

**Date:** December 4, 2009  
**To:** Texas RE Board of Directors (Board)  
**From:** Larry Grimm, Texas RE CEO and CCO  
**Subject:** Approval of Bylaws and Delegation Agreement for Separate Texas RE

**Texas Regional Entity Board of Directors Meeting Date:** December 14, 2009  
**Agenda Item No.:** 5c

**Issue:**

Approval of Bylaws and Delegation Agreement for Texas Reliability Entity, Inc., the new independent corporation which is being formed to take over as the successor regional entity for the ERCOT region, and recommendation of Initial directors.

**Background/History:**

At the October 19, 2009 Board meeting, the Board voted to approve Bylaws for the new Texas RE corporation (these approved Bylaws are attached hereto as Exhibit A), to allow Texas RE to draft an Amended Delegation Agreement based upon those Bylaws and to submit the Bylaws and Amended Delegation Agreement to North American Electric Reliability Corporation (NERC) and the Federal Energy Regulatory Commission (FERC) for approval of a new Texas RE corporation (now referred to as Texas Reliability Entity, Inc. or "New Texas RE") as the successor regional entity for the ERCOT region.

After the October Board meeting, Texas RE staff prepared a draft Amended and Restated Regional Delegation Agreement between New Texas RE and NERC (New Delegation Agreement), based upon the approved Bylaws. Texas RE posted the Bylaws and the draft Delegation Agreement for stakeholder comments on October 30, 2009. After receiving comments, Texas RE posted the documents with requested revisions on November 17, 2009.

Several changes have since been made to the Bylaws (and to the New Delegation Agreement), based upon comments by stakeholders and NERC. The current draft of the New Delegation Agreement is attached hereto as Exhibit B, and a redlined version of the Bylaws showing all changes made since the Board's approval is attached hereto as Exhibit C.

A. Bylaws Changes

On November 24, 2009, Texas RE held a "straw" or pre-membership meeting with potential New Texas RE members. The attendees discussed requested changes to the Bylaws, including the removal of River Authorities from the Cooperative Utility Sector, specific inclusion of Distribution Providers in the Transmission Sector, and a change of the corporate name, to "Texas Reliability Entity, Inc." The attendees voted informally to accept the revised Bylaws and New Delegation Agreement as shown in Exhibit A and Exhibit B.

The primary changes to the Bylaws that were made to address comments by NERC included additional language describing actions to be taken by the formation directors (referred to as the "Initial Directors" in the Bylaws) and identification of the initial Nominating Committee (Initial Nominating Committee) to select the initial Independent Directors. At the time the Board approved the Bylaws, Texas RE thought that NERC Board of Trustees would agree to approve the New Texas RE Amended Delegation Agreement and 2010 Business Plan and Budget as

approved by the current Texas RE Board (particularly if the New Texas RE membership also formally approved the Bylaws). However, the NERC Board of Trustees requires that the Board of New Texas RE formally approve the Bylaws, new Amended Delegation Agreement, and Amended 2010 Business Plan and Budget of New Texas RE before NERC will approve and submit the documents to FERC for approval.

New Texas RE quickly needs to identify Initial Directors that will form the corporation and have at least one meeting to formally approve the New Texas RE Bylaws, New Delegation Agreement, and Amended 2010 Business Plan and Budget. Because New Texas RE Initial Directors will probably not qualify as Independent Directors, language was added to Article VI Section 3 to allow the Initial Board to conduct administrative business (including the approval of contracts and budgets) prior to having three Independent Directors.

In addition, because the Initial Directors will hold at least one meeting before Independent Directors were approved, language was added to Article IV Section 2(c) of the Bylaws to set forth the composition of the Initial Nominating Committee, as follows:

“The Initial Nominating Committee will consist of the Initial Directors except the Management Director (as defined in Article IV, Section 3), and at least two other persons selected by these Initial Directors to represent the interests of the Membership.”

Most of the other modifications to the Bylaws requested by NERC's counsel are primarily clarifications. If any additional modifications are requested or required by NERC or FERC at or after the December 7, 2009 pre-filing meeting, Texas RE staff will discuss these modifications with the Board at the December 14, 2009 meeting. No other requested modifications are known at this time.

#### B. Delegation Agreement Differences

The primary differences between the approved current Texas RE Amended and Restated Regional Delegation Agreement and the New Delegation Agreement are due to the governance changes that are set forth in the new Texas RE Bylaws. The primary changes are that New Texas RE is not affiliated with any registered entity and has different membership Sectors than current Texas RE. It also has a different group of hybrid directors.

The Hearing Process, which is included in Exhibit D and Attachments 1 and 2 to the New Delegation Agreement, has only been slightly modified to have the PUCT, as the hearing body, submit its recommendation to the New Texas RE board of directors (or a committee thereof), instead of to the New Texas RE CEO. The Standards Development Process (Exhibit C to the Delegation Agreement) has some intended efficiency improvements and it now includes the required quorums and voting mechanisms for the Standards Development Committee as well as the Ballot Body (which were previously included in procedure documents).

#### C. Initial Director Recommendation

Time is of the essence for the selection of Initial directors. In order for the NERC Board of Trustees to approve the New Texas RE Bylaws, New Delegation Agreement, and Amended 2010 Business Plan and Budget at or before its February 16, 2010 meeting (for filing with FERC near the end of February), the New Texas RE Initial Directors will need to be selected to form New Texas RE in early January, and the Initial Directors will need to schedule and hold a meeting before the end of January to approve the required documents and to establish a Nominating Committee to screen and select new Independent Directors.

It will likely not be possible to select three new Independent Directors to serve as the Initial Directors and meet the planned time schedule. Texas RE staff proposes that, subject to approval by NERC and by FERC staff at the pre-filing meeting, New Texas RE form the new corporation with the following four directors: Larry Grimm as the CEO of Texas RE and three current Texas RE Unaffiliated Directors. Texas RE staff suggests that the Board Chair, Advisory Committee Chair, and Miguel Espinosa, as the Director with financial expertise, be recommended to serve as the Initial Directors. If NERC or FERC do not allow current Directors to serve as the Initial Directors, Texas RE staff will locate different Initial Directors.

Texas RE respectfully requests that the Board approve the revised Bylaws, as set forth in Exhibit A, and the New Delegation Agreement, as set forth in Exhibit B, and recommend Initial Directors for New Texas RE.

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**Key Factors Influencing Issue:**

Desire to have the current Texas RE Board approve the revised Bylaws and New Delegation Agreement and to recommend formation Directors to allow Texas RE staff to have its required documents formally approved in time for the February NERC Board of Trustees meeting.

**Alternatives:**

- Approve the revised Bylaws and New Delegation Agreement
- Suggest modifications to the Bylaws or New Delegation Agreement
- Recommend Initial Directors

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**Conclusion/Recommendation:**

Texas RE respectfully requests that the Board (1) approve the revised Bylaws attached hereto as Exhibit A; (2) approve the New Texas RE Delegation Agreement attached hereto as Exhibit B; and (3) recommend Initial Directors for New Texas RE.

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

, 2009

WHEREAS, the Board of Directors of Texas Regional Entity, a division of the Electric Reliability Council of Texas, Inc. (Board), a Texas non-profit corporation, has determined it to be desirable and in the best interest of Texas Regional Entity to approve the Bylaws which are attached hereto as Exhibit A, for a legally separate new corporation named Texas Reliability Entity, Inc. to become the successor regional entity for the ERCOT region; and

WHEREAS, the Board has determined it to be desirable and in the best interest of Texas Regional Entity to approve the Amended and Restated Regional Delegation Agreement between Texas Reliability Entity, Inc., and North American Electric Reliability Corporation (New Delegation Agreement), which is attached hereto as Exhibit B; and

WHEREAS, the Board agrees that it is in the best interest of Texas Regional Entity for the following individuals to serve as the formation directors or "Initial Directors" of Texas Reliability Entity, Inc.: (1) Larry Grimm as Chief Executive Officer; (2) \_\_\_\_\_; (3) \_\_\_\_\_; and (4) \_\_\_\_\_.

THEREFORE be it RESOLVED, that the Board hereby approves the Bylaws which are attached hereto as Exhibit A and incorporated herein for all purposes; and

Be it further RESOLVED, that the Board hereby approves the New Delegation Agreement which is attached hereto as Exhibit B and incorporated herein for all purposes; and

Be it further RESOLVED that the Board hereby recommends the following individuals to serve as the Initial Directors of Texas Reliability Entity, Inc.:

1. Larry Grimm as Chief Executive Officer;
2. \_\_\_\_\_;
3. \_\_\_\_\_; and
4. \_\_\_\_\_.

CORPORATE SECRETARY'S CERTIFICATE

I, Susan Vincent, Corporate Secretary of Texas Regional Entity, do hereby certify that, at the December 14, 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

**BYLAWS**  
**OF**  
**TEXAS RELIABILITY ENTITY, INC.**

(A Texas Non-Profit Corporation)

Approved on \_\_\_\_\_, 2010

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## ARTICLE I. DEFINITIONS

**Section 1. Definitions.** The capitalized terms used in these Bylaws of Texas Reliability 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 entity controlling, controlled by or under common control with the entity under consideration, and includes any entity (i.e., any commercial enterprise) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. 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 or having 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) “Initial Director” means a Director named in the Certificate of Formation and seated for formation of the Corporation.

(k) “Member” means a member of the Corporation pursuant to Article III of these Bylaws.

(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) “PUCT” means the Public Utility Commission of Texas.

(o) “OPUC” means the Texas Office of Public Utility Counsel.

(p) “Regional Entity” means an entity with a Delegation Agreement with NERC, as ERO, including the following organizations, in addition to Texas Reliability 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).

(q) “Regional Reliability Standard” means a standard for the ERCOT Region that is proposed and approved in accordance with the Texas RE Standards Development Process, as set forth in Exhibit C to the Delegation Agreement, and either, (i) sets more stringent reliability requirements than a national Reliability Standard, or (ii) covers matters not covered by a national Reliability Standard.

(r) “Registered Entity” means an entity that is registered with NERC and listed on the NERC Compliance Registry (available at [www.nerc.com](http://www.nerc.com)).

(s) “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.

(t) “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.

(u) “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; 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 Business Organizations Code.

**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 only to any 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 entity that is eligible to be a Member of the Corporation in accordance with Article III, Section 1 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, 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 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.

**Section 4. Membership Sectors.** Each Member shall elect to be assigned to one of the following membership Sectors:

(a) **System Coordination and Planning:** An entity that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), or Interchange Authority (IA).

(b) **Transmission and Distribution:** An entity that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), Transmission Service Provider (TSP), Distribution Provider (DP), and/or Transmission Operator (TOP) and is not a Cooperative or Municipal Utility.

(c) **Cooperative:** An entity that is (a) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter; or (b) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or (c) a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute and is registered with NERC for at least one reliability function.

(d) **Municipal Utility:** A municipally owned utility as defined in PURA §11.003 and is registered with NERC for at least one reliability function.

(e) **Generation:** An entity that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).

(f) **Load-Serving and Marketing:** An entity that is registered with NERC as a Load Serving Entity (LSE), a Purchasing-Selling Entity, or any newly defined NERC reliability function for demand response.

## **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.

(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. Any disputes regarding appropriateness of a Member's Sector will be decided by a majority vote of the Board.

(d) A company or entity that is an Affiliate of a Member may hold a separate membership in a different Sector, so long as the legal entities have different NERC Compliance Registry Numbers under which they are currently registered for the applicable NERC reliability function.

(e) A Member must continue to vote in the same Sector for a minimum of the remainder of the fiscal year in which it becomes a Member 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 which 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.

**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 of the Corporation, 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 entity 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) four (4) 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 OPUC (or another employee of OPUC designated by Texas Public Counsel), as an *ex officio* non-voting member, representing the interests of residential and small commercial electricity consumers; (iv) the CEO of the Corporation as a voting member (the "Management Director"); (v) the chair of the Member Representatives Committee as a voting member; and (vi) the vice chair of the Member Representatives Committee as a voting member. The Directors who are the chair and vice chair of the Member Representatives Committee will be collectively referred to herein as "Affiliated Directors." Each Director, including the Affiliated Directors and 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, including ERCOT ISO, and 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 status 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 Directors named as Initial Directors will serve only until the first membership meeting of the Corporation at which Independent Directors are elected. If an Initial Director is qualified to be an Independent Director and elected by the membership, such Director's term as an Initial Director shall not be counted for purposes of term limits. For the originally elected Independent Directors, two positions will have three year terms, one position will have a two year term, and one position will have a one year term. The term for the Affiliated Directors who are chair and vice chair of the Member Representatives Committee shall be one year, and the terms of the *ex officio* Directors will not expire.

(c) Selection.

(1) Except for the selection of the Initial Directors, 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. Except for the original Nominating Committee appointed by the Initial Directors ("Initial Nominating Committee"), the Nominating Committee shall consist of all Independent Directors except those whose terms expire during the current year and are seeking re-election and Affiliated Directors and such other persons with such qualifications as the Board shall specify (provided that such other persons may not vote), provided that the Independent Directors shall constitute a majority of the voting members of the Nominating Committee. The Initial Nominating Committee will consist of the Initial Directors except the Management Director (as defined in Article IV, Section 3), and at least two other persons selected by these Initial Directors to represent the interests of the Membership. The PUCT Chair may choose to participate on the Nominating Committee. If any Nominating Committee should have only two eligible Independent Directors for any reason, the requirement that Independent Directors must constitute a majority of the voting members will be removed to allow both Affiliated Directors to participate on the Nominating Committee. The Nominating Committee may retain an executive search

firm to locate and present candidates with the required qualifications, as set forth in Article IV, Section 2(a).

(2) 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 shall reflect 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.

(3) The Membership shall vote by Sector as described in Article V in favor or against the proposed Independent Director(s). A proposed Independent Director who 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. The chair and vice chair of the Member Representatives Committee may designate each other or may designate an Independent Director as their proxy if unable to attend a Board meeting.

**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 and Vice Chair shall each be one of the Independent Directors.

**Section 5. Vacancies and Removal.**

(a) 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 as follows:

(1) For an Independent Director, by the election of a new Independent Director at the next annual election of Directors to fill the remainder, if any, of the term of the departed Independent 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 Independent Director.

(2) For the Management Director, by the appointment of a new CEO or interim CEO to fill the vacancy.

(3) For an ex officio Director, by the appointment of a new PUCT Chair or Texas Public Counsel by whomever had the right to appoint such Director.

(4) For an Affiliated Director, by the election of a new chair or vice chair, as applicable, by the Member Representative Committee.

(b) 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 any voting 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 Directors, 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 to elect 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.**

(a) 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.

(b) Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws, or applicable law, Members shall vote by Sector and each Sector shall have one vote.

(c) 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 Sectors of the Corporation at a meeting 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, during, 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 to an email distribution list to which Members may subscribe and by posting on the Corporation 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 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. The results of such voting will be posted on the Corporation's website.

**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. The results of any action taken without a meeting, as described above, will be posted on the Corporation's website.

