Member shall be delivered at least twenty (20) days in advance of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by facsimile (receipt confirmed), e-mail (receipt confirmed) or first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in the Corporation's records.

(b) Hearing. An opportunity shall be provided for the Member receiving such notice to be heard by the Board at the hearing, orally and in writing. The Member shall be entitled to have counsel present, and to participate in the hearing, at its own expense, and to present and cross-examine any witnesses.

(c) Liability. A Member which has been sanctioned, expelled, terminated or suspended shall remain liable to the Corporation for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.

(d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, may be submitted to the Board in writing within one year after the effective date of the expulsion, suspension, sanction or termination. If the Board determines to hear such challenge, it shall notify the Member and such proceeding will be subject to the hearing requirements described in subsection (b) above of this Section 8.

Section 9. Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of the Corporation at any time upon written notice to the chief executive officer or president, whereupon it shall cease to be a Member, and its representatives shall cease to be entitled or obligated to participate in the activities of the Board or any activities requiring membership.

Section 10. Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board will reinstate the Membership unless the company does not meet the Membership qualifications set forth in these Bylaws.

ARTICLE IV. BOARD OF DIRECTORS

Section 1. Board of Directors. The business and affairs of the Corporation shall be managed by the Board. The Board shall consist of (i) five Independent Directors who are nominated and elected in accordance with the requirements and procedures specified in this Article IV (the "Independent Directors"); (ii) the Chairman of the PUCT or another PUCT Commissioner designated by the Chairman, as an *ex officio* non-voting member; (iii) Texas Public Counsel, from the Office of Public Utility Counsel, as an *ex officio* non-voting member, representing the interests of residential electricity consumers; and (iv) the CEO of the Corporation as an *ex officio* non-voting member. Each Director, excluding the non-voting members of the Board, shall have one (1) vote on any matter brought before the Board for a

Comment [A3]: Luminant believes that a standard should be provided here to demonstrate when such actions might be appropriate.

vote. All Directors are expected to serve the public interest and to represent the reliability concerns of the entire ERCOT Region Bulk Power System.

Section 2. Independent Directors. The Independent Directors shall be elected, shall have the qualifications specified, and shall serve in the manner provided in this Section.

(a) Qualifications:

(1) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering, bulk power systems, or law; regulation of utilities; and/or risk management.

(2) Independence of any NERC registered entity or any ERCOT Region Market Participant. Requirements of independence include but are not limited to the following:

(i) Independent Directors and the immediate family (any spouse, mother, father, sibling, or dependent, and any spouse of mother, father, or sibling and including any step and adoptive parents, siblings or children) and household members of Independent Directors and their spouses shall not have current or recent status (within the last two years) as a director, officer or employee of an ERCOT Region NERC Registered Entity or ERCOT Region Market Participant.

(ii) Independent Directors and immediate family and household members of Independent Directors shall not have current or recent status (within the last six months) as a director, officer or employee of a non-ERCOT Region NERC Registered Entity.

(iii) Independent Directors and immediate family and household members of Independent Directors shall not have direct business relationships, other than retail customer relationships, with any NERC Registered Entity or Market Participant.

(iv) To the extent that an Independent Director or his or her spouse, dependent child, or any other household member owns stocks or bonds of NERC Registered Entities or Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.

(v) Independent Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a Board member, including the Delegated Authority.

(vi) Other criteria as approved by the Board.

(b) Term. Except for the initial and originally elected Directors, the term for Independent Directors shall be staggered three year terms. An Independent Director may be elected for up to three consecutive terms. Notwithstanding the foregoing, the initial Directors, who are seated for formation of the Corporation will serve only until the first membership meeting of the Corporation, which term shall not exceed six (6) months. If an initial Director is qualified to be an Independent Director and elected by the membership, such Director's initial term shall not be counted for purposes of that term limits. For the originally elected Directors,

two positions will have three year terms, two positions will have two year terms and one position will have a one year term.

(c) Selection.

(1) Except as described below with respect to the selection of Independent Directors to serve as initial Directors upon formation of the Corporation, The Board shall appoint, on an annual basis, or more frequently if needed in the event of a special election pursuant to this subsection, a nominating committee (the "Nominating Committee") to recommend candidates (i) to succeed the Independent Directors whose terms expire during the current year and (ii) to serve the remainder of the term of any Independent Director who ceased to serve as a Director subsequent to the last annual election of Directors. The Nominating Committee shall consist of the Management Director, the ex officio Directors, and those Independent Directors whose terms do not expire during the current year and such number of other persons with such qualifications as the Board shall specify, provided that the Independent Directors shall constitute a majority of the members of the Nominating Committee. In order to provide for the selection of Independent Directors to be seated as initial Directors upon formation of the Corporation, the Nominating Committee shall consist of the Management Director, the ex officio Directors and the Independent Directors of the ERCOT Board of Directors.

(2) The Nominating Committee will retain an executive search firm to locate and present candidates with the required qualifications, as set forth in Article IV, Section 2(a).

(3) The Nominating Committee shall interview the qualified candidates and select and nominate, by at least a two-thirds majority, qualified candidate(s) consistent with the objectives that the Board as an entirety reflects expertise in the areas of technical electric operations and reliability, legal, senior corporate leadership, financial, risk management, and regulatory matters, and familiarity with regional system operation issues in the ERCOT Region to present to the Membership for its approval. With respect to the selection of Independent Directors for service as initial Directors upon formation of the Corporation, the Nominating Committee shall, following the interview process, select such Independent Directors that shall serve as initial Directors upon formation of the Corporation

(4) Except with respect to the selection of Independent Directors to serve as initial Directors upon formation of the Corporation, ~~the~~ Membership shall vote by Sector as described in Article V in favor or against the proposed Independent Director(s). A proposed Independent Director that is approved by a majority of the Sectors shall become an Independent Director.

(d) Director Voting Weights. All voting Directors shall have a single vote each.

(e) Alternates and Proxies. Independent Directors may designate another Independent Director as a proxy if unable to attend a Board meeting. Ex officio Directors may designate a selected proxy or an alternate representative who may attend meetings in the absence of such Director.

Section 3. Appointment of Management Director. The president and chief executive officer (CEO) of the Corporation shall serve as the Management Director of the

Comment [A4]: Luminant proposes these changes to Section 2(c) in order to provide for a selection process for the initial Directors. At present, the propose By-laws do not seem to provide for such a process.

Corporation, effective as of the date of his or her appointment by the Board as CEO of the Corporation in accordance with these Bylaws, to serve until such time that he or she ceases to hold the position of CEO. No action of the Members of the Corporation shall be required in connection with the appointment of the CEO as the Management Director of the Corporation.

Section 4. Chair and Vice Chair. Annually, the Board shall elect from the Board's membership, by resolution of the Board, a Chair and a Vice Chair. The Chair shall be one of the Independent Directors.

Section 5. Vacancies and Removal. Should any vacancy on the Board arise from the death, resignation, retirement, disqualification, or removal from office of any Director, or from any other cause, such vacancy shall be filled by electing a Director at the next annual election of Directors to fill the remainder, if any, of the term of the departed Director. Provided, that the Board by resolution may in its discretion call a special election to fill any such vacancy for the remainder, if any, of the term of the departed Director. A Director may be removed with or without cause at any time by whomever had the right to appoint such Director (for ex officio Directors), or for the elected Independent Directors, by an affirmative vote of sixty percent (60%) of the Members. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner.

Section 6. Committees of the Board. The Board shall by resolution create and appoint all committees of the Board as the Board deems necessary to perform its responsibilities. All committees of the Board shall have such duties as are prescribed and delegated by the Board. Committees to which any of the authority of the Board to manage the Corporation is delegated must have at least two members, and a majority of the members of the committee must be Directors.

ARTICLE V. MEETINGS OF MEMBERS OF THE CORPORATION

Section 1. Annual and Other Meetings of Members.

(a) An annual meeting of the Members for the election of Directors and to conduct such other business as may come before the meeting shall be held on or about December 1 of each year or as soon thereafter as is reasonably practicable.

(b) Meetings of Members of the Corporation may be called for any purpose or purposes by resolution of the Board, by the chair of the Board, the CEO or the secretary of the Corporation, or by a number of Members constituting at least ten (10) percent of all Members on the roster of Members maintained by the secretary of the Corporation, which number shall include Members in at least three of the Sectors. Meetings of Members shall be held at the principal office of the Corporation or at such other place fixed by the Board as shall be specified in the notice of meeting. Meetings shall be called upon written notice of the time, date, place, and purposes of the meeting given to all Members on the roster of Members maintained by the secretary of the Corporation not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. Only Members in good standing with the Corporation, as determined by the Board, have the right to vote at any meeting of the Members. Further, if at any point a Member no longer meets the qualifications for the Sector of which it is a member, the Entity may immediately elect to become a member in any Sector for which it does qualify.

Section 2. Quorum and Voting Requirements for Meetings of Members. At any meeting of the Members of the Corporation, attendance in person or by proxy by a majority of the Members in each of at least two-thirds of the Sectors on the roster of Members maintained by the secretary of the Corporation shall constitute a quorum.

(a) Members shall vote by Sector and each Sector shall have one vote.

(b) Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, actions by the Members of the Corporation shall be approved upon receipt of the affirmative vote of a majority of the members at a meeting of the Members of the Corporation at which a quorum is present, in person or by proxy. Each Sector's vote shall be determined by the affirmative vote of a majority of the members of the Sector voting at the meeting.

Section 3. Waivers of Notice of Meetings of Members and Member Meeting Adjournments. Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of proper notice of such meeting, shall constitute a waiver of notice of the meeting by such Member. When any meeting of Members is adjourned to another time or place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and if at the adjourned meeting only such business is transacted as might have been transacted at the original meeting.

Section 4. Action Without a Meeting of Members. Any action, required or permitted to be taken at a meeting of Members, may be taken without a meeting if the action is consented to in writing by the minimum number of Members that would be required to approve the action at a meeting of the Members at which all Members were present. The voting in such a circumstance shall be performed in writing, including via email or other electronic means. The Members shall receive written notice of the results within ten (10) days of the action vote, and all written responses of the Members shall be filed with the Corporate records.

Section 5. Meetings of the Members to be Open. Notice to the public of the dates, places, and times of meetings of the Members, and all non-confidential material provided to the Members, shall be posted on the Corporation's website at approximately the same time that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourned to closed session to discuss matters of a confidential nature, including but not limited to compliance and enforcement matters, personnel matters, litigation, or commercially sensitive or critical infrastructure information of the Corporation or any other entity.

ARTICLE VI. MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Regular Meetings of the Board. Regular meetings of the Board shall be held at least quarterly. By resolution adopted at any meeting of the Board, the Board may provide for additional regular meetings that may be held as needed.

Section 2. Special Meetings of the Board. Special meetings of the Board for any purpose or purposes may be called at any time by the chair or by any two Directors. Such

meetings may be held upon notice given to all Directors not less than three (3) days prior to the date of the meeting. Such notice shall specify the time, date, place, and purpose or purposes of the meeting and may be given by telephone, email or other electronic media, or by express delivery.

Section 3. Quorum and Voting Requirements for Meetings of the Board. Unless otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, (i) the quorum necessary for the transaction of business at meetings of the Board shall be a majority of the Directors in person or by proxy, and (ii) actions by the Board shall be approved upon receipt of the affirmative vote of a majority of the Directors present and voting in person or by proxy at a meeting at which a quorum is present.

