



## MEMORANDUM

To: Members, Human Resources and Governance Committee  
From: Mike Grable, General Counsel  
Date: 10 November 2009  
Re: Synopsis of Proposed Bylaw Revisions

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Per your request, the following are the explanations available to ERCOT Staff regarding the purpose of the various Bylaws revisions that have been proposed to date. *Please bear in mind that the Board must agree on the precise set of changes to recommend to the ERCOT Membership at this month's Board meeting.*

**The following proposed edits are unchanged from October:**

Article 2, Paragraph 3. Nick Fehrenbach proposed these edits based on his experience representing a Member of the Commercial Consumer Segment and as a Director.

Various Edits to Articles 2, 3, 4, 5 and 14. These edits surrounding the voting requirements for the Corporate Members, for the Board, and for the Technical Advisory Committee (TAC) are unchanged from October 2009. The October 2009 changes were minor (e.g., deletion of language around whether absences affect voting percentages that was superfluous to begin with). The pre-October changes included: (1) to group together all-purpose definitions around terms like "Eligible Voting Director," at Andrew Dalton's suggestion; and (2) to change the minimum absolute voting number required to be 50% of the Board, at Mark Armentrout's suggestion. As you may recall, I originally proposed this group of edits for three reasons: (1) to clarify language that is currently susceptible to multiple interpretations regarding how many affirmative votes are required for the Board to approve an action (the most problematic current phrase is "eligible voting Director," which could mean a Director who is actually voting on that issue either in person or by proxy, or could also mean a Director other than the non-voting Chair of the Public Utility Commission); (2) to end a discrepancy between the minimum number of votes required when an abstention is registered versus the minimum number of votes required when there are no abstentions; and (3) to move language governing quorum and proxy rules for meetings of the Corporate Members, the Board, Board Committees, TAC and TAC subcommittees out of Article 14 (Miscellaneous Provisions) and into the various Articles that explicitly govern such meetings. It is not reasonable to group such provisions into the rules of construction at the end of the bylaws, rather than in the existing sections that govern each type of meeting.

Article 3, Section 3.4. Mr. Fehrenbach proposed this edit to sync with his proposed revised definition of "Commercial Consumers" in Article 2, Paragraph 3.

Article 3, Section 3.7(c). I proposed this edit because of the expense and burden of preparing hard-copy notice to the Members, when email seems to be an acceptable manner of giving notice.

Article 3, Section 3.7(e); Article 4, Section 4.7(c); and Article 5, Section 5.1(c). Mr. Fehrenbach proposed eliminating the language indicating that absences do not decrease the number of votes required for action in Sections 3.7(e), 4.7(c) and 5.1(c) to eliminate confusion on voting items.

Article 4, Section 4.3(a)(1). Mr. Fehrenbach proposed this edit to sync with his proposed revised definition of “Commercial Consumers” in Article 2, Paragraph 3.

Article 4, Sections 4.3(a)(3) and 4.7(b); and Article 5, Section 5.1(c). I proposed this edit to change voting-requirement language from “sixty-seven percent (67%)” to “two-thirds” in Sections 4.3(a)(3), 4.7(b), and 5.1(c).

Article 4, Section 4.3(f). I proposed this edit because of the need to strictly control Director and Segment Alternate participation in the stakeholder process so that no one inadvertently triggers a broadcast requirement in light of the recent revisions to the Public Utility Regulatory Act that require broadcast of any subcommittee of the Board on which a Director sits as a member.

Article 5, Section 5.1(g).<sup>1</sup> Chairman Newton agreed to this revision pursuant to guidance provided by the H.R. & Governance Committee at its September 2009 meeting after considering the memorandum provided by the Technical Advisory Committee.

Article 5, Section 5.4. Kent Saathoff proposed this edit to reflect the evolution of NERC Committee appointments, which should be made through TAC for those committees that are appointed according to NERC regions. TAC’s role in electing representatives is not governed by whether or not NERC “requests” TAC involvement.

Article 10, Section 10.1(c). Mark Dreyfus proposed this edit to remove an outdated reference to the TNT group.