## **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.**

The Board consisting of the Initial Directors ("Initial Board") may conduct only organizational business of the corporation, including but not limited to approving these Bylaws, authorizing the opening of a bank account, appointing officers, approving the Delegation Agreement and reviewing and approving the Corporation's business plan and budget. The quorum necessary for transaction of business by the Initial Board shall be a majority of the Initial Directors, either in person or by proxy, at meetings at which a quorum is present. Thereafter, 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 at least three Independent Directors, and (ii) actions by the Board shall be deemed 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 but in no case less than four votes.

**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 and at least ten (10) business days prior to the scheduled meeting; provided however that the Board may meet on urgent matters on such shorter notice, not less than two (2) hours, as the person(s) calling such meeting may deem necessary for appropriate for urgent matters (emergency conditions threatening health or safety or a reasonably unforeseen situation). 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, during, 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 and sent via email to an email distribution list to which Members and the public may subscribe 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 meeting held in accordance with Article VI 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 the removal of all Officers shall be confirmed by the Board. The Management Director shall not participate in votes electing, approving, or removing Officers. 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 ("CEO").** 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.

**Section 5. Vice Presidents.** The CEO may select such other Corporate officers as he or she deems appropriate, subject to Board approval. Any such officer shall perform such other duties and possess such 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 COMMITTEE**

**Section 1. Requirement.** The Corporation shall have a Reliability Standards 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 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 Member Representatives Committee shall provide its advice and recommendation to the Board through its chair and the vice chair, who also serve as the Affiliated Directors on the Board. 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, through its elected chair and vice chair.

**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. 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 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.

(d) A Sector may elect an Alternate to serve in place and at the convenience of the Sector's Member Representatives Committee Representative(s) in the event a Member Representatives Committee Representative cannot attend a Member Representatives Committee meeting.

**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 and be the Affiliated Directors on the Board. The selected chair and vice chair may not be representatives of the same Sector and may not concurrently serve on the Board of ERCOT ISO. 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 may be 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, 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. For those Sectors that have elected an Alternate, the Alternate will fill a vacancy left by the Sector's Member Representative and a new Alternate will be elected by the Sector.

**Section 6. Meetings of the Member Representatives Committee.** The Member Representatives Committee will plan and hold quarterly meetings, at a time and place determined by the Member Representatives Committee, normally shortly before the regular meetings of the Board, 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 Representatives on 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 the presence, in person or by proxy, of two-thirds of the voting Representatives on the Member Representatives Committee entitled to attend. 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. Alternates and Proxies.** Member Representatives may designate another Member Representative or an employee of the Member Representative as a proxy if both the Member Representative and the Sector Alternate are unable to attend a Members Representative Committee meeting. 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.

**Section 10. 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 the members of 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 members to such standing committees and other committees of the Corporation that are representative of Members, other interested parties, and the public, that provide for balanced decision-making and that include persons with sufficient 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 including 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 any Management Director, Affiliated Director, or *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 his or her 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. 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 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. 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, 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 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 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 action of the Membership, as set forth below. 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. These Bylaws may be altered, amended, or repealed as follows:

(a) Any Director or Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.

(b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board and within 95 days of the request.

(c) If the proposal is approved by an act of the Board as set forth in Article VI, Section 3, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members unless the Board in its discretion calls a Special Meeting of the Corporate Members to vote on the proposal or determines to seek Membership approval without a meeting as provided in Article V, Section 4.

(d) If the proposal is not approved by the Board, the Members of the Corporation may call a meeting, pursuant to Article V, Section 1(b), for the purpose of voting on a proposal not approved by the Board. Any such proposal must be approved by a vote of five of the six Sectors at a meeting of Members called for that purpose or by written consent of five 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 V, Section 2.

### **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 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 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 is in the Corporation's best interests, and is on terms no less favorable to the Corporation than could be obtained in an arms-length transaction. 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. Engaging in 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 any of the Corporation's non-public books and records 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.

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND TEXAS RELIABILITY ENTITY, INC.**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made effective \_\_\_\_\_, 2010, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Texas Reliability Entity, Inc. (“Texas RE”), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and Texas RE may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006; (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission's regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as Texas RE provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, Texas RE is organized on an Interconnection-wide basis and therefore is entitled to the rebuttable presumptions accorded such an entity;

**WHEREAS**, NERC will work through Texas RE to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that Texas RE meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and Texas RE, agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to Texas RE to propose and enforce Reliability Standards pursuant to the Act.

(d) Texas RE Rules means the bylaws, a rule of procedure or other organizational rule or protocol of Texas RE.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

## 2. Representations.

(a) For purposes of its Delegated Authority, Texas RE hereby represents and warrants to NERC that:

(i) Texas RE is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. Texas RE is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any Texas RE decision and no single industry sector can veto any Texas RE decision. The bylaws are attached hereto as **Exhibit B**, and as so attached are in full force and effect. No other such corporate governance documents are binding upon Texas RE.

(ii) As set forth in **Exhibit C** hereto, Texas RE has developed a standards development procedure, which provides the process that Texas RE may use to develop Regional Reliability Standards and Regional Variances that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, Texas RE has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to Texas RE that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

## 3. Covenants.

(a) During the term of this Agreement, Texas RE shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the Texas RE Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the

case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and Texas RE shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

#### **4. Delegation of Authority.**

(a) Based upon the representations, warranties and covenants of Texas RE in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to Texas RE for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. Without limiting the scope of the foregoing delegation, as of the effective date of this Agreement, Texas RE is delegated authority and responsibility for continuation of all compliance monitoring and enforcement activities formerly delegated to and conducted by Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc. ("ERCOT") prior to the effective date, including without limitation: all compliance audits, spot checks, self-certifications, self-reports, compliance violation investigations, investigations of complaints, investigation and processing of possible violations and alleged violations and imposition of penalties or sanctions for violations, review, acceptance or rejection, and oversight of completion of settlement agreements with and mitigation plans of registered entities, and receipt, review, acceptance or rejection, approval or disapproval, and ongoing monitoring, of Technical Feasibility Exceptions requested by registered entities to certain Requirements of Critical Infrastructure Protection Standards. No

further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both Texas RE and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, Texas RE shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

## **5. Reliability Standards.**

- (a) In connection with its Delegated Authority, Texas RE shall be entitled to:
  - (i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords Texas RE reasonable notice and opportunity to be heard; and
  - (ii) develop Regional Reliability Standards and Regional Variances through Texas RE's process as set forth in **Exhibit C**. Proposals approved through Texas RE's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons.



Texas RE may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Texas RE shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Texas RE during NERC's review of the proposal.

## **6. Enforcement.**

(a) In connection with its delegated authority pursuant to this Agreement, Texas RE shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and Texas RE agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. Texas RE may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, Texas RE agrees to comply with the NERC Rules in implementing this program.

(b) Texas RE shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation

to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and Texas RE shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. However, any hearing conducted by the Public Utility Commission of Texas (PUCT) concerning an alleged violation in the ERCOT power region shall be conducted as a public hearing and any evidence or other submissions concerning the hearing, except for information that is confidential or privileged under law, shall be publicly available. Following the hearing, the PUCT shall issue its recommendation on the appropriate resolution of the allegations in a written document that will be publicly available. Notwithstanding the foregoing, the disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by Texas RE shall be filed with NERC, in accordance with the NERC Rules.

(e) Texas RE shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) Texas RE shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, Texas RE shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review Texas RE's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations

across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) Texas RE shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage Texas RE on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

**8. Funding.** Texas RE and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund Texas RE activities necessary for Texas RE to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon Texas RE without providing appropriate funding to carry out such mandates;

(b) Texas RE and NERC agree that costs of carrying out Texas RE's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net-energy-for load or through such other formula as is proposed by Texas RE and approved by NERC and the Commission. If Texas RE proposes to use a formula other than net energy for load beginning in the following year, Texas RE shall submit the proposed formula to NERC in

sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and Texas RE to the Commission pursuant to 18 C.F.R. §39.4, for such year.

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide Texas RE with the form for budget submittal no later than April 30 of the prior year.

(e) Texas RE shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other Texas RE activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The Texas RE budget submission shall include supporting materials, including Texas RE's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures, as well as the budget, supporting materials, and proposed allocation and method of collection for the costs of any approved regional advisory body. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. Texas RE shall follow NERC's prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) Texas RE's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve Texas RE's budget for meeting its responsibilities under the Delegation Agreement.

(h) Texas RE shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) Texas RE shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of Texas RE in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which Texas RE shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which Texas RE shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of Texas RE.

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Texas RE may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit Texas RE from contracting with other entities to assist it in carrying out its Delegated Authority, provided Texas RE retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if

such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

#### **11. Term and Termination.**

(a) This Agreement shall become effective on \_\_\_\_\_, 2010, pursuant to the \_\_\_\_\_, 2010 order of the Federal Energy Regulatory Commission (\_\_\_ FERC \_\_\_\_).

(b) The initial term of the Agreement shall be from the effective date until May 2, 2011. So long as Texas RE continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of Texas RE's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time Texas RE may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or

condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** Texas RE and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and Texas RE shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the Texas RE's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the Texas RE or NERC is found liable for gross negligence or intentional misconduct, in which case Texas RE or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

**13. No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written

permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or that issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

**15. Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

**16. Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed. To the extent Texas RE does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of Texas RE under this Agreement, Texas RE shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by Texas RE to NERC and the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.



**17. Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and Texas RE, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

**18. Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:  
 North American Electric  
 Reliability Corporation  
 116-390 Village Blvd.  
 Princeton, NJ 08540-5721  
 Attn: \_\_\_\_\_

Facsimile: (609) 452-9550

If to Texas RE:  
 Texas Reliability Entity, Inc.  
 2700 Via Fortuna, Suite #225  
 Austin, Texas 78746  
 Attn: Larry Grimm,  
 Chief Executive Officer  
 Facsimile: (512) 225-7165

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey

for the purpose of hearing and determining any action not heard and determined by the Commission.

**20. Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

**21. Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that Texas RE may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

**22. Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

**24. Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

TEXAS RELIABILITY ENTITY, INC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Larry Grimm

Title: \_\_\_\_\_

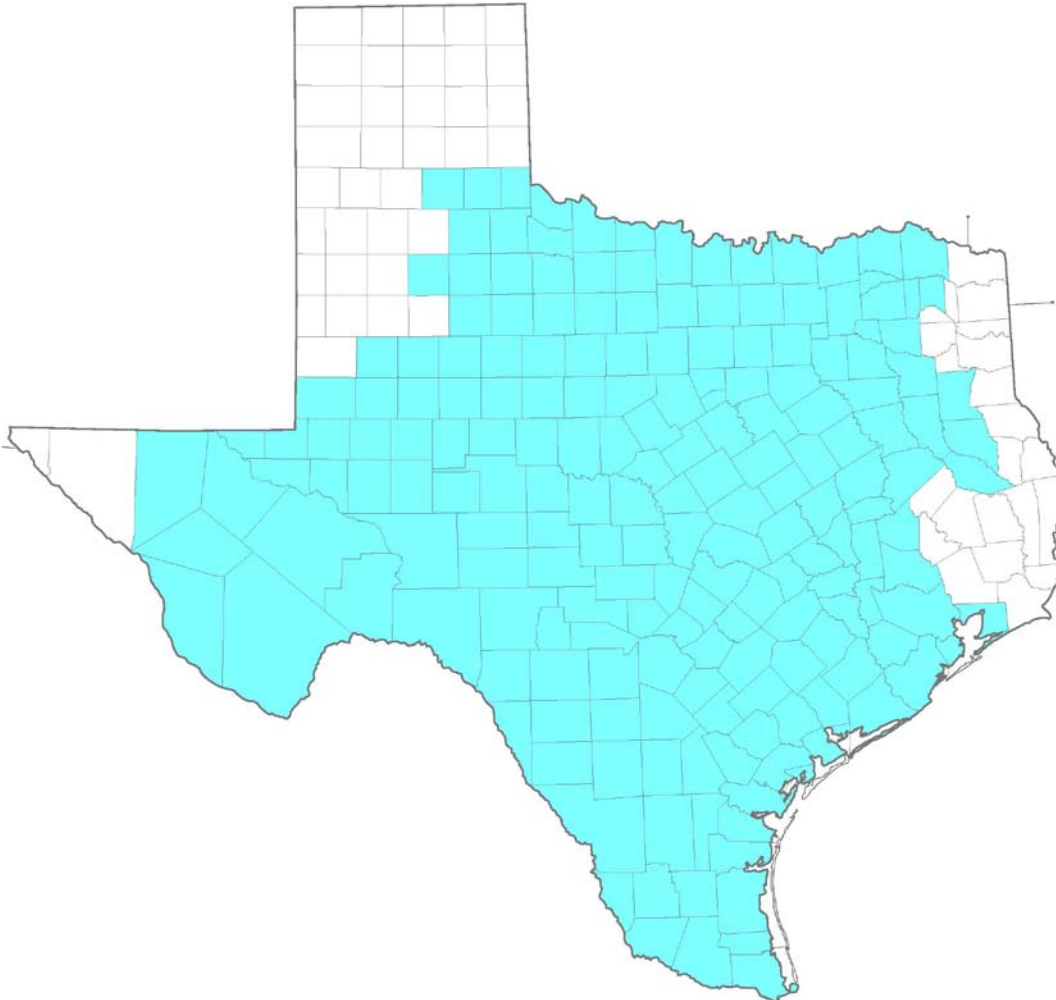
Title: Chief Executive Officer

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

**EXHIBIT A – REGIONAL BOUNDARIES**

The ERCOT Region is 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. The ERCOT Region does not interconnect synchronously across state lines to import or export power with neighboring reliability regions. The ERCOT geographic 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, as indicated on the map below.



## Exhibit B - Governance

Exhibit B shall set forth the Regional Entity's bylaws, which NERC agrees demonstrates that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

**BYLAWS**  
**OF**  
**TEXAS RELIABILITY ENTITY, INC.**

(A Texas Non-Profit Corporation)

Approved on \_\_\_\_\_, 2010

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## ARTICLE I. DEFINITIONS

**Section 1. Definitions.** The capitalized terms used in these Bylaws of Texas Reliability 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 entity controlling, controlled by or under common control with the entity under consideration, and includes any entity (i.e., any commercial enterprise) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. 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 or having 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) “Initial Director” means a Director named in the Certificate of Formation and seated for formation of the Corporation.

(k) “Member” means a member of the Corporation pursuant to Article III of these Bylaws.

(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) “PUCT” means the Public Utility Commission of Texas.

(o) “OPUC” means the Texas Office of Public Utility Counsel.

(p) “Regional Entity” means an entity with a Delegation Agreement with NERC, as ERO, including the following organizations, in addition to Texas Reliability 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).

(q) “Regional Reliability Standard” means a standard for the ERCOT Region that is proposed and approved in accordance with the Texas RE Standards Development Process, as set forth in Exhibit C to the Delegation Agreement, and either, (i) sets more stringent reliability requirements than a national Reliability Standard, or (ii) covers matters not covered by a national Reliability Standard.

(r) “Registered Entity” means an entity that is registered with NERC and listed on the NERC Compliance Registry (available at [www.nerc.com](http://www.nerc.com)).

(s) “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.

(t) “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.

(u) “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; 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 Business Organizations Code.