Section 4. Meetings of the Board to be Open. Notice to the public of the dates, places, and times of meetings of the Board, and all non-confidential material provided to the Board, shall be posted on the Corporation's website at approximately the same time that notice or such material is given to the Directors. Meetings of the Board shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the Board may meet in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to compliance and enforcement matters, personnel matters, litigation, or commercially sensitive or critical infrastructure information of the Corporation or any other entity. Any or all of the Directors or members of a Board committee, may participate in a meeting of the Board, or a meeting of a committee, in person or by proxy, by means of any communications system by which all persons participating in the meeting are able to hear each other.

Section 5. Waivers of Notice of Board Meetings and Board Meeting Adjournments. Notice of a board meeting need not be given to any Director who signs or sends email confirming a waiver of notice, in person or by proxy, whether before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting. Notice of an adjourned board meeting need not be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and if the period of adjournment does not exceed ten (10) days.

Section 6. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board, or of any committee thereof, may be taken by the Board or by the committee without a meeting if the action is consented to in writing by the number of Directors or Members of the committee, as the case may be, entitled to vote on the action that would be required to approve the action at a meeting of the Board or committee with all Members of the Board or committee present. The call for action without a meeting of the Board may be initiated by the chair or by any two Directors. Notice of the proposed call for action without a meeting, and all non-confidential material provided to the Board in connection with the call for action without a meeting, shall be posted on the Corporation's website at approximately the same time notice of the call for action without a meeting or such material is provided to the Board. The call for action without a meeting of a committee of the Board may be initiated by the chair of the committee or by any two Members of the committee. The Directors or Members of the committee shall receive written notice of the results of such action within seven (7) days of the action vote. All written responses of the Directors shall be filed with the minutes of the Corporation, and all written responses of Members of a committee shall be filed with the minutes of such committee.

ARTICLE VII. OFFICERS

Section 1. Selection of Officers. At a regular meeting held in accordance with Article V, Section 1 of these Bylaws, the Board shall elect a CEO and shall approve a corporate secretary and such other officers of the Corporation (collectively, the "Officers") as it shall deem necessary. The CEO shall be nominated and elected by the Board. All of the other Officers shall be selected by the CEO and approved by the Board, and all Officers shall be removed by the Board. The duties and authority of the Officers shall be determined from time to time by the Board. Subject to any such determination, the Officers shall have the following duties and authority:

Section 2. Chief Executive Officer. The CEO shall be the chief executive officer of the Corporation. He or she shall be responsible for the day-to-day ongoing activities of the Corporation and shall have such other duties as may be delegated or assigned to him or her by the chair. The CEO may enter into and execute in the name of the Corporation contracts or other instruments not in the regular course of business that are authorized, either generally or specifically, by the Board.

Section 3. Corporate Secretary. The secretary shall maintain the roster of Members of the Corporation, shall cause notices of all meetings to be served as prescribed in these Bylaws, shall keep or cause to be kept the minutes of all meetings of the Members and the Board, and shall have charge of the seal of the Corporation. The secretary shall perform such other duties and possess such other powers as are incident to his or her office or as shall be assigned to him or her by the CEO

Section 4. Chief Financial Officer. If hired and approved, a chief financial officer shall have custody of the funds and securities of the Corporation, shall keep or cause to be kept regular books of account for the Corporation and shall have the duties normally assigned to a treasurer of a corporation. The chief financial officer shall perform such other duties and possess such other powers as are incident to his or her office or as shall be assigned to him or her by the CEO.

**ARTICLE VIII.
RELIABILITY STANDARDS DEVELOPMENT COMMITTEE**

Section 1. Requirement. The Corporation shall have a Reliability Standards Development Committee, which shall operate in accordance with the Standards Development Process as set forth in Exhibit C to the Delegation Agreement with NERC and approved by FERC. The chair and vice chair of the Standards Development Committee must be accepted or approved by the Board, in accordance with said Exhibit C.

**ARTICLE IX.
MEMBER REPRESENTATIVES COMMITTEE**

Section 1. Purpose of Member Representatives Committee. The Corporation shall have a Member Representatives Committee that shall provide advice and recommendations to the Board with respect to annual budgets, business plans and funding mechanisms of the Corporation; other matters relevant to reliability of the ERCOT Bulk Power System; and other matters pertinent to the purpose and operations of the Corporation. The Members Representatives Committee may create subcommittees, task forces, or working groups ("subcommittees") as it deems appropriate to study or discuss selected technical or compliance matters to make recommendations to the board as requested or required by the Board or as deemed appropriate to its purpose by the Members Representatives Committee. Because it is elected by the Members of the Corporation and not appointed by the Board, the

Member Representatives Committee shall not be a standing committee of the Board of Directors of the Corporation, but is authorized to provide advice and recommendations directly to the Board.

Section 2. Composition of the Member Representatives Committee. The Member Representatives Committee shall consist of two representatives from each Sector to serve annually and will annually select a chair and vice chair for the Member Representatives Committee. The representatives of each Sector shall be officers, employees, or directors of Members in that Sector; provided however, except for a Sector that has only one Member, only one officer, employee, or director of a Member in a Sector may be a representative from that Sector. No member of the Board shall be a member of the Member Representatives Committee. The Board may by resolution create additional non-voting positions on the Member Representatives Committee on its own initiative or at the written request of any group of Members of the Corporation that believes its interests are not adequately represented on the Member Representatives Committee. There shall be no limit on the number of terms that an officer, employee, or director of a Member, may serve on the Member Representatives Committee.

Section 3. Election of Representatives of the Member Representatives Committee. Unless a Sector adopts an alternative election procedure, the annual election of representatives from each Sector to the Member Representatives Committee, and any election to fill a vacancy, shall be conducted in accordance with the following process, which shall be administered by the officers of the Corporation.

(a) During the period beginning no more than ninety (90) days and ending no less than fifteen (15) days prior to an annual meeting, or beginning no more than forty-five (45) days and ending no less than fifteen (15) days prior to a special meeting called in whole or in part to hold an election to fill a vacancy, nominations may be submitted for candidates for election to the Member Representatives Committee. A nominee for election as a Sector representative must be an officer, employee, or director of a Member in that Sector. No more than one nominee who is an officer, employee, or director of a Member may stand for election in any single Sector; if more than one officer, employee, or director of a Member is nominated for election from a Sector, the Member shall designate which such nominee shall stand for election. The election of representatives shall be conducted over a period of ten (10) days using an electronic process approved by the secretary of the Corporation.

(b) Each Member in a Sector shall have one vote for each Representative to be elected from the Sector in that election and may cast no more than one vote for any nominee. The nominee receiving the highest number of votes in each Sector shall be elected to one Representative position to be filled from that Sector and the nominee receiving the second highest number of votes shall be elected as the second Representative position for that Sector. To be elected on the first ballot, a nominee must receive a number of votes equal to a simple majority of the Members in the Sector casting votes in the election. If no nominee in a Sector receives a simple majority of votes cast in the first ballot, a second ballot shall be conducted which shall be limited to the number of candidates receiving the three (3) highest vote totals on the first ballot. The nominees receiving the two highest totals of votes on the second ballot shall be elected to the Representative positions for the Sector.

(c) A Sector may adopt an alternative procedure to the foregoing to nominate and elect its Representatives to the Member Representatives Committee if (i) the alternative procedure is consistent in principle with the procedures specified in the preceding paragraph of this Section, and (ii) the alternative procedure is approved by vote of at least two-thirds of the

Members in the Sector, provided, however that any alternative procedure may be reviewed and disapproved by the Board.

Section 4. Chair and Vice Chair of the Member Representatives Committee.

After the annual selection of its Representatives, the Member Representatives Committee shall select a chair and vice chair from among its voting Representatives by majority vote to serve during the upcoming year. The selected chair and vice chair may not be representatives of the same Sector. The Board shall be notified of the selection of the chair and vice chair, but the selection will not be subject to approval of the Board. The chair is responsible for ensuring that minutes of the meetings are properly maintained and made available to the public, but the chair may delegate this responsibility to the vice chair or to another Representative of the Member Representatives Committee who is designated as secretary of the Member Representatives Committee.

Section 5. Vacancies on the Member Representatives Committee. In the event that any Representative of the Member Representatives Committee ceases to serve as a Representative of the Member Representatives Committee as a result of his or her death, resignation, retirement, disqualification, or removal or other cause, the Members in the Sector of which such Representative was a representative shall elect, as soon thereafter as reasonably practicable, and in accordance with the procedures in this Article IX, a new Representative to replace the Representative of the Member Representatives Committee who ceased to serve.

Section 6. Meetings of the Member Representatives Committee. The Member Representatives Committee will annually plan and hold quarterly meetings, at a time and place determined by the Member Representatives Committee and posted on the Corporation's website. Except for closed session meetings specifically allowed by this Section, all meetings shall be open to the public. The Members Representatives Committee shall adopt such procedural rules as are needed to operate in accordance with its purpose and will include procedures for coordinating with employees of the Corporation who provide administrative support, as set forth in subsection 6(c), below.

(a) Notice to the public of the dates, places, and times of meetings of the Member Representatives Committee and any subcommittees thereof, and all non-confidential material provided to the Member Representatives Committee or any subcommittees thereof, shall be posted on the Corporation's website at approximately the same time that notice or such material is given to the Member Representatives Committee, which will normally be at least one week prior to any meeting. Meetings of the Member Representatives Committee shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the Member Representatives Committee may meet in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to confidential planning information, critical infrastructure information, or commercially sensitive information of the corporation or any other entity. Any or all Representatives of, and any other participants in, the Member Representatives Committee may participate in a meeting of the Member Representatives Committee by means of a communications system by which all persons participating in the meeting are able to hear each other.

(b) Special meetings may be called for any purpose or purposes by the chair of the Member Representatives Committee or by any three (3) Representatives of the Member Representatives Committee, which number shall include representatives from at least three Sectors, and require notice given to all Representatives of the Member Representatives Committee not less than seven (7) days prior to the date of the meeting. Such notice shall

specify the time, date, place, and purpose or purposes of the meeting and may be given by telephone, facsimile, or other electronic media, or by express delivery.

(c) The Member Representatives Committee shall effectively coordinate with the employees of the Corporation and adopt procedural rules for the voting for Representatives, scheduling of meetings, and public posting of required meeting information and minutes. The chair or vice chair of the Member Representatives Committee shall provide all meeting agendas, material, minutes and other information required or desired to be posted on the Corporation's website to appropriate Corporation employees at least one business day prior to the time such information should be posted.

Section 7. Waivers of Notice of Meetings of the Member Representative Committee and Meeting Adjournments. Notice of a meeting of the Member Representatives Committee need not be given to any member of the Member Representatives Committee who signs a waiver of notice, in person or by proxy, whether before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting. Notice of an adjourned meeting of the Member Representatives Committee need not be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and if the period of adjournment does not exceed ten (10) days.

Section 8. Quorums and Voting for Meetings of the Member Representatives Committee. The quorum necessary for the transaction of business at meetings of the Member Representatives Committee shall be two-thirds of the voting members of the Member Representatives Committee attending the meeting in person or by proxy. A member of the Member Representatives Committee may give a proxy only to a person who is an officer, employee, or director of a Member, registered in the same Sector. Each voting member of the Member Representatives Committee shall have one (1) vote on any matter coming before the Member Representatives Committee that requires a vote. Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, actions by members of the Member Representatives Committee shall be approved upon receipt of the affirmative vote of a majority of the voting members of the Member Representatives Committee present and voting at any meeting at which a quorum is present.

