

Board of Directors Meeting

Room 206, 7620 Metro Center Drive, Austin, Texas

August 17, 2009 at 9:30 a.m.**

Item	Topic	Presenter	Time**
1.	Call to Order	J. Newton	9:30 a.m.
2.	Approval of June 15, 2009 Minutes* (Vote)	J. Newton	9:35 a.m.
3.	CEO Report	L. Grimm	9:38 a.m.
4.	Operating Reports		9:45 a.m.
	A. Compliance Report* (Q&A)	V. Barry	
	B. Violation Tracking Report* (Q&A)	V. Barry	
	C. Standards Report* (Q&A)	L. Grimm	
5.	Texas RE Advisory Committee Report	M. Gent	9:55 a.m.
	A. Financial Report (Q&A)*	T. Brewer	10:00 a.m.
	B. Approval of Supplemental Budget for Technical Feasibility Exception Requirements* (Vote)	L. Grimm	10:05 a.m.
	C. Review Draft Bylaws and Comments*	S. Vincent L. Grimm	10:20 a.m.
	<ul style="list-style-type: none"> • Independent or Hybrid Directors 		
	<ul style="list-style-type: none"> • Protocol & Operating Guide Compliance Activities 		
	<ul style="list-style-type: none"> • OPUC as Ex Officio Director (and/or Member in Governmental Sector) 		
	<ul style="list-style-type: none"> • Nominating Committee for Independent Directors 		
	<ul style="list-style-type: none"> • Appropriate Sector and Voting for Muni or Coop with Multiple Registrations (1 Legal Entity) 		
	<ul style="list-style-type: none"> • Appropriate Sector for TSP 		
	<ul style="list-style-type: none"> • Other Comments 		
6.	Other Business	J. Newton	10: 50 a.m.
7.	Future Agenda Items*	J. Newton	10:55 a.m.
	Convene Executive Session		
8.	Executive Session	J. Newton	11:05 a.m.
	A. Approval of June 15, 2009 Minutes* (Vote)	J. Newton	11:10 a.m.
	B. Discussion of Privileged, Contract, Governance, Ethics, Personnel, Compliance, or Legal Matters*	J. Newton	11:15 a.m.
	Reconvene Open Session (if needed)		
9.	Vote on Matters from Executive Session, if applicable (Vote)	J. Newton	11:25 a.m.
	Adjourn Board Meeting		
		J. Newton	11:30 a.m.

* Background material enclosed or will be distributed prior to or at meeting.

** All times shown in the Agenda are approximate.

The next Texas RE Board Meeting will be held on November 16, 2009

**DRAFT MINUTES OF THE BOARD OF DIRECTORS OF
THE TEXAS REGIONAL ENTITY DIVISION OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

Room 206, Met Center, 7620 Metro Center Drive, Austin, Texas 78744

June 15, 2009

Directors

Jan Newton, Chair		Unaffiliated
Michehl Gent, Vice Chair		Unaffiliated
Barry T. Smitherman	Chairman, Public Utility Commission of Texas (PUC)	
Mark Armentrout		Unaffiliated
Brad Cox	Tenaska	Ind. Power Marketer
Miguel Espinosa		Unaffiliated
Don Ballard	Office of Public Utility Counsel (OPUC)	Residential Small Consumer
Andrew Dalton ¹	Valero	Ind. Consumer
Bob Helton	International Power America	Independent Generator
Clifton Karnei	Brazos Electric Cooperative	Cooperative
Bob Kahn	Electric Reliability Council of Texas, Inc. (ERCOT ISO)	ERCOT ISO, CEO
A.D. Patton		Unaffiliated
Robert Thomas	Green Mountain Energy	Ind. Retail Electric Provider
Dan Wilkerson	Bryan Texas Utilities	Municipal

Other Attendees

Larry Grimm, Texas RE CEO & CCO
 Victor Barry, Texas RE Director, Compliance
 Susan Vincent, Texas RE Director, Legal Affairs
 Derrick Davis, Texas RE Corporate Counsel
 Mark Henry, Texas RE Manager, Compliance Audits
 Ryan Clay, Texas RE Senior Paralegal
 Chris Humphreys, Texas RE CIP Analyst
 Nancy Capezzuti, ERCOT ISO VP & CAO
 Eric Goff, Reliant Energy
 Bill Wullenjohn, ERCOT ISO
 Mark Dreyfus, Austin Energy
 Mark Bruce, MJB Energy Consulting

Call to Order

Pursuant to notice duly given, the meeting of the Texas Regional Entity (Texas RE) Board of Directors (Board) convened at approximately 12:33 p.m. on June 15, 2009. Jan Newton called the meeting to order, ascertained that a quorum was present, and immediately adjourned the meeting to executive session.

¹ Andrew Dalton served as a proxy for Nick Fehrenbach at this meeting.

Reconvene Open Session

The Board reconvened open session at approximately 1:00 p.m.

Vote on Matters from Executive Session

CEO Market Compensation Structure

Mark Armentrout moved for the Board to approve the revised compensation structure discussed in executive session (Option #8) for the Texas RE CEO, Larry Grimm; Michehl Gent seconded the motion. The motion was approved by voice vote with one abstention by Nick Fehrenbach (Andrew Dalton served as Mr. Fehrenbach's proxy).

Other Business

Don Ballard moved to instruct Texas RE staff to draft an urgent Protocol Revision Request (PRR) to address the need for all market participants in the ERCOT region to immediately disable network and physical access for all employees and consultants who are terminated and also promptly issue a market notice that recommends access removal "best practices" for the industry. Mr. Gent seconded the motion.

Brad Cox suggested that there should be clarity on what specific language should be included in the proposed PRR (i.e. systems, personnel, etc.). Chair Newton stated she believed that Texas RE staff would determine the appropriate measures to be included in the PRR, and Mr. Grimm confirmed that any draft PRR would be subject to the normal stakeholder process once it was filed.

The motion passed by unanimous voice vote.

CEO Report

Mr. Grimm informed the Board of a meeting with the Federal Energy Regulatory Commission (FERC) staff on June 10, 2009 to discuss the possible separation of Texas RE from ERCOT ISO. In attendance were nine FERC staff members from the Office of Reliability, the Office of Enforcement, and the Office of General Counsel; David Cook (NERC General Counsel); Tom Hunter (PUC Legal); Jan Newton; Larry Grimm; and Susan Vincent. Mr. Grimm said that the meeting at FERC focused on Texas RE's governance and that he asked for feedback on the following issues relating to a possible separation of Texas RE:

- Proposed new Board structure of five (5) Independent Directors. There were no concerns from FERC.
- Continue receiving IT services from ERCOT ISO through the Amended Memorandum of Understanding after separation. FERC indicated concern about continuing IT services from ERCOT long-term (particularly after the CIP standards were enforceable for most entities), but was responsive to this for short-term interim basis.
- New Bylaws, revised Delegation Agreement with NERC, and a revised 2010 budget. FERC Staff offered having pre-filing meetings to review new and revised documents, and confirmed that Texas RE would keep NERC (David Cook) in the loop to review these documents before the pre-filing.

- Continued performance of non-statutory Protocol compliance. FERC expressed no concern with this and suggested that the Protocol compliance activities had synergy with the NERC standards compliance activities.

Chair Newton stated that NERC and FERC were very complimentary of Mr. Grimm and Texas RE staff, and she commended Mr. Grimm for maintaining good relations and initiating the meeting.

Bob Kahn asked Mr. Grimm if he knew of a timeline of when Texas RE might separate from ERCOT. Mr. Grimm replied that there is no definitive date in sight at this time, but said it would be helpful to accomplish a January 1, 2010 separation date.

Approval of Previous Minutes

Mr. Armentrout made a motion to approve the minutes of the May 19, 2009 Board meeting; Mr. Kahn seconded the motion. The motion passed by voice vote with abstentions from Mr. Cox and Miguel Espinosa.

Operating Reports

Chair Newton asked the Directors if they had any questions regarding any of the monthly Texas RE operating reports.

Compliance Report

A.D. Patton asked for Texas RE staff to comment on the two non-wind only QSEs that failed the April 2009 Resource Plan Performance Metrics. Victor Barry informed the Board that one QSE had recently changed its portfolio (i.e. they took on additional generators) and it was still in the process of fine tuning its performance.

Dr. Patton asked Mr. Barry to explain the May 2009 SCPS2 differences in the scores for wind only QSEs (page 6). Mr. Barry explained to the Board that a small wind QSE or a wind QSE that comes on-line and only reports a few intervals will most likely receive a higher score. Conversely, a large wind QSE that reports many intervals will achieve a lower SCPS2 score. Dr. Patton stated his concern that, by this reasoning, wind QSEs that have the biggest impact on the grid would have the lowest SCPS2 scores. Mr. Barry stated that the current SCPS2 scores for wind only QSEs was not a very useful indicator of performance. This metric was created to measure the performance of traditional generators, not wind generators.

Dr. Patton suggested that Texas RE staff draft a PRR to fix the metric. Bob Helton noted that the industry had considered this previously in PRR 525, and Chair Newton reminded the Board that the ERCOT Technical Advisory Committee (TAC) was currently working on developing a PRR to address this issue. Dr. Patton and Mr. Barry discussed the wind only metrics in detail.

Chair Newton asked Texas RE staff about the entity "HJ" score of zero on the April 2009 Resource Plan Performance Metrics for Wind Only QSEs (page 10), since it was not listed as a failure. Mr. Barry said that he would look into the issue and inform the Board at a later date. [Mr. Barry was able to confirm that the zero score was a typographical error and should have been a 100.]

Mr. Gent stated that he had noticed that NERC and FERC have scaled back their participation in Regional Entities' audits of registered entities.

Dr. Patton discussed the pending PRRs related to wind with Mr. Barry and Mr. Helton. Dr. Patton urged Texas RE staff to file PRR 811 comments promptly as stated in page 21 of the Compliance Report. Mr. Barry confirmed that Texas RE would not delay PRR 811.

Mark Bruce (TAC Chair) commented on the SCPS2 metric chart. Mr. Bruce stated that TAC continues to bring appropriate metrics for wind QSEs and that TAC had the impression that they had finished identifying all metrics listed as "urgent." Mr. Bruce further suggested that ERCOT should report to Texas RE if a wind QSE is not performing. Mr. Bruce asked Chair Newton what the Board wanted from TAC to replace the SCPS2 score for wind only QSEs, because the most recent metrics developed in the stakeholder process were pass/fail only. Chair Newton asked Mr. Bruce to work with Texas RE and ERCOT staff to develop the appropriate metrics for renewable sources of energy. Mr. Bruce requested that this issue be listed as an agenda item at the August Texas RE Board of Directors meeting; the Directors agreed. Mr. Ballard asked Mr. Bruce for a timeline for the TAC report on SCPS2. Mr. Bruce stated staff recommended for the replacement of SCPS2 by the August meeting.

Texas RE Advisory Committee Report

2010 Business Plan and Budget Approval

Mr. Gent updated the Board regarding the changes to the Texas RE 2010 Business Plan and Budget, and explained that the Texas RE Advisory Committee recommended approval of the 2010 Business Plan and Budget. The Directors discussed the proposed Business Plan and Budget.

Chair Newton made a motion to approve the recommended Texas RE 2010 Business Plan and Budget, with no material changes; Mr. Armentrout seconded the motion. Mr. Kahn asked for clarification on the supplemental budget in the materials, if Texas RE separates from ERCOT ISO. Chair Newton responded that a proposed supplemental budget would not be considered at this meeting. **The motion passed by unanimous voice vote.**

Approval of Amended Memorandum of Understanding (MOU) with ERCOT

Mr. Gent made a motion to approve the recommended Amended Memorandum of Understanding with ERCOT, as presented in the materials, with no material changes; Mr. Ballard seconded the motion. Dr. Patton informed the Board that he had a few non-material wording changes to the MOU, which he provided to Texas RE staff. **The motion passed by voice vote with one abstention from Mr. Dalton.**

Separation Discussion

Mr. Gent made a motion to approve the legal separation of Texas RE from ERCOT, as recommended by the Texas RE Advisory Committee; Mr. Armentrout seconded the motion.

Chair Newton opened with a discussion on procedural matters and then opened the floor for discussion. Chair Newton explained the work and new legal documents (including Bylaws, Amended Delegation Agreement, and revised Business Plan and Budget) that would be required for an actual separation.

Mr. Gent stated that the 2010 supplemental budget was not being considered at this time by the

Advisory Committee or the Board because of the length of time that would be required to separate Texas RE from ERCOT and the details that remained to be decided. Mr. Gent then told Mr. Kahn that ERCOT has included the assumption that Texas RE will be separate from ERCOT in 2010, so ERCOT might need to consider changing that assumption.

In response to the Directors' questions about the approximate cost for the separated company, Ms. Vincent referred the Board to the supplemental budget materials, showing that the current estimated cost was approximately \$1.29 million on-going and approximately \$1.14 million for start-up costs.

Mr. Ballard stated that if Texas RE is to continue to monitor, assess, and report Protocol compliance, then the separation process might require statutory approval by the Texas Legislature, and he questioned how market participants would continue to interface with Texas RE absent a stakeholder Board. Mr. Ballard suggested that Texas RE keep Texas public officials on any new Texas RE board, in addition to independent directors.