**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 only to any 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 entity that is eligible to be a Member of the Corporation in accordance with Article III, Section 1 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, 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 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.

**Section 4. Membership Sectors.** Each Member shall elect to be assigned to one of the following membership Sectors:

(a) **System Coordination and Planning:** An entity that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), or Interchange Authority (IA).

(b) **Transmission and Distribution:** An entity that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), Transmission Service Provider (TSP), Distribution Provider (DP), and/or Transmission Operator (TOP) and is not a Cooperative or Municipal Utility.

(c) **Cooperative:** An entity that is (a) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter; or (b) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or (c) a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute and is registered with NERC for at least one reliability function.

(d) **Municipal Utility:** A municipally owned utility as defined in PURA §11.003 and is registered with NERC for at least one reliability function.

(e) **Generation:** An entity that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).

(f) **Load-Serving and Marketing:** An entity that is registered with NERC as a Load Serving Entity (LSE), a Purchasing-Selling Entity, or any newly defined NERC reliability function for demand response.

## **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.

(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. Any disputes regarding appropriateness of a Member's Sector will be decided by a majority vote of the Board.

(d) A company or entity that is an Affiliate of a Member may hold a separate membership in a different Sector, so long as the legal entities have different NERC Compliance Registry Numbers under which they are currently registered for the applicable NERC reliability function.

(e) A Member must continue to vote in the same Sector for a minimum of the remainder of the fiscal year in which it becomes a Member 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 which 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.

**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 of the Corporation, 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 entity 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) four (4) 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 OPUC (or another employee of OPUC designated by Texas Public Counsel), as an *ex officio* non-voting member, representing the interests of residential and small commercial electricity consumers; (iv) the CEO of the Corporation as a voting member (the "Management Director"); (v) the chair of the Member Representatives Committee as a voting member; and (vi) the vice chair of the Member Representatives Committee as a voting member. The Directors who are the chair and vice chair of the Member Representatives Committee will be collectively referred to herein as "Affiliated Directors." Each Director, including the Affiliated Directors and 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, including ERCOT ISO, and 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 status 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 Directors named as Initial Directors will serve only until the first membership meeting of the Corporation at which Independent Directors are elected. If an Initial Director is qualified to be an Independent Director and elected by the membership, such Director's term as an Initial Director shall not be counted for purposes of term limits. For the originally elected Independent Directors, two positions will have three year terms, one position will have a two year term, and one position will have a one year term. The term for the Affiliated Directors who are chair and vice chair of the Member Representatives Committee shall be one year, and the terms of the *ex officio* Directors will not expire.

(c) Selection.

(1) Except for the selection of the Initial Directors, 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. Except for the original Nominating Committee appointed by the Initial Directors ("Initial Nominating Committee"), the Nominating Committee shall consist of all Independent Directors except those whose terms expire during the current year and are seeking re-election and Affiliated Directors and such other persons with such qualifications as the Board shall specify (provided that such other persons may not vote), provided that the Independent Directors shall constitute a majority of the voting members of the Nominating Committee. The Initial Nominating Committee will consist of the Initial Directors except the Management Director (as defined in Article IV, Section 3), and at least two other persons selected by these Initial Directors to represent the interests of the Membership. The PUCT Chair may choose to participate on the Nominating Committee. If any Nominating Committee should have only two eligible Independent Directors for any reason, the requirement that Independent Directors must constitute a majority of the voting members will be removed to allow both Affiliated Directors to participate on the Nominating Committee. The Nominating Committee may retain an executive search

firm to locate and present candidates with the required qualifications, as set forth in Article IV, Section 2(a).

(2) 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 shall reflect 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.

(3) The Membership shall vote by Sector as described in Article V in favor or against the proposed Independent Director(s). A proposed Independent Director who 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. The chair and vice chair of the Member Representatives Committee may designate each other or may designate an Independent Director as their proxy if unable to attend a Board meeting.

**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 and Vice Chair shall each be one of the Independent Directors.

**Section 5. Vacancies and Removal.**

(a) 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 as follows:

(1) For an Independent Director, by the election of a new Independent Director at the next annual election of Directors to fill the remainder, if any, of the term of the departed Independent 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 Independent Director.

(2) For the Management Director, by the appointment of a new CEO or interim CEO to fill the vacancy.

(3) For an ex officio Director, by the appointment of a new PUCT Chair or Texas Public Counsel by whomever had the right to appoint such Director.

(4) For an Affiliated Director, by the election of a new chair or vice chair, as applicable, by the Member Representative Committee.

(b) 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 any voting 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 Directors, 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 to elect 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.**

(a) 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.

(b) Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws, or applicable law, Members shall vote by Sector and each Sector shall have one vote.

(c) 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 Sectors of the Corporation at a meeting 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, during, 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 to an email distribution list to which Members may subscribe and by posting on the Corporation 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 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. The results of such voting will be posted on the Corporation's website.

**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. The results of any action taken without a meeting, as described above, will be posted on the Corporation's website.

## **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.**

The Board consisting of the Initial Directors ("Initial Board") may conduct only organizational business of the corporation, including but not limited to approving these Bylaws, authorizing the opening of a bank account, appointing officers, approving the Delegation Agreement and reviewing and approving the Corporation's business plan and budget. The quorum necessary for transaction of business by the Initial Board shall be a majority of the Initial Directors, either in person or by proxy, at meetings at which a quorum is present. Thereafter, 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 at least three Independent Directors, and (ii) actions by the Board shall be deemed 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 but in no case less than four votes.

**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 and at least ten (10) business days prior to the scheduled meeting; provided however that the Board may meet on urgent matters on such shorter notice, not less than two (2) hours, as the person(s) calling such meeting may deem necessary for appropriate for urgent matters (emergency conditions threatening health or safety or a reasonably unforeseen situation). 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, during, 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 and sent via email to an email distribution list to which Members and the public may subscribe 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 meeting held in accordance with Article VI 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 the removal of all Officers shall be confirmed by the Board. The Management Director shall not participate in votes electing, approving, or removing Officers. 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 ("CEO").** 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.

**Section 5. Vice Presidents.** The CEO may select such other Corporate officers as he or she deems appropriate, subject to Board approval. Any such officer shall perform such other duties and possess such 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 COMMITTEE**

**Section 1. Requirement.** The Corporation shall have a Reliability Standards 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 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 Member Representatives Committee shall provide its advice and recommendation to the Board through its chair and the vice chair, who also serve as the Affiliated Directors on the Board. 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, through its elected chair and vice chair.

**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. 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 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.

(d) A Sector may elect an Alternate to serve in place and at the convenience of the Sector's Member Representatives Committee Representative(s) in the event a Member Representatives Committee Representative cannot attend a Member Representatives Committee meeting.

**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 and be the Affiliated Directors on the Board. The selected chair and vice chair may not be representatives of the same Sector and may not concurrently serve on the Board of ERCOT ISO. 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 may be 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, 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. For those Sectors that have elected an Alternate, the Alternate will fill a vacancy left by the Sector's Member Representative and a new Alternate will be elected by the Sector.

**Section 6. Meetings of the Member Representatives Committee.** The Member Representatives Committee will plan and hold quarterly meetings, at a time and place determined by the Member Representatives Committee, normally shortly before the regular meetings of the Board, 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 Representatives on 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 the presence, in person or by proxy, of two-thirds of the voting Representatives on the Member Representatives Committee entitled to attend. 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. Alternates and Proxies.** Member Representatives may designate another Member Representative or an employee of the Member Representative as a proxy if both the Member Representative and the Sector Alternate are unable to attend a Members Representative Committee meeting. 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.

**Section 10. 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 the members of 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 members to such standing committees and other committees of the Corporation that are representative of Members, other interested parties, and the public, that provide for balanced decision-making and that include persons with sufficient 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 including 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 any Management Director, Affiliated Director, or *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 his or her 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. 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 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. 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, 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 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 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 action of the Membership, as set forth below. 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. These Bylaws may be altered, amended, or repealed as follows:

(a) Any Director or Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.

(b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board and within 95 days of the request.

(c) If the proposal is approved by an act of the Board as set forth in Article VI, Section 3, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members unless the Board in its discretion calls a Special Meeting of the Corporate Members to vote on the proposal or determines to seek Membership approval without a meeting as provided in Article V, Section 4.

(d) If the proposal is not approved by the Board, the Members of the Corporation may call a meeting, pursuant to Article V, Section 1(b), for the purpose of voting on a proposal not approved by the Board. Any such proposal must be approved by a vote of five of the six Sectors at a meeting of Members called for that purpose or by written consent of five 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 V, Section 2.

### **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 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 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 is in the Corporation's best interests, and is on terms no less favorable to the Corporation than could be obtained in an arms-length transaction. 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. Engaging in 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 any of the Corporation's non-public books and records 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.

## **Exhibit C – Regional Standard Development Procedure**

### **COMMON ATTRIBUTE 1**

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No regional reliability standard shall be effective within the Texas Reliability Entity, Inc. ("Texas RE") area unless filed by NERC with FERC and approved by FERC.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Standards Development Process (Process) – Introduction, 4th ¶:

Proposed Texas RE-Specific Standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Texas RE area unless filed by NERC with FERC and approved by FERC.

### **COMMON ATTRIBUTE 2**

Texas RE regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A Texas RE reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See TRE Process – Introduction, 5th ¶:

Texas RE-Specific Standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A Texas RE-Specific Standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A Texas RE-Specific Standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards,

and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### **COMMON ATTRIBUTE 3**

Texas RE regional reliability standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Introduction, 6th ¶:

Texas RE-Specific Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

### **COMMON ATTRIBUTE 4**

**Requester** — The requester is the sponsor of the regional reliability standard request may assist in the development of the standard. Any member of Texas RE, or group within Texas RE shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the Texas RE area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Roles in the Texas RE Reliability Standards Development Process, 1st ¶ - Originator:

**Originator** - Any person, acting as a representative of an organization which is directly and materially affected by the operation of the ERCOT region BPS, is allowed to request a Standard be developed or an existing Standard modified, or deleted, by creating a Standards Authorization Request (SAR) as described in Appendix B to this document.

### **COMMON ATTRIBUTE 5**

**[Standards or other named] committee** — The Texas RE [standards] committee manages the standards development process. The [standards] committee will consider

which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the Texas RE board on standards presented for adoption.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Section IV – Roles in the Texas RE Reliability Standards Development Process – 5th ¶ - Reliability Standards:

**Reliability Standards Committee (RSC)** – A balanced committee comprised of the six (6) Texas RE Standard Development Sectors. The RSC will consist of two representatives from each Sector (except that Sectors with only one member may only have one representative), as elected by the Sector, and the RSC requires a quorum of at least one representative from at least two-thirds (2/3) of the Sectors to take action. The RSC in coordination with the Reliability Standards Manager will review, participate in, and manage the Texas RE Regional Standards Development Process, and develop Texas RE Regional Standards on a schedule as directed by NERC and as needed per the reliability related needs of the ERCOT Region. Where necessary or appropriate, the RSC will coordinate the development of Texas RE Regional Standards and Regional Variances with the development of national standards appearing in the NERC work plan, and the RSC will coordinate and submit comments as a group, to the extent feasible. The RSC will also review FERC Orders pertaining to standards and standards development activities to ensure directives are addressed in regional standard development.

## **COMMON ATTRIBUTE 6**

**[Registered ballot body]** — The registered ballot body comprises all entities or individuals that a) qualify for one of the stakeholder segments; are registered with Texas RE as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Section IV - Roles in the Texas RE Reliability Standards Development Process – 3rd ¶:

**Registered ballot body** — The Registered Ballot Body is comprised of all entities or individuals (whether or not they are Texas RE corporate members) that are ERCOT region BPS owners, operators, and users and qualify for one of

the below-listed Texas RE Standards Development Sectors, and are registered with the Texas RE as potential ballot participants.

### **COMMON ATTRIBUTE 7**

Texas RE will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the Texas RE and NERC websites.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V. B. Regional Reliability Standards Development Process Steps – 1st ¶:

Texas RE will coordinate with NERC such that the acknowledgement of receipt of a Regional Standard request identified in Step 1, notice of comment posting period identified in Step 4, and notice for vote identified in Step 5 below are concurrently posted on both the Texas RE and NERC websites.

### **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V. B. Regional Reliability Standards Development Process Steps, Step 1 – 3rd ¶ & Appendix C:

An acceptable SAR contains a description of the proposed Regional Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Regional Standard.

### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V. B. Regional Reliability Standards Development Process Steps, Step 1 – 5th ¶:

The RSM [Reliability Standards Manager] will post all adequately completed SARs on the Texas RE Website for public viewing and comment. This initial comment period shall be 15 days. After this initial comment period, the RSM will then forward the SAR to the RSC for its consideration at the next regularly scheduled meeting of the RSC. Within 60 days of receipt of an adequately completed SAR that has been through the initial 15-day comment period, the RSC shall determine the disposition of the SAR and, if the RSC deems necessary, direct the RSM to post for review the revised SAR again for review and comment for another 15-day period.

### **COMMON ATTRIBUTE 10**

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V. B. Regional Reliability Standards Development Process Steps, Step 1 – 6th ¶:

The disposition decision and decision process shall use the normal “business rules and procedures” of the RSC then in effect. The RSC may vote to take one of the following actions:

- Accept the SAR as a candidate for development of a new Regional Standard, revision of an existing Regional Standard, or deletion of an existing Regional Standard. The RSC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The RSC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the RSC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision, and the Texas RE BOD will also be notified with such explanation. The Texas RE BOD may, at its discretion, direct the RSC to reconsider any SAR that has been rejected.
- Remand the SAR back to the Originator for additional work. The Reliability Standards Manager will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the RSC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the RSC.

### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the Texas RE website within [no greater than 30] days of acceptance by the committee.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 1 – 7th ¶:

Any SAR that is accepted by the RSC for development of a Regional Standard (or modification or deletion of an existing Regional Standard) shall be posted for public viewing on the Texas RE Website, and their status will be updated as appropriate. .

### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.



Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 2 – 3rd ¶:

The Reliability Standards Manager shall submit the proposed list of names of the SDT to the RSC. The RSC will either accept the recommendations of the Reliability Standards Manager or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

### **COMMON ATTRIBUTE 13**

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the Texas RE website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to Texas RE stakeholders and other potentially interested entities, both within and outside of the Texas RE area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 4 – 1st ¶:

At the direction from the RSC, the Reliability Standards Manager shall post the draft Regional Standard on the Texas RE Website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The Reliability Standards Manager shall give notice of the posting to all potentially interested entities inside or outside of the ERCOT region of which Texas RE is aware. The Reliability Standards Manager will give notice using the typical communication procedures in effect or by other means as deemed appropriate.

### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the Texas RE website no later than the next posting of the proposed standard.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process Section V, B. Regional Reliability Standards Development Process Steps, Step 4 – 3rd ¶:

The SDT shall prepare a “modification report” summarizing the comments received, the team’s responses to these comments, and the changes made to the draft standard as a result of these comments. The modification report shall also summarize comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. The RSM shall post responses to all comments will be posted on the Texas RE Website no later than the next posting of the revised draft.

### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 5 – 1st ¶:

Upon recommendation of the Standards Drafting Team, and if the RSC concurs that all of the requirements for development of the standard have been met, the Reliability Standards Manager shall post the proposed standard and implementation plan for ballot on the Texas RE Website. The Reliability Standards Manager shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the Texas RE [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 5 – 2nd ¶:

The Reliability Standards Manager will schedule a vote among the Registered Ballot Pool, which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting.

### **COMMON ATTRIBUTE 17**

The Texas RE registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 5 – 4th ¶:

The Texas RE registered ballot body shall be able to vote on the proposed standard during a 15-day period.

### **COMMON ATTRIBUTE 18**

All members of Texas RE are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, B. Regional Reliability Standards Development Process Steps, Step 5, –fifth ¶:

Voting is an advisory to the Texas RE BOD. The voting shall be composed of only the votes from the Registered Ballot Pool members who have responded within the 15-day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to

and posted to the Texas RE Website prior to going to the RSC or Texas RE BOD.

### **COMMON ATTRIBUTE 19**

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 5 – 6th ¶ and Section V., B, Step 6A:

At least one (1) representative from four (4) of the six (6) Sectors must vote to constitute a quorum. Each Sector shall have two (2) Sector votes. If a draft Regional Standard receives 2/3 or greater affirmative votes during the 15-day voting period, the RSC will forward the Regional Standard to the Texas RE BOD for action (Step 7).

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 7 – 3rd ¶:

Under no circumstances may the Texas RE board substantively modify the proposed Texas RE Regional Standard.

### **COMMON ATTRIBUTE 21**

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Texas RE Reliability Standards Development Process, Section V., B. Regional Reliability Standards Development Process Steps, Step 7 – 4th ¶:

Once a Regional Standard is approved by the Texas RE BOD, the standard will be submitted to NERC for approval and filing with FERC.

## **COMMON ATTRIBUTE 22**

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the Texas RE bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in Texas RE, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the Texas RE members and others.

Texas RE regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 3rd ¶ - Open:

- **Open** - Participation in the development of a Regional Standard shall be open to all organizations that are directly and materially affected by ERCOT bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to ERCOT members and others.

## **COMMON ATTRIBUTE 23**

- **Balanced** - The Texas RE standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

Texas REs regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 3rd ¶ - Balanced:

- **Balanced** - The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by

any two interest categories and no single interest category shall be able to defeat a matter.

#### **COMMON ATTRIBUTE 24**

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 3rd ¶ - Inclusive:

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the ERCOT Bulk Power System in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

#### **COMMON ATTRIBUTE 25**

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 3rd ¶ - Fair due process:

- **Fair due process** — The Texas RE Standards Development Process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

#### **COMMON ATTRIBUTE 26**

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 3rd ¶ - Transparent:

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on RTexas RE's Web site.

### **COMMON ATTRIBUTE 27**

- Does not unnecessarily delay development of the proposed reliability standard.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 3rd ¶ - Last bullet:

- Does not unnecessarily delay development of the proposed Regional Standard.

### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 5th ¶:

Each Regional Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Regional Standard serves a purpose in support of the reliability of the ERCOT bulk power system. Each Regional Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Regional Standard undermines reliability through an unintended consequence.

### **COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity

markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, I. Principles, – 6th ¶:

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all Regional Standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### **COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, II. Regional Reliability Standard Characteristics and Elements, b. Elements of a Regional Reliability Standard – 1st ¶:

To ensure uniformity of regional reliability standards, a Regional Reliability Standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

### **COMMON ATTRIBUTE 31**



All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, II. Regional Reliability Standard Characteristics and Elements, b. Elements of a Regional Reliability Standard – 2nd ¶:

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

### **COMMON ATTRIBUTE 32**

<b>Applicability</b>	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire Texas RE area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, II. Regional Reliability Standard Characteristics and Elements, a., Applicability:

<b>Applicability</b>	<p>Each Regional Standard Clearly identifies the functional classes of entities responsible for complying with the standard, with any specific additions or exceptions noted.</p> <p>Such functional classes include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each Regional Standard identifies the geographic applicability of the standard.</p> <p>Each Regional Standard identifies the geographic applicability of the standard. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.</p>
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**COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.
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Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, II. Regional Reliability Standard Characteristics and Elements, b. Elements of a Regional Reliability Standard – Table 1 - Measures(s):

<b>Measure(s)</b>	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.
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**COMMON ATTRIBUTE 34**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> </ul>
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	<ul style="list-style-type: none"> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> </ul>
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Texas RE's regional standard development procedure or other governing documents contain the following language relative to this Common Attribute:

See Texas RE Process – Appendix B, II. Regional Reliability Standard Characteristics and Elements, b. Elements of a Regional Reliability Standard – Table 2 – Compliance Monitoring Process:

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> </ul>
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**November 30, 2009**

**Texas Reliability Entity  
Standards Development Process**

**Appendix to Exhibit C to the  
Delegation Agreement  
Between NERC and Texas Reliability Entity**

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## **I. Introduction**

This document defines the fair and open process for adoption, approval, revision, and reaffirmation, of a Regional Reliability Standard (Regional Standard) for the ERCOT Region by Texas Reliability Entity, Inc. (Texas RE). Regional Standards provide for the reliable regional and sub-regional planning and operation of the Bulk-Power System (BPS), consistent with Good Utility Practice within a Regional Entity's (RE's) geographical footprint.

The process for obtaining a Texas RE Regional Variance to a NERC Reliability Standard shall be the same as the process for obtaining a Regional Standard. Throughout this document, where the term Regional Standard is used, the same process will be applied to a Regional Variance.

Due process is the key to ensuring that Regional Standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in a Regional Standard's development.

Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the BPS has a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

Proposed Regional Standards shall be subject to approval by North American Electric Reliability Corporation (NERC), as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the FPA. No Regional Standard shall be effective within the Texas RE area unless filed by NERC with FERC and approved by FERC.

Regional Standards shall provide for as much uniformity as possible with reliability standards across the interconnected BPS of the North American continent. A Regional Standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the BPS. A Regional Standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

Regional Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable BPS owners, operators, and users within the Texas RE area, regardless of membership in the region.

## **II. Background**

The Texas RE may develop, through its own processes, separate Regional Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or otherwise address issues that are not addressed in NERC Reliability Standards.

NERC Reliability Standards and Regional Standards are all to be included within the Texas RE's Compliance Program.

Regional Standards are developed consistent with the following philosophies according to the process defined within this document:

- Developed in a fair and open process that provides an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and does not have a significant adverse impact on reliability; and
- Based on a justifiable difference between regions or between sub-regions within the Regional geographic area.

The NERC Board of Trustees has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. As these principles are fundamental to reliability and the market interface, these principles provide a constant beacon to guide the development of reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards. Persons and committees that are responsible for the Texas RE Standards Process shall consider these NERC Principles in the execution of those duties.

NERC Reliability Standards are based on certain reliability principles that define the foundation of reliability for the North American BPS. Each Regional Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Regional Standard serves a purpose in support of reliability of the North American BPS. Each Regional Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Regional Standard undermines reliability through an unintended consequence.

While NERC Reliability Standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Regional Standards shall be consistent with the market interface principles. Consideration of the market interface principles is intended to ensure that Regional Standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### **III. Regional Standards Definition**

A NERC Reliability Standard defines certain obligations or requirements of entities that operate, plan, and use the BPS of North America. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the stated reliability principles and shall be consistent with all of the stated reliability and market interface principles.

Texas RE may develop, through its own processes: (1) Regional Standards that go beyond, add detail to, or implement NERC Reliability Standards or that cover matters not addressed in NERC Reliability Standards, and (2) Regional Variances that allow an alternative approach to meeting the same reliability objective as the NERC Reliability Standard and are typically necessitated by physical differences.

## IV. Roles in the Texas RE Regional Standards Development Process

**Originator** – Any person, acting as a representative of an organization that is directly and materially affected by the operation of the ERCOT region BPS is allowed to request that a Regional Standard be developed or an existing Regional Standard modified, or deleted, by creating a Regional Standards Authorization Request (SAR) as described in Appendix B to this document.

**Texas RE Board of Directors (Texas RE BOD)** – The Texas RE BOD shall act on any proposed Regional Standard that has gone through the process. Once the Regional Standard is approved by FERC, compliance with the Regional Standard will be enforced consistent with the terms of the Regional Standard.

**Registered Ballot Body (RBB)** – The Registered Ballot Body is comprised of all entities or individuals (whether or not they are Texas RE corporate members) that are ERCOT region BPS owners, operators, and users and qualify for one of the below-listed Texas RE Standards Development Sectors, and are registered with the Texas RE as potential ballot participants.

**Registered Ballot Pool (RBP)** – Each Regional Standard has its own ballot pool formed of interested members of the Registered Ballot Body. Through the voting process, the RBP will ensure that the need for and technical merits of a proposed Regional Standard are appropriately considered. The RBP will also ensure that appropriate consideration of views and objections are received during the development process.

**Reliability Standards Committee (RSC)** – A balanced committee comprised of entities representing the six Texas RE Standard Development Sectors. The RSC will consist of two representatives from each Sector (except that Sectors with only one member may only have one representative), as elected by the Sector, and the RSC requires a quorum of at least one representative from at least two-thirds (2/3) of the Sectors to take action. The RSC in coordination with the Reliability Standards Manager will review, participate in, and manage the Texas RE Regional Standards Development Process, and develop Texas RE Regional Standards on a schedule as directed by NERC and as needed per the reliability related needs of the ERCOT Region. Where necessary or appropriate, the RSC will coordinate the development of Texas RE Regional Standards and Regional Variances with the development of national standards appearing in the NERC work plan, and the RSC will coordinate and submit comments as a group, to the extent feasible. The RSC will also review FERC Orders pertaining to standards and standards development activities to ensure directives are addressed in regional standard development.

**Reliability Standards Manager (RSM)** – A Texas RE employee assigned the task of ensuring that the development, revision or deletion of Regional Standards is in accordance with this document. The RSM works with the RSC to ensure the integrity of the process and consistency of quality and completeness of the Regional Standards. The RSM manages the Regional Standards Development Process, and coordinates and facilitates all actions contained in all steps in the process including the management of the Standard Drafting Teams and the facilitation of RSC meetings.

**Reliability Standards Staff** – Employees of the Texas RE that work with or for the Reliability Standards Manager.



**Standard Drafting Team (SDT)** – A team of technical experts, assigned by the RSC, and typically includes a Texas RE employee and the Originator, assigned the task of developing a proposed Regional Standard based upon an approved SAR using the Regional Standard Development Process contained in this document.

**Texas RE Standards Development Sectors (Sectors)** – The six (6) Texas RE Standards Development Sectors are defined as follows:

- **System Coordination and Planning:** An entity that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), or Interchange Authority (IA)
- **Transmission:** An entity that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), Transmission Service Provider (TSP), and/or Transmission Operator (TOP).
- **Cooperative or River Authority Utility:** An entity that is (a) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter; or (b) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or (c) a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or (d) a River Authority as defined in Tex. Water Code §30.003 that is registered with NERC for at least one registered function.
- **Municipal Utility:** A municipally owned utility as defined in PURA §11.003 and is registered with NERC for at least one registered function.
- **Generation:** An entity that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).
- **Load-Serving and Marketing:** An 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, and any entity with a direct and material interest in the ERCOT region BPS that is not eligible for membership in any other Sector.

## **V. Texas RE Regional Standards Development Process**

### **A. Assumptions and Prerequisites**

The process for developing and approving Standards is generally based on the procedures of the American National Standards Institute (ANSI) and other standards-setting organizations in the United States and Canada. The Regional Standards development process has the following characteristics:

- **Due process** – Any person representing an organization with a direct and material interest has a right to participate by:
  - a) Expressing an opinion and its basis,
  - b) Having that position considered, and
  - c) Appealing any negative decision
- **Openness** – Participation is open to all organizations that are directly and materially affected by ERCOT region's BPS reliability. There shall be no undue financial barriers to

participation. Participation shall not be conditioned upon membership in Texas RE, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to all interested parties. All proposed SARs and Regional Standards are posted for comment on the Texas RE Website.

- **Balance** – The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any single interest category.

## **B. Regional Standards Development Process Steps**

**Note:** The term “days” below refers to calendar days.

Texas RE will coordinate with NERC such that the acknowledgement of receipt of a Regional Standard request identified in Step 1, notice of comment posting period identified in Step 4, and notice for vote identified in Step 5 below are concurrently posted on both the Texas RE and NERC websites.

### ***Step 1 – Development of a Standards Authorization Request (SAR) to Develop, Revise, or Delete a Regional Standard***

Any entity (Originator) that is directly or materially impacted by the operation of the BPS (including all users, owners, and operators of the BPS and regardless of whether the entity is a Texas RE member) within the geographical footprint of Texas RE may request, via a submittal of a Standard Authorization Request (SAR) form, the development, modification, or deletion of a Regional Standard or Regional Variance.

Any such request shall be submitted to the Texas RE RSM, or his or her designee in electronic format. The SAR form may be downloaded from the Texas RE Website.

An acceptable SAR contains a description of the proposed Regional Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Regional Standard.

The RSM will verify that the submitted SAR form has been adequately completed. The RSM may offer the Originator suggestions regarding changes and/or improvements to enhance clarity of the Originator’s intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the RSM will electronically acknowledge receipt of the SAR.

The RSM will post all adequately completed SARs on the Texas RE Website for public viewing and comment. This initial SAR comment period shall be 15 days. After this initial comment period, the RSM will then forward the SAR to the RSC for its consideration at the next regularly scheduled meeting of the RSC. Within 60 days of receipt of an adequately completed SAR that has been through the initial 15-day comment period, the RSC shall determine the disposition of the SAR and, if the RSC deems necessary, direct the RSM to post the revised SAR again for review and comment for another 15-day period.

The disposition decision process shall use the normal “business rules and procedures” of the RSC then in effect. The RSC may vote to take one of the following actions:

- Accept the SAR as a candidate for development of a new Regional Standard, revision of an existing Regional Standard, or deletion of an existing Regional Standard. The RSC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The RSC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the RSC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision, and the Texas RE BOD will also be notified with such explanation. The Texas RE BOD may, at its discretion, direct the RSC to reconsider any SAR that has been rejected.
- Remand the SAR back to the Originator for additional work. The RSM will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the RSC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the RSC.

Any SAR that is accepted by the RSC for development of a Regional Standard (or modification or deletion of an existing Regional Standard) shall be posted for public viewing on the Texas RE Website, and their status will be updated as appropriate.

Any documentation of the deliberations of the RSC concerning SARs shall be made available according to normal “business rules and procedures” of the RSC then in effect.

Texas RE Staff shall submit a written report to the Texas RE BOD on a periodic basis (at least quarterly at regularly scheduled Texas RE BOD Meetings) showing the status of all SARs that have been brought to the RSC for consideration.