Section 9. Other Procedures of the Member Representatives Committee. The chair of the Board, shall preside at the initial meeting of the Member Representatives Committee, until a chair is selected in accordance with Article IX, Section 4. Except as to any matter as to which the procedure to be followed by the Member Representatives Committee is expressly set forth in these Bylaws, the Member Representatives Committee may adopt such additional procedures, not inconsistent with these Bylaws, as it deems appropriate, subject to review and disapproval by the Board.

ARTICLE X. OTHER COMMITTEES AND SUBCOMMITTEES

Section 1. Committees of the Corporation. In addition to those committees specified by these Bylaws, to which the Board shall appoint members in accordance with the requirements of these Bylaws, the Board may by resolution create standing committees of the Corporation; and may in addition by resolution appoint such committees, subcommittees, task forces and Sector-specific forums as the Board deems necessary or desirable to carry out the purposes of the Corporation. The Board shall appoint standing committees and other committees of the Corporation that are representative of Members, other interested parties, and

the public, that provide for balanced decisionmaking and that include persons with outstanding technical knowledge and experience. All committees, subcommittees, task forces and Sector-specific forums shall have such scope and duties, not inconsistent with law, as are specified in these Bylaws and the Rules of Procedure of the Corporation or otherwise determined by the Board.

ARTICLE XI. BUDGETS AND FUNDING

Section 1. Compensation of the Board and Member Representatives Committee. The Board shall have the right to fix from time to time, by resolution adopted by a majority of the Directors and a majority of the Independent Directors then serving as Directors, the amount of the annual retainer fee or other compensation to be paid to the Independent Directors for their services to the Corporation, including any fees to be paid for each meeting of the Board or any Board committee attended by an Independent Director. The Board will evaluate the fee or other compensation at least every three years, to ensure that Director compensation is appropriate. No compensation shall be paid to a Management Director or any ex officio Director for his or her services on the Board, other than the compensation paid to the Management Director for services as CEO of the Corporation. No compensation shall be paid by the Corporation to any member of the Member Representatives Committee for their services on the Member Representatives Committee. Independent Directors shall be entitled to be reimbursed their reasonable out-of-pocket expenditures for attending meetings and conducting the business of the Corporation.

Section 2. Preparation and Adoption of Annual Budget, Business Plan, and Funding Mechanism. The Board shall require the CEO to prepare for Board approval an annual business plan and budget for the administrative and other expenses of the Corporation, including the expenditures for the fiscal year for any material special projects undertaken by the Corporation and reasonable and proper reserves and provisions for contingencies, in accordance with all NERC and Commission requirements. If the Corporation might or will be performing Non-statutory activities in the budget year, the Board will require that such Non-statutory activities be budgeted for separately from the activities performed pursuant to the Delegation Agreement. The Board shall further require that a funding mechanism be in place for such Non-statutory activities (pursuant to Article XI, Section 3), prior to the approval of any Non-statutory activities. The annual business plan, budget and funding mechanism of the Corporation shall be for a fiscal year commencing on January 1 and ending on December 31. Each annual business plan, budget, and funding mechanism shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose. The Board shall use reasonable efforts to approve each annual business plan, budget, and funding mechanism at a time that allows for timely submittal of the approved annual business plan, budget, and funding mechanism to the applicable regulatory authorities.

~~**Section 3. — Criteria for Non-Statutory Funding Mechanisms.** For any authorized Non-statutory activities, the Board must approve a funding mechanism, which is authorized and approved by the PUCT, which funding mechanism shall recover, over the course of the fiscal year, the revenue required to fund the fiscal year Non-statutory activities~~

~~**Section 4.**~~ **Section 3. Comments During Preparation of Annual Business Plan and Budget.** In preparing the annual business plan and budget, the Board shall require that the CEO post a draft business plan and budget for review and comment by the Members of the Corporation and the Member Representatives Committee and the standing committees of the

Comment [A5]: Luminant proposes the deletion of the non-statutory funding mechanism section as such section is not necessary given Luminant's proposal that the TRE focus only on its statutory jurisdiction.

Corporation for at least ten (10) days prior to the date of the meeting of the Board at which the annual business plan and budget is to be adopted.

~~Section 5-~~**Section 4. Modified or Supplemental Budgets.** During the course of a fiscal year, the Board may modify any approved budget or develop and approve a supplemental budget if determined by the Board to be necessary due to such factors as a shortfall in revenues of the Corporation from projected levels, incurred or anticipated expenditures, duties, or new projects not provided for in the annual budget, or such other factors as in the judgment of the Board warrant modification of the budget for the fiscal year or development of a supplemental budget. In preparing a modified or supplemental budget, the Board shall follow the provisions of this Article XI, Section 4 to the extent practicable in the judgment of the Board in light of the urgency of the circumstances necessitating preparation and approval of the modified or supplemental budget. Each modified or supplemental budget shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose.

~~Section 6-~~**Section 5. Submission of Annual Business Plans and Budgets to the Regulatory Authorities.** Each annual budget, annual business plan, and annual, modified, or supplemental budget approved by the Board shall be submitted by the Corporation to the ERO and any applicable regulatory authorities for approval in accordance with its regulations, and shall not be effective until approved by the applicable regulatory authorities. If ordered to modify or remand an annual budget, business plan, or annual, modified, or supplemental funding mechanism, the Board shall promptly following such order adopt such modifications to the business plan, budget, or funding mechanism as are required or directed by the order of the ERO and any applicable regulatory authority.

ARTICLE XII. AMENDMENTS TO THE BYLAWS

Section 1. Amendments to the Bylaws. These Bylaws may be altered, amended, or repealed by a majority vote of both the Board and the Membership at respective meetings of the Board and the Members at which a quorum is present. Written notice of the subject matter of the proposed changes to the Bylaws shall be provided to the Directors and to the Members not less than ten (10) nor more than sixty (60) days prior to the date of the meeting of the Board or the Members at which the vote is to be taken. Notwithstanding the provisions of this Article XIV, the Members of the Corporation voting by Sector shall have the right to alter, amend, or repeal Bylaws adopted by the Board and to adopt new Bylaws, provided that any such alteration, amendment, or repeal or the adoption of new Bylaws is approved by vote of two-thirds of the Sectors at a meeting of Members called for that purpose, or by written consent of two-thirds of the Sectors, where the number of votes for and against the proposed alteration, amendment, repeal or adoption of Bylaws shall be determined in accordance with Article IV, Section 2. Any alteration, amendment, repeal or adoption of Bylaws shall be subject to any applicable requirements for filing with or approval by the ERO or any other applicable regulatory authority.

ARTICLE XIII. INDEMNIFICATION; PROCEDURE; DISSOLUTION

Section 1. Indemnification. The Corporation shall indemnify each person who at any time shall serve, or shall have served, as an officer, Director, employee, or other corporate agent of the Corporation, is or was serving at its request as a director, officer, partner, venturer, proprietor, employee, agent or similar functionary of another foreign or domestic corporation,

partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise (“Indemnified Parties”), to the full extent from time to time permitted by the Texas Business Organizations Code and other applicable law. Such right of indemnification shall inure to the benefit of the legal representative of any such Indemnified Party. The foregoing indemnification shall be in addition to, and not in restriction or limitation of, any privilege or power that the Corporation may have with respect to the indemnification or reimbursement of its Indemnified Parties. The Corporation shall also pay or advance reasonable expenses incurred by an Indemnified Party in connection with a proceeding in advance of the final disposition of the proceeding upon receipt of a written affirmation by the Indemnified Party of a good faith belief that the standard of conduct necessary for indemnification under this Article XIII and the Texas Business Organizations Code has been met and a written undertaking by or on behalf of the officer, Director, or other corporate agent to repay the amount if it shall be ultimately determined that the Indemnified Party was not entitled to be indemnified by the Corporation.

Section 2. Parliamentary Rules. In the absence of and to the extent not inconsistent with specific provisions in these Bylaws, meetings or other actions pursuant to these Bylaws shall be governed by procedures that the Board may, from time to time, establish by resolution.

Section 3. Dissolution. Upon dissolution of the Corporation, in accordance with the Certificate of Formation, the remaining assets of the Corporation after payment of debts shall be distributed in the manner determined by the Board, provided that, (i) no part of the assets shall be distributed to any Director of the Corporation, and (ii) the distribution of assets shall be consistent with the requirements of Section 501(c)(3) of the United States Internal Revenue Code of 1954.

ARTICLE XIV. CONFLICTS OF INTEREST

Section 1. Conflicts of Interest.

(a) ~~Each Independent~~ Director shall have an affirmative duty to disclose to the Board or committee (as the case may be) any actual or potential conflicts of interest of the Director that arise during his or her tenure as a director where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board. ~~An Independent~~ Director with a direct or potentially conflicting interest in a matter shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. Any disclosure of a potential conflict of interest by a Director shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, without participating in discussion of the issue raising the potential conflict, shall not constitute participation.

(b) The Corporation may not make any loan to a Director, committee member or officer of the Corporation. A Member, Director, officer, or committee member of the Corporation may not lend money to, or otherwise transact business with, the Corporation except as otherwise provided by these Bylaws, the Certificate of Formation, and applicable law. A related party transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation, provided the related party nature of the transaction is known to the Board. The Corporation may not borrow money from, or otherwise transact business with, a Member, Director, officer, or committee member of the Corporation unless the transaction is described fully in a legally

Comment [A6]: Luminant believes that all Directors should have an obligation to disclose conflicts of interest, not just the Independent Directors.

binding instrument and is in the Corporation's best interests. The Corporation may not borrow money from, or otherwise transact business with, a Member, Director, officer, or committee member of the Corporation without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

Section 2. Prohibited Acts. No Member, Director, officer, or committee member of the Corporation may do any of the below-listed prohibited acts. Performance of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing as described in these Bylaws. The prohibited acts include the following:

- (a) Do any act in violation of these Bylaws.
- (b) Do any act in violation of a binding obligation of the Corporation except with the Board's prior approval.
- (c) Do any act with the intention of harming the Corporation or any of its operations.
- (d) Receive an improper personal benefit from the operation of the Corporation.
- (e) Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business.
- (f) Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill.
- (g) Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of Corporation in the ordinary course of its business or as a reference to the Corporation or its region.
- (h) Disclose any of Corporation's or Members' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.

Section 3. Loans and Guarantees. Neither participation in the activities of the Corporation nor any provision of these Bylaws or of the Certificate of Formation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of the Corporation or a guarantee by any Member of any obligation of the Corporation.

**ARTICLE XV.
BOOKS AND RECORDS; AUDIT; FISCAL YEAR**

Section 1. Access to Books and Records. All Members of the Corporation will have access to the books and records of the Corporation, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of the Corporation. If necessary to protect the confidential information of the Corporation, a Member requesting examination of the Corporation's books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 2. Audit. At least annually, an audit of the financial statements of the Corporation shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Article XV, Section 1.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be from January 1 through the following December 31, unless otherwise established by resolution of the Board.