Mr. Armentrout identified 10 Texas RE Evaluation next steps, which he shared with the Board as follows:

1. TRE Advisory Committee approval – by July
2. TRE Board approval – by August, if successful with #1
3. ERCOT ISO Board approval – September (if successful with #2)
4. PUC Review/Endorsement – Fall 2009 (pending above)
5. Bylaws Changes
6. Delegation Agreement Changes
7. TRE Budget & Operating Plan Changes
8. TRE Board Reconstitution Plan
9. Independent TRE Startup Plan
10. Startup date

In response to a question from Mr. Dalton asking if the issue of Texas RE continuing the duty of monitoring, assessing, and reporting upon non-statutory (Protocol) compliance, Chair Newton informed the Board that that issue was still under consideration by many parties, including the PUC, which would make the final decision.

Mr. Cox stated that there were additional details needed regarding the separation of Texas RE from ERCOT ISO before there should be a vote to separate Texas RE from ERCOT ISO. Clifton Karnei stated that the proposed resolution in the materials for the separation of Texas RE from ERCOT ISO uses stronger language than he was comfortable with for an approved endorsement to proceed to separate. Chair Newton said that she was in favor of the language, because the Directors needed to vote on this issue today to allow Texas RE staff to start the many steps and approvals that they must accomplish. Chair Newton emphasized that because of the Directors' conflict of interest she does not know if the Board will be effective if there were to be a violation by ERCOT ISO.

Mr. Helton stated that he agreed with the idea of separating Texas RE from ERCOT ISO, but said he did not feel comfortable letting Texas RE to continue monitoring, assessing and reporting Protocol compliance since they will then be an entity of just the federal government and not ERCOT.

Mr. Karnei commented that he supported the separation but requested that the resolution be less specific about separation at this point. Ms. Vincent confirmed that the individual components of the separation process (i.e. the Bylaws, Delegation Agreement, etc.) would be brought to the Advisory Committee and the Board for consideration and approval, prior to any separation.

Mr. Dalton stated that he too was concerned about Texas RE continuing to monitor, assess and report Protocol compliance since they will then be an entity of the federal government, not ERCOT.

Chair Newton suggested clarifying the language in the resolution.

Mr. Gent stated that he revised his motion to move that the Board approve, in concept, the legal separation of Texas RE from ERCOT ISO, to allow Texas RE staff to begin to take the actions needed to allow the separation of Texas RE from ERCOT ISO; provided, however, that Texas RE must return to the Board for the formal approvals needed for separation, such as Bylaws and an Amended Delegation Agreement. Mr. Armentrout seconded the amended motion, and the motion passed by voice vote with one vote against by Mr. Dalton.

Other Business

Dr. Patton had a question about language on page 16 of the BP&B and requested a change in language. In addition, Dr. Patton discussed Situational Awareness referenced on page 32. The Board had a brief discussion over this issue.

Adjournment

Chair Newton adjourned the Texas RE Board of Directors meeting at approximately 2:20 p.m.

Susan Vincent
Corporate Secretary

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

June 15, 2009

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

WHEREAS, the Board did not consider in its vote whether or not Texas Regional Entity should or would continue to perform its current Non-statutory Protocol Compliance activities for the ERCOT region; and

WHEREAS, the Board has determined it to be desirable for Texas Regional Entity staff to promptly pursue actions needed to implement the new separate legal entity by January 1, 2010 or as soon thereafter as reasonably practicable; and

THEREFORE be it RESOLVED, that the Board hereby approves, in concept, the legal separation of Texas Regional Entity from ERCOT; and

BE it FURTHER RESOLVED that Texas Regional Entity staff is hereby authorized to immediately take such actions as are needed to create a new legal entity to perform the Texas Regional Entity duties, with the understanding that the following documents must receive approval by the Board prior to being formally filed with the Public Utility Commission of Texas, North American Electric Reliability Corporation (NERC), or the Federal Energy Regulatory Commission:

- (1) Certificate of Formation and Bylaws;
- (2) Amended Delegation Agreement with NERC; and
- (3) Any required supplemental Business Plan(s) and Budget(s).

CORPORATE SECRETARY’S CERTIFICATE

I, Susan Vincent, Corporate Secretary of Texas Regional Entity, do hereby certify that, at the June 15, 2009 Texas Regional Entity Board of Directors Meeting, the Board of Directors of Texas Regional Entity approved the above referenced resolution. The motion passed by a vote of fourteen in favor and Andrew Dalton voting against.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2009.

Susan Vincent
Corporate Secretary



**TEXAS
REGIONAL
ENTITY™**

An Independent Division of ERCOT

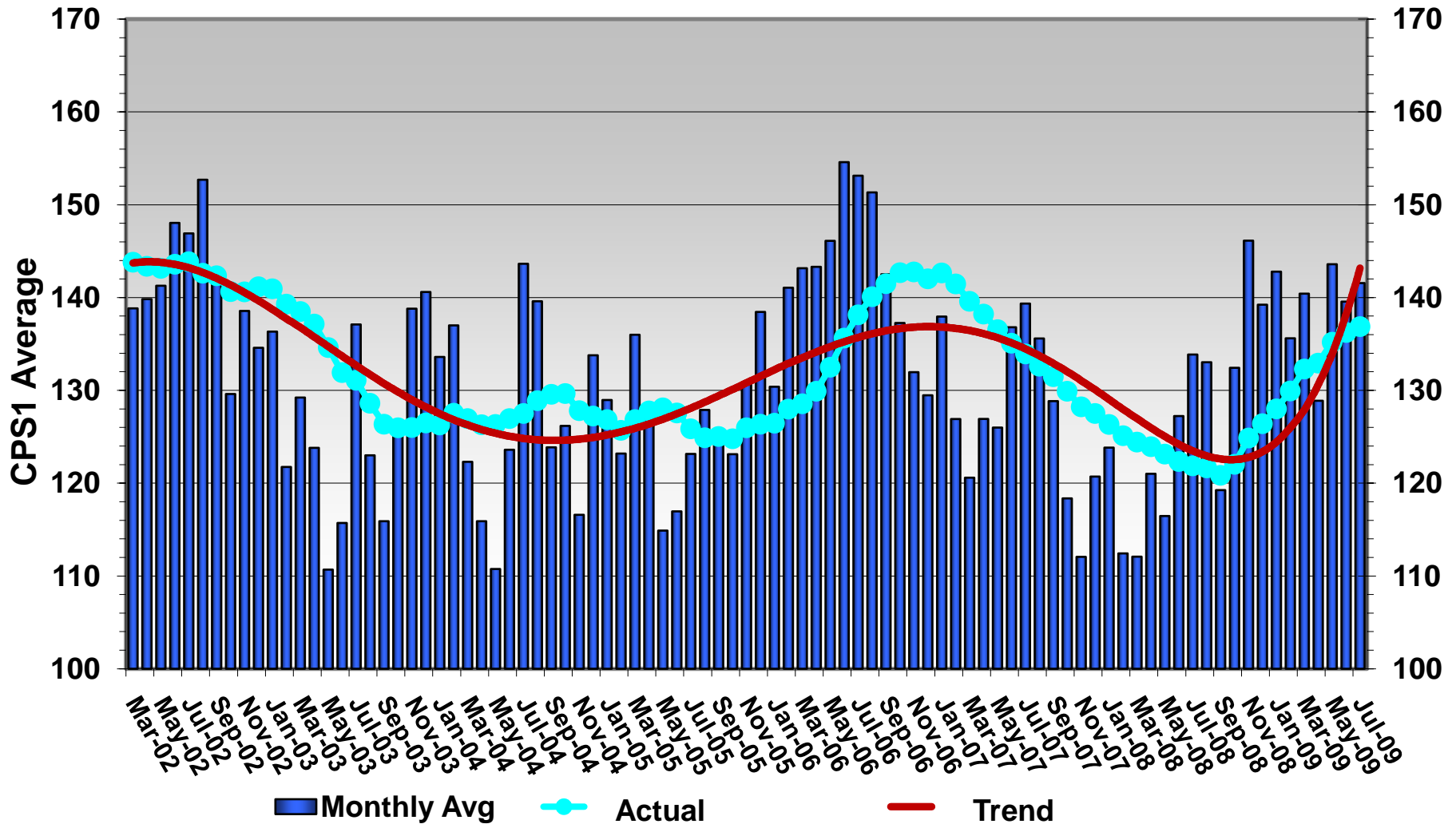
Texas Regional Entity Compliance Report

Board of Directors
August 17, 2009

Overview

- **July 2009 ERCOT CPS1 Monthly Performance**
- **July 2009 SCPS2 Scores for Non-Wind and Wind Only QSEs**
- **June 2009 Resource Plan Performance Metrics for Non-Wind and Wind Only QSEs**
- **Key Issues**
 - NERC Organization Registration and upcoming Compliance Workshop schedule
 - NERC Standards Self-Certification update and Schedule
 - NERC Audit & Enforcement Highlights
 - Technical Feasibility Exceptions (TFEs)
 - Nodal Regulatory Requirements
 - PRR – 822 Removing Access to Restricted Computer Systems, Control Systems and Facilities

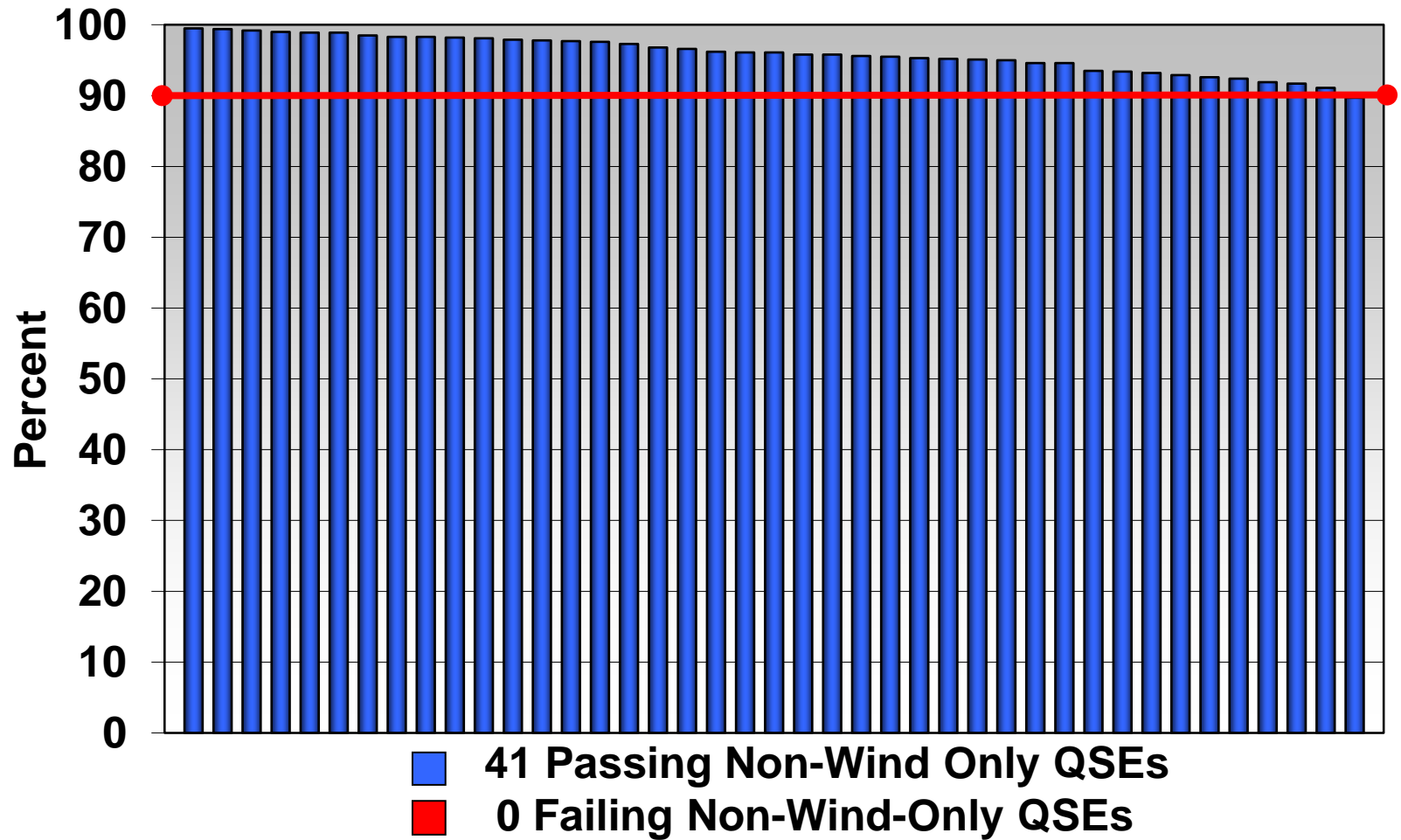
July 2009 ERCOT's CPS1 Monthly Performance