### ***Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date***

Upon acceptance by the RSC of a SAR for development of a new Regional Standard (or modification or deletion of an existing Regional Standard), the RSC shall direct the RSM to assemble a qualified balanced slate for the SDT. The RSM will solicit drafting team nominees by announcing the opening of nominations to the stakeholders in the region. The SDT shall consist of a group of people who collectively have the necessary technical expertise and work process skills to draft the standard being requested in the SAR. The RSM shall recommend to the RSC a slate of ad-hoc individuals or a pre-existing task force, work group, or similar group for the SDT. The membership of the SDT shall not include more than one individual from any one entity.

The RSM will manage the SDT to ensure that the Texas RE Standards Development Process is followed, and that the team membership receives all necessary administrative support. This support typically includes a Texas RE staff member and the Originator if he/she chooses to participate. The RSM may develop additional guidelines to assist the SDT, but as a general rule, the RSM will follow the then-current NERC SDT Guidelines and associated NERC SDT procedures in the management of the regional SDTs. The RSC shall appoint the SDT interim chair (should not be a Texas RE staff person). The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The RSM shall submit the proposed list of names of the SDT to the RSC. The RSC will either accept the recommendations of the RSM or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

### ***Step 3 – Work and Work Product of the Standard Drafting Team***

The RSM will collaborate with the SDT to develop a work plan including the establishment of milestones for completing critical elements. This plan shall be delivered and reported to the RSC, and based upon this work plan, the RSC shall declare a preliminary date on which a completed draft Regional Standard and associated supporting documentation will be available for comment.

The SDT is to meet, either in person or via electronic means (such as Web Ex) as necessary, establish sub-work teams or groups (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established

The work product of the SDT will consist of the following:

- A draft Regional Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Regional Standard (or other regional criteria, protocol, or rule) that may be deleted, in part or whole, or otherwise impacted by the implementation of the draft Regional Standard.
- Technical reports and/or work papers that provide technical support for the draft Regional Standard under consideration.
- The perceived reliability impact should the Regional Standard be approved.

Upon completion of these tasks, the SDT shall submit these documents to the RSC, which will verify that the proposed Regional Standard is consistent with the SAR on which it was developed.

The SDT shall regularly (at least once each month) report to and inform the RSC of its progress in meeting the timely completion of the draft Regional Standard. The SDT may request of the RSC, at any point in the Regional Standard Development Process, and change in the scope of the SAR.

The RSC may, at any time, exercise its authority over the Regional Standards Development Process by directing the SDT to move to Step 4 (below) and post the current work product for comment. Any interested entity (including the Originator and the RSM) that contends that the SDT is not effectively progressing on a draft standard or variance may notify the RSC. If any entity contends that the RSC has not taken timely action regarding any requested standard, the entity may file a written complaint with the RSM, who will notify the RSC. If the RSC cannot resolve the complaint within sixty days, the complaining entity may request that its complaint be included on the RSM's report to the Texas RE BOD.

#### ***Step 4 – Comment Posting Period***

At the direction from the RSC, the RSM shall post the draft Regional Standard on the Texas RE Website, along with a draft implementation plan and supporting documents, for a 30-day public comment period. The RSM shall also give notice of the posting to all potentially interested entities inside or outside of the ERCOT region of which Texas RE is aware. The RSM will give notice using the typical communication procedures in effect or other means as deemed appropriate.

Within 30 days of the conclusion of the 30-day comment posting period, the SDT shall convene and consider changes to the draft Regional Standard, the implementation plan, and/or supporting technical documents based upon comments received. The SDT shall also prepare a formal written response to every comment received. The SDT may then elect to return to Step 3 to revise the draft Regional Standard, implementation plan, and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received, the team’s responses to the comments, and the changes made to the draft standard as a result of these comments. The modification report shall also summarize comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. The RSM shall post responses to all comments on the Texas RE Website no later than the next posting of the revised draft standard.

#### ***Step 5 – Posting for Voting by the Registered Ballot Pool***

Upon recommendation of the SDT, and if the RSC concurs that all of the requirements for development of the standard have been met, the RSM shall post the proposed standard and implementation plan for ballot on the Texas RE Website. The RSM shall also announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

The RSM will schedule a vote among the Registered Ballot Pool, which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting.

The RSM shall send a notice to every entity in the Registered Ballot Body (RBB) to notify them of an opportunity to become a part of the Registered Ballot Pool for this Regional Standard or a Regional Variance. This notice should precede the start of the ballot by at least 30 days. The purpose of this notice is to establish a ballot pool to participate in the consensus development process and ballot the proposed action. All members of the Registered Ballot Body are eligible to participate in voting on proposed new Regional Standards, Regional Standard revisions, or Regional Standard deletions. There shall be one person designated as the primary RBB representative of each entity. Those members of the RBB that sign up for the Ballot Pool become that pool.

The Texas RE Registered Ballot Pool shall be able to vote on the proposed standard during a 15-day period. Votes shall be submitted electronically, or through other means as approved by the RSC.



Voting is an advisory to the Texas RE BOD. The voting results shall be composed of only the votes from the Registered Ballot Pool members who have responded within the 15-day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the Texas RE Website prior to going to the RSC or Texas RE BOD.

At least one (1) representative from four (4) of the six (6) Sectors must vote to constitute a quorum. Each Sector shall have two (2) Sector votes.

***Step 6A – Registered Ballot Pool Voting Receives 2/3 or Greater Affirmative Votes of the Texas RE Sectors***

If a draft Regional Standard receives 2/3 or greater affirmative votes during the 15-day voting period, the RSC will forward the Regional Standard to the Texas RE BOD for action (Step 7).

***Step 6B – Membership Voting Does Not Receive 2/3 Affirmative Votes of the Texas RE Sectors***

If a draft Regional Standard does not receive 2/3 or greater affirmative votes during the 15-day voting period, the RSC may:

- Revise the SAR on which the draft Regional Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Regional Standard and/or implementation plan shall be posted for a second voting period. The RSC may require a second comment period prior to a second voting period. The second posting of the draft Regional Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.
  - If a draft Regional Standard receives 2/3 or greater affirmative votes during the second voting period, the RSC will forward to the Texas RE BOD for action (Step 7).
  - If a draft Regional Standard does not receive 2/3 or greater affirmative votes during the second voting period, the RSC will refer the draft Regional Standard and implementation plan to the Texas RE BOD. The RSC may also submit an assessment, opinion, and recommendations to the Texas RE BOD (Step 7).
- Direct the existing SDT to reconsider or modify certain aspects of the draft Regional Standard and/or implementation plan. The resulting draft Regional Standard and/or implementation plan shall be posted for a second voting period. The RSC may require a second comment period prior to the second voting period. The second posting of the draft Regional Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.
  - If a draft Regional Standard receives 2/3 or greater affirmative votes on the second voting period, the RSC will forward it to the Texas RE BOD for action (Step 7).
  - If a draft Regional Standard does not receive 2/3 or greater affirmative votes on the second voting period, the RSC will refer the draft Regional Standard and

implementation plan to the Texas RE BOD. The RSC may also submit an assessment, opinion, and recommendations to the Texas RE BOD (Step 7).

### ***Step 7 – Action by the Texas RE Board of Directors***

A proposed Regional Standard submitted to the Texas RE BOD for action shall be publicly posted at least 10 days prior to action by the Texas RE BOD. At a regular or special meeting, the Texas RE BOD shall consider adoption of the draft Regional Standard. The Texas RE BOD shall be provided with an “informational package” which includes:

- The draft Regional Standard and any modification or deletion of other related existing Regional Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Regional Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The Texas RE BOD will consider the results of the voting and dissenting opinions. The Texas RE BOD will consider any advice offered by the RSC and may:

- Approve the proposed Regional Standard;
- Remand the proposed Regional Standard to the RSC with comments and instructions; or
- Disapprove the proposed Regional Standard without recourse.

Under no circumstances may the Texas RE BOD substantively modify the proposed Regional Standard.

Once a Regional Standard is approved by the Texas RE BOD, the standard will be submitted to NERC for approval and filing with FERC.

### ***Step 8 – Implementation of a Regional Standard***

Upon approval of a draft Regional Standard by the Texas RE BOD, the RSM will notify the membership of such action of the Texas RE BOD through the normal and customary membership communication procedures and processes then in effect. The RSM will take whatever steps are necessary to have a Regional Standard reviewed and/or approved by NERC or any successor organization.

### ***C. Regional Standards Integration***

Once the Regional Standard is approved by FERC, the RSM shall notify the stakeholders of the effective date. The RSM will also notify the Texas RE Compliance Staff for integration into the Texas RE Compliance Monitoring and Enforcement Program.

## **Appendix A – Stakeholder Representation**

The Texas RE stakeholder representation for Regional Standards development is as follows:

### **I. Reliability Standards Committee (RSC)**

The Reliability Standards Committee (RSC), comprised of two representatives (except for Sectors with only one member, which will have only one representative) from each of the six Texas RE Standards Development Sectors (System Coordination and Planning; Transmission; Generation; Cooperative or River Authority Utility; Municipal Utility; Load-Serving and Marketing), is to provide balanced decision-making and due process for Regional Standards and Regional Variances. The RSC will receive, consider, and vote upon requests for new or revised Regional Standards and Regional Variances. The RSC requires a quorum of at least one representative from at least two-thirds of the Sectors.

The RSC will consider any requests for Regional Standards or Regional Variances from parties that are directly and materially affected by the operation of the ERCOT Region BPS that have first been submitted to the RSM for initial review.

### **II. Texas RE Board of Directors (BOD)**

Texas RE is a Texas non-profit corporation that is governed by a combination independent and balanced stakeholder board. The Texas RE Board of Directors (BOD) includes the following directors:

- Four independent directors who are independent of any ERCOT region market participant and any NERC registered entity and are nominated and elected in accordance with the requirements and procedures specified in the Texas RE Bylaws;
- Two directors from different Sectors who are selected by the Texas RE Member Representatives Committee as its chair and vice chair;
- CEO of Texas RE (as ex officio non-voting Director); and
- Chairman of the Public Utility Commission of Texas (PUCT) or another PUCT Commissioner designated by the Chairman (as ex officio non-voting Director); and
- Texas Public Counsel from the Office of Public Utility Counsel (OPUC) or another employee of OPUC designated by Public Counsel (as ex officio non-voting Director).

### **III. Registered Ballot Body (RBB)**

A Registered Ballot Body (RBB) will be comprised of representatives from all the Sectors, to provide balanced decision-making on Regional Standards and Regional Variances. The RBB is eligible to vote on all proposed new or revised Regional Standards or Regional Variances. The RBB requires a quorum of at least one vote from at least two-thirds of the Sectors. At all meetings, each Sector shall have one (1) Sector vote, and each voting entity is entitled to only one vote. Each voting entity participating in the vote, shall receive an equal fraction of its Sector's vote. A Registered Ballot Pool (RBP) will be formed for each proposed Regional Standard or Regional Variance and will be a subset of the RBB. The RBP will vote on a particular standard action.



## **Appendix B – Principles, Characteristics, and Special Procedures**

### **I. Principles**

Due process is the key to ensuring that regional reliability standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in the development of a standard.

The Texas RE develops Regional Standards with due consideration of the following principles, in accordance with the steps outlined in this procedure. The process must ensure that any Regional Standard is technically sound and the technical specifications proposed would achieve a valuable reliability objective.

The standards development process has the following characteristics:

- **Open** – Participation in the development of a Regional Standard shall be open to all organizations that are directly and materially affected by ERCOT BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to ERCOT members and others.
- **Balanced** – The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** – Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the ERCOT BPS in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Fair due process** – The Texas RE Standards Development Process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
- **Transparent** – All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the Texas RE Website.
- Does not unnecessarily delay development of the proposed Regional Standard.

NERC has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. These principles are to be used to guide the development of reliability standards, including regional reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards.

Each Regional Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Regional Standard serves a purpose in support of the reliability of the ERCOT BPS. Each Regional Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Regional Standard undermines reliability through an unintended consequence.

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Regional Standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

## **II. Regional Standard Characteristics and Elements**

### **a. Characteristics of a Regional Standard**

The following characteristics describe objectives to be considered in the development of Regional Standards:

1. **Applicability** – Each Regional Standard clearly identifies the functional classes of entities responsible for complying with the standard, with any specific additions or exceptions noted. Such functional classes include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each Regional Standard identifies the geographic applicability of the standard. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** – Each Regional Standard has a clear statement of purpose that describes how the standard contributes to the reliability of the ERCOT BPS.
3. **Requirement or Outcome** – Each Regional Standard states one or more requirements, which if achieved by the applicable entities, will provide for a reliable BPS, consistent with good utility practices and the public interest.
4. **Measurability** – Each performance requirement is stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement has one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics are provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each Regional Standard is based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.

6. **Completeness** — Each Regional Standard is complete and self-contained. Supporting references may be provided with standards, but they are not part of the standard and do not impose mandatory requirements.
7. **Clear Language** — Each Regional Standard is stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in keeping with good utility practice, are able to arrive at a consistent understanding of the required performance.
8. **Practicality** — Each Regional Standard establishes requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
9. **Consistent Terminology** — To the extent possible, Regional Standards use a set of standard terms and definitions that are approved through the regional standards development procedure.

Although Regional Standards have a common format and process, several types of standards may exist, each with a different approach to measurement:

- **Technical standards** are related to the provision, maintenance, operation, or state of electric systems, and will likely contain measures of physical parameters that are technical in nature.
- **Performance standards** are related to the actions of entities providing for or impacting the reliability of the BPS, and will likely contain measures of the results of such actions or qualities of performance of such actions.
- **Preparedness standards** are related to the actions of entities to be prepared for conditions that are unlikely to occur, but are nonetheless critical to reliability, and will likely contain measures of such preparations or the state of preparedness.

#### **b. Elements of a Regional Standard**

To ensure uniformity of regional reliability standards, a Regional Standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

**Table 1 – Performance Elements of a Regional Standard**

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for

	complying with the standard, noting any specific additions or exceptions. If not applicable to the entire Texas RE area, then a clear identification of the portion of the BPS to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the standard or, prior to approval of the standard, the proposed effective date.
<b>Purpose</b>	The purpose of the standard. The purpose shall explicitly state what outcome will be achieved or is expected by this standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.
<b>Measure(s)</b>	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.

**Table 2 – Compliance Elements of a Regional Standard**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> </ul>
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**Table 3 – Supporting Information Elements**

<b>Interpretation</b>	Any interpretation of regional reliability standard that is developed and approved in accordance with Section VI “Interpretation of Regional Standards” in Appendix B of this procedure, to expound on the application of the standard for unusual or unique situations or to provide clarifications.
<b>Implementation Plan</b>	Each regional reliability standard shall have an associated implementation plan describing the effective date of the standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the standard in the compliance program and other considerations in the initial use of the standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
<b>Supporting References</b>	<p>This section references related documents that support reasons for, or otherwise provide additional information related to the regional reliability standard. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Glossary of terms</li> <li>• Developmental history of the standard and prior versions</li> <li>• Notes pertaining to implementation or compliance</li> <li>• Regional Standard references</li> <li>• Regional Standard supplements</li> <li>• Procedures</li> <li>• Practices</li> <li>• Training references</li> <li>• Technical references</li> <li>• White papers</li> <li>• Internet links to related information</li> </ul>

### **III. Maintenance of the Texas RE Regional Standards Development Process**

Significant changes to this process which are not made as part of a Texas RE request for an amendment to the Delegation Agreement shall begin with the preparation of a SAR and be addressed using the same procedure as a request to add, modify, or delete a Regional Standard.