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August 5, 2009

Texas Regional Entity

Via email to information@texasre.org

Re: Proposed Bylaws

Gentlemen,

Brazos Electric Power Cooperative, Inc. (“Brazos Electric”) submits these comments on the proposed Texas Regional Entity (“TRE”) Bylaws:

1. Article I, Section 1(a) defines “Affiliate” as a company holding 5% or more voting securities in another company. Generation and transmission cooperatives (“G&T’s”) are owned by their distribution cooperative members. Only a cooperative with over 20 members would *not* be considered affiliated companies, effectively silencing either the G&T or all its distribution cooperative members. Article III, Section 4(c) specifically prohibits a Distribution Provider from joining if it has a registered Transmission Operator as an affiliate. Only one cooperative in Texas has more than 20 members, effectively prohibiting membership of distribution cooperatives from joining the Distribution Providers sectors.

2. On a related note for cooperatives, would entities represented by a Joint Registration Organization (“JRO”) be eligible for membership in TRE under these bylaws? Brazos Electric registered for its distribution cooperative members under a JRO. Are those distribution members eligible for membership (assuming the first comment is resolved)?

3. Is it reasonable to force entities to decide to only join one sector? For example, Brazos Electric is registered in a number of different capacities, as are many other companies, because they have substantial interests and operations in those sector categories. Certainly it would be unfair to have multiple votes, but is there a way to allow membership in more than one sector?

4. Is it intentional that there is no provision for individuals to join? Perhaps the OPUC can effectively represent individuals, as the consumer representative.

5. The formula for the Nominating Committee should be reviewed. If the non-expiring Independent Directors (3 or 4 directors) must be a majority of the members of the Committee, but the ex officio Directors are on the committee, there can be no other members (and except for the year only one director rotates off, the Independent Directors will not be in a majority).

6. Is there a conflict between the open meeting provision (Article V, Section 5) and the ability to act without a meeting (Article V, Section 4)? The same issue would apply to Director's meetings (Article VI).

Yours truly,

J. David Carpenter

**CPS Energy's First Round Comments
on Texas Regional Entity Bylaws**

**Contact: Kenan Ögelman
Phone: (512) 542-7594
Email: kogelman@cpsenergy.com**

COMMENTS OF CPS ENERGY,

CPS Energy¹, offers the following comments to Texas Regional Entity Bylaws. CPS Energy appreciates the hard work and thoughtfulness of the Texas Regional Entity's Staff in preparing the "Draft Bylaws". CPS Energy has two principal comments to the Bylaws. First, we offer our support for the formation of a Member Representatives Committee as soon as practical. Second, we recommend bylaws changes that adjust the "Membership Sectors" to create a "Municipal Utility Sector".

Absent the proposed language changes to Article III Section 4, a municipal utility such as CPS Energy, must choose its sector and be held to membership in that sector for one year. The problem is that CPS Energy and many other municipally owned electric utilities are registered as Transmission Owners (TOs), Generator Owners (GOs), and Load Serving Entities (LSEs) to list just a few. Therefore, if the Membership Sectors are maintained as proposed in the bylaws, CPS Energy must represent several interests with one membership that does not cover the activities of CPS Energy. This creates problems with respect to the Member Representative Committee because we will be forced to potentially advocate a GO position while a member of the TO sector. This is a poor design outcome for not only CPS Energy, but for all the members of the Texas Regional Entity

To correct the problem CPS Energy recommends adding another sector as subsection (h) of Article III Section 4 of the Texas Regional Entity Bylaws stating:

¹ CPS Energy™ is the trade name of City Public Service of San Antonio, acting by and through the City Public Service Board.

(h) Municipal Utility: An entity owned by or subject to the governmental authority of a municipality that is engaged in the generation, delivery, and/or sale of electric power to end-use customers within ERCOT.

CPS Energy offers this language as a proposed solution only; once efforts are undertaken to address the issue there may be other solutions that incorporate the comments of all of the membership of the Texas Regional Entity. CPS Energy appreciates the opportunity to offer these comments.

**FIRST ROUND COMMENTS OF TEXAS COMPETITIVE POWER
ADVOCATES ON THE PROPOSED TEXAS REGIONAL ENTITY BYLAWS**

Texas Competitive Power Advocates (“TCPA”), a trade association representing power generators, wholesale power marketers and retail providers active in the wholesale and retail markets in the Electric Reliability Council of Texas (“ERCOT”),¹ appreciates the opportunity to file comments with the Texas Regional Entity (“TRE”) on the proposed TRE Bylaws. TCPA’s substantive comments focus on two important topics: the purpose of the TRE (Article II) and the composition of the TRE Board of Directors (Article IV).

Article II. Purpose

Subsection (c) of Section 1 provides that the TRE will “Perform non-statutory compliance monitoring and reporting of the ERCOT Protocols, as authorized by the Public Utility Commission of Texas and allowed by NERC and FERC.” TCPA strongly objects to the inclusion of this non-statutory function that is furthermore not required by any of the regulatory bodies mentioned. Compliance monitoring and reporting of the ERCOT Protocols is already the responsibility of ERCOT, as well as the Public Utility Commission (“PUC” or the “Commission”), and the Commission enforces the Protocols under its state statutory authority. There is absolutely no reason for a federal agency to be granted such responsibilities in addition to ERCOT and the PUC, both of which are fully capable of fulfilling their respective responsibilities. The TRE’s sole focus should be fulfilling the demanding and important statutory functions for which the United States Congress mandated such federal entities, for which it is well-qualified.

¹ TCPA’s members include.....

If the TRE is required to monitor and require compliance with the ERCOT Protocols, it will require systems that will be redundant with ERCOT's. ERCOT customers should not be saddled with such an unnecessary expense. Even more important, the possibility will always exist for the TRE's interpretation and application of the Protocols to conflict with that of ERCOT or the PUC. TCPA does not look forward to the state-federal dispute that will result, and would not welcome federal intrusion into—or even usurpation of—ERCOT or the PUC with respect to the interpretation or application of the Protocols, which are solely a Texas creation. The primary purpose of legally separating the TRE from ERCOT is to create a clean break between the two entities and their respective responsibilities. Allowing the TRE to retain compliance monitoring responsibilities of the Protocols fails that purpose. Texas regulators and ERCOT should be the only entities entitled and empowered to interpret the Protocols.

Finally, if the only non-statutory functions contemplated by the Bylaws are those reflected in Section 1(c) of Article II, then TCPA recommends deletion of Section 3 of Article XI, which addresses the funding mechanism for the TRE's non-statutory activities.

Article IV. Board of Directors

In Section 1 of Article IV, the proposed Bylaws require five independent Directors, and provides that the Public Counsel be added to the Board as an *ex officio* non-voting member representing the interests of residential electricity consumers. TCPA recommends that the five independent Board members be reduced to three. Reducing the number of independent Board members to three reduces the TRE's costs (which will

ultimately be borne by consumers), while maintaining an adequate and appropriate level of oversight. Additionally, TCPA opposes the inclusion of the Public Counsel on the TRE Board. Pursuant to its delegation agreement with the National Electricity Reliability Council (“NERC”), the TRE is charged with statutory responsibilities to ensure compliance with the NERC reliability standards and to enforce such standards. Including a person on the Board charged with representing residential consumers only is unnecessary for the TRE to carry out its responsibilities and discriminates against other ERCOT stakeholders. The PUC has a well-established policy of denying participation to parties other than Staff and the accused in cases involving an alleged violation of the ERCOT Protocols and the Commission’s rules. The TRE should follow a similar policy with respect to its Board’s composition.

TCPA has attached a redline to the proposed Bylaws reflecting its comments herein and correcting a few typos. Please contact the undersigned if you have any questions.

RESPECTFULLY SUBMITTED,

Marianne Carroll
Executive Director of TEXAS
COMPETITIVE POWER ADVOCATES

BYLAWS
OF
TEXAS REGIONAL ENTITY, INC.

(A Texas Non-Profit Corporation)

Approved on _____, 2009

Table of Contents

	Page
Article I. Definitions	1
Article II. Purpose.....	3
Article III. Membership	4
Article IV. Board of Directors	7
Article V. Meetings of Members of the Corporation	10
Article VI. Meetings of the Board of Directors	11
Article VII. Officers	12
Article VIII. Reliability Standards Development Committee	13
Article IX. Member Representatives Committee	13
Article X. Other Committees and SubCommittees	16
Article XI. Budgets and Funding	16
Article XII. Amendments to the Bylaws	18
Article XIII. Indemnification; Procedure; Dissolution	18
Article XIV. Conflicts of Interest	19
Article XV. Books and Records; Audit; Fiscal Year.....	20

ARTICLE I. DEFINITIONS

Section 1. Definitions. The capitalized terms used in these Bylaws of Texas Regional Entity, Inc. (the “Corporation” or “Texas RE”), shall have the meanings set forth below, or if not set forth below, shall have the meanings given them in the NERC Rules of Procedure.

(a) “Affiliate” means any company controlling, controlled by or under common control with the entity under consideration, and includes any company (i.e., any commercial enterprise) in any of the following relationships: (i) a company that directly or indirectly owns or holds at least five percent of the voting securities of another company, (ii) a company in a chain of successive ownership of at least five percent of the voting securities of another company, (iii) a company which shares a common parent with or is under common influence or control with another company or (iv) a company that actually exercises substantial influence or control over the policies and actions of another company. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in Texas RE shall not create an affiliation with Texas RE. [Should the Substantive Rule Definition here (25.5 (3)), instead of redefining it? This really gives the BOD of the TRE significant power in determining an affiliate relationship.]

(b) “Board” means the Board of Directors of the Corporation.

(c) “Bulk Power System” or “BPS” means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and facilities generating electric energy as needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

(d) “Commission” or “FERC” means the Federal Energy Regulatory Commission.

(e) “Delegated Authority” means the authority delegated by NERC to the Corporation to propose and enforce NERC Reliability Standards and perform other reliability-related activities in the ERCOT Region under the Delegation Agreement executed by NERC and the Corporation and approved by FERC, pursuant to Section 215 of the Federal Power Act (16 U.S.C. §824n).

(f) Delegation Agreement means the agreement between the Corporation and NERC and approved by the Commission which describes the Delegated Authority and may be amended from time to time.

(g) “Electric Reliability Organization” or “ERO” means the organization that is certified by the Commission pursuant to Section 39.3 of its regulations, and has received recognition by appropriate regulatory authorities in Canada and Mexico, as applicable, to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries and that has entered into a delegation agreement with the Corporation pursuant to which the Electric Reliability Organization delegates enforcement authority for Reliability

Standards for the Bulk Power System in the ERCOT Region. NERC was certified as the ERO on July 20, 2006.

(h) “ERCOT Region” means the geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

(i) “Independent Director” means a person who is not (a) an officer or employee of the Corporation; (b) a NERC Registered Entity or Member or an officer, director, or employee of a Member of the Corporation; or (c) an officer, director, or employee of any company or entity that would reasonably be perceived as having a direct financial interest in the outcome of Board decisions and who does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a Director, as more specifically described in Article IV of these Bylaws.

(j) “Member” means a member of the Corporation pursuant to Article II of these Bylaws.

(k) “PUCT” means the Public Utility Commission of Texas.

(l) “NERC” means North American Electric Reliability Corporation, the entity certified by FERC as the ERO on July 20, 2006.

(m) “NERC Rules of Procedure” means the Rules of Procedure that are adopted by NERC and approved by the Commission.