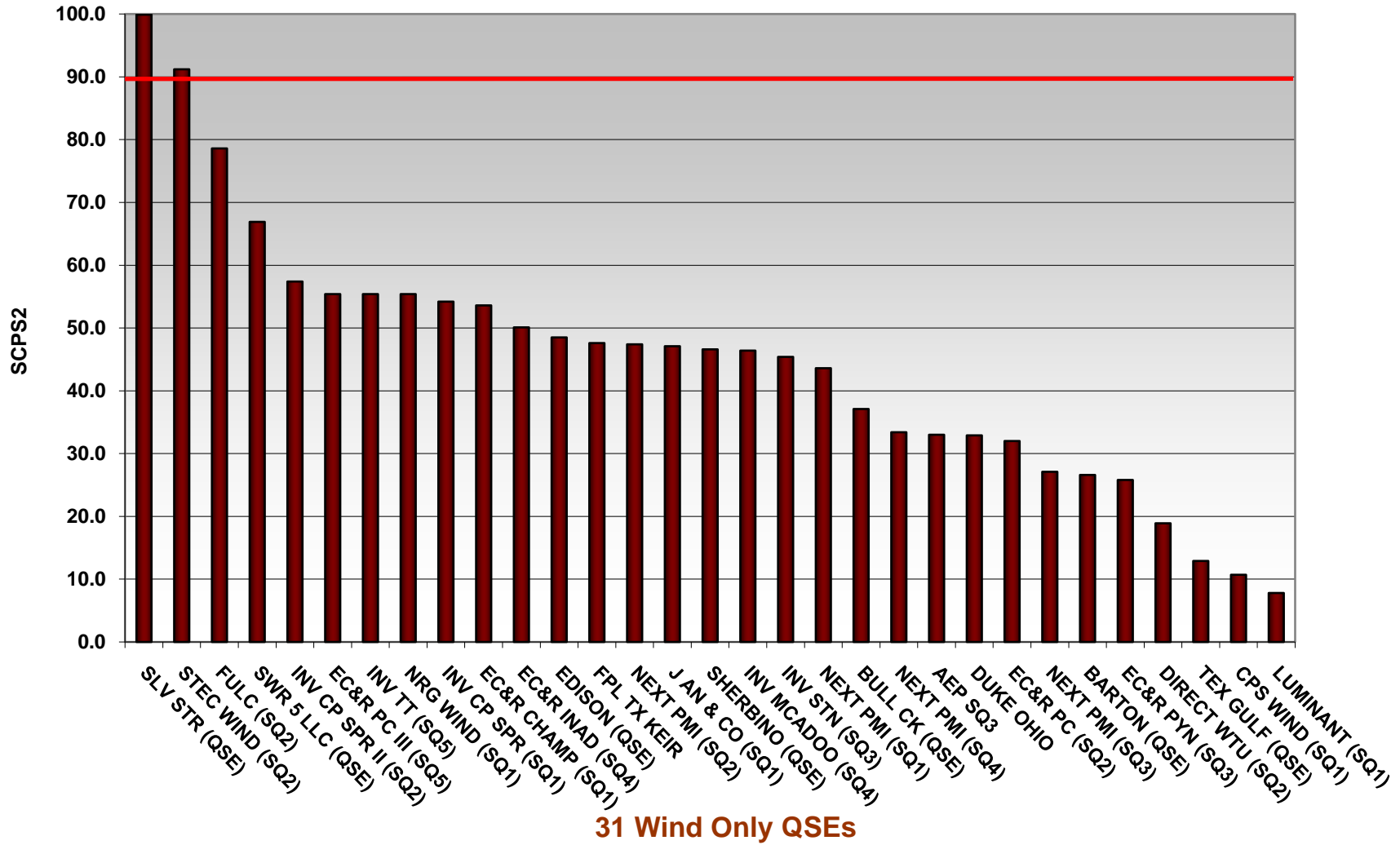
Analysis of CPS1 Monthly Performance

- **Purpose**: To maintain Interconnection steady-state frequency within defined limits by balancing real power demand and supply in real-time
- **CPS1 is one reliability measure of how well the ERCOT region managed the BPS**
- **ERCOT region's frequency performance is determined by NERC Control Performance Standard 1 (CPS1)**
- **Seasonal fluctuation is expected**
- **Scores for individual months can be adversely affected by events (such as hurricanes)**
- **A detailed formula can be found in NERC Reliability Standard BAL-001-0a**

July 2009 SCPS2 Scores for Non-Wind Only QSEs



July 2009 SCPS2 Scores for Wind Only QSEs



Analysis of July 2009 SCPS2 Scores

- **This is a schedule focused metric**
- **Calculations are Portfolio Based by QSE**
- **A detailed formula can be found in Protocol 6.10.5.3**

June 2009 Resource Plan Performance Metrics for Non-Wind Only QSEs

Resource Plan Performance Metric	ID																			
	DK	DE	AP	BY	BC	AY	AM	AR	KB	BR	DF	CI	AD	BJ	CF	ET	DA	DP	KD	IP
Resource Status Score	100	100	100	100	100	99	99	100	100	99	100	100	100	100	99	100	99	100	100	100
LSL HSL Percent Score	97	99	98	98	92	100	100	91	91	97	97	99	100	99	95	100	100	100	100	94
DA Zonal Schedule Score	100	100	100	99	100	98	100	100	99	100	100	98	100	100	100	98	100	100	100	100
AP Zonal Schedule Score	98	100	100	100	100	98	99	99	99	99	99	99	100	99	98	96	98	99	100	100
Down Bid & Obligation Score	97	90	97	98	100	99	98	97	94	95	96	99	100	98	99	100	97	100	92	100
Total Up AS Scheduled Obligation Score	-	98	100	90	90	96	96	90	90	97	100	-	-	91	100	96	93	90	96	-
Resource Plan Performance Metric	ID																			
	BG	CQ	JZ	JV	JU	CX	KE	FK	HW	JD	KA	JZ	IN	IZ	BX	CC	CD	AC	IO	
Resource Status Score	99	99	100	100	100	100	99	99	100	100	100	100	99	100	99	100	99	99	100	
LSL HSL Percent Score	99	97	100	100	100	94	100	97	99	100	97	97	100	98	95	97	95	100	100	
DA Zonal Schedule Score	97	100	100	100	100	99	100	99	99	99	99	100	99	100	100	100	100	100	100	
AP Zonal Schedule Score	99	99	-	100	90	98	98	100	99	100	99	100	97	100	99	100	100	100	-	
Down Bid & Obligation Score	99	100	-	100	100	96	100	100	93	100	96	94	95	100	100	98	92	100	98	
Total Up AS Scheduled Obligation Score	95	99	-	90	92	98	-	97	100	99	92	91	98	99	99	96	99	-	100	

June 2009 Resource Plan Performance Metrics for Wind Only QSEs

	ID														
Resource Plan Performance Metric	JG	BT	JF	JS	HJ	BH	DI	JY	JM	JW	JL	GR	GS	HS	BF
DA Zonal Schedule Score	100	97	100	100	98	100	100	100	100	100	99	100	97	100	100
AP Zonal Schedule Score	100	92	100	100	97	100	100	100	100	100	98	100	98	100	100
Down Bid & Obligation Score	100	95	100	100	100	100	78	100	100	100	100	100	100	100	100
	ID														
Resource Plan Performance Metric	BE	FX	JH	JI	JN	JJ	JT	JC	IV	JQ	JP	JK	JX	JE	JR
DA Zonal Schedule Score	98	100	100	100	100	100	100	100	100	98	100	100	100	100	100
AP Zonal Schedule Score	100	100	100	100	100	100	99	100	99	97	100	100	98	100	100
Down Bid & Obligation Score	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

 4 Consecutive Failing Scores

 3 Consecutive Failing Scores

 2 Consecutive Failing Scores

 1 Failing Score

Analysis of June 2009 Resource Plan Performance Metrics for Wind Only QSEs

- **DI - First time failing the Down Bid & Obligation Resource Plan Performance Measure**
 - **Actions:** QSE was notified of its failing score
 - **Reason:** Failed intervals resulted from QSE's Resource Plan and scheduling methods used to submit their Resource Plans
 - **Solution:** QSE implemented changes to their internal system and Resource Plan submittal methods

NERC Organization Registration and Upcoming Compliance Workshop Schedule

- **Comments are due to NERC on the proposed changes to NERC Reliability Functional Model Version 5 - Deadline is August 19th; Texas RE may submit comments. Proposed changes can modify:**
 - The Planning, Interchange Authority, Load Serving Entity and Distribution Providers functions
 - The terminology and definitions for consistency with other NERC documents
 - The Reliability Functional Model Version 5 document is posted on the NERC website: <http://www.nerc.com/page.php?cid=2|247|108>
- **Upcoming Texas RE Compliance Workshops:**
 - Standards and Compliance Workshop will be on **September 23, 2009** at the ERCOT Austin MET Center
 - Critical Infrastructure Protection Workshop will be on **September 24, 2009** at the ERCOT Austin MET Center
- **Registration begins 6 weeks prior to each workshop.**

NERC Standards Self-Certification update and Schedule

- **100% of 2009 NERC CIP 002-009 standards Self-Certification submissions for GO/GOP/TO which were due on August 3, 2009 were received**
- **NERC non-CIP standards Self-Certification for Distribution Provider (DP), Purchasing-Selling Entity (PSE), Transmission Planner (TP) and Transmission Owner (TO) entities started on August 3, 2009 and are due on September 3rd**
- **All submissions will be sent via the Texas RE Portal**

NERC Audit & Enforcement Highlights

- **Two (2) NERC standards Audits; One (1) Protocol Audit conducted in July, as scheduled**
- **Focus in July has been to prepare for spot checks of NERC CIP standards and development of a process to handle Technical Feasibility Exceptions (TFEs)**
- **Texas RE conducted one voluntary spot-check in July for 13 requirements related to NERC cyber and physical security standards CIP 002-009**
 - **This was a good learning opportunity for Texas RE staff and the entity**
 - **Entity demonstrated excellent preparation**
- **CIP workshop (Sept. 24th) will review the CIP requirements**

Technical Feasibility Exception (TFE)

- **What is TFE?**
 - A procedure by which a Responsible Entity to which the NERC CIP Standards apply, may request and receive approval for an exception from the terms of certain requirements of the CIP Standards on the grounds of technical feasibility or technical limitations
- **Applies to 12 CIP Standard Requirements:**
 - CIP-005 requirements 2.4, 2.6, 3.1, & 3.2
 - CIP-006 requirement 1.1
 - CIP-007 requirements 2.3, 3.2, 4, 4.1, 5.3, 6, & 6.3
- **There will be a staffing and budgetary impact**
 - Estimates have been developed by each region
 - Some details are still unclear, i.e. number of TFEs to expect, time to process each TFE, etc.
- **Regional entities, not NERC, will be leading this effort**

Nodal Regulatory Requirements

- **Texas RE is working with PUCT, ERCOT ISO and other Stakeholders to determine the plan for implementation of reports needed for metrics for go-live date**
- **NOGRR 025 – Reporting Requirements created by ERCOT ISO and Stakeholders**
 - ERCOT CEO revision request review determined that 16 of 37 reports can be delivered within the current schedule and budget of the nodal program
 - Need a plan for implementation of remainder of needed reports
- **New NPRR – Jointly authored by ERCOT ISO, PUCT and Texas RE**
 - Defines the minimum metric requirements for the Nodal Market
 - Stakeholder workshops completed / NPRR process next

PRR - 822 Removing Access to Restricted Computer Systems, Control Systems and Facilities

- **PRR-822 was granted urgent status in July by PRS**
- **PRS unanimously voted to refer the PRR to ROS**
- **Based on the PRR process:**
- **ROS will consider and may vote on August 13th**

NERC Standards Violations

	Entity	Violation Date	Violation Status	Category	VSL	VRF	Mitigation Plan Status	Next Step(s) Needed	Deadline for Finishing Next Step(s)	Texas RE Assessment of Reliability Impact
1	T	10/20/2008	Preliminary	Technical	H	M	Approval (by NERC)	NAVAPS		Large
2	T	10/20/2008	Preliminary	Technical	H	M	Approval (by NERC)	NAVAPS		Large
3	T	10/20/2008	Preliminary	Technical	H	M	Approval (by NERC)	NAVAPS		Large
4	T	10/20/2008	Preliminary	Technical	S	H	Approval (by NERC)	NAVAPS		Large
5	T	10/20/2008	Preliminary	Technical	H	H	Approval (by NERC)	NAVAPS		Large
6	F	3/21/2008	Preliminary	Technical	S	H	Completed & Confirmed*	NERC Settlement Approval		Medium
7	T	10/10/2008	Preliminary	Technical	H	M	Submitted*	Settlement Agreement	8/28/2009	Medium
8	W	11/17/2008	Preliminary	Technical	S	H	Approval (by NERC)*	Settlement Agreement	8/28/2009	Medium
9	Q	9/22/2008	Preliminary	Technical	S	H	Completed	Settlement Agreement	9/4/2009	Small
10	U	9/24/2008	Preliminary	Technical	S	H	Approval (by NERC)	NAVAPS	8/21/2009	Small
11	F	10/10/2008	Preliminary	Technical	M	H	Approval (by NERC)*	Settlement Agreement	9/1/2009	Small
12	V	11/3/2008	Preliminary	Technical	S	H	Not Submitted	NAVAPS	8/31/2009	Small
13	V	11/3/2008	Preliminary	Technical	S	M	Not Submitted	NAVAPS	8/31/2009	Small
14	A	10/3/2007	Confirmed	Admin	S	L	New Plan Submitted	Approval (by NERC)	8/9/2009	Minimal
15	A	10/3/2007	Confirmed	Admin	S	L	New Plan Submitted	Approval (by NERC)	8/9/2009	Minimal
16	A	10/3/2007	Confirmed	Admin	S	L	New Plan Submitted	Approval (by NERC)	8/9/2009	Minimal
17	A	10/3/2007	Confirmed	Admin	S	M	New Plan Submitted	Approval (by NERC)	8/9/2009	Minimal
18	A	10/3/2007	Confirmed	Admin	S	M	New Plan Submitted	Approval (by NERC)	8/9/2009	Minimal
19	A	10/3/2007	Confirmed	Technical	L	H	Approved, Completed	FERC Approval		Minimal
20	C	1/23/2008	Alleged	Admin	L	M	Completed & Confirmed*	FERC Approval		Minimal
21	C	1/23/2008	Alleged	Admin	H	M	Completed & Confirmed*	FERC Approval		Minimal