The RSC has the authority to make ‘minor’ changes to this process as deemed appropriate by the RSC and subject to the RSC voting practices and procedures then in effect. The RSM, on behalf of the RSC, shall promptly notify the Texas RE BOD of such changes to this process for their review and concurrence at the next Texas RE BOD meeting.

### **IV. Maintenance of Regional Standards**

The RSM shall ensure that each Regional Standard is reviewed at least once every five years from the effective date of the Standard or the latest revision to the Regional Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the RSM shall recommend to the Texas RE BOD

that the Regional Standard be reaffirmed. If the review indicates a need to revise or delete a Regional Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this process.

## **V. Urgent Action**

Under certain conditions, the RSC may designate a proposed Regional Standard or revision to a standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed standard or revision could materially impact reliability of the BPS. The RSC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Regional Standard.

An originator shall prepare a SAR and a draft of the proposed standard and submit to the RSM. The standard request must include a justification for urgent action. The RSM submits the request to the RSC for its consideration. If the RSC designates the requested standard or revision as an urgent action item, then the RSM shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 6.

Any Regional Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the standard permanent the standard would be required to go through the full Regional Standard Development Process. All urgent action standards require Texas RE BOD, NERC, and FERC approval, as outlined for standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent standard is not adopted. In determining whether to authorize an urgent action standard for a renewal ballot, the RSC shall consider the impact of the standard on the reliability of the BPS and whether expeditious progress is being made toward a permanent replacement standard. The RSC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement standard or if the RSC lacks confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action standard renewal shall be effective only upon approval by the Texas RE BOD, and approval by applicable governmental authorities.

Any person or entity, including the drafting team working on a permanent replacement standard, may at any time submit a standard request proposing that an urgent action standard become a permanent standard by following the full standards process.



## **VI. Interpretations of Regional Standards**

All persons who are directly and materially affected by ERCOT's BPS reliability shall be permitted to request an interpretation of a Regional Standard or Regional Variance (collectively referred to as Regional Standard). The person requesting an interpretation shall send a request to the RSM electronically using the Interpretation Request Form explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The RSM shall assemble a team with the relevant expertise to address the clarification. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The RSM shall submit the proposed list of names of the IDT to the RSC. The RSC will either accept the recommendations of the RSM or modify the IDT slate.

As soon as practical (not more than 45 days), the team will meet to draft a written interpretation to the Regional Standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Regional Standard addressing only the issues raised, the team will forward the draft interpretation to the RSM. The RSM will forward the draft interpretation to the Texas RE Chief Compliance Officer. The Chief Compliance Officer shall assess if the inclusion of the interpretation lessens the measurability of the Regional Standard. Barring receipt of an opinion from the Chief Compliance Officer within 21 days, that the interpretation lessens measurability or is not technically appropriate for the Regional Standard, the RSM shall forward the interpretation to the RSC. The RSC shall determine if the interpretation is consistent with the Regional Standard. The RSM, on behalf of the RSC, shall forward the interpretation to the Texas RE BOD for informational purposes as being appended to the approved Regional Standard.

Note: In the event that the Chief Executive Officer determines that measurability is lessened, the Chief Executive Officer shall provide an explanation of his/her reasoning to the RSM and IDT for inclusion in a subsequent reversion. In either case, the IDT and RSM will continue to re-circulate the interpretation as stated above.

The interpretation shall stand until such time as the Regional Standard is revised through the normal process, at which time the Regional Standard will be modified to incorporate the clarifications provided by the interpretation.

## **VII. Appeals**

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a Regional Standard shall have the right to appeal. This Appeals Process applies only to this Regional Standards Process.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

The Appeals Process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants:

### ***Level 1 Appeal***

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the RSM that describes the substantive or procedural action or inaction associated with Regional Standard or the Regional Standards Process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the RSM shall prepare a written response addressed to the appellant as soon as practical, but not more than 45 days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the Regional Standard.

### ***Level 2 Appeal***

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the RSM, the RSM shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by the Texas RE BOD. In all cases, Level 2 Appeals Panel Members shall have no direct affiliation with the participants in the appeal.

The RSM shall post the complaint and other relevant materials and provide at least 30 days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the RSC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a Regional Standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to Texas RE BOD for consideration at the time the Texas RE BOD decides whether to adopt a particular Regional Standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30 days after the announcement of the vote on the Regional Standard in question.



## **Appendix C – Regional Standard Authorization Request Form**

The tables below provide a representative example of information in a Regional Standard Authorization Request (SAR). The RSM shall be responsible for implementing and maintaining the applicable form as needed to support the information requirements of the Texas RE Standards Process. The latest version of the form will be downloadable from the Texas RE's Standards Development Web page.

### **Standard Authorization Request**

#### **Texas RE to complete**

ID
Authorized for Posting
Authorized for Development

Title of Proposed Regional Standard:
Request Date:

#### **SAR Originator Information**

<b>Name:</b>	SAR Type (Check one box.)	
Company:	<input type="checkbox"/>	New Regional Standard
Telephone:	<input type="checkbox"/>	Revision to Existing Regional Standard
Fax:	<input type="checkbox"/>	Withdrawal of Existing Regional Standard
Email:	<input type="checkbox"/>	Urgent Action

**Purpose** (Describe the purpose of the proposed regional reliability standard – what the standard will achieve in support of reliability.)

**Industry Need** (Provide a detailed statement justifying the need for the proposed regional reliability standard, along with any supporting documentation.)

**Brief Description** (Describe the proposed regional reliability standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others.)

### Reliability Functions

<b>The Regional Standard will Apply to the Following Functions</b> <i>(Check all applicable boxes.)</i>		
<input type="checkbox"/>	Reliability Coordinator	The entity that is the highest level of authority who is responsible for the reliable operation of the BPS, has the Wide Area view of the BPS, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
<input type="checkbox"/>	Balancing Authority	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
<input type="checkbox"/>	Interchange Authority	Authorizes valid and balanced Interchange Schedules.
<input type="checkbox"/>	Planning Authority	The responsible entity that coordinates and integrates transmission facility and service plans, resource plans, and protection systems.
<input type="checkbox"/>	Transmission Service Provider	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.
<input type="checkbox"/>	Transmission Owner	The entity that owns and maintains transmission facilities.
<input type="checkbox"/>	Transmission Operator	The entity responsible for the reliability of its "local" transmission system, and that operates or directs the operations of the transmission facilities.
<input type="checkbox"/>	Transmission Planner	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk power transmission systems within its portion of the Planning Authority Area.
<input type="checkbox"/>	Resource Planner	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area.
<input type="checkbox"/>	Generator Operator	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
<input type="checkbox"/>	Generator Owner	Entity that owns and maintains generating units.
<input type="checkbox"/>	Purchasing-Selling Entity	The entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.

<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer.
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.

### Reliability and Market Interface Principles

<b>Applicable Reliability Principles</b> <i>(Check all boxes that apply.)</i>	
<input type="checkbox"/>	1. Interconnected BPSs shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
<input type="checkbox"/>	2. The frequency and voltage of interconnected BPSs shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
<input type="checkbox"/>	3. Information necessary for the planning and operation of interconnected BPSs shall be made available to those entities responsible for planning and operating the systems reliably.
<input type="checkbox"/>	4. Plans for emergency operation and system restoration of interconnected BPSs shall be developed, coordinated, maintained, and implemented.
<input type="checkbox"/>	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected BPSs.
<input type="checkbox"/>	6. Personnel responsible for planning and operating interconnected BPSs shall be trained, qualified, and have the responsibility and authority to implement actions.
<input type="checkbox"/>	7. The security of the interconnected BPSs shall be assessed, monitored, and maintained on a wide-area basis.
<b>Does the proposed Regional Standard comply with all of the following Market Interface Principles?</b> <i>(Select ‘yes’ or ‘no’ from the drop-down box.)</i>	
Recognizing that reliability is an Common Attribute of a robust North American economy:	
1.	A reliability standard shall not give any market participant an unfair competitive advantage. Yes
2.	A reliability standard shall neither mandate nor prohibit any specific market structure. Yes
3.	A reliability standard shall not preclude market solutions to achieving compliance with that standard. Yes
4.	A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards. Yes

**Detailed Description** (Provide enough detail so that an independent entity familiar with the industry could draft a standard based on this description.)

