



Date: September 8, 2009
To: Human Resources and Governance (HR&G) Committee
From: Mark Bruce, Technical Advisory Committee (TAC) Chair
Subject: Proposed Revisions to ERCOT Bylaws

Issue for the HR&G Committee of the ERCOT Board of Directors

HR&G Committee Meeting Date: September 15, 2009

Agenda Item No.: 14a

Issue:

The HR&G Committee has requested comment on proposed revisions to the ERCOT Bylaws prior to making a recommendation to the full ERCOT Board. In response to this request, TAC submits the comments below, which recommend HR&G strike the proposed change to Article 5, Section 5.1(g) limiting the eligibility to serve as TAC Chair or Vice Chair to TAC Representatives who are also employees of ERCOT Members. The motion to adopt this recommendation carried on a voice vote with no opposing votes and four abstentions (1 Electric Cooperative, 1 Municipal Utility, 2 Investor Owned Utilities). TAC does not express an opinion at this time on any other proposed changes to the ERCOT Bylaws.

Key Factors Influencing Issue:

At the September 3 TAC meeting, TAC Representatives discussed at length the proposed change to the ERCOT Bylaws contained in the August 10 version of proposed Bylaws amendments considered by the HR&G Committee at its August 18 meeting which would limit the eligibility to serve as TAC Chair or Vice Chair to TAC Representatives who are also employees of ERCOT Members. TAC believes the change is unnecessarily restrictive, creates unintended complications, and does not provide clear governance benefits which cannot be achieved through other, more targeted means.

TAC discussed the challenges inherent for the representative of any market participant to serve in any leadership position in the ERCOT stakeholder process and noted that while all Committee, Subcommittee, Work Group, and Task Force chairs and vice chairs are expected to argue the position of their employers or clients, stakeholder leaders are also obligated to fairly and impartially perform their ministerial functions of planning meeting agendas, conducting orderly meetings, and reporting the discussions and actions of their respective stakeholder groups up through the TAC process and, ultimately, to the Board of Directors. TAC notes that procedures are already in place for TAC and its subcommittees to address any deficiencies in the execution of these ministerial functions by electing new leadership and further notes that the ERCOT Bylaws already grant the Board of Directors the ability to reject TAC's choice of Chair and/or Vice Chair by denying confirmation following election by the TAC.

TAC suggests the proposed change ignores an evolving reality in the marketplace where ERCOT Members are increasingly choosing to engage external resources – consultants and attorneys – to represent them in the ERCOT stakeholder process rather than dedicating their



own internal resources to the effort. TAC does not believe these duly appointed representatives are any less worthy or capable of performing the duties of stakeholder leadership than the internal resources dedicated by Members to the stakeholder process. TAC further notes that the term “employee of a Member,” is perhaps more restrictive than the author of the proposed amendment realizes. Although TAC currently has three Representatives who are external resources of an ERCOT Member, several other current TAC Representatives are not technically employees of ERCOT Members but rather are employees of an ERCOT Member subsidiary or affiliated company. TAC is concerned that the proposed change, or some variation on this theme, is encroaching on the management decisions of ERCOT Members and beginning to dictate how they will be allowed to engage the ERCOT stakeholder process.

TAC further notes that the proposed Bylaws amendment either permanently prohibits the Residential Consumer Representative from ever serving in a TAC leadership position or requires the Office of Public Utility Counsel (OPUC) to dedicate a second employee to participate at TAC (since OPUC appoints the Residential Consumer Representative and OPUC also has an *ex-officio* seat on the TAC) if the Public Utility Counsel ever desired the appointed Residential Consumer Representative to seek the position of TAC Chair or Vice Chair. As with the broader discussion above of utilizing external resources, TAC reiterates this is a resource management decision appropriate to OPUC, not to ERCOT Corporate Members through the ERCOT Bylaws.

Finally, TAC discussed at length that principles of good governance require transparency and that the ERCOT Board needs confidence that the interests of all individuals who appear before them, including the TAC leadership, should be clearly known. Furthermore, TAC noted that in many meetings throughout the stakeholder process, it has not always been clear which entities are represented by individuals who are not direct employees of ERCOT Members. TAC notes that Section 9.2 of the ERCOT Bylaws already places an affirmative duty on all ERCOT Directors and Representatives of TAC and its subcommittees to disclose any conflict of interest on a matter pending before the relevant body. To supplement the existing disclosure requirement in the ERCOT Bylaws, on September 3 TAC amended the TAC Procedures to require that all individuals participating in any meeting of TAC, its subcommittees, or any work groups or task forces thereunder, shall disclose the entity or entities on whose behalf the individual is participating. TAC believes uniform adherence to this requirement will increase transparency and address the concern that the interests of outside consultants or attorneys were not always known to all meeting participants under the previous practice.

TAC appreciates the courtesy of the HR&G Committee to seek TAC input on proposed changes to the ERCOT Bylaws prior to the development of a recommendation to the full Board and hopes these comments and the recent action of TAC to amend its own procedures will be considered in your deliberations. TAC takes no position at this time on any other proposed changes to the Bylaws.

Conclusion/Recommendation:

For the reasons stated above, TAC recommends the proposed revision to Bylaws Section 5.1(g)



be removed from further consideration and not recommended to the ERCOT Board for recommendation to ERCOT Members.