

**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

September 14, 2009

**Directors**

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

**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  
 Betty Sachnik, Texas RE Executive Assistant  
 Sarah Hensley, Texas RE Standards Coordinator  
 Judith James, Texas RE Reliability Standards Manager  
 Tony Shiekhi, Texas RE Compliance Stakeholder Manager  
 Nancy Capezzuti, ERCOT ISO VP & CAO  
 Eric Goff, Reliant Energy  
 Chuck Manning, ERCOT ISO Chief Compliance Officer  
 Mark Bruce, MJB Energy Consulting  
 Melissa Dehler, PUC  
 DeAnn Walker, CenterPoint Energy

Jennifer Windler, LCRA  
Tom Burke, Luminant  
Kip Fox, AEP  
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 on September 14, 2009. Chair Jan Newton ascertained that a quorum was present, reviewed the Antitrust Admonition with the Directors, and called the meeting to order at approximately 12:45 p.m.

### **Approval of Previous Minutes**

**Mark Armentrout made a motion to approve the minutes of the August 17, 2009 Board meeting; A.D. Patton seconded the motion. The motion passed by voice vote, with three abstentions by Charles Jenkins, Robert Thomas, and Nick Fehrenbach.**

### **CEO Report**

CEO Larry Grimm informed the Committee that the North American Electric Reliability Corporation (NERC) Board of Trustees approved Texas RE's 2010 Business Plan & Budget including the supplemental budget for Technical Feasibility Exceptions (TFEs) approved by the Board on August 20, 2009.

Mr. Grimm reminded the Board that registration for two Texas RE workshops (the September 23rd Standards and Compliance Workshop and the September 24th Critical Infrastructure Protection Workshop) was still available through the Texas RE website ([www.texasre.org](http://www.texasre.org)).

Mr. Grimm provided an update on the status of Protocol Revision Request (PRR) 822 (Removing Access to Restricted Computer Systems, Control Systems and Facilities), and informed the Committee that the Critical Infrastructure Protection Working Group met on August 31, 2009 and revised the PRR in a manner that concerned Texas RE because:

- All language submitted by Texas RE, including the title, had been removed;
- The revised language was similar to NERC standard CIP-008;
- Exempts all entities that have not identified critical cyber assets (approximately 180 entities were exempted in ERCOT and only approximately 41 were included; and
- Reports of deficiencies to Texas RE were required, but "shall be considered informational in nature and shall not constitute an admission of legal liability.

Mr. Grimm informed the Board that the Reliability and Operations Subcommittee (ROS) voted to approve the revised PRR 822 (1 abstention from the IOU segment) at its September 10, 2009

meeting and that PRR 822 will set to be voted on at the Protocol Revisions and Subcommittee (PRS) at the meeting on Thursday, September 17<sup>th</sup>.

Michehl Gent expressed dissatisfaction that PRR 822 is now a near duplication of NERC Reliability Standard CIP-008. Mr. Gent explained that CIP- 008 is unacceptable and inadequate and had been pronounced as such by Federal Energy Regulatory Commission (FERC). In response to Mr. Gent's question on whether or not the stakeholders were aware of the NERC activities relating to cyber security, Mr. Grimm responded that most should be aware, because the stakeholders receive NERC cyber security updates from ERCOT ISO's Jim Brenton. Chair Newton noted that the Board had requested that market participants work on a PRR that would require tighter control on access termination, but the revised PRR was not as stringent as was requested by the Board. Mark Bruce explained that because PRR 822 was on the PRS agenda for Thursday and eligible to be declared urgent, it could be on the ERCOT ISO Board agenda for next month if it passed in PRS. In response to Robert Thomas' question about whether Texas RE intended to provide comments when the PRR was before the ERCOT ISO Board for consideration, Mr. Grimm stated that Texas RE could provide comments as the PRR moves forward through PRS and Technical Advisory Committee (TAC). Mr. Gent related to the Board that Texas RE needs to be relieved of this responsibility and that the PRR should now be under the responsibility of ERCOT ISO. Mr. Gent briefly discussed the FERC Order 706 requirement of immediate revocation of access privileges upon termination. Chair Newton stated that there will need to be a discussion at the ERCOT ISO Board about whether the PRR satisfies the Board's request. Dr. Patton expressed concerned about the stakeholder process on this PRR. Mr. Bruce replied that he would relate the sense of urgency on the issue to the stakeholders.