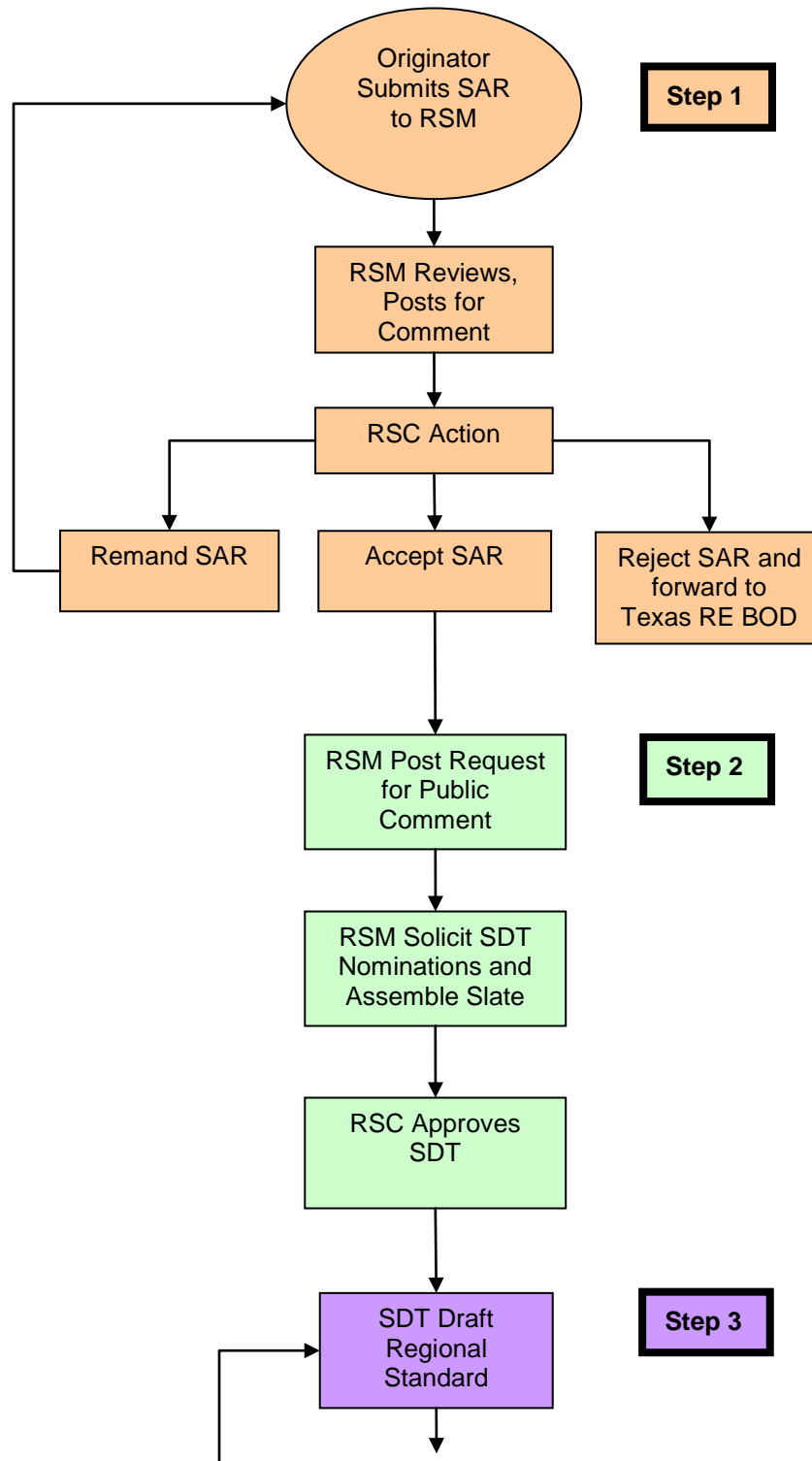
### Related Standards

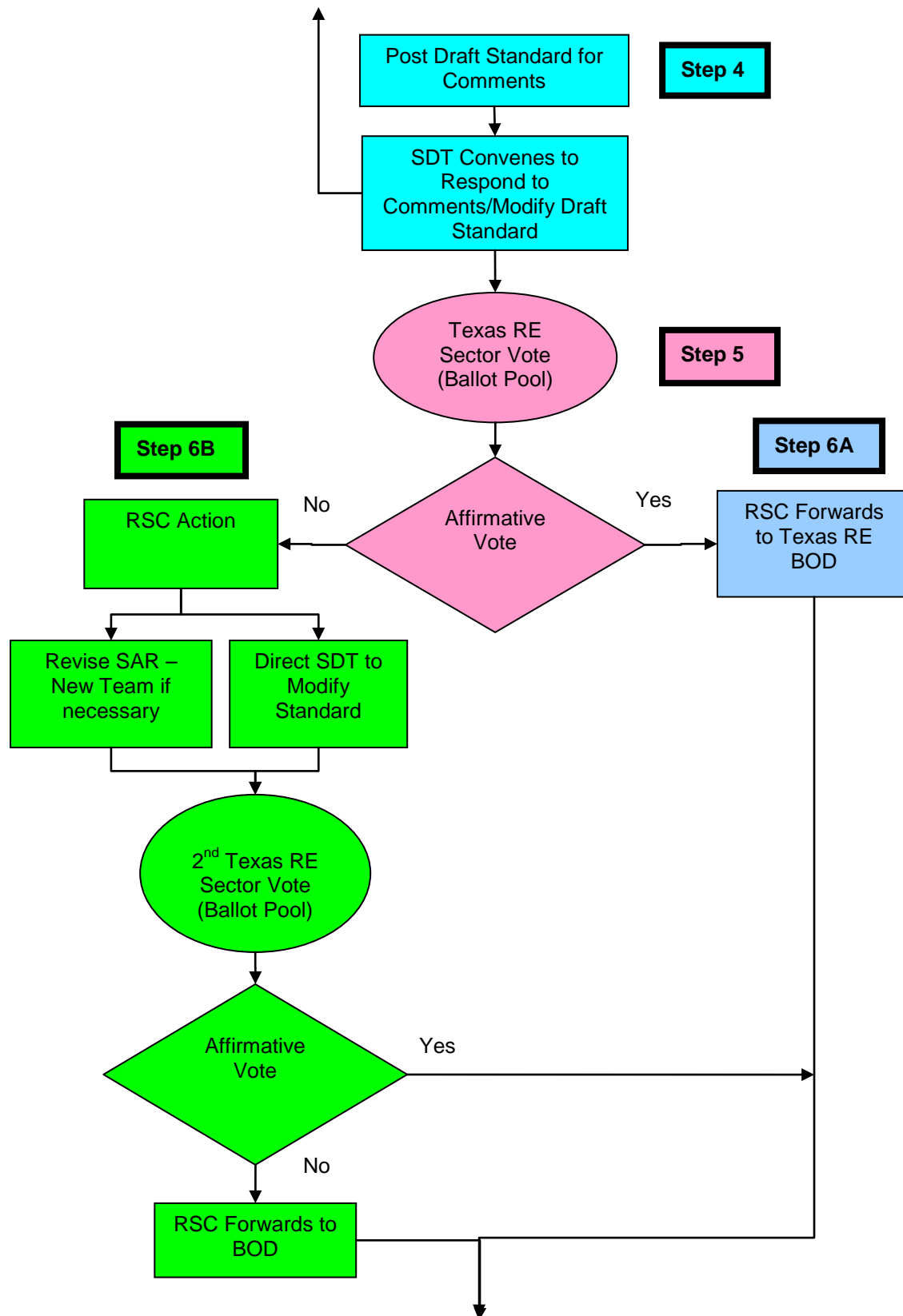
Standard No.	Explanation

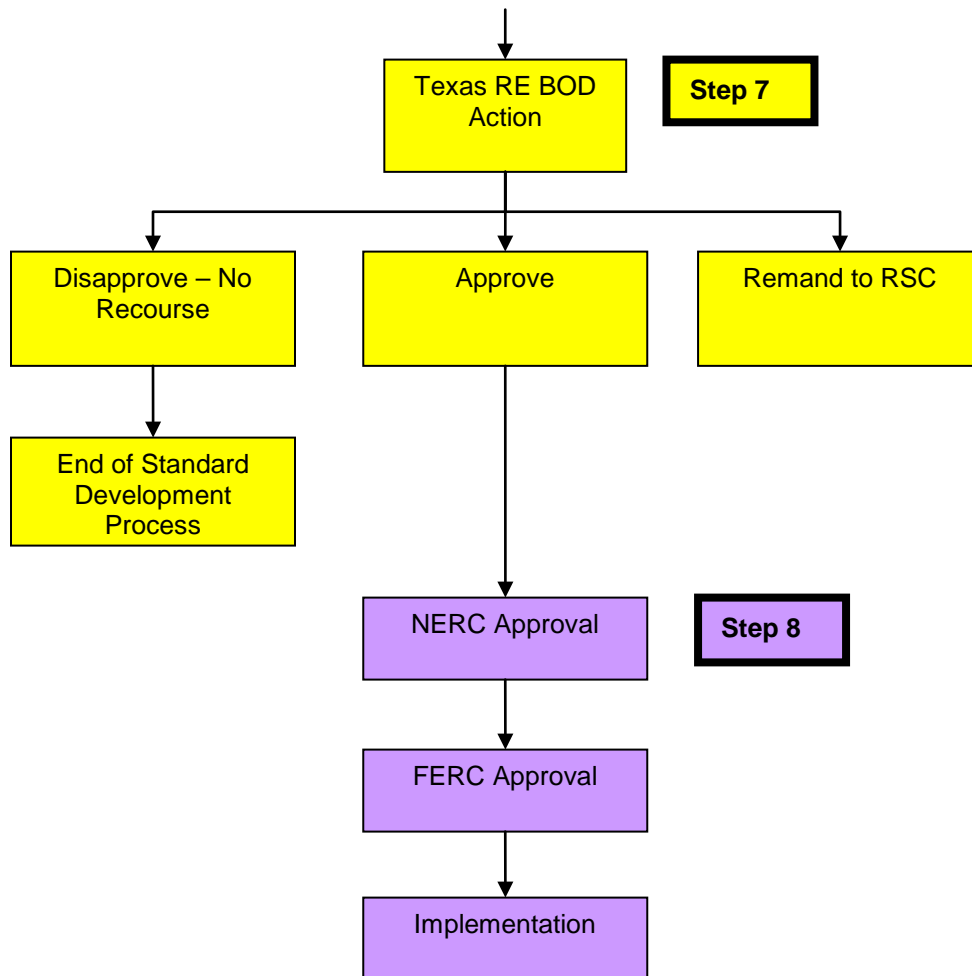
### Related SARs

SAR ID	Explanation

## Appendix D – Texas RE Standards Development Process Diagram







## EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

### 1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.1 Obligations of Texas Reliability Entity

The Texas Reliability Entity, Inc. (Texas RE), will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure (NERC CMEP)) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within Texas RE's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

#### 1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

**A. Hearing Body.** Texas RE will use the Public Utility Commission of Texas (PUCT) as its Hearing Body, and the PUCT (as Hearing Body) will issue recommendations to the Texas RE Board of Directors or a compliance committee of the Board of Directors ("Board") which will make final decisions following regional hearings of compliance matters. The PUCT has extensive experience in conducting contested case hearings and other adjudicatory proceedings in a manner that assures due process of law to all participants. Texas RE intends to rely upon the PUCT's experience and expertise in conducting the hearing process under the Delegation Agreement. Texas RE believes that it is more efficient and cost-effective to use existing PUCT procedures than to attempt to establish a redundant hearing process within Texas RE. The PUCT is uniquely well-positioned to perform this function for the ERCOT Region since electric utilities operating in the ERCOT Region do not synchronously interconnect with electric utilities operating outside of Texas, and ERCOT market participants have experience in participating in PUCT proceedings.

**B. Public Hearings.** The PUCT as Hearing Body will hold public hearings on all matters referred to it by the Texas RE for hearing and recommendation. The PUCT's performance of Hearing Body responsibilities is fully consistent with the NERC Rules of Procedure and with Section 39.7 of FERC Order 672, with the exception of Section 39.7(b)(4), which requires "[e]ach violation or alleged violation [to] be treated as nonpublic until the matter is filed with [FERC] as a notice of penalty or resolved by an admission ... or by a settlement or other negotiated disposition." Because the PUCT is a "governmental body" under the Texas Open Meetings Act (Texas Government Code § 551.002), the PUCT is required to conduct any deliberations and render a decision in a meeting that is open to the public. The Texas Open Meetings Act also requires that any evidence or other submissions concerning a PUCT hearing, except for information that is confidential or privileged under law, be publicly available. Texas Attorney General opinions have determined that the need to consider confidential information does not justify conducting a closed meeting or executive session. Although PUCT hearings, including those contemplated under this Exhibit D, are conducted as open meetings, steps are taken to prevent the disclosure of confidential information during the hearing process. Direct testimony in such cases is generally presented in written question and



answer format, with any confidential information redacted, filed under seal and provided to parties pursuant to a protective order. In hearings conducted under these rules, the Hearing Body shall use best efforts to avoid the inadvertent disclosure of confidential information. The Presiding Officer may use the following methods to protect confidential information, in addition to the entry of an appropriate protective order: (1) Requiring the aggregation of confidential information aggregated to eliminate its confidentiality; (2) Permitting or requiring the redaction of testimony where the non-public information is not material to the merits; (3) Closing the public hearings on a temporary basis to those not bound under the terms of any case-specific protective order in place while the specific, confidential data is the subject of testimony or argument; and (4) other reasonable means in the discretion of the Presiding Officer.

Under the Texas Public Utility Regulatory Act (PURA) §39.151(j), market participants in the ERCOT market are required to comply with all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures ERCOT establishes. The PUCT is given authority to enforce this obligation through the imposition of penalties, revocation of certifications or other means. In any enforcement proceeding under PURA, PUCT deliberations are conducted in an open meeting in accordance with the procedures outlined above. ERCOT is thus unlike other power regions that may be implementing an enforcement mechanism for the first time. The history of public availability of this information in the ERCOT power region argues in favor of the continued public availability of information considered in enforcement hearings the PUCT conducts as Hearing Body for the Texas RE.

Moreover, elsewhere in Order No. 672, FERC stated that: “If the ERO or a Regional Entity wishes to conduct a public investigation, enforcement audit or permit interventions when determining whether to impose a penalty, the ERO or the Regional Entity must receive advance authorization from the Commission.”<sup>1</sup>

In response to the request by Texas RE’s predecessor to be permitted to hold public hearings as outlined herein, FERC issued *In the matter of Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT*, Docket No. RR07-1-000, *Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements and Accepting Regional Entity 2007 Business Plans*, 119 FERC 61,060 at ¶253 (Issued April 19, 2007)(Delegation Agreement Acceptance Order). The Delegation Agreement Acceptance Order provides for open hearings as requested.

**C. Hearing Administration.** PUCT, as Hearing Body, is authorized to hear cases and render its recommendations through the PUCT Commissioners. The Hearing Body is authorized to use the PUCT staff of Administrative Law Judges (ALJs) and other trained employees to establish the procedures and timelines that will be followed in the regional hearings, including the conduct of hearings and the preparation of draft recommendations. These presiding officers will not, however, have any authority to issue a final recommendation on any alleged violation. The ALJs and staff may preside over hearings before the PUCT, may establish the procedural schedule for these proceedings, take evidence, prepare a draft recommendation, and perform all tasks

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<sup>1</sup> Order 672, ¶511.

delegated from the PUCT, except the final rendition and approval of the final recommendation to be provided to the Board.

**D. Detailed Hearing Procedures.** The details of the Texas Reliability Entity Regional Hearing Process are attached hereto as **Attachment 1 and Attachment 2**. **Attachment 1** consists of a summary of the NERC CMEP procedures that must be altered to accommodate Texas RE's request to have the PUCT act as its Hearing Body. **Attachment 1** is a summary of necessary revisions to Attachment 2 of the CMEP, and together with **Attachment 2** hereto and the incorporated PUCT Chapter 22 Procedural Rules, provides the details of the regional hearing process Texas RE has adopted.

In addition to the requested modifications to procedures set forth in Attachment 2 of the CMEP, Texas RE also varies from Section 5.5 of the main body of the CMEP, allowing the Board's decision (instead of the hearing body's decision) be appealed to NERC. This language is contained as subsection 9.2 of **Attachment 1**: "The Registered Entity may appeal the Board's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410."

**E. Regional Hearing of Compliance Matters.** Texas RE shall establish the PUCT as the hearing body, with authority to conduct compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan. The PUCT will issue a final recommendation to the Board rather than a final order.

### **1.3 Other Decision-Making Bodies.**

Texas RE will not use other decision-making bodies within its compliance program.

## **ATTACHMENT 1 TO EXHIBIT D – TEXAS RE REGIONAL HEARING PROCESS**

### **1.0 Designation of Hearing Body**

All formal compliance hearings shall be held before the Compliance Enforcement Authority's Hearing Body. The Hearing Body shall be the Public Utility Commission of Texas. All hearings shall be conducted under the hearing procedures set forth in Attachment 2 to Exhibit D ("Attachment 2—Rules of Procedure"), supplementing this Attachment 1. As set forth in Attachment 2— Rules of Procedure, the Hearing Body may delegate any hearing-related task to a Presiding Officer, except for the issuance of the final recommendation.

The Compliance Enforcement Authority shall initiate the hearing process following the completion of the Notice of Alleged Violation and proposed sanction and registered entity response processes in accordance with Section 5.1 of the North American Electric Reliability Corporation ("NERC") Compliance Monitoring and Enforcement Program ("NERC CMEP"), as set forth below.

Following the filing of a proceeding contesting an Alleged Violation or a Remedial Action Directive, no person shall engage in ex parte communications with the Hearing Body, including without limitation any appointed Presiding Officer, concerning the matter in dispute until the written decision of the Board of Directors or a compliance committee of the Board of Directors ("Board") is issued pursuant to Section 9.1 is appealed or the deadline for filing an appeal has passed; provided, however, that: (a) a member of the Hearing Body or the Presiding Officer may communicate ex parte with another member of the Hearing Body unless prohibited by other law, and (b) a member of the Hearing Body or the Presiding Officer may communicate ex parte with a Commission employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

The Hearing Body may rule on all procedural and discovery matters pursuant to Attachment 2—Rules of Procedure.

The Hearing Body may delegate to a single commissioner, a hearings examiner, or an administrative law judge (a "Presiding Officer") the authority to establish the procedures and dates for the presentation of all materials concerning the alleged violation and the power to hear evidence and to issue a draft recommendation, but the Hearing Body may not delegate its authority to issue a final recommendation on the alleged violation to the Board of the Compliance Enforcement Authority.

In accordance with Attachment 2—Rules of Procedure, the Hearing Body may provide for additional procedures as it deems necessary to effectively carry out a compliance hearing. To the extent permitted by law, any provision in this Attachment 1 may be waived, suspended, or modified by the Presiding Officer or the Hearing Body, as defined in Attachment 2—Rules of Procedure §1.1.5, for good cause shown, either upon the Presiding Officer's or the Hearing Body's own motion or upon the motion of any Party.

## **2.0 Recusal of Member of Hearing Body**

A Hearing Body member, Presiding Officer, or Technical Advisor shall recuse himself or herself if participation in the enforcement proceeding would violate the Compliance Enforcement Authority's Conflict of Interest or Code of Conduct policy.

The Registered Entity may raise an objection to any member of the Hearing Body, a Presiding Officer or Technical Advisor on grounds of a conflict of interest or the existence of other circumstances that could interfere with the that person's impartial performance of his or her duties. Such objections must be provided in writing and filed reasonably in advance of the start of the hearing and the Presiding Officer shall make a decision on the objection promptly. Upon request of the Registered Entity, the Hearing Body (without participation of the Hearing Body member, Presiding Officer, or Technical Advisor) may review the determination and, if so, shall issue a decision on the objection promptly.

## **3.0 Authorized Representatives**

Both the Compliance Enforcement Authority and the Registered Entity shall submit to the Hearing Body the names of the persons authorized to represent them in the Hearing Process pursuant to Attachment 2—Rules of Procedure. Such persons shall be officers or equivalents of the Regional Entity and the Registered Entity that have the authority to act on behalf of the Regional Entity and the Registered Entity, respectively. In addition, a party shall advise the Hearing Body and the other party if the party will be represented by legal counsel.

## **4.0 Statement of Alleged Violation and Response by Registered Entity**

The Registered Entity shall initiate the compliance hearing process in accordance with Section 5.1 of the NERC CMEP and Attachment 2—Rules of Procedure by filing with the Hearing Body Clerk a statement or complaint contesting the written Notice of Alleged Violation and proposed sanction and serving a copy upon the Compliance Enforcement Authority. Specifically, the Registered Entity shall file with the Hearing Body (with service of copies upon the Compliance Enforcement Authority) a written statement of reasons why the Alleged Violation is in error or a written statement of reasons why the proposed penalty or sanction is inappropriate (if applicable in the particular case), along with copies of all documents relied on by the Registered Entity to support its position. If the dispute involves a Registered Entity's proposed mitigation plan ("Registered Entity's Mitigation Proposal") that has not been accepted by the Compliance Enforcement Authority, the Registered Entity may initiate the hearing process by filing a request for hearing with the Hearing Body Clerk and serving a copy upon the Compliance Enforcement Authority.

Within five (5) business days after the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed, the Compliance Enforcement Authority's designated representative shall file with the Hearing Body (with copies to the Registered Entity) a copy of the written Notice of the Alleged Violation and proposed sanction that was originally provided to the Registered Entity, along with copies of any non-privileged or non-exempt documents gathered and reviewed by the Compliance Enforcement Authority in the course of determining an Alleged Violation has occurred and in determining the proposed sanction or penalty.