(n) “Regional Entity” means an entity with a Delegation Agreement with NERC, as ERO-, including the following organizations, in addition to Texas Regional Entity: Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), ReliabilityFirst Corporation (RFC), Southeastern Electric Reliability Council (SERC), Southwest Power Pool (SPP), and Western Electricity Coordinating Council (WECC).

(o) “Registered Entity” means an entity that is registered with NERC and listed on the NERC Compliance Registry (available at www.nerc.com).

(p) “Reliability Standard” means a requirement to provide for Reliable Operation of the Bulk-Power System, which is approved by NERC and the Commission, pursuant to Section 215 of the Federal Power Act and all amendments thereto. This term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk-Power System.

Regional Reliability Standard – Should be defined here

(q) “Reliable Operation” means operating the elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of the Bulk Power System will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

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(r) "Sector" means a group of Members of the Corporation that are Bulk Power System owners, operators, or users, as defined in Article III, Section 4 of these Bylaws. Each Sector shall constitute a class of Members for purposes of Chapter 22 (Nonprofit Corporations) of the Texas Business Organizations Code.

ARTICLE II. PURPOSE

Section 1. General Purpose. The purpose of the Corporation is to preserve and enhance reliability in the ERCOT Region. In furtherance of this goal, the Corporation will:

(a) Perform Reliability Standards development, compliance monitoring, compliance enforcement, and other related activities— as a Regional Entity, pursuant to 16 U.S.C. §824n, in accordance with the Corporation's Delegation Agreement with NERC;

(b) Carry out other activities as set forth in the Delegation Agreement, the NERC Rules of Procedure, or as otherwise required or requested by NERC, in support of the Delegated Authority, including but not limited to organization registration and certification, reliability assessment and performance analysis, training and education, and situational awareness and infrastructure security;

~~(d) Perform non-statutory compliance monitoring and reporting of the ERCOT Protocols, as authorized by the Public Utility Commission of Texas and allowed by NERC and FERC; and~~

~~(c)~~ Engage in any other lawful act or activity that is not in conflict with the Corporation's duties as a Regional Entity and for which non-profit corporations may be organized under the Texas Non-Profit Corporations Act.

Section 2. Non-Profit Corporation. The Corporation is a Texas non-profit corporation.

Section 3. Geographic Area. The Corporation will perform its operations primarily within the ERCOT Region. The ERCOT Region includes 200,000 square miles, 85% of Texas load, and 75% of Texas land area (does not include the Panhandle, El Paso area, and 2 areas of East Texas). The ERCOT Region includes the following Texas cities and towns: Dallas, Ft. Worth, Houston, San Antonio, Austin, Paris, Tyler, Nacogdoches, Lufkin, Bryan, College Station, Corpus Christi, Harlingen, Brownsville, Laredo, Brownwood, San Angelo, Abilene, Midland, Odessa, Fort Stockton, Monahans, Snyder, Vernon, Wichita Falls, Denton, Garland, Greenville, Waco, Temple, Killeen, Weatherford, and Graham, and does not interconnect synchronously across state lines to import or export power with neighboring reliability regions.

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ARTICLE III. MEMBERSHIP

Section 1. Members. The Corporation is a membership corporation. Membership in the Corporation is voluntary and is open to any company that is a user, owner or operator of the ERCOT Region Bulk Power System, registers with the Corporation as a Member, maintains its registration in accordance with this Article III, and complies with the other conditions and obligations of membership specified in these Bylaws. All Members must qualify and be registered in one of the Sectors defined in Article III, Section 4. Membership in the Corporation is not a condition to participating in the development or consideration of proposed Regional Standards.

Section 2. Registration as a Member. Any company that is eligible to be a Member of the Corporation in accordance with Article III, Section A may become a Member by completing and submitting to the secretary of the Corporation a membership registration on a form prescribed by the Corporation. The Member shall designate one representative and an alternative representative with authority to receive notices, cast votes, and execute waivers and consents on behalf of the Member. The secretary of the Corporation shall maintain a current roster of the Members of the Corporation including each Member's designated representative and alternative representative. From time to time, the Board shall establish a date by which Members shall submit their registration renewals. All Members shall be required to renew their registrations annually and within 30 calendar days of a request by an officer of the Corporation, using a registration renewal form prescribed by the Corporation. The secretary of the Corporation shall remove from the roster of Members of the Corporation any Member that has not submitted a registration renewal within 30 days following a date established by the Corporation. The secretary shall inform any Member that is removed from the roster of Members of such removal, by sending notice to such former Member's last known address on the records of the Corporation.

Section 3. Obligations and Conditions of Membership.

(a) Members must agree to promote, support, and comply with Reliability Standards, comply with the ERCOT region market rules, and assist the Corporation in its compliance with the terms and provisions of the Corporation's Delegation Agreement with NERC. Each Member shall agree, in writing, to accept the responsibility to comply with policies of NERC and the Corporation as set forth in their respective certificates of formation, bylaws, rules of procedure, and Reliability Standards, as applicable, as from time to time adopted, approved, or amended.

(b) As an additional condition of membership in the Corporation, each Member shall be required to execute an agreement with the Corporation, in a form to be specified by the Corporation, that such company will hold all Directors, officers, employees, and agents of the Corporation, as well as volunteers participating in good faith in the activities of the Corporation, harmless for any injury or damage caused by any act or omission of any director, officer, employee, agent, or volunteer in the course of performance of his or her duties on behalf of the Corporation, other than for willful acts of misconduct.

(c) Consistent with applicable laws and regulations, Members must share nonproprietary information at the Corporation's request as necessary for the furtherance of the Corporation's activities and consistent with NERC, PUCT, or any other applicable rules relating to confidentiality.

Section 4. Membership Sectors. Each Member shall elect to be assigned to one of the following membership Sectors:

(a) **Coordination and Planning:** A company that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), Transmission Service Provider (TSP), or Interchange Authority (IA).

(b) **Transmission:** A company that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), and/or Transmission Operator (TOP).

(c) **Distribution:** A company that is registered with NERC as a Distribution Provider (DP) and is not registered as a TO and has no Affiliates that are registered as a TO.

(d) **Generation:** A company that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).

(e) **Load-Serving and Marketing:** A company that is registered with NERC as a Load Serving Entity (LSE), a Purchasing-Selling Entity, or any newly defined NERC Function for demand response.

(f) **BPS Owner, Operator or User:** A company that is an owner, user, or operator of the ERCOT Region Bulk Power System but is not registered with NERC for any NERC Function and has no Affiliates that are Members.

(g) **Governmental/Regulatory:** A representative of the Public Utility Commission of Texas.

Section 5. Participation.

(a) There is only one level of Membership, and no company or entity may simultaneously hold more than one Membership.

(b) Members must qualify in and join a Sector. If any company does not qualify in any other Sector but is an owner, user, or operator of the ERCOT Region Bulk Power System, it may belong to the BPS Owner, Operator or User Sector.

(c) A Member that is eligible for more than one Sector may join only one Sector.

(d) A company or entity that is an Affiliate of a Member may hold a separate membership in a different Sector (except for the BPS Owner Operator, User Sector), so long as the legal entities have different NERC Compliance Registry Numbers under which they are currently registered for the applicable NERC Function.

(e) A Member must continue to vote in the same Sector for a minimum of one year or until it is no longer eligible to remain in such Sector, and it must give notice to the Corporate secretary when it elects or is required to change Sectors.

(f) The Board may review the Sector qualification of any Member and may determine that a Member does not qualify for, and require them to change Sectors.

(g) A Member who is no longer eligible or not in good standing may not vote on any matters that require membership. [Definition of is required to be in good standing would be helpful.]

Section 6. Membership Fees. Members must pay an annual Membership Fee of \$250, to offset the expenses of membership qualification, coordination, and meetings, unless the Board waives the fee for any Member for good cause shown. The Board may agree to change the amount or frequency of the Membership Fee, from time to time, by majority vote.

Section 7. Term of Membership. Membership in the Corporation must be renewed on an annual basis and will only be retained as long as a Member meets its respective qualifications, obligations, and conditions of membership as set forth in these Bylaws. Membership is conditioned on the annual payment of Membership Fees, unless the Membership Fees are waived by the Board for good cause shown, as determined in the Board's sole discretion.

Section 8. Removal. No Member or Member representative may be sanctioned, expelled or suspended and no membership in the Corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. The Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member following notice to the Member and exercise of appropriate due process procedures and a determination by the Board in its sole discretion that in its judgment the Member has violated its obligations and responsibilities to the Corporation. In the event that the Board does not adopt procedures, the following procedures shall apply:

(a) Written notice. Written notice of intent to terminate, expel, suspend or sanction a Member shall be delivered at least twenty (20) days in advance of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by facsimile (receipt confirmed), e-mail (receipt confirmed) or first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in the Corporation's records.

(b) Hearing. An opportunity shall be provided for the Member receiving such notice to be heard by the Board at the hearing, orally and in writing. The Member shall be entitled to have counsel present, and to participate in the hearing, at its own expense, and to present and cross-examine any witnesses.

(c) Liability. A Member which has been sanctioned, expelled, terminated or suspended shall remain liable to the Corporation for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.

(d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, may be submitted to the Board in writing within one year after the effective date of the expulsion, suspension, sanction or termination. If the Board determines to hear such challenge, it shall notify the Member and such proceeding will be subject to the hearing requirements described in subsection (b) above of this Section 8.

Section 9. Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of the Corporation at any time upon written notice to the chief executive officer or president, whereupon it shall cease to be a

Member, and its representatives shall cease to be entitled or obligated to participate in the activities of the Board or any activities requiring membership.

Section 10. Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board will reinstate the Membership unless the company does not meet the Membership qualifications set forth in these Bylaws.

ARTICLE IV. BOARD OF DIRECTORS

The purpose of the Board should be listed here. The business and affairs of the Corporation shall be managed by the Board. Specific functions of the Board shall include, but not be limited to:

(a) govern the Corporation and oversee all of its activities;

(b) establish and oversee all organizational groups;

(c) approve, revise and enforce Reliability Standards utilizing a fair, open, balanced and inclusive process;

(d) establish compliance monitoring procedures and requirements, and sanctions for non-compliance consistent with applicable NERC Rules;

(f) establish and approve an annual budget for submission to NERC;

(g) hire the Corporation's president and approve his or her salary;

(h) annually at the first regular Board meeting following the annual meeting of Members, elect a Chair ("Chair") and a vice-chair from among the directors on the Board; and

(i) establish Board committees.

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Section 1. Board of Directors. ~~The business and affairs of the Corporation shall be managed by the Board.~~ The Board shall consist of (i) ~~five~~^{Three} Independent Directors who are nominated and elected in accordance with the requirements and procedures specified in this Article IV (the "Independent Directors"); (ii) the Chairman of the PUCT or another PUCT Commissioner designated by the Chairman, as an *ex officio* non-voting member; ~~(iii) Texas Public Counsel, from the Office of Public Utility Counsel, as an ex officio non-voting member, representing the interests of residential electricity consumers;~~ and ~~(iii)~~^{iv} the CEO of the Corporation as an *ex officio* non-voting member. Each Director, excluding the non-voting members of the Board, shall have one (1) vote on any matter brought before the Board for a vote. All Directors are expected to serve the public interest and to represent the reliability concerns of the entire ERCOT Region Bulk Power System.