NERC Standards Violations

	Entity	Violation Date	Violation Status	Category	VSL	VRF	Mitigation Plan Status	Next Step(s) Needed	Deadline for Finishing Next Step(s)	Texas RE Assessment of Reliability Impact
22	D	2/15/2008	Preliminary	Technical	S	H	Completed & Confirmed*	FERC Approval		Minimal
23	D	2/15/2008	Preliminary	Technical	S	H	Completed & Confirmed*	FERC Approval		Minimal
24	D	2/15/2008	Preliminary	Technical	S	M	Completed & Confirmed*	FERC Approval		Minimal
25	D	2/15/2008	Preliminary	Technical	S	M	Completed & Confirmed*	FERC Approval		Minimal
26	D	2/15/2008	Preliminary	Technical	S	M	Completed & Confirmed*	FERC Approval		Minimal
27	D	2/15/2008	Preliminary	Admin	L	M	Completed & Confirmed*	FERC Approval		Minimal
28	D	2/15/2008	Preliminary	Admin	L	M	Completed & Confirmed*	FERC Approval		Minimal
29	D	2/15/2008	Preliminary	Admin	H	M	Completed & Confirmed*	FERC Approval		Minimal
30	D	2/15/2008	Preliminary	Admin	L	M	Completed & Confirmed*	FERC Approval		Minimal
31	D	2/15/2008	Preliminary	Admin	S	M	Completed & Confirmed*	FERC Approval		Minimal
32	D	2/15/2008	Preliminary	Admin	S	L	Completed & Confirmed*	FERC Approval		Minimal
33	E	3/5/2008	Preliminary	Admin	M	L	Completed & Confirmed*	FERC Approval		Minimal
34	E	3/5/2008	Preliminary	Admin	M	M	Completed & Confirmed*	FERC Approval		Minimal
35	T	10/20/2008	Preliminary	Technical	L	M	Approval (by NERC)	NAVAPS		Minimal
36	T	10/20/2008	Preliminary	Technical	S	H	Approval (by NERC)	NAVAPS		Minimal
37	T	10/20/2008	Preliminary	Technical	L	M	Approval (by NERC)	NAVAPS		Minimal
38	T	10/20/2008	Preliminary	Technical	S	L	Approval (by NERC)	NAVAPS		Minimal
39	T	10/20/2008	Preliminary	Technical	M	M	Approval (by NERC)	NAVAPS		Minimal
40	F	11/18/2008	Preliminary	Technical	TBD	M	Completed*	Settlement Agreement	9/1/2009	Minimal
41	F	11/18/2008	Preliminary	Technical	S	M	Completed*	Settlement Agreement	9/1/2009	Minimal
42	Z	12/18/2008	Preliminary	Technical	TBD	H	Approval (by NERC)	Mitigation Verification	8/24/2009	Minimal

NERC Standards Violations

	Entity	Violation Date	Violation Status	Category	VSL	VRF	Mitigation Plan Status	Next Step(s) Needed	Deadline for Finishing Next Step(s)	Texas RE Assessment of Reliability Impact
43	F	2/10/2009	Possible	NA	NA	NA	NA	Dismissed	NA	NA
44	F	6/8/2009	Preliminary	Technical	TBD	M	Not Submitted	Submit Plan	8/24/2029	TBD
45	F	6/8/2009	Preliminary	Technical	TBD	H	Not Submitted	Submit Plan	8/24/2009	TBD
46	T	3/30/2009	Possible	TBD	TBD	TBD	Submitted	Validate Violation		TBD
47	T	3/30/2009	Possible	TBD	TBD	TBD	Submitted	Validate Violation		TBD
48	AC	4/16/2009	Possible	Technical	TBD	M	Submitted	Approval (by NERC)	8/31/2009	TBD
49	AC	6/2/2009	Possible	Technical	TBD	H	Submitted	Approval (by NERC)	8/31/2009	TBD
50	AC	6/2/2009	Possible	Technical	TBD	H	Submitted	Approval (by NERC)	8/31/2009	TBD

Legend:

Violation Status – Preliminary, Alleged, Confirmed

Category – Technical, Training, Administrative

Violation Severity Level (VSL) – Lower (L), Moderate (M), High (H), Severe (S)

Violation Risk Factor – High (H), Medium (M), Lower (L)

Mitigation Plan Status – Not Submitted, Submitted, Approval (by NERC), (After Approval - On Schedule, Behind Schedule, Extension Requested, Completed)

NAVAPS = Notice of Alleged Violation and Proposed Penalty or Sanction

Assessment of Reliability Impact - Minimal, Small, Medium, Large, Immense

- Assessment of Reliability Impact Considers:
- Time horizon (real-time issues versus planning issues)
 - Size of the entity (assets and facilities);
 - Category of violation (technical versus documentation)
 - Potential effect of violation
 - Actual effect of violation

Status Change = Highlighted in Gray

* Entity is in settlement discussions * Next step is dependent on entity

ERCOT Protocols & Operating Guides Violations

	Protocol/ Operating Guide	Brief Description	Violation Date	Violation Status	Mitigation Plan Status	Next Status Step	Estimated Date of Next Step	Texas RE Assessment of Reliability Impact
1	P6.10.5.4	Responsive Reserve Services Deployment	11/12/2008	Alleged	Completed	Verify Complete Plan	8/14/2009	Minimal
2	OG8.3.3	QSE Responsibilities	9/24/2008	Alleged	Submitted	Verify Complete Plan	8/21/2009	Small
3	OG1.8.2	System Operating Training Requirements	1/13/2009	Alleged	Submitted	Complete Plan ⁺	12/31/2009	Small
4	OG1.8.2	System Operating Training Requirements	4/20/2009	Alleged	Submitted	Complete Plan ⁺	12/31/2009	Small
5	OG1.8.2	System Operating Training Requirements	6/2/2009	Initial	Not Submitted	Review Response	8/31/2009	Small
6	P6.10.5.3	SCPS2 Score less than 90%	4/30/2009	Alleged	Submitted	Review Plan	8/21/2009	Medium
7	P8.1.3.2	Planned Outage and Maintenance Outage	5/12/2009	Alleged	Completed	Verify Complete Plan	8/17/2009	Medium
8	P6.10.5.3	SCPS2 Score less than 90%	6/9/2009	Alleged	Submitted	Approve Mitigation Plan	8/19/2009	Medium

Legend:

Violation Status – Initial, Alleged, Confirmed

Discovery Method – Compliance Audit, Investigation, Self-Reported, Spot Check, Self-Certification, Data Submittal, Incident Report, Data Gathering

Mitigation Plan Status – Not Submitted, Submitted, On Schedule, Behind Schedule, Extension Requested, Extension Requested/Granted, Completed

Assessment of Reliability Impact - Minimal, Small, Medium, Large, Immense

Assessment of Reliability Impact Considers:

- Time horizon (real-time issues versus planning issues)
- Size of the entity (assets and facilities);
- Category of violation (technical versus documentation)
- Potential effect of violation
- Actual effect of violation

⁺Next step is dependent on entity



**TEXAS
REGIONAL
ENTITY™**

An Independent Division of ERCOT

Texas Regional Entity Standards Report

Texas RE Board of Directors

Item

August 17, 2009

SAR-001-TRE-02 – ERCOT ISO VOTE

- SAR-001-TRE-002 Provision for ERCOT ISO to Have a Vote in the Regional Standards Process
 - NERC filed with FERC on June 8, 2009
 - FERC Docket No. RR09-5
 - Motions to intervene and comments by ERCOT ISO, Texas RE, and Austin Energy have been filed

- SAR-002 Development of Regional UFLS Program
 - This regional standard development is on hold awaiting the outcome of the continent-wide standard characteristics.
 - Regional drafting team submitted comments to NERC on second draft of continent-wide standard in May 2009, and will await direction from the national team later this summer after all comments are reviewed.

- SAR-003 Draft Regional Standard BAL-001-TRE-01
 - The first comment period closed on April 14, 2009.
 - The drafting team has met seven (7) times to write responses to comments and work on new draft.
 - Responses will be posted when they are complete.
 - Drafting team (stakeholders and Texas RE Manager, Standards) and NERC staff are meeting with FERC, Office of Electric Reliability staff on August 27th to discuss the draft standard.
 - Revised draft will be presented to Reliability Standards Committee in Fall 2009 for either reposting for comment or balloting.

NERC Project 2009-01 Disturbance and Sabotage Reporting

- **Texas RE's Reliability Standards Manager is the Vice-Chair of this NERC SAR Drafting Team.**
- **NERC Project 2009-01 will revise CIP-001 and EOP-004 together to eliminate redundancies and reassign applicability to correct responsible entities.**
- **Texas RE supports the addition of both the GO and TO to the list of applicability for sabotage reporting, and commented and argued to have this added to the SAR.**
- **It was added to the SAR, and now will be further considered by the NERC Standard Drafting Team.**



Texas Regional Entity Financial Report

Board of Directors
August 17, 2009

July 2009 Financial Accomplishments

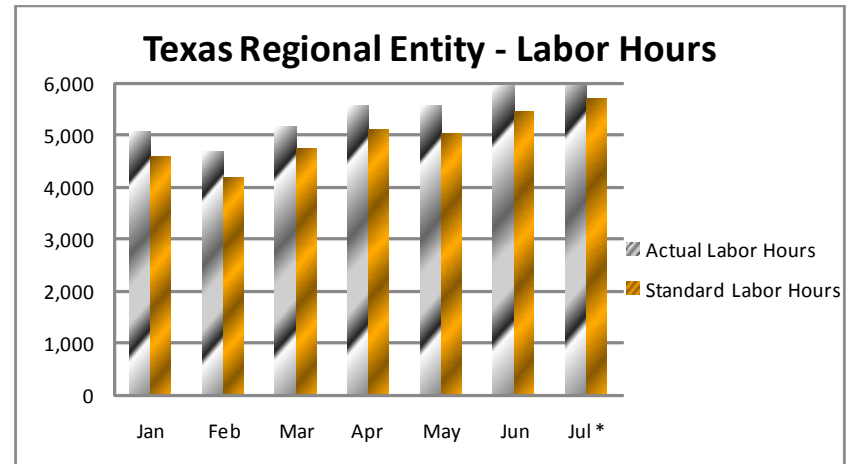
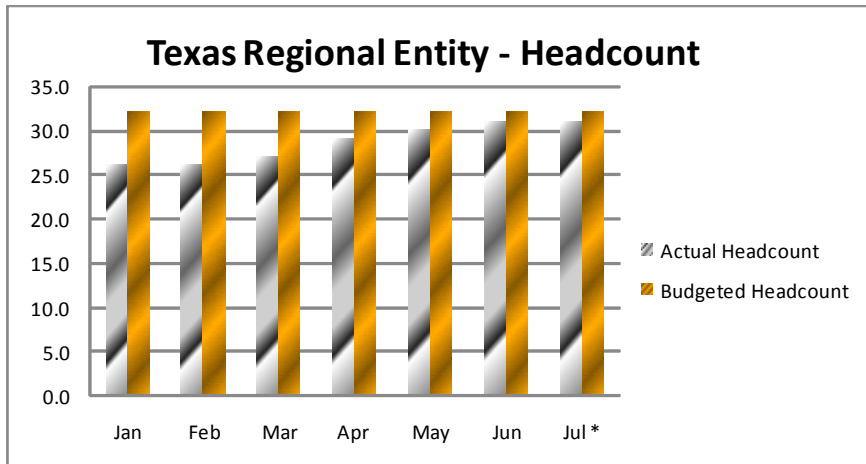
- **Worked with staff to develop an estimate for resource requirements to address the Technical Feasibility Exception (TFE) evaluations.**

