

**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

August 17, 2009

Directors

Jan Newton, Chair		Unaffiliated
Michehl Gent, Vice Chair		Unaffiliated
Donna L. Nelson	Commissioner, Public Utility Commission of Texas (PUC)	
Mark Armentrout		Unaffiliated
Deryl Brown	Hudson Energy Services	Retail Electric Provider
Brad Cox	Tenaska	Ind. Power Marketer
Calvin Crowder	Electric Transmission Texas	Investor-Owned Utilities
Miguel Espinosa		Unaffiliated
Don Ballard	Office of Public Utility Counsel (OPUC)	Residential Small Consumer
Andrew Dalton	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
Dan Wilkerson	Bryan Texas Utilities	Municipal

Segment Alternates

Steve Bartley	CPS Energy	Municipal
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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
 Jeff Whitmer, Texas RE Manager, Compliance Enforcement
 Chris Humphreys, Texas RE CIP Analyst
 Judith James, Texas RE Manager, Reliability Standards
 Betty Sachnik, Texas RE Executive Assistant
 Nancy Capezzuti, ERCOT ISO VP & CAO
 Eric Goff, Reliant Energy
 Bill Wullenjohn, ERCOT ISO
 Mark Dreyfus, Austin Energy
 Chuck Manning, ERCOT ISO
 DeAnn Walker, CenterPoint Energy
 Jennifer Windler, LCRA

Tom Burke, Luminant
Joel Firestone, Direct Energy
Les Barrow, CPS Energy
Wendell Bell, TPPA
Shannon K. McClendon, TAC Vice Chair
Kenan Ogelman, CPS Energy
Bridget Headrick, PUC
Manji Philis, PSEG

Call to Order

Pursuant to notice duly given, the meeting of the Texas Regional Entity (Texas RE) Board of Directors (Board) convened at approximately 9:33 a.m. on August 17, 2009. Chair Jan Newton called the meeting to order and ascertained that a quorum was present.

Approval of Previous Minutes

Miguel Espinosa made a motion to approve the minutes of the June 15, 2009 Board meeting; Bob Helton seconded the motion. The motion passed by unanimous voice vote.

CEO Report

CEO Larry Grimm informed the Board that the NERC Board of Trustees approved Texas RE's 2010 Business Plan & Budget on August 5, 2009, but because NERC has determined (after receiving stakeholder and some regional entity comments) that regional entities must process Technical Feasibility Exceptions (TFEs), the regional entities were all required to revise their approved business plans and budgets to include funding for processing the TFEs.

Mr. Grimm told the Board that because the Regional Delegation Agreements with NERC were due to expire in May 2010, NERC and the Regions were in the early stages of revising the Delegation Agreements with NERC, based on things learned over the last three years and industry feedback received regarding the 3-year ERO Assessment. He informed them that Texas RE and the other regional entities would be asking FERC to extend the current Delegation Agreements through 2010 and would be working toward having the new agreements in place by the end of 2010.

Mr. Grimm provided an update on the status of PRR 822 (Removing Access to Restricted Computer Systems, Control Systems and Facilities), and informed the Board that the Protocol Revision Subcommittee (PRS) urgency vote passed, PRS remanded the PRR to the Reliability and Operations Subcommittee (ROS), and ROS had sent the PRR to the Critical Infrastructure Protection Working Group.

Mr. Grimm notified the Board that Texas RE will be hosting two workshops in September at Met Center:

- September 23rd – Standards and Compliance Workshop.
- September 24th – Critical Infrastructure Protection Workshop.

Mr. Grimm informed the Board that FERC was visiting Texas RE during the last week of August to perform the final field work and interviews. He said that he understood the purpose of the meeting was to tie up a few loose ends and then proceed with an exit interview so that the FERC auditors can prepare the audit report.

Mr. Grimm reminded the Board that Texas RE was included in the special Sunset review of ERCOT, and the Texas RE self-evaluation was due to ERCOT by the end of August.

Operating Reports (Q&A)

Chair Newton asked the Directors if they had any questions regarding any of the monthly Texas RE operating reports. Michehl Gent requested that Texas RE contact Luminant and other QSEs regarding their SCPS2 scores because of lack of performance. Jeff Whitmer discussed with the Board the difficulties with the wind metrics and how they are analyzed. In response to A.D. Patton's question about a wind only entity being able to get an exception for SCPS2, Victor Barry responded that he had concerns with the metric. The Board discussed briefly, and Chair Newton requested that Texas RE present only meaningful metrics to the Board. Mark Armentrout stated although there are valid concerns with the metric he would like to continue to receive this information.