### **Operating Reports (Q&A)**

Dr. Patton discussed the non-wind and wind-only Qualified Scheduling Entity (QSE) Resource Plan Performance Metrics in the Compliance Report with Victor Barry. In response to Dr. Patton's question about whether the wind-only QSE that failed in July had implemented the required changes, Tony Shiekhi responded affirmatively that the QSE had remedied the problems and passed the metric in August. In response to Mr. Gent's question on NPRR192 which was recommended for approval by TAC, Mr. Bruce responded that it was approved and would be on ERCOT ISO Board agenda for adoption on Tuesday. Dr. Patton, Mr. Gent, and Mr. Barry discussed PRR 822, CIP-008. Mr. Gent asked who makes the judgment of what is a critical asset, and Mr. Barry explained that an entity creates and uses its own methodology for identifying any critical assets.

### **Texas RE Advisory Committee Report**

#### **Financial Report (Q&A)**

Mr. Gent provided an overview of the Advisory Committee discussions relating to the proposed Bylaws changes and explained that no financial report was included in the board packets due to the Labor Day Holiday and the timing of the Texas RE Board meeting. Mr. Gent told the Directors that Texas RE was financially in good shape and operating basically according to budget, with revenues and expenses being close to expected with a cash reserve of \$855,000 and slightly more revenues than expenses anticipated by the end of year. Mr. Gent also reminded the Board about the upcoming compliance workshops.

## **Bylaws for Separate Texas RE**

Chair Newton stated that she had hoped to present a recommendation from the Texas RE Advisory Committee relative to bylaws, but that after some healthy discussion and good recommendations concerning changes, the Advisory Committee did not have a recommendation on the bylaws this month. Chair Newton asked that Directors submit comments and asked Ms. Vincent to send out bylaws with corrections from today with due date in next week or two to be compiled and sent back out for next month's Board meeting. Chair Newton stated that another Board meeting would need to be scheduled in October to move forward and try to vote on the bylaws. Brad Cox noted that he had fundamental questions about the governance structure and that he was more than happy to review drafts and give comments. Mr. Cox informed the Board that he was operating under assumption that the way the discussions were going, he didn't feel that he could recommend the Bylaws to the membership even with the improvements discussed during the Advisory Committee.

Chairman Barry Smitherman commented that he was struggling to understand what exactly about the proposed board was causing such concern, and he noted that the feeling that the market participants were losing some element of control was what the more independent board was intended to do. Mr. Cox replied that he believed that this effort had become a referendum on independent boards and his issue was with 4 (independent)-2 (affiliated)-1 (CEO) board structure in the draft bylaws. Mr. Cox said that his personal feeling was that a hybrid board would be the best approach, and he doesn't feel 4-2-1 is a hybrid board. Mr. Cox further stated that he would not stand in the way of presenting these bylaws to the membership.

Andrew Dalton introduced an alternative proposal, changing the structure of the delegation agreement with NERC, which he thought would deal with the issue of a perceived conflict between the shared boards that should not require a Bylaws change or the creation of a new entity. Mr. Dalton suggested that the current Texas RE division of ERCOT could negotiate a partial delegation for the entire ERCOT region except for activities relating to ERCOT ISO, and NERC would be the entity that would provide all compliance and enforcement for ERCOT ISO. He said that this would allow for the governance structure to remain intact as it is today and would remove an appearance of conflict because Texas RE would not be the auditor for ERCOT ISO. Mr. Armentrout stated that it was refreshing to hear strategic comment, but there may be an issue with incident investigations that ERCOT ISO is involved in that also include market participants. In response to Mr. Armentrout's request for an opinion on Mr. Dalton's proposed alternative, Chuck Manning stated that he was not sure if it is technically feasible to redo the agreement with NERC. Mr. Dalton stated that the strength of the ERCOT region was its unique nature, and the Board would be better off focusing on that uniqueness rather than trying to fit Texas RE into a box it does not fit in well. Mr. Dalton said his proposal was a way to codify what is already going on, but would allow NERC to take over responsibility for ERCOT ISO compliance to resolve the conflict.

Mr. Espinoza asked Mr. Gent if Mr. Dalton's point would be palatable to NERC and whether it might bring the region closer to FERC and NERC oversight. Mr. Gent replied that NERC had already approved the current situation, so it would have to consider such a proposal.

Charles Jenkins stated that he generally agreed with Mr. Cox, that the separation was fine, but he had concern about the 4-2-1 board. He said that he was concerned that the member representatives committee (MRC) would not achieve the same quality of membership to provide technical input to the board. Bob Helton stated that although Mr. Dalton's suggestion could possibly work, it could also make the situation worse and it is not where he wants the end game

to be. Mr. Gent commented that the Board was considering the separation today because FERC staff wants it that way, but FERC staff could change their minds tomorrow. Mr. Helton stated that Mr. Dalton's suggestion would be a difficult to implement because NERC could just say no and implementing this solution might affect the auditing of the market participants.