July 2009 Actual Workforce

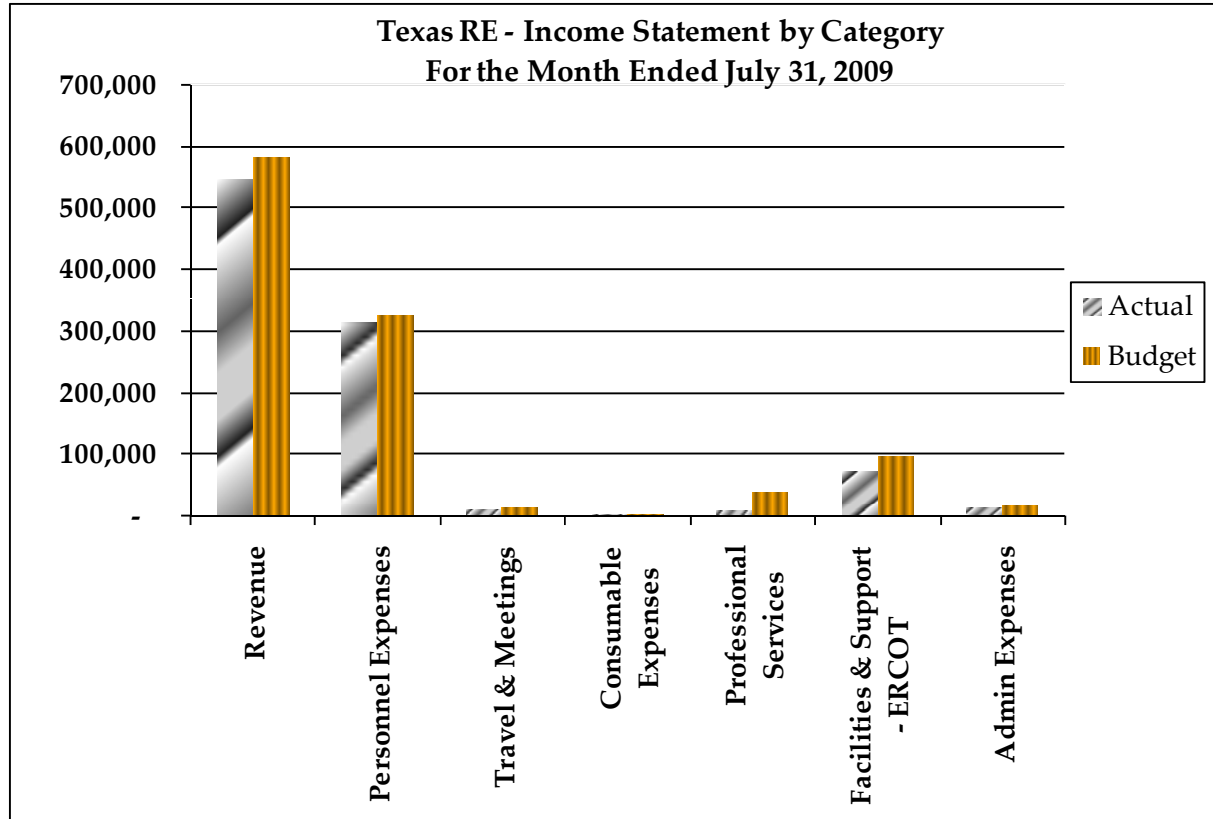
Texas Regional Entity Headcount Statutory & Non-Statutory Combined For The Month Ended July 31, 2009

	Jan	Feb	Mar	Apr	May	Jun	Jul *	Aug	Sep	Oct	Nov	Dec
Actual Headcount	26.0	26.0	27.0	29.0	30.0	31.0	31.0					
Budgeted Headcount	32.0	32.0	32.0	32.0	32.0	32.0	32.0					
Variance Under/(Over)	6.0	6.0	5.0	3.0	2.0	1.0	1.0					
	Jan	Feb	Mar	Apr	May	Jun	Jul *	Aug	Sep	Oct	Nov	Dec
Actual Labor Hours	5,050	4,688	5,154	5,584	5,577	5,963	6,155					
Standard Labor Hours	4,576	4,160	4,752	5,104	5,040	5,456	5,704					
Variance Under/(Over)	(474)	(528)	(402)	(480)	(537)	(507)	(451)					
	10.4%	12.7%	8.5%	9.4%	10.7%	9.3%	7.9%					
FTE's Calc'd from Labor	28.7	29.3	29.3	31.7	33.2	33.9	33.5					

* Does not include interns and consultants



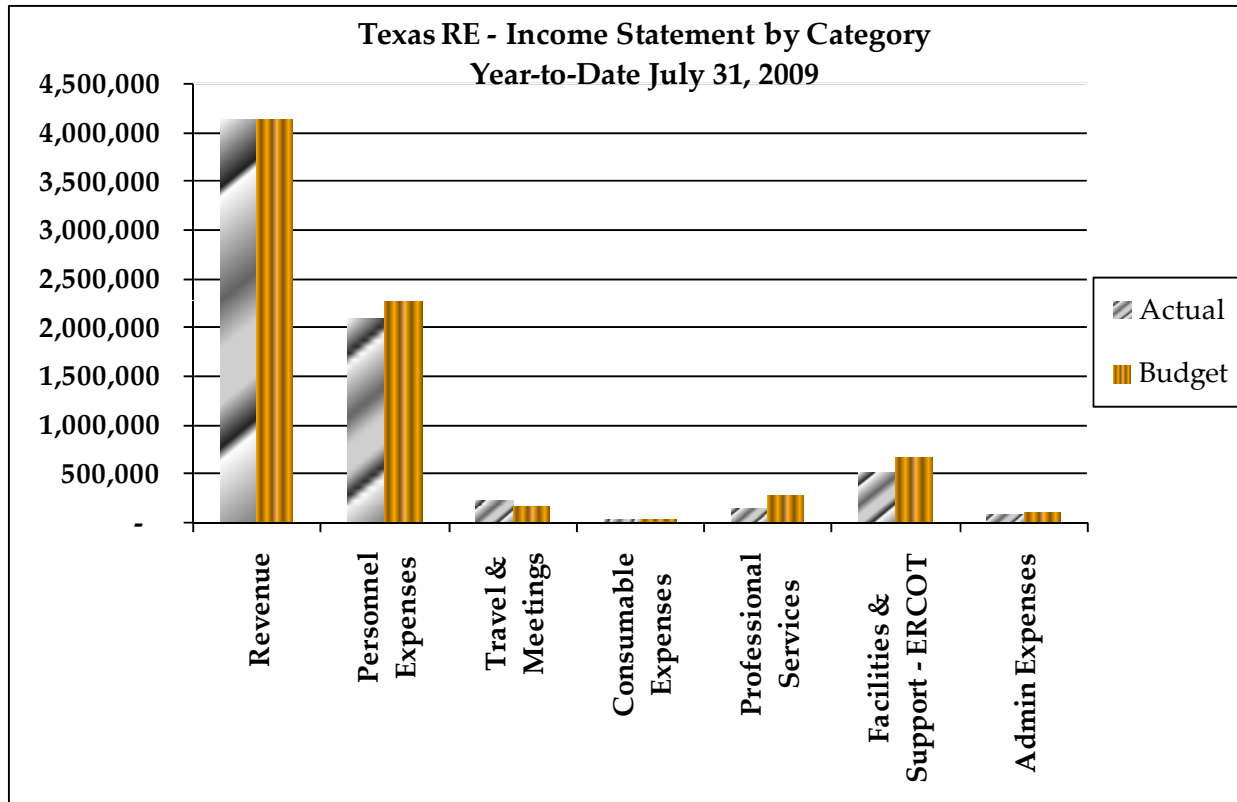
July 2009 Operating Expenses



July Comments

-  **Revenue** - Revenue is less than budget due to less than planned non-statutory expenses.
-  **Personnel Expenses** - Lower than plan due to a release of health benefit reserves in July.
-  **Travel & Meetings Expenses** - Underspending due to less meeting expense in July.
-  **Consumable Expenses** - Slightly less for the month due to reduced office supply orders in July.
-  **Professional Services** - Less than plan for the month primarily due to underspending on legal expenses.
-  **Facilities & Support** - MOU signed in June 2009. Facilities related expenses will be less than budget for the year.
-  **Administrative Expenses** - Variance is primarily driven by underspending on IT for the month (Timing Variance).

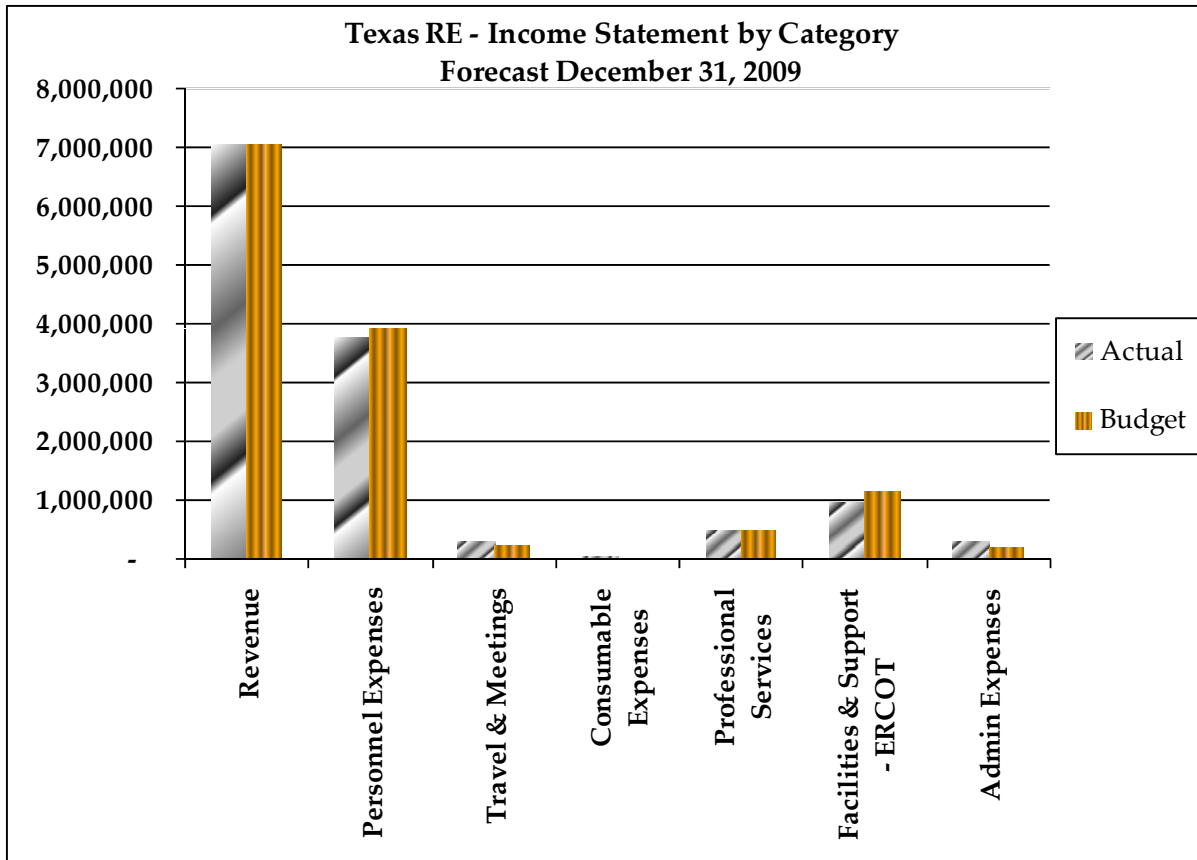
YTD July 2009 Operating Expenses



YTD July Comments

- ➔ **Revenue** - Higher than budget due to the Operations Training Seminar (OTS).
- ➔ **Personnel Expenses** - Lower YTD due to employee vacancies. Budget is 32 FTEs, we currently are staffed at 31 FTEs.
- ➔ **Travel & Meetings Expenses** - Overspending due to OTS. The OTS overages have been offset by revenue.
- ➔ **Consumable Expenses** - Spending is higher than plan due to expenses incurred for the OTS. This additional spending was offset by additional fees charged to attendees.
- ➔ **Professional Services** - Less than plan primarily due to underspending in legal.
- ➔ **Facilities & Support** - There will be a permanent variance due to the timing of Texas RE's move and the budget, as well as the budgeted rent vs. actual rent.
- ➔ **Administrative Expenses** - Variance is primarily driven by less than expected depreciation expense. This should increase over the coming months.

2009 Forecast for Annual Operating Expenses



2009 Forecast Comments

- ➡ **Revenue** - Is forecast higher than budget due to the OTS. Non-statutory revenue forecast to be approximately \$81K less than plan due to lower expenses.
- ➡ **Personnel Expenses** - Lower YTD due to employee vacancies. Budget is 32 FTEs, we currently are staffed at 31 FTEs.
- ➡ **Travel & Meetings Expenses** - Overspending due to OTS costs, however spending has been offset by additional fees charged to the OTS attendees. Additionally, more NERC and Audit related travel.
- ➡ **Consumable Expenses** - Expect to exceed plan primarily due to the FERC audit.
- ➡ **Professional Services** - Expect to be higher than plan due to unbudgeted direct Board expenses.
- ➡ **Facilities & Support** - Expect to be below budget on rent.
- ➡ **Administrative Expenses** - Variance is primarily driven by hosting expenses for Texas RE's portal and website, as well as additional expenses for portal maintenance.