Chair Newton expressed frustration with the status of PRR 822. Dr. Patton questioned the ERCOT working group process. Don Ballard stated that he would recommend that a process be put in place whereby the ERCOT Board could enact a PRR without any other action of working groups. In response, Mr. Helton stated that such authority may have negative ramifications on the market. In response to Chair Newton's request to have urgent status items expedited by the stakeholder committee, Mr. Barry replied that stakeholders seemed to take the status seriously and were looking closely at the details and how it could affect their business models. Mr. Espinosa noted it is not a Texas RE issue and the matter should be addressed at the ERCOT Board meeting.

Texas RE Advisory Committee Report

Financial Report (Q&A)

Chair Newton asked the Directors if they had any questions regarding the monthly Texas RE Financial Report. In response to Clifton Karnei's question about budgeted headcount, Todd Brewer explained that the actual labor hours worked were higher than the standard labor hours (reflecting time equal to 33-34 employees working a 40 hour workweek even though Texas RE had only 31 employees). Mr. Brewer confirmed that the additional hours worked were by exempt (salaried) employees, so no overtime was charged for these hours.

Approval of Supplemental 2010 Business Plan and Budget for TFEs

Mr. Gent updated the Board regarding the changes to the Texas RE 2010 Business Plan and Budget to accommodate the newly required TFE evaluations. Mr. Gent explained that Texas RE Advisory Committee recommended approval of \$400,000, which was just over half of the amount requested by Texas RE staff for additional work. He explained that the Committee was committed to approve additional supplemental funds if requested by Texas RE staff in the future, based upon the actual work generated to process the TFEs. Mr. Gent explained that the Committee also requested that Texas RE discuss fee-based activities with NERC, to see if registered entities could be charged a fee for Texas RE to perform services like TFE

evaluations. Chair Newton asked Mr. Grimm and Ms. Vincent to ask NERC about the subject and advise the Board of NERC's response. Brad Cox expressed concern about the charging a fee to conduct NERC activities.

The Directors discussed the proposed supplement to the approved 2010 Texas RE Business Plan and Budget. The Directors and Mr. Grimm discussed how Texas RE arrived at the requested \$784,000 supplemental amount. In response to a question by Dan Wilkerson inquiring whether Texas RE could charge a fee, Susan Vincent said that any fees would have to be approved by NERC. Andrew Dalton questioned where the \$400,000 number came from and asked if the full \$784,000 request was not met would the TFE work be underfunded. Mr. Grimm replied that he was uncertain about whether this amount would be sufficient to fund the entire year, but it was a good starting point. Ms. Vincent said that if the work required was as estimated by Texas RE staff, Texas RE would need to use its cash reserves while it prepared a supplemental budget for approval. The Committee discussed whether the \$400,000 supplemental amount should include any cash reserves, and determined that it should not.

Bob Kahn asked if Texas RE had sufficient cash reserves to allow it to perform the TFE work in 2009, during the approval period for the 2010 budget. Mr. Grimm confirmed that Texas RE still had an "underspent" amount for 2009 as well as cash reserves that could be used while awaiting FERC approval on its 2010 Business Plan & Budget.

Michehl Gent made a motion to (a) approve \$400,000 as an amount to supplement the previously approved Texas RE 2010 Business Plan and Budget, and (b) request that Texas RE staff have a conversation with NERC about allowing regional entities to charge registered entities who requested a TFE a fee for the TFE evaluation process, for the processing of TFEs and including no reserves; Miguel Espinosa seconded the motion. The motion passed by unanimous voice vote.

Review Draft Bylaws for Separation and Comments

Independent or Hybrid Directors

Mr. Gent updated the Board regarding the draft Bylaws and comments received. Mr. Gent explained that the Texas RE Advisory Committee recommended:

- CEO as a voting member
- No OPUC director
- Four independent directors
- Two stakeholders (chair and vice-chair of the MRC) as directors
- Proxies but no alternates
- Quorum must include a majority of independents
- Engagement of search firm for independent directors was optional
- No member of Texas RE Board can be on ERCOT Board also (except PUCT)

Don Ballard commented that he strongly disagreed with the removal of OPUC from the board and that OPUC should have a non-voting *ex officio* director on the board. Ms. Vincent said that during the break, PUC staff had confirmed that the PUC would prefer the Governmental

membership Sector was removed; so, OPUC could instead remain as a non-voting *ex officio* director. Calvin Crowder noted that the board should not have any ERCOT Directors except the Chairman of the PUCT. Chair Newton noted that the Advisory Committee had mixed signals regarding OPUC's position about being on the board or in a voting Sector at the time the Committee voted.

Mr. Wilkerson stated his concern that with the narrow function of the Texas RE, the criteria for directors should be limited to those with experience in the industry. Ms. Vincent noted that often the conflicts of interests make it difficult to find independent directors with industry experience, and Chair Newton stated that in her experience it had been difficult to find candidates with industry knowledge. Commissioner Donna Nelson stated that experience outside the electricity field is beneficial along with other backgrounds to provide a well-rounded board. Brad Cox told the Board of the potential conflict with the Chairman of the PUC sitting in on executive sessions for both boards. In response to Ms. Nelson's question about NERC's acceptance of a hybrid board, Ms. Vincent responded that NERC had softened its public stance on requiring independent only boards.