Chair Newton recapped the discussion and said that since the votes at the prior board meeting were the framework of the draft Bylaws, she wanted to confirm that there was still consensus on the following topics:

- Separate board from ISO board (ex-officios excluded from this requirement)
- Hybrid board instead of fully independent board
- Texas RE would stop performing Protocol compliance

The Directors indicated their consensus with these items.

Mr. Cox stated that the ReliabilityFirst (RFC) board has good stakeholder representation, with three independent directors and 11 market participant directors. He also noted that if this type of a board were used, the MRC may not be necessary. Mr. Cox noted that the membership of a new Texas RE entity may not be the same as corporate members of ERCOT and may choose, down the line, a different governance structure; so, whatever is approved can always be changed.

Clifton Karnei stated that he supports the 4-2-1 structure and would recommend that the cooperative group to support it. Mr. Smitherman noted that it appeared that the Board is in agreement on everything except the number of Directors, and the Directors would need to be careful in heading toward a large board because of the costs. Dr. Patton stated that there would not be a need for a compliance committee with the 4-2-1 structure because the majority is independents and would deal even-handedly with compliance issues.

Mr. Grimm stated that he had talked to his counterpart at RFC about their board, but noted that RFC and many other regions had both compliance and stakeholder responsibilities, whereas ERCOT has the stakeholder responsibilities in the ERCOT region (such as the Technical Advisory Committee and its subcommittees). Mr. Grimm reminded the Board that Texas RE board was only going to be dealing with compliance issues, which would be similar to RFC's compliance committee, which is comprised of three independent directors and two affiliated directors. Mr. Helton stated he agreed with Mr. Grimm and that because it is a statutory compliance entity only, he didn't have a problem with the number of directors being small. Mr. Grimm noted that RFC is going to a 4 independent structure so they can make sure they always have a quorum. Steve Bartley stated that he is supportive of hybrid board. Chair Newton stated that ultimately she wanted to take a vote on the proposal on the table.

Mr. Jenkins stated he was fine with small hybrid board but, that his concern was hinged on the idea that we'd have an effective MRC. Dr. Patton asked Chairman Smitherman about Commissioner Donna Nelson's comments last month that having a hybrid board might cause discomfort with the legislature. Mr. Smitherman said that this was his first time hearing that, but the bottom line is whatever the Board does needs to be easily explainable to the Legislature and more independence is normally perceived by the Legislature as better than less independence.

Chairman Smitherman further stated that one way to justify a hybrid board is it is another step in transition to a fully independent board. Dr. Patton asked if the Texas Legislature had purview over Texas RE. Chairman Smitherman said that if the Legislature asked questions of Texas

RE, it would expect answers, and Ms. Vincent noted that the PUC would still be the hearing body for Texas RE.

Mr. Gent stated he supported Mr. Jenkins' comments related to the concerns about the MRC and that he depends on stakeholder Directors on the Texas RE and ERCOT Boards for their technical expertise. Mr. Armentrout generally discussed RFC's structure and said he could support a different proposal as long as the compliance committee had a majority of independents. In response to Mr. Jenkins concerns with an inadequate MRC, Mr. Helton described the SPP ISO structure, which has a fully independent board and a members committee that meet jointly. Chair Newton reminded the Directors of the need to make a decision and move forward by taking a vote.

**Chair Newton made a motion that for purposes of the revised bylaws that the board is made up of a hybrid board, proposed 4 Independent Directors, 2 Affiliates (the chair and vice chair of MRC), the CEO of Texas RE, and the Chairman of PUC and Public Counsel from OPUC as ex-officio non-voting members. Don Ballard seconded this motion. Robert Thomas, Bob Helton, Bob Kahn, Don Ballard, Michehl Gent, Jan Newton, A.D. Patton, Miguel Espinoza, Clifton Karnei, Mark Armentrout, Steve Bartley voted in the affirmative; Nick Fehrenbach and Andrew Dalton voted against; and Charles Jenkins and Brad Cox abstained. The Motion carried.**

**Mr. Dalton made a motion that Texas RE explore his alternative proposal to not focus on legally separating the entity but instead amend the Delegation Agreement to maximize the existence of the current shared Texas RE Board. Chair Newton requested an amendment to the motion that Texas RE staff prepare a list of the pros and cons for this alternative proposal, Mr. Dalton agreed to this amendment; Mr. Gent seconded. The motion passed by unanimous voice vote.**

### **Adjournment**

Chair Newton adjourned the Texas RE Board of Directors meeting at approximately 1:59 p.m.