July 2009 Operating Expenses

Texas Regional Entity
Income Statement
Statutory & Non-Statutory Consolidated
For the Period Ended July 31, 2009
Unaudited Management Report

Group Rollup	Group Rollup Name	Period to Date			Year to Date			Forecast Actual	Annual Budget	Difference
		Actual	Budget	Difference	Actual	Budget	Difference			
Revenue	1-Assessments*	543,180	581,671	(38,491)	3,955,215	4,065,480	(110,266)	6,864,350	6,969,023	(104,673)
	2-Workshops	-	-	-	180,607	70,000	110,607	180,607	70,000	110,607
	3-Interest Income	163	-	163	2,621	-	2,621	4,125	-	4,125
Total Revenue		543,343	581,671	(38,328)	4,138,442	4,135,480	2,962	7,049,082	7,039,023	10,059
Personnel	10-Salaries	256,378	247,571	(8,807)	1,630,646	1,722,143	91,497	2,913,236	2,945,048	31,812
	11-Payroll Taxes	30,768	20,510	(10,258)	138,579	161,449	22,870	225,184	235,604	10,420
	12-Employee Benefits	23,000	20,608	(2,392)	113,929	132,731	18,802	231,502	305,571	74,069
	13-Saving and Retirement	33,252	37,175	3,923	214,956	250,431	35,475	388,861	421,495	32,634
Total Personnel		343,398	325,863	(17,535)	2,098,109	2,266,754	168,645	3,758,783	3,907,718	148,935
Travel & Meetings	20-Meetings & Training	217	-	(217)	135,857	87,500	(48,357)	157,394	105,000	(52,394)
	30-Travel	10,228	13,080	2,852	73,515	72,181	(1,334)	122,027	109,651	(12,376)
Total Travel & Meetings		10,445	13,080	2,635	209,372	159,681	(49,691)	279,421	214,651	(64,770)
Consumables	40-Office Supplies	281	860	579	6,446	5,960	(486)	13,333	10,200	(3,133)
	41-Postage & Shipping	721	200	(521)	3,304	1,400	(1,904)	6,311	2,400	(3,911)
	42-Telecommunications	674	967	293	4,951	6,767	1,816	6,867	4,960	(1,907)
	43-Printing & Copying	50	100	50	8,279	700	(7,579)	800	1,200	400
Total Consumables		1,726	2,127	401	22,980	14,827	(8,153)	27,311	18,760	(8,551)
Professional Services & Consulting	60-Professional Services-Legal	3,655	29,167	25,511	61,245	204,167	142,922	350,000	350,000	-
	61-Professional Services-Auditing	3,061	3,750	689	28,061	26,250	(1,811)	50,976	45,000	(5,976)
	62-Professional Services-Other	-	5,575	5,575	53,181	47,775	(5,406)	91,485	75,650	(15,835)
Total Professional Services & Consulting		6,716	38,492	31,776	142,487	278,192	135,706	492,461	470,650	(21,810)
Facilities & Support - ERCOT	70-Rent & Improvements	32,500	49,979	17,479	193,503	349,853	156,351	340,364	599,748	259,384
	71-Support (HR, Treas, Finance, BOD)	18,773	26,388	7,614	181,047	184,715	3,667	368,303	316,654	(51,649)
	72-IT/MIS Support & Services	21,163	19,000	(2,163)	136,455	133,000	(3,455)	247,592	228,000	(19,592)
Total Facilities & Support - ERCOT		72,436	95,367	22,930	511,005	667,568	156,563	956,258	1,144,402	188,144
Administrative	73-IT/MIS Projects, Purchases & Maint	9,321	5,250	(4,071)	60,317	37,712	(22,604)	163,385	63,988	(99,397)
	74-Employee Training	-	550	550	4,464	4,270	(194)	9,266	7,440	(1,826)
	80-Depreciation Expense	2,476	6,378	3,903	17,329	44,648	27,320	106,246	76,540	(29,706)
	82-Bank Fees	139	-	(139)	975	-	(975)	1,766	-	(1,766)
	90-Miscellaneous Other	418	2,800	2,382	2,849	19,485	16,636	2,691	33,712	31,021
Total Administrative Expenses		12,354	14,978	2,625	85,933	106,116	20,182	283,354	181,680	(101,674)
Total Expenses		447,076	489,907	42,831	3,071,636	3,493,137	421,501	5,797,588	5,937,861	140,273
GAIN / (LOSS)		96,266	91,764	4,503	1,066,806	642,344	424,463	1,251,494	1,101,162	150,332
Non-Operating Expenses	91-Cash / Contingency Reserve	-	71,250	71,250	-	498,750	498,750	-	855,000	855,000
Grand Total of Expenses (Operating & Non-Operating)		447,076	561,157	114,081	3,071,636	3,991,887	920,251	5,797,588	6,792,861	995,273
TOTAL GAIN / (LOSS)		96,266	20,513	75,753	1,066,806	143,593	923,213	1,251,494	246,162	1,005,332

* Reflecting the release from the regulatory liability and Statutory assessments per budget. Ignores the regulatory accounting of \$871K year-to-date which is made for GAAP purposes.



Date: August 10, 2009
To: Texas RE Board of Directors
From: Larry Grimm, Texas RE CEO and CCO
Subject: Approval of Supplemental Budget for Technical Feasibility Exceptions

Texas Regional Entity Board of Directors Meeting Date: August 17, 2009

Agenda Item No.: 5b

Issue:

Approval of supplemental 2010 budget for processing and evaluating Technical Feasibility Exceptions (TFEs).

Background/History:

At the time the Texas Regional Entity (Texas RE) 2010 Business Plan and Budget were developed, posted for stakeholder comment, and submitted to and approved by the Board, North American Electric Reliability Corporation (NERC) anticipated that the processing of TFEs would be handled centrally by NERC staff and thus significant Regional Entity resources would not be required for this work. Based upon feedback and input (from market participants and several regional entities) NERC received in response to the public posting of its proposed 2010 Business Plan and Budget, NERC revised this approach and directed the Regional Entities to develop proposed budgets allowing them to process and review TFEs.

A TFE is a procedure by which a registered entity to which NERC Critical Infrastructure Protection (CIP) standards apply may request and receive approval for an exception from the terms of certain (12) requirements of the CIP Standards on the grounds of technical feasibility or technical limitations. Under the new NERC requirement, Texas RE will need to receive, review, and screen all TFEs from the registered entities in the ERCOT region. Texas RE will then do a detailed review of any TFEs that are conditionally accepted. The processing of TFEs is expected to begin in September 2009.

Although NERC issued general guidance regarding the intended process for submitting and processing TFEs in July, there is still great uncertainty regarding the workload requirements, longevity, and other evolving issues associated with the processing, evaluating, and coordinating of TFEs, such as the number of TFEs that will be filed in the ERCOT region and the amount of time that will be required to process and evaluate each TFE. Processing TFEs requires:

- Prompt preliminary screening of the TFE and included mitigating measures for completeness and reasonableness
 - Registered entities will be permitted to re-submit initially rejected TFEs (within 30 days) with additional information
- A thorough review of each initially accepted TFE (including proposed mitigating measures) by audit or spot check (currently within 360 days)
- Tracking of TFEs and coordination with other Regional Entities for consistency and efficiency

Texas RE will require additional resources prior to, during, and beyond 2010 to process and review the anticipated TFEs. Based upon the information available to Texas RE currently, Texas RE anticipates that it will require approximately 56 hours to process each TFE. It

estimates that the 48 registered entities that have declared critical assets in the ERCOT region will file an average of five (5) TFEs, totaling an estimated 240 TFEs requiring review. Based upon these estimates, Texas RE will need to increase its 2010 budget by 4 full time equivalents (FTEs) or \$784,152 (including reserves of \$132,949) for the required processing of TFEs which will begin in 2009.

The 2010 Business Plans and Budgets of NERC and all Regional Entities are required to be filed with the Federal Energy Regulatory Commission on August 24, 2009 and are scheduled to be approved by the NERC Board of Trustees on August 20, 2009. Because the TFE work is now required of the Regional Entities under the Delegation Agreement, Texas RE (along with the other Regional Entities) must increase its 2010 budget by the amount that will adequately permit it to accomplish the required processing and evaluation of TFEs in 2010. Funding to carry out these activities for the remainder of 2009 is proposed to be from prior years' unspent funds.

Texas RE respectfully requests that the Board approve a supplemental budget amount for its 2010 budget, in the amount of \$784,152. This would increase the 2010 Texas RE Business Plan and Budget as follows (details are included in Board materials):

2010 Statutory Budget (approved in June):	\$8,041,359
Supplemental Budget for TFEs:	\$ 784,152
New Total 2010 Statutory Budget:	\$8,825,511

Originally approved 2010 Budget (Statutory and Non-statutory):	\$ 9,225,131
Supplemental Budget for TFEs:	\$ 784,152
New Total Approved 2010 Budget:	\$10,009,283

New Total Approved 2010 Funding (including TFEs):	\$8,380,301
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Key Factors Influencing Issue:

- Requirement that Texas RE process and evaluate TFEs as a statutory activity
- Requirement that Texas RE be adequately funded for all statutory activities
- Requirement that Texas RE budget be approved by NERC on August 20th and filed with FERC on August 24th

Alternatives:

- Approve increasing the Texas RE 2010 budget in the amount of \$784,152 for the processing of TFEs in 2010
- Approve a modified increase in the Texas RE 2010 budget for the processing of TFEs

Conclusion/Recommendation:

Texas RE staff respectfully requests that the Board approve an increase to the 2010 Texas RE Business Plan and Budget in the amount of \$784,152, making an amended total Texas RE statutory budget of \$8,825,511.

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

August 17, 2009

WHEREAS, the Board of Directors (“Board”) of Texas Regional Entity, an independent division of Electric Reliability Council of Texas, Inc. (“Texas RE”), a Texas non-profit corporation, understands that Texas RE will be required to process and evaluate Technical Feasibility Exceptions (TFEs) as a statutory activity during the remainder of 2009 and beyond; and

WHEREAS, the Board deems it desirable and in the best interest of Texas RE to adequately fund Texas RE for the performance of the processing and evaluation of TFEs in 2010, in the amount of \$784,152, which is in addition to the \$9,225,131 total budget approved by the Board on June 15, 2009 for the 2010 Texas RE Business Plan and Budget;

THEREFORE be it RESOLVED, that the Board hereby approves increasing the approved Texas RE 2010 Business Plan and Budget by the additional amount of \$784,152 for its required processing of Technical Feasibility Exceptions; and

Be it FURTHER RESOLVED, that the Board hereby approves a revised 2010 Texas RE Business Plan and Budget, including the processing and evaluation of TFEs, in the total amount of \$10,009,283.

CORPORATE SECRETARY’S CERTIFICATE

I, Susan Vincent, Corporate Secretary of Texas Regional Entity, do hereby certify that, at the August 17, 2009 Texas Regional Entity Board of Directors Meeting, the Board of Directors of Texas Regional Entity approved the above referenced resolution. The motion passed by _____.

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

Susan Vincent
Corporate Secretary

2010 Texas Regional Entity Technical Feasibility Exception (TFE) Supplemental Budget

Board of Directors
August 17, 2009

Technical Feasibility Exception (TFE) Background

- Registered Entities subject to Critical Infrastructure Protection (CIP) Standards are allowed to request exceptions to designated standard requirements on the grounds of technical feasibility or technical limitations
 - Currently applies to 12 standard requirements
- NERC originally planned to budget for TFE evaluations on a national basis
- NERC eliminated this from the NERC budget after stakeholder and Regional Entity input and now requires Regional Entities to perform TFE evaluations
- Texas RE and all other Regional Entities will perform TFE evaluations for registered entities and must modify their 2010 budgets
- Business Plans and Budgets for NERC and all Regional Entities are scheduled to be approved by NERC on August 20th and submitted to FERC on August 24th
- Texas RE needs Board approval for a supplemental amount to fund the required TFE evaluations in 2010

Workload for Processing TFEs

- Processing TFEs requires:
 - Prompt preliminary screening of the TFE and included mitigating measures for completeness and reasonableness
 - Registered entities will be permitted to re-submit initially rejected TFEs (within 30 days) with additional information
 - A thorough review of each initially accepted TFE (including proposed mitigating measures) by audit or spot check (currently within 360 days)
 - Tracking of TFEs and coordination with other Regional Entities for consistency and efficiency
- There is still great uncertainty regarding the workload requirements and issues are still evolving and being clarified, for example:
 - # of registered entities with TFEs (48 in ERCOT region have critical cyber assets)
 - # of TFEs (Texas RE estimates 240)
 - Time to process/evaluate each TFE (Texas RE estimates 56 hours per TFE)

Texas RE TFE Supplemental Budget for 2010

- Texas RE has developed a supplemental budget to address TFEs
 - Supplemental budget (when approved) will be incorporated into the approved 2010 Texas RE Business Plan and Budget and submitted to NERC
 - NERC will submit to FERC on August 24th
 - Current Texas RE estimate for TFE evaluation and processing:
 - 4 additional FTEs
 - \$651,203 + \$132,949 cash reserves = **\$784,152**
- | | |
|---|----------------------------|
| • 2010 Texas RE Statutory Budget (Approved in June): | \$ 8,041,359 |
| • Supplemental Budget for TFEs: | \$ 784,152 |
| • New Total 2010 Total Texas RE Statutory Budget: | <u>\$ 8,825,511</u> |
- Impacts statutory budget only (no impact on Protocol compliance program)
 - Texas RE requests approval of the \$784,152 supplemental budget for 2010