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Section 2. Independent Directors. The Independent Directors shall be elected, shall have the qualifications specified, and shall serve in the manner provided in this Section.

(a) Qualifications:

(1) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering, bulk power systems, or law; regulation of utilities; and/or risk management.

(2) Independence of any NERC registered entity or any ERCOT Region Market Participant. Requirements of independence include but are not limited to the following:

(i) Independent Directors and the immediate family (any spouse, mother, father, sibling, or dependent, and any spouse of mother, father, or sibling and including any step and adoptive parents, siblings or children) and household members of Independent Directors and their spouses shall not have current or recent status (within the last two years) as a director, officer or employee of an ERCOT Region NERC Registered Entity or ERCOT Region Market Participant.

(ii) Independent Directors and immediate family and household members of Independent Directors shall not have current or recent status (within the last six months) as a director, officer or employee of a non-ERCOT Region NERC Registered Entity.

(iii) Independent Directors and immediate family and household members of Independent Directors shall not have direct business relationships, other than retail customer relationships, with any NERC Registered Entity or Market Participant.

(iv) To the extent that an Independent Director or his or her spouse, dependent child, or any other household member owns stocks or bonds of NERC Registered Entities or Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.

(v) Independent Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a Board member, including the Delegated Authority.

(vi) Other criteria as approved by the Board.

(b) Term. Except for the initial and originally elected Directors, the term for Independent Directors shall be staggered three year terms. An Independent Director may be elected for up to three consecutive terms. Notwithstanding the foregoing, the initial Directors, who are seated for formation will serve only until the first membership meeting of the Corporation, which term shall not exceed six (6) months. If an initial Director is qualified to be an Independent Director and elected by the membership, such Director's initial term shall not be counted for purposes of that term limits. For the originally elected Directors, two positions will have three year terms, two positions will have two year terms and one position will have a one year term.

(c) Selection.

(1) The Board shall appoint, on an annual basis, or more frequently if needed in the event of a special election pursuant to this subsection, a nominating committee (the "Nominating Committee") to recommend candidates (i) to succeed the

Independent Directors whose terms expire during the current year and (ii) to serve the remainder of the term of any Independent Director who ceased to serve as a Director subsequent to the last annual election of Directors. The Nominating Committee shall consist of the Management Director, the ex officio Directors, and those Independent Directors whose terms do not expire during the current year and such number of other persons with such qualifications as the Board shall specify, provided that the Independent Directors shall constitute a majority of the members of the Nominating Committee.

(2) The Nominating Committee will retain an executive search firm to locate and present candidates with the required qualifications, as set forth in Article IV, Section 2(a).

(3) The Nominating Committee shall interview the qualified candidates and select and nominate, by at least a two-thirds majority, qualified candidate(s) consistent with the objectives that the Board as an entirety reflects expertise in the areas of technical electric operations and reliability, legal, senior corporate leadership, financial, risk management, and regulatory matters, and familiarity with regional system operation issues in the ERCOT Region to present to the Membership for its approval.

(4) The Membership shall vote by Sector as described in Article V in favor or against the proposed Independent Director(s). A proposed Independent Director that is approved by a majority of the Sectors shall become an Independent Director.

(d) Director Voting Weights. All voting Directors shall have a single vote each.

(e) Alternates and Proxies. Independent Directors may designate another Independent Director as a proxy if unable to attend a Board meeting. Ex officio Directors may designate a selected proxy or an alternate representative who may attend meetings in the absence of such Director.

Section 3. Appointment of Management Director. The president and chief executive officer (CEO) of the Corporation shall serve as the Management Director of the Corporation, effective as of the date of his or her appointment by the Board as CEO of the Corporation in accordance with these Bylaws, to serve until such time that he or she ceases to hold the position of CEO. No action of the Members of the Corporation shall be required in connection with the appointment of the CEO as the Management Director of the Corporation.

Section 4. Chair and Vice Chair. Annually, the Board shall elect from the Board's membership, by resolution of the Board, a Chair and a Vice Chair. The Chair shall be one of the Independent Directors.

Section 5. Vacancies and Removal. Should any vacancy on the Board arise from the death, resignation, retirement, disqualification, or removal from office of any Director, or from any other cause, such vacancy shall be filled by electing a Director at the next annual election of Directors to fill the remainder, if any, of the term of the departed Director. Provided, that the Board by resolution may in its discretion call a special election to fill any such vacancy for the remainder, if any, of the term of the departed Director. A Director may be removed with or without cause at any time by whomever had the right to appoint such Director (for ex officio

Directors), or for the elected Independent Directors, by an affirmative vote of sixty percent (60%) of the Members. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner.

Section 6. Committees of the Board. The Board shall by resolution create and appoint all committees of the Board as the Board deems necessary to perform its responsibilities. All committees of the Board shall have such duties as are prescribed and delegated by the Board. Committees to which any of the authority of the Board to manage the Corporation is delegated must have at least two members, and a majority of the members of the committee must be Directors.

ARTICLE V. MEETINGS OF MEMBERS OF THE CORPORATION

Section 1. Annual and Other Meetings of Members.

(a) An annual meeting of the Members for the election of Directors and to conduct such other business as may come before the meeting shall be held on or about December 1 of each year or as soon thereafter as is reasonably practicable.

(b) Meetings of Members of the Corporation may be called for any purpose or purposes by resolution of the Board, by the chair of the Board, the CEO or the secretary of the Corporation, or by a number of Members constituting at least ten (10) percent of all Members on the roster of Members maintained by the secretary of the Corporation, which number shall include Members in at least three of the Sectors. Meetings of Members shall be held at the principal office of the Corporation or at such other place fixed by the Board as shall be specified in the notice of meeting. Meetings shall be called upon written notice of the time, date, place, and purposes of the meeting given to all Members on the roster of Members maintained by the secretary of the Corporation not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. Only Members in good standing with the Corporation, as determined by the Board, have the right to vote at any meeting of the Members. Further, if at any point a Member no longer meets the qualifications for the Sector of which it is a member, the Entity may immediately elect to become a member in any Sector for which it does qualify.

Section 2. Quorum and Voting Requirements for Meetings of Members. At any meeting of the Members of the Corporation, attendance in person or by proxy by a majority of the Members in each of at least two-thirds of the Sectors on the roster of Members maintained by the secretary of the Corporation shall constitute a quorum.

(a) Members shall vote by Sector and each Sector shall have one vote.

(b) Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, actions by the Members of the Corporation shall be approved upon receipt of the affirmative vote of a majority of the members at a meeting of the Members of the Corporation at which a quorum is present, in person or by proxy. Each Sector's vote shall be determined by the affirmative vote of a majority of the members of the Sector voting at the meeting.

Section 3. Waivers of Notice of Meetings of Members and Member Meeting Adjournments. Notice of a meeting of Members need not be given to any Member who signs a

waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of proper notice of such meeting, shall constitute a waiver of notice of the meeting by such Member. When any meeting of Members is adjourned to another time or place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and if at the adjourned meeting only such business is transacted as might have been transacted at the original meeting.

Section 4. Action Without a Meeting of Members. Any action, required or permitted to be taken at a meeting of Members, may be taken without a meeting if the proposed action is posted to all members (via email and posting on the TRE website), and consented to in writing by the minimum number of Members that would be required to approve the action at a meeting of the Members at which all Members were present. The voting in such a circumstance shall be performed in writing, including via email, posting on the TRE website, or other electronic means. The Members shall receive-be provided with written notice of the results within ten-5 (40five) days of the action vote, and all written responses of the Members shall be filed with the Corporate records.

Section 5. Meetings of the Members to be Open. Notice to the public of the dates, places, and times of meetings of the Members, and all non-confidential material provided to the Members, shall be posted on the Corporation's website at approximately the same daytime that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourned to closed session to discuss matters of a confidential nature, including but not limited to compliance and enforcement matters, personnel matters, litigation, or commercially sensitive or critical infrastructure information of the Corporation or any other entity.

ARTICLE VI. MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Regular Meetings of the Board. Regular meetings of the Board shall be held at least quarterly. By resolution adopted at any meeting of the Board, the Board may provide for additional regular meetings that may be held as needed.

Section 2. Special Meetings of the Board. Special meetings of the Board for any purpose or purposes may be called at any time by the chair or by any two Directors. Such meetings may be held upon notice given to all Directors not less than three (3) days prior to the date of the meeting. Such notice shall specify the time, date, place, and purpose or purposes of the meeting and may be given by telephone, email or other electronic media, or by express delivery.

Section 3. Quorum and Voting Requirements for Meetings of the Board. Unless otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, (i) the quorum necessary for the transaction of business at meetings of the Board shall be a majority of the voting Directors in person or by proxy, and (ii) actions by the Board shall be approved upon receipt of the affirmative vote of a majority of the Directors present and voting in person or by proxy at a meeting at which a quorum is present.

Section 4. Meetings of the Board to be Open. Notice to the public of the dates, places, and times of meetings of the Board, and all non-confidential material provided to the

Board, shall be posted on the Corporation's website ~~at approximately~~ the same ~~day time~~ that notice or such material is given to the Directors. Meetings of the Board shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the Board may meet in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to compliance and enforcement matters, personnel matters, litigation, or commercially sensitive or critical infrastructure information of the Corporation or any other entity. Any or all of the Directors or members of a Board committee, may participate in a meeting of the Board, or a meeting of a committee, in person or by proxy, by means of any communications system by which all persons participating in the meeting are able to hear each other.

Section 5. Waivers of Notice of Board Meetings and Board Meeting Adjournments. Notice of a board meeting need not be given to any Director who signs or sends email confirming a waiver of notice, in person or by proxy, whether before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting. Notice of an adjourned board meeting need not be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and if the period of adjournment does not exceed ten (10) days.

Section 6. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board, or of any committee thereof, may be taken by the Board or by the committee without a meeting if the proposed action is posted to all members (via email and posting on the TRE website), and consented to in writing by the number of Directors or Members of the committee, as the case may be, entitled to vote on the action that would be required to approve the action at a meeting of the Board or committee with all Members of the Board or committee present. The call for action without a meeting of the Board may be initiated by the chair or by any two Directors. Notice of the proposed call for action without a meeting, and all non-confidential material provided to the Board in connection with the call for action without a meeting, shall be posted on the Corporation's website ~~at approximately~~ the same ~~time day that~~ notice of the call for action without a meeting or such material is provided to the Board. The call for action without a meeting of a committee of the Board may be initiated by the chair of the committee or by any two Members of the committee. The Directors or Members of the committee shall ~~receive be provided with~~ written notice of the results of such action within ~~seven five (57)~~ days of the action vote. All written responses of the Directors shall be filed with the minutes of the Corporation, and all written responses of Members of a committee shall be filed with the minutes of such committee.

ARTICLE VII. OFFICERS

Section 1. Selection of Officers. At a regular meeting held in accordance with Article V, Section 1 of these Bylaws, the Board shall elect a CEO and shall approve a corporate secretary and such other officers of the Corporation (collectively, the "Officers") as it shall deem necessary. The CEO shall be nominated and elected by the Board. All of the other Officers shall be selected by the CEO and approved by the Board, and all Officers shall be removed by the Board. The duties and authority of the Officers shall be determined from time to time by the Board. Subject to any such determination, the Officers shall have the following duties and authority:

Section 2. Chief Executive Officer. The CEO shall be the chief executive officer of the Corporation. He or she shall be responsible for the day-to-day ongoing activities of the

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Corporation and shall have such other duties as may be delegated or assigned to him or her by the chair. The CEO may enter into and execute in the name of the Corporation contracts or other instruments not in the regular course of business that are authorized, either generally or specifically, by the Board.