Mr. Cox expressed doubt over gaining membership approval for the Bylaws because of the non-stakeholder composition of the board. In response to questions by the Directors about the composition of the other regional entity boards, Ms. Vincent provided a chart showing the board composition of all regional entities. Mr. Dalton noted that only one regional entity had an independent board. In response to Mr. Dalton's question about what was driving the independent board, Ms. Vincent replied that the primary driver was NERC comments in the first draft of the 3-year NERC Assessment and the Texas Legislature. Mr. Cox stated that he believed the process was moving too fast. Chair Newton replied that the discussions started as early as February, so it was not a new topic and needed to move forward. Mr. Crowder said that some of the other regional entities had too many directors, and he supported the hybrid board as proposed by the Advisory Committee because it was more efficient and it was beneficial to have stakeholders at the table. Mr. Armentrout requested that Mr. Grimm prepare an update of the steps needed for Texas RE to become legally separate.

Protocol & Operating Guide Compliance Activities

Chair Newton asked the Directors if they had any comments regarding ERCOT Protocol compliance monitoring. Mr. Kahn stated that he recommended a clean break between non-statutory and statutory work for the Texas RE. Mr. Kahn suggested that either the Independent Market Monitor (IMM), ERCOT Internal Audit, or ERCOT Compliance group would be appropriate alternatives to provide the Protocol compliance monitoring. Mr. Armentrout recommended that the Protocol compliance monitoring remain with ERCOT and the PUC could later move it out of ERCOT if it so chose. Commissioner Nelson reminded the Board that conflicts should be avoided, and leaving it in ERCOT left more potential for conflicts. Dr. Patton stated that allowing Protocol compliance to remain with Texas RE defeats the purpose of separating and recommended that the Protocol compliance go to ERCOT Internal Audit. Bob Helton stated his agreement with Dr. Patton.

Chair Newton asked how it would affect the board structure if Texas RE did not have the Protocols. Mr. Helton said he thought the board could be smaller with as few as three members voting if Texas RE was only performing NERC compliance.

Chair Newton asked for a straw vote with option #1 Texas RE maintaining the Protocol compliance monitoring or option #2 ERCOT Internal Audit acquiring the Protocol compliance monitoring. All directors except for Mr. Gent voted for option #2.

Commissioner Nelson said that the PUC was concerned about having Protocol compliance remain at ERCOT, and if given the choice between ERCOT and Texas RE, the PUC would prefer to have Texas RE perform Protocol compliance. The Directors discussed briefly.

Chair Newton asked the Directors to comment on a hybrid or an independent board, and asked whether the non-performance of Protocol compliance would make a difference. Mr. Dalton stated that he had concerns with a fully independent board because of costs. Mr. Helton noted that having an entity besides Texas RE perform Protocol compliance would probably increase costs, because there would need to be two different groups performing audits and two sets of systems to monitor and measure compliance. Mr. Helton said he agreed with the hybrid board recommended by Mr. Gent.

Chair Newton asked for a straw vote with option #1 hybrid board (as recommended by Mr. Gent or with some group of stakeholders) and option #2 a fully independent board. The Board voted unanimously for a hybrid board.

Ms. Nelson commented that the political realities (as demonstrated during the recent Texas Legislative session) indicated that a stakeholder board with similar composition to ERCOT's Board was a dangerous direction.

Chair Newton asked for a straw vote on the matter of no duplication between individuals or companies on the ERCOT and Texas RE boards of directors, except for *ex officio* directors. There was a unanimous consent for no duplication of directors or companies on the boards.

Chair Newton asked Ms. Vincent to revise the draft Bylaws to include a hybrid board as proposed and no Protocols compliance monitoring by Texas RE.

Ms. Vincent asked for clarification regarding sector(s) for municipal or cooperative utilities, and Chair Newton had the Directors discuss their preferences. Because time was running short, Chair Newton suggested that Texas RE draft the bylaws with two sectors, and the Board could discuss after receiving comments.

The Board discussed whether OPUC should remain on the board as an *ex officio* non-voting member. Since time was running short, Chair Newton asked that Texas RE include OPUC on the board in the revised bylaws that would be sent out for comment.

Future Agenda Items

Chair Newton requested feedback on the revised draft bylaws be included in upcoming Board and Committee meetings. Mark Armentrout asked Texas RE staff to include a one page plan for separation of Texas RE from ERCOT. Miguel Espinosa noted that the Board should receive a status update on PRR822 until it was completed.

Adjournment

Chair Newton adjourned the Texas RE Board of Directors meeting at approximately 11:25 a.m.