Breakdown of Projected TFE Resource Needs

- **Salary & Benefits \$505K** – 4.0 FTEs needed for the added requirements (propose adding in 2009 as necessary)
 - 48 registered entities have currently declared they have critical cyber assets
 - Estimate 5 TFEs per registered entity (240 TFEs expected)
 - Approximately 56 hours per TFE for all phases (worked over 2 years)
 - ~13,440 hours over 2 years = 6,720 labor hours (1,680 labor hours for 1 FTE)
- **Travel \$20K**– estimate some travel for TFE evaluations and staff training
- **Contracts \$68K** – MOU expenses will increase for 4.0 FTEs added on staff
- **Professional Services \$24K** – recruitment of 4 staff will cost \$6K per position
- **Office Supplies \$4K** – estimate based on current staff consumption
- **Capital Expense \$29K** – additional cubicles and associated furniture
- **Cash Reserves \$133K** – estimated reserves to be consistent with Texas RE's base 2010 Business Plan & Budget
- **Total TFE resource needs – \$784K for 2010**

2010 Base Statutory Budget + TFE Supplement

Statement of Activities							
2009 Budget & Projection, and 2010 Budget							
STATUTORY - Baseline Budget + TFE Supplemental							
	2009 Budget	2009 Projection	Variance 2009 Projection v 2009 Budget Over(Under)	2010 Budget	Variance 2010 Budget v 2009 Budget Over(Under)	2010 Budget Plus TFE	Variance to 2010 Budget Over(Under)
Funding							
ERO Funding							
ERO Assessments	\$ 3,430,700	\$ 3,430,700	\$ -	\$ 6,260,377	\$ 2,829,676	\$ 7,044,529	\$ 784,152
Penalty Sanctions ⁽¹⁾	-	-	-	-	-	-	-
Total ERO Funding	\$ 3,430,700	\$ 3,430,700	\$ -	\$ 6,260,377	\$ 2,829,676	\$ 7,044,529	\$ 784,152
Membership Dues	-	-	-	-	-	-	-
Testing Fees	-	-	-	-	-	-	-
Services & Software	-	-	-	-	-	-	-
Workshops	70,000	174,029	104,029	180,000	110,000	180,000	-
Interest	-	4,125	4,125	2,000	2,000	2,000	-
Miscellaneous	-	-	-	-	-	-	-
Total Funding	\$ 3,500,700	\$ 3,608,854	\$ 108,154	\$ 6,442,377	\$ 2,941,676	\$ 7,226,529	\$ 784,152
Expenses							
Personnel Expenses							
Salaries	\$ 2,496,968	\$ 2,479,855	\$ (17,114)	\$ 3,113,791	\$ 616,822	\$ 3,493,791	\$ 380,000
Payroll Taxes	199,757	191,667	(8,090)	246,724	46,967	276,834	30,110
Benefits	259,628	194,403	(65,225)	335,244	75,615	376,154	40,910
Retirement Costs	356,523	329,741	(26,782)	446,050	89,526	500,489	54,440
Total Personnel Expenses	\$ 3,312,876	\$ 3,195,666	\$ (117,211)	\$ 4,141,808	\$ 828,931	\$ 4,647,268	\$ 505,460
Meeting Expenses							
Meetings	\$ 105,000	\$ 157,394	\$ 52,394	\$ 228,000	\$ 123,000	\$ 228,000	\$ -
Travel	107,470	117,528	10,057	186,619	79,348	207,015	20,197
Conference Calls	-	-	-	-	-	-	-
Total Meeting Expenses	\$ 212,470	\$ 274,922	\$ 62,452	\$ 414,619	\$ 202,348	\$ 435,015	\$ 20,197
Operating Expenses							
Consultants & Contracts	\$ 490,986	\$ 539,074	\$ 48,088	\$ 630,334	\$ 139,348	\$ 698,478	\$ 68,144
Office Rent	517,550	287,392	(230,158)	327,600	(189,950)	327,600	-
Office Costs	18,290	26,581	8,301	40,720	22,440	45,122	4,402
Professional Services	426,000	563,134	137,134	622,625	196,625	646,625	24,000
Miscellaneous	11,160	13,943	2,783	36,236	25,076	36,236	-
Depreciation	76,540	76,540	-	150,000	73,460	154,143	4,143
Total Operating Expenses	\$ 1,540,516	\$ 1,506,664	\$ (33,852)	\$ 1,807,515	\$ 266,999	\$ 1,908,204	\$ 100,689
Total Direct Expenses	\$ 5,065,864	\$ 4,977,252	\$ (88,612)	\$ 6,364,141	\$ 1,298,278	\$ 6,990,487	\$ 626,346
Indirect Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Non-Operating Expenses	\$ 855,000	\$ -	\$ (855,000)	\$ -	\$ (855,000)	\$ -	\$ -
Total Expenses	\$ 5,920,864	\$ 4,977,252	\$ (943,612)	\$ 6,364,141	\$ 443,278	\$ 6,990,487	\$ 626,346
Change in Assets	\$ (2,420,163)	\$ (1,368,397)	\$ 1,051,766	\$ 78,235	\$ 2,498,398	\$ 236,041	\$ 157,806
Fixed Assets							
Depreciation	\$ (76,540)	\$ (76,540)	\$ -	\$ (150,000)	\$ (73,460)	\$ (154,143)	\$ (4,143)
Computer & Software CapEx	322,702	354,202	31,500	306,500	(16,202)	306,500	-
Furniture & Fixtures CapEx	-	-	-	-	-	29,000	29,000
Equipment CapEx	-	-	-	-	-	-	-
Leasehold Improvements	-	-	-	-	-	-	-
Change in Fixed Assets	\$ (246,162)	\$ (277,662)	\$ (31,500)	\$ (156,500)	\$ 89,662	\$ (181,357)	\$ (24,857)
Allocation of Fixed Assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Change in Fixed Assets	\$ (246,162)	\$ (277,662)	\$ (31,500)	\$ (156,500)	\$ 89,662	\$ (181,357)	\$ (24,857)
TOTAL CHANGE IN ASSETS	\$ (2,666,325)	\$ (1,646,059)	\$ 1,020,266	\$ (78,265)	\$ 2,588,060	\$ 54,684	\$ 132,949

(1) Reflects penalty sanctions collected prior to June 30, 2009.

2010 Base Budget + TFE Supplemental Recap

	<u>Statutory</u>	<u>Non-statutory</u>	<u>Combined</u>
● Operating Expense Budget	\$6,364,141	\$1,086,772	\$7,450,913
● Capital Budget	\$ 306,500	\$ 67,000	\$ 373,500
● Cash Reserve	<u>\$1,370,718</u>	<u>\$ 30,000</u>	<u>\$1,400,718</u>
● Subtotal Budget Requirements	\$8,041,359	\$1,183,772	\$9,225,131
● Less: Unspent Funds (prior years)	(\$ 593,982)		(\$ 593,982)
● Less: Cash Reserves on Hand	(\$ 855,000)		(\$ 855,000)
● Less: Depreciation Expense	<u>(\$ 150,000)</u>	<u>(\$ 30,000)</u>	<u>(\$ 180,000)</u>
● BASE BUDGET <i>Funding Requirement</i>	\$6,442,377	\$1,153,772	\$7,596,149
● TFE Supplemental Budget	<u>\$ 784,152</u>	<u> </u>	<u>\$ 784,152</u>
● New 2010 Budget (Base + TFE)	<u>\$7,226,529</u>	<u>\$1,153,772</u>	<u>\$8,380,301</u>
● Staffing (Full Time Equivalents)	31.00	6.00	37.00
● TFE Supplemental Budget	<u>4.00</u>	<u> </u>	<u>4.00</u>
	35.00	6.00	41.00



2010 Business Plan and Budget

Draft 1

Supplemental Budget to Address Technical Feasibility Exceptions

Texas Regional Entity

July 30, 2009

Scope and Description

Background

The Critical Infrastructure Protection (CIP) Standards allow for registered entities to request Technical Feasibility Exceptions (TFEs) to the standard requirements in certain instances. Once these requests are made, they must be reviewed and approved, and then short and long-term plans to deal with the TFEs must also be evaluated, approved and monitored to completion.

At the time the Texas RE 2010 Business Plan and Budget were developed, submitted to the Board for review, and posted for stakeholder comment, NERC anticipated that the processing of TFEs would be handled centrally by NERC staff and thus significant Regional Entity resources would not be required for this work. Based upon feedback and input NERC received in response to the public posting of its proposed 2010 Business Plan and Budget, NERC revised this approach and directed the Regions to develop proposals to deal with TFE processing. Texas RE will require additional resources prior to and during 2010 to process the anticipated TFEs.

Texas RE decided to leave its base 2010 Business Plan and Budget as originally proposed and approved by the Texas RE Board of Directors and to develop this supplement devoted only to the TFE work. If approved by the NERC Board of Trustees, this supplement would be in addition to the 2010 Texas RE Business Plan and Budget previously submitted. Should the NERC Board of Trustees decide that Regional resources are not needed for TFE evaluations because NERC will centrally process them, this supplement will not be necessary and the NERC Board has the option to simply approve the base Business Plan and Budget.

There is great uncertainty regarding the workload requirements, longevity and evolving issues associated with TFEs. The ultimate answers to these questions will greatly impact resource requirements. Texas RE is attempting to answer these questions to the extent it can in this supplement, given the information presently available. The assumptions made were used to determine the budget impact of TFE evaluations across the Region.

Key Issues and Assumptions

1. Texas RE will perform TFE evaluations for registered entities in the ERCOT Region, and will coordinate with the other Regions to ensure consistent treatment of similar requested TFEs.
2. Processing will require a preliminary screening of the TFE for completeness and reasonableness for acceptance on an interim basis. Screening is assumed to be completed within 60 days of receipt by the Regional Entity.
3. Texas RE will conduct a thorough review of the TFE and proposed mitigating measures, and will prepare its justification for approval or denial of the TFE within 360 days of the initial submittal of the TFE, unless otherwise extended by NERC.
4. The initial screening and thorough review of each TFE will be conducted off-site (not at the office of the Registered Entity and normally at the Texas RE offices) and Registered Entities will electronically submit all documentation required to review TFEs, including Critical Energy Infrastructure Information (CEII) associated with TFEs, to Texas RE. Registered entities will submit the information through either (1) encrypted email or (2) encrypted or password protected CDs, DVDs, or other mobile storage devices. Texas RE will ensure that confidential data and information received, including Critical Energy

Infrastructure Information (CEII), are secured, in accordance with Section 1500 of NERC Rules of Procedure. Texas RE will maintain all CEII on password protected or encrypted mobile storage devices which are maintained in locked fire-proof filing cabinets, in accordance with its Handling Guidelines for CEII Corporate Procedure, and Texas RE will only view registered entity CEII on designated secured (password protected) computers that are not network- connected to either the Internet or the Texas RE corporate local area network.

5. If a TFE is found to be deficient in the initial screening or during the thorough review, the registered entity will be provided 30 days to remedy the deficiency. If the registered entity fails to comply with the mitigation measures in its own TFE, the entity may be referred to Texas RE enforcement for processing of a possible violation. Registered entities will have a 'safe harbor' from enforcement while a TFE is pending acceptance by Texas RE and while the entity is performing in accordance with the TFE mitigation plan.
6. TFEs are associated with and permitted for only CIP-005 requirements 2.4, 2.6, 3.1, and 3.2; CIP-006 requirement 1.1; and CIP-007 requirements 2.3, 3.2, 4, 4.1, 5.3, 6, and 6.3.
7. If a registrant refuses to submit materials or documents due to CEII concerns and requests that Texas RE only review materials on-site, Texas RE will not approve the request, unless the registered entity is prohibited by law from disclosing information designated as Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended). In such an instance, the TFE Request shall identify the Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information. The registered entity must submit all information that is not so designated.
8. Registered entities will be required to provide quarterly updates on the status of TFEs compared to mitigation plan milestones. Texas RE will be expected to review the completion of a TFE in a manner similar to a spot check.
9. TFEs will be grouped by common equipment/device types. Therefore, if there is one vulnerability that affects several types of devices, of which an entity has hundreds of such devices, Texas RE assumes that an entity will submit a single TFE.
10. NERC will provide review, input, and visibility (such as through a shared national database for use by the Regions) for consistency of the TFEs and will also develop common TFEs to provide better consistency and efficiency across Regions.

Incremental Staffing & Other Costs Summary

Texas RE currently has 48 registered entities who declared critical cyber assets (this number may increase in light of recent NERC efforts). Each of these registered entities must be audited against the requirements of the CIP standards over the course of the next three years. Texas RE assumes that each of these entities may submit five (5) TFEs (on average) totaling 240 TFEs and that these will be screened and verified over the next two years (2010-2011), or 120 TFEs per year. Should the total number of TFEs significantly exceed this estimate, additional resources will be required.

Texas RE estimates that screening of each of these TFEs will require 16 hours of staff labor and the verification will require 34 hours of staff labor. Additionally, there will be approximately 6 hours of staff support required for development and maintenance of online forms, data management, and to monitor periodic reporting of TFE status. Therefore the total estimated impact is 56 hours per TFE. The total effort given these assumptions is 6,720 hours in 2010 (6,000 hours for engineering/technical/legal labor (3.6 FTEs) and 720 hours of support labor (0.4 FTEs), or a total of 4 FTEs). These staff additions would be such that these personnel could be reassigned in future years if the TFE workload diminished. All staffing commitments will be made only on the basis of actual TFE required workload. This estimate is simply for the purpose of budgeting and all staffing decisions would be made on actual need and not estimated needs. This estimate may need to be revised later based upon actual experience.

The estimates above do not include staff enforcement time required if violations are assessed during the TFE evaluation. Should a large number of violations be assessed as a result of TFE evaluations, this will have a significant impact on enforcement staff and additional resources will be required.