**Meanwhile, the following proposed edits have been revised since October:**

Article 4, Section 4.3(b)(2)(ii). Nick Fehrenbach proposed these edits in August 2009 based on his view that “Market Participant” includes any entity that qualifies for ERCOT members, and all businesses located in the ERCOT service area qualify for membership, then the present Bylaws disqualify anyone who has worked in the ERCOT region during the past two years.<sup>2</sup> In October 2009, the H.R. & Governance Committee suggested that Section 4.3(b)(2)(ii)(a) should be modified to exclude employees of Market Participants or their Affiliates from independence limitations and that Section 4.3(b)(2)(ii)(b) should be further modified to narrow the independence limitation to those employees of ERCOT Members or NERC-Registered Entities.

Article 10, Section 10.1(b). In August 2009, Nick Fehrenbach proposed this edit to add a reimbursement policy for Unaffiliated and Consumer Directors’ travel costs in attending Board meetings. He has expressed concern that potential Consumer Director candidates may be dissuaded from seeking to join the Board due to the financial commitment that is currently required. Alan Lieberman, a tax law specialist with the law firm of Shipman & Goodwin, LLP, who is ERCOT’s outside tax counsel, further changed this provision to clarify that expenses are only to be reimbursed pursuant to a properly documentable plan. I further changed this provision at the H.R. & Governance Committee’s request to delete Consumer Directors from expense reimbursements.

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<sup>1</sup> Reference is to the section as modified; the section is 5.1(e) under the existing Bylaws.

<sup>2</sup> Mr. Fehrenbach recognizes that ERCOT Legal has a different view on what the word “qualifies” must mean.

**Finally, the following are newly proposed edits:**

Entire Document - Texas Regional Entity References. In accordance with the Board's direction at the October 2009 Board meeting, I have highlighted all proposed deletions throughout the Bylaws in the event that it is determined that Texas Regional Entity shall be a separate legal entity from ERCOT and that the Federal Energy Regulatory Commission decides to terminate the existing Delegation Agreement.

Article 3, Section 3.3. Mr. Lieberman proposed these changes to emphasize the exempt purpose of ERCOT. Such changes are appropriate regardless of whether a 501(c)(3) application is filed.

Article 3, Sections 3.4, 3.6(b), 3.6(c) and 3.9. Mr. Lieberman proposed changing the reference from Annual Member Service Fees to Annual Member Dues to conform to ERCOT's historical reports and references on its prior Internal Revenue Service Forms 990. He additionally modified the Section to provide that it is only the Board that can grant a waiver of the dues payment to expressly designate who has authority to grant the waiver. Conforming changes regarding the characterization of the payments as dues were made to Sections 3.6(b), 3.6(c) and 3.9.

Article 4, Section 4.3(c). I proposed this revision to eliminate an outdated, historical reference to the seating of Unaffiliated Directors in 2005.

Article 4, Section 4.4. Mr. Lieberman proposed eliminating an outdated, historical reference to the fact that, prior to September 1, 2006, the Chair could have been someone other than an Unaffiliated Director.

Article 4, Section 4.9. I proposed a correction to the North American Electric Reliability Corporation (NERC) corporate name. Michehl Gent, ERCOT Board Vice Chair and Unaffiliated Director, suggested modifying the reference to the now defunct NERC Stakeholder Committee to address NERC successor membership committees.

Article 4, Section 4.10. Mr. Lieberman proposed revising this section to emphasize the exempt purposes of ERCOT and make express the reference to an audit be conducted by an independent public accounting firm.

Article 9, Section 9.2. Mr. Lieberman proposed revising this section regarding potential conflicts of interest to include Segment Alternates, particularly in light of the Segment Alternates' right to vote in the absence of a director. In addition, Mr. Lieberman proposed revising this section to provide explicitly that attendance at a meeting should not constitute "participation" only if the affected individual properly recuses himself or herself from the portion of the meeting devoted to the discussion or action on the particular issue which gives rise to a conflict.

Article 9, Section 9.3. Mr. Lieberman proposed expanding the list of prohibited acts to include a violation of ERCOT's Articles of Incorporation and changed the reference from ERCOT's "business" to its "exempt purposes."