Section 3. Corporate Secretary. The secretary shall maintain the roster of Members of the Corporation, shall cause notices of all meetings to be served as prescribed in these Bylaws, shall keep or cause to be kept the minutes of all meetings of the Members and the Board, and shall have charge of the seal of the Corporation. The secretary shall perform such other duties and possess such other powers as are incident to his or her office or as shall be assigned to him or her by the CEO

Section 4. Chief Financial Officer. If hired and approved, a chief financial officer shall have custody of the funds and securities of the Corporation, shall keep or cause to be kept regular books of account for the Corporation and shall have the duties normally assigned to a treasurer of a corporation. The chief financial officer shall perform such other duties and possess such other powers as are incident to his or her office or as shall be assigned to him or her by the CEO.

ARTICLE VIII. RELIABILITY STANDARDS DEVELOPMENT COMMITTEE

Section 1. Requirement. The Corporation shall have a Reliability Standards Development Committee, which shall operate in accordance with the Standards Development Process as set forth in Exhibit C to the Delegation Agreement with NERC and approved by FERC. The chair and vice chair of the Standards Development Committee must be accepted or approved by the Board, in accordance with said Exhibit C.

ARTICLE IX. MEMBER REPRESENTATIVES COMMITTEE

Section 1. Purpose of Member Representatives Committee. The Corporation shall have a Member Representatives Committee that shall provide advice and recommendations to the Board with respect to annual budgets, business plans and funding mechanisms of the Corporation; other matters relevant to reliability of the ERCOT Bulk Power System; and other matters pertinent to the purpose and operations of the Corporation. The Members Representatives Committee may create subcommittees, task forces, or working groups ("subcommittees") as it deems appropriate to study or discuss selected technical or compliance matters to make recommendations to the board as requested or required by the Board or as deemed appropriate to its purpose by the Members Representatives Committee. Because it is elected by the Members of the Corporation and not appointed by the Board, the Member Representatives Committee shall not be a standing committee of the Board of Directors of the Corporation, but is authorized to provide advice and recommendations directly to the Board.

Section 2. Composition of the Member Representatives Committee. The Member Representatives Committee shall consist of two representatives from each Sector to serve annually and will annually select a chair and vice chair for the Member Representatives Committee. The representatives of each Sector shall be officers, employees, or directors of Members in that Sector; provided however, except for a Sector that has only one Member, only one officer, employee, or director of a Member in a Sector may be a representative from that Sector. No member of the Board shall be a member of the Member Representatives Committee.

The Board may by resolution create additional non-voting positions on the Member Representatives Committee on its own initiative or at the written request of any group of Members of the Corporation that believes its interests are not adequately represented on the Member Representatives Committee. There shall be no limit on the number of terms that an officer, employee, or director of a Member, may serve on the Member Representatives Committee.

Section 3. Election of Representatives of the Member Representatives Committee. Unless a Sector adopts an alternative election procedure, the annual election of representatives from each Sector to the Member Representatives Committee, and any election to fill a vacancy, shall be conducted in accordance with the following process, which shall be administered by the officers of the Corporation.

(a) During the period beginning no more than ninety (90) days and ending no less than fifteen (15) days prior to an annual meeting, or beginning no more than forty-five (45) days and ending no less than fifteen (15) days prior to a special meeting called in whole or in part to hold an election to fill a vacancy, nominations may be submitted for candidates for election to the Member Representatives Committee. A nominee for election as a Sector representative must be an officer, employee, or director of a Member in that Sector. No more than one nominee who is an officer, employee, or director of a Member may stand for election in any single Sector; if more than one officer, employee, or director of a Member is nominated for election from a Sector, the Member shall designate which such nominee shall stand for election. The election of representatives shall be conducted over a period of ten (10) days using an electronic process approved by the secretary of the Corporation.

(b) Each Member in a Sector shall have one vote for each Representative to be elected from the Sector in that election and may cast no more than one vote for any nominee. The nominee receiving the highest number of votes in each Sector shall be elected to one Representative position to be filled from that Sector and the nominee receiving the second highest number of votes shall be elected as the second Representative position for that Sector. To be elected on the first ballot, a nominee must receive a number of votes equal to a simple majority of the Members in the Sector casting votes in the election. If no nominee in a Sector receives a simple majority of votes cast in the first ballot, a second ballot shall be conducted which shall be limited to the number of candidates receiving the three (3) highest vote totals on the first ballot. The nominees receiving the two highest totals of votes on the second ballot shall be elected to the Representative positions for the Sector.

(c) A Sector may adopt an alternative procedure to the foregoing to nominate and elect its Representatives to the Member Representatives Committee if (i) the alternative procedure is consistent in principle with the procedures specified in the preceding paragraph of this Section, and (ii) the alternative procedure is approved by vote of at least two-thirds of the Members in the Sector, provided, however that any alternative procedure may be reviewed and disapproved by the Board.

Section 4. Chair and Vice Chair of the Member Representatives Committee. After the annual selection of its Representatives, the Member Representatives Committee shall select a chair and vice chair from among its voting Representatives by majority vote to serve during the upcoming year. The selected chair and vice chair may not be representatives of the same Sector. The Board shall be notified of the selection of the chair and vice chair, but the selection will not be subject to approval of the Board. The chair is responsible for ensuring that minutes of the meetings are properly maintained and made available to the public, but the chair may delegate this responsibility to the vice chair or to another Representative of the Member

Representatives Committee who is designated as secretary of the Member Representatives Committee.

Section 5. Vacancies on the Member Representatives Committee. In the event that any Representative of the Member Representatives Committee ceases to serve as a Representative of the Member Representatives Committee as a result of his or her death, resignation, retirement, disqualification, or removal or other cause, the Members in the Sector of which such Representative was a representative shall elect, as soon thereafter as reasonably practicable, and in accordance with the procedures in this Article IX, a new Representative to replace the Representative of the Member Representatives Committee who ceased to serve.

Section 6. Meetings of the Member Representatives Committee. The Member Representatives Committee will annually plan and hold quarterly meetings, at a time and place determined by the Member Representatives Committee and posted on the Corporation's website. Except for closed session meetings specifically allowed by this Section, all meetings shall be open to the public. The Members Representatives Committee shall adopt such procedural rules as are needed to operate in accordance with its purpose and will include procedures for coordinating with employees of the Corporation who provide administrative support, as set forth in subsection 6(c), below.

(a) Notice to the public of the dates, places, and times of meetings of the Member Representatives Committee and any subcommittees thereof, and all non-confidential material provided to the Member Representatives Committee or any subcommittees thereof, shall be posted on the Corporation's website at approximately the same time that notice or such material is given to the Member Representatives Committee, which will normally be at least one week prior to any meeting. Meetings of the Member Representatives Committee shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the Member Representatives Committee may meet in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to confidential planning information, critical infrastructure information, or commercially sensitive information of the corporation or any other entity. Any or all Representatives of, and any other participants in, the Member Representatives Committee may participate in a meeting of the Member Representatives Committee by means of a communications system by which all persons participating in the meeting are able to hear each other.

(b) Special meetings may be called for any purpose or purposes by the chair of the Member Representatives Committee or by any three (3) Representatives of the Member Representatives Committee, which number shall include representatives from at least three Sectors, and require notice given to all Representatives of the Member Representatives Committee not less than seven (7) days prior to the date of the meeting. Such notice shall specify the time, date, place, and purpose or purposes of the meeting and may be given by telephone, facsimile, or other electronic media, or by express delivery.

(c) The Member Representatives Committee shall effectively coordinate with the employees of the Corporation and adopt procedural rules for the voting for Representatives, scheduling of meetings, and public posting of required meeting information and minutes. The chair or vice chair of the Member Representatives Committee shall provide all meeting agendas, material, minutes and other information required or desired to be posted on the Corporation's website to appropriate Corporation employees at least one business day prior to the time such information should be posted.

Section 7. Waivers of Notice of Meetings of the Member Representative Committee and Meeting Adjournments. Notice of a meeting of the Member Representatives Committee need not be given to any member of the Member Representatives Committee who signs a waiver of notice, in person or by proxy, whether before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice of such meeting. Notice of an adjourned meeting of the Member Representatives Committee need not be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and if the period of adjournment does not exceed ten (10) days.

Section 8. Quorums and Voting for Meetings of the Member Representatives Committee. The quorum necessary for the transaction of business at meetings of the Member Representatives Committee shall be two-thirds of the voting members of the Member Representatives Committee attending the meeting in person or by proxy. A member of the Member Representatives Committee may give a proxy only to a person who is an officer, employee, or director of a Member, registered in the same Sector. Each voting member of the Member Representatives Committee shall have one (1) vote on any matter coming before the Member Representatives Committee that requires a vote. Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws or applicable law, actions by members of the Member Representatives Committee shall be approved upon receipt of the affirmative vote of a majority of the voting members of the Member Representatives Committee present and voting at any meeting at which a quorum is present.

Section 9. Other Procedures of the Member Representatives Committee. The chair of the Board, shall preside at the initial meeting of the Member Representatives Committee, until a chair is selected in accordance with Article IX, Section 4. Except as to any matter as to which the procedure to be followed by the Member Representatives Committee is expressly set forth in these Bylaws, the Member Representatives Committee may adopt such additional procedures, not inconsistent with these Bylaws, as it deems appropriate, subject to review and disapproval by the Board.

ARTICLE X. OTHER COMMITTEES AND SUBCOMMITTEES

Section 1. Committees of the Corporation. In addition to those committees specified by these Bylaws, to which the Board shall appoint members in accordance with the requirements of these Bylaws, the Board may by resolution create standing committees of the Corporation; and may in addition by resolution appoint such committees, subcommittees, task forces and Sector-specific forums as the Board deems necessary or desirable to carry out the purposes of the Corporation. The Board shall appoint standing committees and other committees of the Corporation that are representative of Members, other interested parties, and the public, that provide for balanced decisionmaking and that include persons with outstanding technical knowledge and experience. All committees, subcommittees, task forces and Sector-specific forums shall have such scope and duties, not inconsistent with law, as are specified in these Bylaws and the Rules of Procedure of the Corporation or otherwise determined by the Board.

ARTICLE XI. BUDGETS AND FUNDING

Section 1. Compensation of the Board and Member Representatives Committee. The Board shall have the right to fix from time to time, by resolution adopted by a

majority of the Directors and a majority of the Independent Directors then serving as Directors, the amount of the annual retainer fee or other compensation to be paid to the Independent Directors for their services to the Corporation, including any fees to be paid for each meeting of the Board or any Board committee attended by an Independent Director. The Board will evaluate the fee or other compensation at least every three years, to ensure that Director compensation is appropriate. No compensation shall be paid to a Management Director or any ex officio Director for his or her services on the Board, other than the compensation paid to the Management Director for services as CEO of the Corporation. No compensation shall be paid by the Corporation to any member of the Member Representatives Committee for their services on the Member Representatives Committee. Independent Directors shall be entitled to be reimbursed their reasonable out-of-pocket expenditures for attending meetings and conducting the business of the Corporation.