2010 Overview of Cost Impacts Including TFE Impact

Funding Requirements — Explanation of Increase (Decrease)

Funding for Technical Feasibility Exceptions will affect the Compliance programs (4 FTE increase). If this supplement is approved all expenses will be added to the program. The purpose of this supplement is to show the net effect to the total budget.

2010 Overview of TFE Cost Impacts

The overall cost of implementing TFE processing by Texas RE in 2010 is projected to be \$651,203 excluding cash reserves (\$132,949). This would bring the total Texas RE statutory operating budgeted expenses in 2010 to \$7,171,844 excluding cash reserves, an increase of \$1,859,818 compared to the 2009 budget. This will result in the 2010 budget increasing by 35 percent over the 2009 budget. A statement of the budget impact of TFE processing is provided in the table on the following page. Additionally, a restated summary budget is provided on the subsequent page.

Funding Requirements — Explanation of Increase (Decrease)

Texas RE proposes to file a supplemental budget with NERC and FERC for all costs associated with TFE evaluations. Should any over-collection occur, these funds will be used to offset subsequent years' expenses. If expenses exceed the budget estimated for TFE evaluations, this cost will be absorbed in the operating reserves which will be restored in a future year.

Supplement 1 Technical Feasibility Exceptions

Funding sources and related expenses for Supplement 1 - Technical Feasibility Exceptions section of the 2010 business plan are shown in the table below.

Table 1

Statement of Activities					
2009 Budget & Projection, and 2010 Budget					
Supplemental Budget - Technical Feasibility Exception					
	2009 Budget	2009 Projection	Variance 2009 Projection v 2009 Budget Over(Under)	2010 Budget	Variance 2010 Budget v 2009 Budget Over(Under)
Funding					
ERO Funding					
ERO Assessments	\$ -	\$ -	\$ -	\$ 784,152	\$ -
Penalty Sanctions ⁽¹⁾	-	-	-	-	-
Total ERO Funding	\$ -	\$ -	\$ -	\$ 784,152	\$ -
Membership Dues	-	-	-	-	-
Testing Fees	-	-	-	-	-
Services & Software	-	-	-	-	-
Workshops	-	-	-	-	-
Interest	-	-	-	-	-
Miscellaneous	-	-	-	-	-
Total Funding	\$ -	\$ -	\$ -	\$ 784,152	\$ -
Expenses					
Personnel Expenses					
Salaries	\$ -	\$ -	\$ -	\$ 380,000	\$ -
Payroll Taxes	-	-	-	30,110	-
Benefits	-	-	-	40,910	-
Retirement Costs	-	-	-	54,440	-
Total Personnel Expenses	\$ -	\$ -	\$ -	\$ 505,460	\$ -
Meeting Expenses					
Meetings	\$ -	\$ -	\$ -	-	\$ -
Travel	-	-	-	20,197	-
Conference Calls	-	-	-	-	-
Total Meeting Expenses	\$ -	\$ -	\$ -	\$ 20,197	\$ -
Operating Expenses					
Consultants & Contracts	\$ -	\$ -	\$ -	\$ 68,144	\$ -
Office Rent	-	-	-	-	-
Office Costs	-	-	-	4,402	-
Professional Services	-	-	-	24,000	-
Miscellaneous	-	-	-	-	-
Depreciation	-	-	-	4,143	-
Total Operating Expenses	\$ -	\$ -	\$ -	\$ 100,689	\$ -
Total Direct Expenses					
	\$ -	\$ -	\$ -	\$ 626,346	\$ -
Indirect Expenses					
	\$ -	\$ -	\$ -	\$ -	\$ -
Other Non-Operating Expenses					
	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenses	\$ -	\$ -	\$ -	\$ 626,346	\$ -
Change in Assets	\$ -	\$ -	\$ -	\$ 157,806	\$ -
Fixed Assets					
Depreciation	\$ -	\$ -	\$ -	\$ (4,143)	\$ -
Computer & Software CapEx	-	-	-	-	-
Furniture & Fixtures CapEx	-	-	-	29,000	-
Equipment CapEx	-	-	-	-	-
Leasehold Improvements	-	-	-	-	-
Change in Fixed Assets	\$ -	\$ -	\$ -	\$ (24,857)	\$ -
Allocation of Fixed Assets	\$ -	\$ -	\$ -	\$ -	\$ -
Change in Fixed Assets	\$ -	\$ -	\$ -	\$ (24,857)	\$ -
TOTAL CHANGE IN ASSETS	\$ -	\$ -	\$ -	\$ 132,949	\$ -

Explanations of Variances – 2010 Budget versus 2009 Budget

This activity is new for 2010 and therefore it was not incorporated into the 2009 or 2010 base budget.

Funding Sources

Texas RE considers TFE evaluations to be a part of the functions delegated to the Regions by the ERO. Therefore, funding for this statutory program in 2010 is provided through assessments to LSEs or designees (mandatory in the United States).

Personnel Expenses

There will be an increase in the proposed 2010 FTE count of four (4.0) FTEs for TFE related work.

Hiring Plans

Four additional FTEs will be needed in 2010, with plans to begin hiring process (solicitation of candidates) in late 2009.

Shared Employees

These employees will be assigned 100% to this statutory activity.

Meeting Expenses

Staffs travel expenses in support of the Texas RE TFE evaluations.

Operating Expenses

These additional operating expenses are needed to support the added personnel.

Indirect Expenses

No additional indirect expense will be needed above and beyond what has been requested in the original 2010 business plan & budget.

Other Non-Operating Expenses

There are no other non-operating expenses

Fixed Asset Additions

There are 4 cubicle units that would be required to support the additional personnel that would be capitalized.

2009 Budget and Projection and 2010 Budget Comparisons Including Technical Feasibility Exceptions

Table 2

Statement of Activities							
2009 Budget & Projection, and 2010 Budget							
STATUTORY - Baseline Budget + TFE Supplemental							
	2009 Budget	2009 Projection	Variance 2009 Projection v 2009 Budget Over(Under)	2010 Budget	Variance 2010 Budget v 2009 Budget Over(Under)	2010 Budget Plus TFE	Variance to 2010 Budget Over(Under)
Funding							
ERO Funding							
ERO Assessments	\$ 3,430,700	\$ 3,430,700	\$ -	\$ 6,260,377	\$ 2,829,676	\$ 7,044,529	\$ 784,152
Penalty Sanctions ⁽¹⁾	-	-	-	-	-	-	-
Total ERO Funding	\$ 3,430,700	\$ 3,430,700	\$ -	\$ 6,260,377	\$ 2,829,676	\$ 7,044,529	\$ 784,152
Membership Dues	-	-	-	-	-	-	-
Testing Fees	-	-	-	-	-	-	-
Services & Software	-	-	-	-	-	-	-
Workshops	70,000	174,029	104,029	180,000	110,000	180,000	-
Interest	-	4,125	4,125	2,000	2,000	2,000	-
Miscellaneous	-	-	-	-	-	-	-
Total Funding	\$ 3,500,700	\$ 3,608,854	\$ 108,154	\$ 6,442,377	\$ 2,941,676	\$ 7,226,529	\$ 784,152
Expenses							
Personnel Expenses							
Salaries	\$ 2,496,968	\$ 2,479,855	\$ (17,114)	\$ 3,113,791	\$ 616,822	\$ 3,493,791	\$ 380,000
Payroll Taxes	199,757	191,667	(8,090)	246,724	46,967	276,834	30,110
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Total Personnel Expenses	\$ 3,312,878	\$ 3,195,666	\$ (117,211)	\$ 4,141,808	\$ 828,931	\$ 4,647,268	\$ 505,460
Meeting Expenses							
Meetings	\$ 105,000	\$ 157,394	\$ 52,394	\$ 228,000	\$ 123,000	\$ 228,000	\$ -
Travel	107,470	117,528	10,057	186,819	79,348	207,015	20,197
Conference Calls	-	-	-	-	-	-	-
Total Meeting Expenses	\$ 212,470	\$ 274,922	\$ 62,452	\$ 414,819	\$ 202,348	\$ 435,015	\$ 20,197
Operating Expenses							
Consultants & Contracts	\$ 490,986	\$ 539,074	\$ 48,088	\$ 630,334	\$ 139,348	\$ 698,478	\$ 68,144
Office Rent	517,550	287,392	(230,158)	327,600	(189,950)	327,600	-
Office Costs	18,280	26,581	8,301	40,720	22,440	45,122	4,402
Professional Services	426,000	563,134	137,134	622,625	196,625	646,625	24,000
Miscellaneous	11,160	13,943	2,783	36,236	25,076	36,236	-
Depreciation	76,540	76,540	-	150,000	73,460	154,143	4,143
Total Operating Expenses	\$ 1,540,516	\$ 1,506,664	\$ (33,852)	\$ 1,807,515	\$ 266,999	\$ 1,908,204	\$ 100,689
Total Direct Expenses	\$ 5,065,864	\$ 4,977,252	\$ (88,612)	\$ 6,364,141	\$ 1,298,278	\$ 6,990,487	\$ 626,346
Indirect Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Non-Operating Expenses	\$ 855,000	\$ -	\$ (855,000)	\$ -	\$ (855,000)	\$ -	\$ -
Total Expenses	\$ 5,920,864	\$ 4,977,252	\$ (943,612)	\$ 6,364,141	\$ 443,278	\$ 6,990,487	\$ 626,346
Change in Assets	\$ (2,420,163)	\$ (1,368,397)	\$ 1,051,766	\$ 78,235	\$ 2,498,398	\$ 236,041	\$ 157,806
Fixed Assets							
Depreciation	\$ (76,540)	\$ (76,540)	\$ -	\$ (150,000)	\$ (73,460)	\$ (154,143)	\$ (4,143)
Computer & Software CapEx	322,702	354,202	31,500	306,500	(16,202)	306,500	-
Furniture & Fixtures CapEx	-	-	-	-	-	29,000	29,000
Equipment CapEx	-	-	-	-	-	-	-
Leasehold Improvements	-	-	-	-	-	-	-
Change in Fixed Assets	\$ (246,162)	\$ (277,662)	\$ (31,500)	\$ (156,500)	\$ 89,662	\$ (181,357)	\$ (24,857)
Allocation of Fixed Assets	-	-	-	-	-	-	-
Change in Fixed Assets	\$ (246,162)	\$ (277,662)	\$ (31,500)	\$ (156,500)	\$ 89,662	\$ (181,357)	\$ (24,857)
TOTAL CHANGE IN ASSETS	\$ (2,666,325)	\$ (1,646,059)	\$ 1,020,266	\$ (78,265)	\$ 2,588,060	\$ 54,684	\$ 132,949

(1) Reflects penalty sanctions collected prior to June 30, 2009.

Reserve Balance Including Technical Feasibility Exceptions

Table 3

Working Capital Reserve Analysis 2009-2010	
STATUTORY	
Beginning Working Capital Reserve (Deficit), December 31, 2008	2,666,325
Penalty sanctions being held to be used as offset to 2010 assessments ¹	0
Plus: 2009 ERO Funding (from LSEs or designees)	3,430,700
Plus: 2009 Other funding sources	178,154
Less: 2009 Regulatory Liability Projected	(165,266)
Less: 2009 Projected expenses & capital expenditures	(5,254,914)
Projected Working Capital Reserve (Deficit), December 31, 2009	855,000
Desired Working Capital Reserve, December 31, 2010 ²	1,503,667
Less: Projected Working Capital Reserve, December 31, 2009	(855,000)
Increase(decrease) in assessments to achieve desired Working Capital Reserve	648,667
2010 Assessment for Expenses and Capital Expenditures	7,171,844
Less: Penalty Sanctions ¹	0
Less: Other Funding Sources	(182,000)
Less: LT Regulatory Liability Release	(593,983)
Adjustment to achieve desired Working Capital Reserve	648,667
2010 Assessment	7,044,529

¹ Represents collections prior to June 30, 2009.

² Represents an approximately 75-day cash reserve approved by the Texas RE Board of Directors on June 15, 2009.

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.

(p) **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.

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

(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

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~~ 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.

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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.

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
(512) 225-7022
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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**Texas Regional Entity
Board of Directors
Future Agenda Items - August 2009**

Item		Meeting
1.	Discuss Proposed Bylaws Modifications	November 2009
2.	Discuss Proposed Delegation Agreement Modifications	November 2009
3.	Discuss Texas RE Succession Plan	November 2009
4.	Review and Approve 2010 Goals & Objectives	November 2009
5.	Select Financial Auditor for 2009 Financials	November 2009
6.	Select an Independent Auditor for the TRE Annual Financial Audit	November 2009
7.	Distribute Board Self-Survey	November 2009
8.	Elect Board Chair and Vice Chair	February 2009
9.	Assess Texas RE performance	
10.	Evaluate CEO/CCO performance against goals and objectives	February 2009
11.	Interview and recommend to the Board the hiring and reaffirmation of the Texas RE CEO	February 2009
12.	Review and approve compensation plan for CEO/CCO for implementation in April	February 2009
13.	Distribute Committee Self-evaluation Survey	February 2009
14.	Review scope of annual financial audit	February 2009
15.	Review Committee Self-evaluation survey	February 2009
16.	Review Texas RE's general compensation and benefits programs	February 2009
17.	Consider Board Training Needs	February 2009