Section 2. Preparation and Adoption of Annual Budget, Business Plan, and Funding Mechanism. The Board shall require the CEO to prepare for Board approval an annual business plan and budget for the administrative and other expenses of the Corporation, including the expenditures for the fiscal year for any material special projects undertaken by the Corporation and reasonable and proper reserves and provisions for contingencies, in accordance with all NERC and Commission requirements. If the Corporation might or will be performing Non-statutory activities in the budget year, the Board will require that such Non-statutory activities be budgeted for separately from the activities performed pursuant to the Delegation Agreement. The Board shall further require that a funding mechanism be in place for such Non-statutory activities (pursuant to Article XI, Section 3), prior to the approval of any Non-statutory activities. The annual business plan, budget and funding mechanism of the Corporation shall be for a fiscal year commencing on January 1 and ending on December 31. Each annual business plan, budget, and funding mechanism shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose. The Board shall use reasonable efforts to approve each annual business plan, budget, and funding mechanism at a time that allows for timely submittal of the approved annual business plan, budget, and funding mechanism to the applicable regulatory authorities.

~~**Section 4. Criteria for Non-Statutory Funding Mechanisms.** For any authorized Non-statutory activities, the Board must approve a funding mechanism, which is authorized and approved by the PUCT, which funding mechanism shall recover, over the course of the fiscal year, the revenue required to fund the fiscal year Non-statutory activities~~

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~~**Section 4. Section 3. Comments During Preparation of Annual Business Plan and Budget.** In preparing the annual business plan and budget, the Board shall require that the CEO post a draft business plan and budget for review and comment by the Members of the Corporation and the Member Representatives Committee and the standing committees of the Corporation for at least ten (10) days prior to the date of the meeting of the Board at which the annual business plan and budget is to be adopted.~~

~~**Section 5. Section 4. Modified or Supplemental Budgets.** During the course of a fiscal year, the Board may modify any approved budget or develop and approve a supplemental budget if determined by the Board to be necessary due to such factors as a shortfall in revenues of the Corporation from projected levels, incurred or anticipated expenditures, duties, or new projects not provided for in the annual budget, or such other factors as in the judgment of the Board warrant modification of the budget for the fiscal year or development of a supplemental budget. In preparing a modified or supplemental budget, the Board shall follow the provisions of this Article XI, Section 4 to the extent practicable in the judgment of the Board in light of the urgency of the circumstances necessitating preparation and approval of the modified or~~

supplemental budget. Each modified or supplemental budget shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose.

~~Section 6-Section 5. Submission of Annual Business Plans and Budgets to the Regulatory Authorities.~~ Each annual budget, annual business plan, and annual, modified, or supplemental budget approved by the Board shall be submitted by the Corporation to the ERO and any applicable regulatory authorities for approval in accordance with its regulations, and shall not be effective until approved by the applicable regulatory authorities. If ordered to modify or remand an annual budget, business plan, or annual, modified, or supplemental funding mechanism, the Board shall promptly following such order adopt such modifications to the business plan, budget, or funding mechanism as are required or directed by the order of the ERO and any applicable regulatory authority.

ARTICLE XII. AMENDMENTS TO THE BYLAWS

Section 1. Amendments to the Bylaws. These Bylaws may be altered, amended, or repealed by a majority vote of both the Board and the Membership at respective meetings of the Board and the Members -at which a quorum is present. Written notice of the subject matter of the proposed changes to the Bylaws shall be provided to the Directors and to the Members not less than ten (10) nor more than sixty (60) days prior to the date of the meeting of the Board or the Members at which the vote is to be taken. Notwithstanding the provisions of this Article XIV, the Members of the Corporation voting by Sector shall have the right to alter, amend, or repeal Bylaws adopted by the Board and to adopt new Bylaws, provided that any such alteration, amendment, or repeal or the adoption of new Bylaws is approved by vote of two-thirds of the Sectors at a meeting of Members called for that purpose, or by written consent of two-thirds of the Sectors, where the number of votes for and against the proposed alteration, amendment, repeal or adoption of Bylaws shall be determined in accordance with Article IV, Section 2. Any alteration, amendment, repeal or adoption of Bylaws shall be subject to any applicable requirements for filing with or approval by the ERO or any other applicable regulatory authority.

ARTICLE XIII. INDEMNIFICATION; PROCEDURE; DISSOLUTION

Section 1. Indemnification. (a) The Corporation shall indemnify each person who at any time shall serve, or shall have served, as an officer, Director, employee, or other corporate agent of the Corporation, is or was serving at its request as a director, officer, partner, venturer, proprietor, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise ("Indemnified Parties"), to the full extent from time to time permitted by the Texas Business Organizations Code and other applicable law. Such right of indemnification shall inure to the benefit of the legal representative of any such Indemnified Party. The foregoing indemnification shall be in addition to, and not in restriction or limitation of, any privilege or power that the Corporation may have with respect to the indemnification or reimbursement of its Indemnified Parties. The Corporation shall also pay or advance reasonable expenses incurred by an Indemnified Party in connection with a proceeding in advance of the final disposition of the proceeding upon receipt of a written affirmation by the Indemnified Party of a good faith belief that the standard of conduct necessary for indemnification under this Article XIII and the Texas Business Organizations Code has been met and a written undertaking by or on behalf of

the officer, Director, or other corporate agent to repay the amount if it shall be ultimately determined that the Indemnified Party was not entitled to be indemnified by the Corporation.

(b) Limitations on Liability. A director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

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Section 2. Parliamentary Rules. In the absence of and to the extent not inconsistent with specific provisions in these Bylaws, meetings or other actions pursuant to these Bylaws shall be governed by procedures that the Board may, from time to time, establish by resolution.

Section 3. Dissolution. Upon dissolution of the Corporation, in accordance with the Certificate of Formation, the remaining assets of the Corporation after payment of debts shall be distributed in the manner determined by the Board, provided that, (i) no part of the assets shall be distributed to any Director of the Corporation, and (ii) the distribution of assets shall be consistent with the requirements of Section 501(c)(3) of the United States Internal Revenue Code of 1954.

ARTICLE XIV. CONFLICTS OF INTEREST

Section 1. Conflicts of Interest.

(a) Each Independent Director shall have an affirmative duty to disclose to the Board or committee (as the case may be) any actual or potential conflicts of interest of the Director that arise during his or her tenure as a director where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board. An Independent Director with a direct or potentially conflicting interest in a matter shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. Any disclosure of a potential conflict of interest by a Director shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, without participating in discussion of the issue raising the potential conflict, shall not constitute participation.

(b) The Corporation may not make any loan to a Director, committee member or officer of the Corporation. A Member, Director, officer, or committee member of the Corporation may not lend money to, or otherwise transact business with, the Corporation except as otherwise provided by these Bylaws, the Certificate of Formation, and applicable law. A related party transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation, provided the related party nature of the transaction is known to the Board. The Corporation may not borrow money from, or otherwise transact business with, a Member, Director, officer, or committee member of the Corporation unless the transaction is described fully in a legally binding instrument and is in the Corporation's best interests. The Corporation may not borrow money from, or otherwise transact business with, a Member, Director, officer, or committee member of the Corporation without full disclosure of all relevant facts and

without the Board's approval, not including the vote of any person having a personal interest in the transaction.

Section 2. Prohibited Acts. No Member, Director, officer, or committee member of the Corporation may do any of the below-listed prohibited acts. Performance of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing as described in these Bylaws. The prohibited acts include the following:

- (a) Do any act in violation of these Bylaws.
- (b) Do any act in violation of a binding obligation of the Corporation except with the Board's prior approval.
- (c) Do any act with the intention of harming the Corporation or any of its operations.
- (d) Receive an improper personal benefit from the operation of the Corporation.
- (e) Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business.
- (f) Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill.
- (g) Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of Corporation in the ordinary course of its business or as a reference to the Corporation or its region.
- (h) Disclose any of Corporation's or Members' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.

Section 3. Loans and Guarantees. Neither participation in the activities of the Corporation nor any provision of these Bylaws or of the Certificate of Formation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of the Corporation or a guarantee by any Member of any obligation of the Corporation.

ARTICLE XV. BOOKS AND RECORDS; AUDIT; FISCAL YEAR

Section 1. Access to Books and Records. All Members of the Corporation will have access to the books and records of the Corporation, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand ~~stating the purpose of the demand~~ may examine and copy the books and records of the Corporation. A Member, or the agent or attorney of a Member, may inspect all books and records for any proper purpose at any reasonable time. Upon request, the Corporation shall give the Member a statement showing the financial result of all operations and transactions affecting income and expenses during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period. If necessary to protect the confidential information of the Corporation, a Member requesting examination of the Corporation's books and records may be required to sign a confidentiality

and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 2. Audit. At least annually, an audit of the financial statements of the Corporation shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Article XV, Section 1.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be from January 1 through the following December 31, unless otherwise established by resolution of the Board.

Vincent, Susan

From: Texas Regional Entity Information
Sent: Wednesday, August 05, 2009 3:57 PM
To: Vincent, Susan
Subject: FW: AEP and ETT's comments on Texas Regional Entity Bylaws

Respectfully Yours,

Lindley Ellisor

Compliance Administrator
Compliance Stakeholder Management
Texas Regional Entity
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lindley.ellisor@texasre.org

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From: rdrana@aep.com [mailto:rdrana@aep.com]
Sent: Wednesday, August 05, 2009 3:39 PM
To: Texas Regional Entity Information
Cc: Crowder, Calvin; rdrana@aep.com
Subject: AEP and ETT's comments on Texas Regional Entity Bylaws

AEP, on behalf of AEP Texas North Co, AEP Texas Central Co, Public Service of Oklahoma, Desert Sky Wind Farm LP, Trent Wind Farm LP, AEP Energy Partners, and Electric Transmission Texas, LLC (ETT) are members of the TexasRE and submit the following comments on the proposed Texas Regional Entity bylaws. The companies appreciate your consideration of these comments.

AEP and ETT support TexasRE's effort to revise its bylaws to possibly function as a legally separate corporation. The current draft proposes an independent Board, which will consist of five independent Directors as voting-members and three non-voting members: the Chairman of the PUCT, Texas Public Counsel, and the CEO of the corporation. AEP and ETT believe that a hybrid Board comprising of independent Directors and elected representatives from the industry sectors is a better structure for the TexasRE Board. The hybrid Board with stakeholders' participation at the Board level will increase: 1) the Board's understanding of the complexities associated with the planning and operation of the Texas bulk electric system in decision making, 2) close interaction with the stakeholders that will strengthen the collaborative partnership between members and the Board, and 3) responsiveness of the members. Stakeholders' executive representatives as part of the Board will bring valuable experience in planning and operating the Texas bulk electric system. Furthermore, this structure is consistent with other Regional Entities. The other six Reliability Entities (REs) under NERC, excluding TexasRE, have either a FERC-approved stakeholder or a hybrid Board. AEP and ETT also support industry participation in the appropriate committees, while taking steps to balance the voting rights of stakeholders with a good governance practice of ensuring that independent members have a high degree of influence.

AEP and ETT appreciate the opportunity to comment and look forward to further discussion on the structure of the TexasRE Board.

thanks,
regards,

Raj Rana
Director - RTO Policy and NERC Compliance
614-716-2359
cell 614-565-3052

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