If the hearing involves the question of whether a Registered Entity's Mitigation Proposal

should be accepted, within twenty (20) days after the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed, the Compliance Enforcement Authority shall file a report stating why the Registered Entity's Mitigation Proposal was not accepted. If the hearing involves a Registered Entity's Mitigation Proposal, the Registered Entity shall file its proposed Mitigation Plan and supporting information stating why the Mitigation Plan should be accepted within thirty (30) days after the date the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed.

## **5.0 Setting of Hearings and Conferences**

The Hearing Body shall set a date for an initial conference within thirty (30) days after the date the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed. At the initial conference, the Hearing Body shall establish specific procedures for the hearing including (1) any procedures for exchange of additional documents, (2) any written testimony, (3) the hearing date(s), and (4) dates for any briefs. Subject to Section 6.0 and the Attachment 2—Rules of Procedure, each party shall be entitled to (1) present the testimony of witnesses, (2) cross-examination of opposing witnesses, (3) make an oral presentation of position, and (4) file a written post-hearing brief.

The Hearing Body may hold additional conferences. All notices of conferences and hearings shall set forth the date, time and place of hearing. The Hearing Body shall issue a written order setting forth the agreements and rulings made at each conference.

By agreement of the parties or order of the Hearing Body, any conference or hearing may be conducted via teleconference, except that, subject to section 6.0 of this hearing process, witnesses shall personally appear at the hearing.

All prehearing conferences and hearings shall be open to the public, except when the use of a closed meeting is authorized by Texas law.

## **6.0 Conduct of Hearing**

The hearing will be conducted under the provisions of this section 6.0 and the Attachment 2— Rules of Procedure.

The hearing need not be held on consecutive days, and shall be held at the offices of the Hearing Body unless the Hearing Body decides on a different location after consulting with the parties.

The party requesting transcription of the hearing, the Registered Entity or Compliance Enforcement Authority, will arrange and pay for transcription of the hearing.

The Hearing Body shall direct the direct testimony of any witnesses be in written form in accordance with Attachment 2— Rules of Procedure. All witnesses shall be required to appear in person, unless waived by the parties and the Hearing Body. Motions shall be made and decided, evidence shall be presented, and a record shall be made in accordance with Attachment 2— Rules of Procedure.

## **7.0 Submission of Post-Hearing Briefs**

The parties may submit post-hearing briefs on a schedule established by the Hearing Body pursuant to Attachment 2— Rules of Procedure. The parties may, and on request of the Hearing Body shall, submit proposed findings of fact and conclusions of law.

## 8.0 Record of the Compliance Hearing

If applicable, copies of the following documents shall be maintained by the Hearing Body as the record of the hearing process:

- (1) The written notice that a request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive has been filed with the Hearing Body Clerk;
- (2) The Notice of Alleged Violation and sanction issued by the Compliance Enforcement Authority and the response filed by the Registered Entity, including in each case all attachments thereto and documents provided therewith;
- (3) If the hearing involves a Registered Entity's Mitigation Proposal, (a) the Registered Entity's Mitigation Proposal and supporting information as to why the Registered Entity's Mitigation Proposal should be accepted and (b) the report of the Compliance Enforcement Authority stating why the Registrant's Mitigation Proposal was not accepted;
- (4) Any requests for recusal of a member of the Hearing Body, a Presiding Officer, or a Technical Advisor, and any responses to such requests;
- (5) All motions, notices and responses filed by the parties during the hearing process;
- (6) All documents that set forth or that summarize any ex parte communications;
- (7) All notices and rulings issued by the Hearing Body during the hearing process;
- (8) All interlocutory orders;
- (9) All written testimony and all exhibits received into evidence;
- (10) All written testimony and documentary exhibits that were proffered but not admitted into evidence;
- (11) Any transcript(s);
- (12) The parties' post-hearing briefs, any exceptions to the draft recommendation, any motions for reconsideration or rehearing, and any other post-decision briefing or motion;
- (13) The draft recommendation of the Presiding Officer, if any; and
- (14) The final recommendation of the Hearing Body.

## 9.0 Timing of Written Recommendation to the Board

The Hearing Body shall issue its written final recommendation to the Board within thirty (30) days following the submission of post-hearing briefs, or, if briefing is waived, following the conclusion of the hearing. The Hearing Body may in its discretion extend the time for the issuance of the written final recommendation to the Board for up to an additional sixty (60) days. The written final recommendation shall state the opinion of the Hearing Body with respect to Alleged Violations of Reliability Standards and proposed penalties or sanctions at issue in the hearing. If the hearing involves a Registered Entity's Mitigation Proposal, the written final recommendation shall either

propose acceptance or rejection of the Registered Entity's Mitigation Proposal. If the proposed Registered Entity's Mitigation Proposal is recommended for rejection, the Hearing Body may specify the provisions of an alternative plan of mitigation that the Registered Entity should be required to implement. The written final recommendation shall explain the reasons for the Hearing Body's conclusions and cite the testimony and exhibits relied on by the Hearing Body in reaching its opinions. Copies of the written final recommendation shall be served electronically and by certified mail on the Registered Entity and on the Compliance Enforcement Authority's designated representative at the time it is issued to the Board.

### **9.1 Written Decision by the Board**

The Board shall issue its written decision accepting, rejecting or modifying the Hearing Body's recommendation, within twenty (20) business days following the issuance of the Hearing Body's written final recommendation. The Board may extend the date for issuance of its written decision for an additional twenty (20) business days in its sole discretion. The Board's written decision shall state the conclusion of the Board with respect to Alleged Violations of Reliability Standards and proposed penalties or sanctions at issue in the hearing. If the hearing involves a Registered Entity's Mitigation Proposal, the written decision shall either accept or reject the Registered Entity's Mitigation Proposal. If the proposed Registered Entity's Mitigation Proposal is rejected, the Board may specify the provisions of the Registered Entity's Mitigation Proposal that the Registered Entity should be required to implement, together with other mitigation measures the Board shall require. The written decision shall explain the reasons for the Board's conclusions and cite the testimony and exhibits relied on by the Board in reaching its conclusions. Copies of the written decision shall be served electronically and by certified mail on the Registered Entity, on the Compliance Enforcement Authority's designated representative, and on the Hearing Body.

### **9.2 NERC Appeal Process**

The Registered Entity may appeal an adverse decision of the Board to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410.

## **10.0 Expedited Hearing Process for Disputes Concerning Remedial Action Directives**

A Registered Entity that disputes a Remedial Action Directive issued by a Compliance Enforcement Authority may request an expedited hearing. To facilitate the expedited hearing, the Compliance Enforcement Authority may request that the Hearing Body convene for purposes of the expedited hearing process. The following expedited procedures shall be followed:

- (1) The Registered Entity shall file its written response the Remedial Action Directive and request for emergency hearing with the Hearing Body, with a copy to the Compliance Enforcement Authority's designated representative within two (2) business days after receipt of the Remedial Action Directive. The Hearing Body may appoint a Presiding Officer to conduct all proceedings under this Section 10.0, except for the issuance of a final recommendation to the Board.
- (2) The Hearing Body shall be convened for purposes of a prehearing, and if requested, for interim relief, not less than two (2) nor more than five (5) business days after receipt of the Registered Entity's request for a hearing.

- (3) The Hearing Body shall conduct a hearing on the matter, in person or by teleconference, within thirty (30) days after the Hearing Body is convened. At the hearing, the Compliance Enforcement Authority shall explain why the Remedial Action Directive should be complied with, and the Registered Entity shall explain why the Remedial Action Directive is not necessary or should be modified.
- (4) The Hearing Body shall issue a summary written recommendation to the Board within twenty (20) business days following the hearing, stating whether the Registered Entity should or should not be required to comply with the Remedial Action Directive and identifying any modifications to the directive that it finds appropriate.
- (5) The Board shall issue a summary written decision within ten (10) business days following the Hearing Body's issuance of its summary written recommendation, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the directive that it finds appropriate.
- (6) If the Board's summary written decision concludes that the Registered Entity is required to comply with the Remedial Action Directive or any modification to such directive (including adjustments to the timetable for implementation), the Registered Entity shall be required to begin implementing the Remedial Action Directive upon receipt of the summary written decision, if it has not already implemented the Remedial Action Directive.
- (7) Within thirty (30) days following issuance of its summary written decision, the Board shall issue a full written decision regarding the Remedial Action Directive to the requirements of Section 9.0, above, that may be appealed consistent with Section 9.2.
- (8) This Section 10.0 provides procedures for the expeditious determination of the propriety of a contested Remedial Action Directive. Nothing in this Section shall be read to impair the Compliance Enforcement Authority's authority to issue a Notice of Alleged Violation and proposed sanction on alleged violations of standards addressed by a Remedial Action Directive or on other alleged violations occurring contemporaneously with the Remedial Action Directive or at any other time using the non-expedited procedures of this Attachment 1 or Attachment 2— Rules of Procedure.



## ATTACHMENT 2 TO EXHIBIT D – TEXAS RE RULES OF PROCEDURE

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 to the Texas Reliability Entity, Inc. (“Texas RE” or “Compliance Enforcement Authority”) (“Rules of Procedure”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority and Hearing Board, as defined herein, in hearings in the ERCOT region of the United States conducted into (a) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (b) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Rules of Procedure shall be conducted before the Public Utility Commission of Texas (“Commission”), as is further provided herein.

#### 1.1.2 Deviations and Exceptions

- (a) To the extent permitted by law, any provision in these Rules of Procedure may be waived, suspended or modified by the Presiding Officer or the Hearing Body, as defined in Section 1.1.5, for good cause shown, either upon the Presiding Officer’s or the Hearing Body’s own motion or upon the motion of any Party.
- (b) Where an issue is not addressed by the terms of these Rules, the Hearing Body shall use the Chapter 22 Procedural Rules.
- (c) The following provisions of Chapter 22 shall not be applicable to proceedings brought under these Procedural Rules:
  - (1) P.U.C. PROC. R. § 22.32;
  - (2) P.U.C. PROC. R. § 22.33;
  - (3) P.U.C. PROC. R. § 22.35;
  - (4) P.U.C. PROC. R. §§ 22.51-22.54;
  - (5) P.U.C. PROC. R. § 22.56;
  - (6) P.U.C. PROC. R. § 22.71(j);
  - (7) P.U.C. PROC. R. §§ 22.102(a)(3), (4) and (c);
  - (8) P.U.C. PROC. R. §§ 22.103-22.105;
  - (9) P.U.C. PROC. R. §§ 22.125-22.126;
  - (10) P.U.C. PROC. R. § 22.202(e);
  - (11) P.U.C. PROC. R. §§ 22.206-22.207;
  - (12) P.U.C. PROC. R. §§ 22.241-22.246;
  - (13) P.U.C. PROC. R. §§ 22.251-22.252;
  - (14) P.U.C. PROC. R. § 22.263(d); and

(15) P.U.C. PROC. R. §§ 22.281-22.284.

(d) For purposes of this Attachment 2—Rules of Procedure, the following shall supplement the terms of a Chapter 22 Rule, as specified:

(1) P.U.C. PROC. R. § 22.31. The following subsection (d) shall be added:

“(d) The Hearing Body Clerk shall designate each proceeding brought under these rules as a docket.”

(2) P.U.C. PROC. R. § 22.72(e). The following sentence shall be added at the end of this subsection:

“A party or its authorized representative shall also provide in its signature block one or more electronic mail addresses to which service may be made.”

(3) P.U.C. PROC. R. § 22.74(b). The following sentence shall be added at the end of this subsection:

“(b) . . . Service may be made by electronic mail to the email address included in a signature block of a party or its authorized representative.

\* \* \*

“(4) Service by email shall be complete upon transmission of the communication from the electronic mail server of the serving party.”

(e) All proceedings filed under these rules shall be conducted under the Commission’s Chapter 22 Procedural Rules, as modified herein, but may not be referred to the State Office of Administrative Hearings.

### **1.1.3 Standards for Discretion**

The Hearing Body’s discretion under these Rules of Procedure shall be exercised to accomplish the following goals:

- (a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- (b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Parties should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Party that would otherwise result from another Party’s failure to act diligently and in good faith.
- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Party or interest group.
- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority’s conflict of interest policy.

- (e) Impartiality - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

#### **1.1.4 Interpretation**

- (a) These Rules of Procedure shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Section 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- (b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- (c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

#### **1.1.5 Definitions**

- (a) Unless otherwise defined, as used in these Rules of Procedure (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Board” means the Board of Directors of Texas Reliability Entity.

“Bulk-Power System,” for the purposes of these Rules of Procedure, has the meaning set forth in 16 U.S.C. §824o(a)(1).

“Chapter 22” or “Commission Procedural Rules” shall mean the Chapter 22 Procedural Rules of the Commission, 16 TEX. ADMIN. CODE ch. 22., and be cited as “P.U.C. PROC. R. § [].”

“Commission” means the Public Utility Commission of Texas.

“Compliance Enforcement Authority Clerk,” as designated by the Compliance Enforcement Authority.

“Compliance Enforcement Authority” means the Regional Entity, by and through its Chief Executive Officer.

“Compliance Enforcement Authority’s area of responsibility” means the Texas Reliability Entity’s corporate region.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software, and data that are essential to the Reliable Operation of the Bulk-Power System.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. §39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Filing Clerk” or “Hearing Body Clerk” means the Central Records filing clerk of the Public Utility Commission of Texas.

“Hearing Body” means the Public Utility Commission of Texas.

“Mitigation Plan” means an action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent reoccurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority Decision, settlement agreement, or otherwise.

“Party” means any Person who is allowed or required to participate in a proceeding conducted pursuant to these Rules of Procedure. The term “Party” as used herein shall include the members of the Compliance Staff of the Compliance Enforcement Authority that participate in a proceeding.

“Penalty” as used herein includes all penalties and sanctions that may be imposed pursuant to 16 U.S.C. §824o-1 and applicable regulations, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Presiding Officer” or “Hearing Examiner” means an individual employed or contracted by the Hearing Body and designated by the Hearing Body to preside over hearings conducted pursuant to these Rules of Procedure.

“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.

“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with the Regional Entity pursuant to 18 C.F.R. § 39.2.

“Regional Entity” means Texas Reliability Entity or Texas RE.

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent threat of harm.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation or contested Mitigation Plan that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by the Compliance Enforcement Authority who have the authority to make initial determinations of Registered Entities’ compliance with or violation of the Reliability Standards and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, Hearing Body employee, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Presiding Officer and/or the Hearing Body.

- (b) For purposes of this Attachment 2--Rules of Procedure and in application to any proceeding brought under these rules, the following terms shall be substituted for the term used in a Chapter 22 rule:

“Administrative law judge” shall mean and refer to the defined term “Presiding Officer.”

“Central records” shall mean “Hearing Body Clerk.”

“Final order” shall mean “final recommendation.”

“Proposal for decision” shall mean “draft recommendation.”

“Public utility” shall mean “party.”

- (c) If a term is defined in this Attachment 2—Rules of Procedure and in Chapter 22, the meaning expressed herein shall prevail.

### **1.1.6 Interventions Are Not Permitted**

The Respondent(s) and Compliance Staff shall be Parties to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Party to the proceeding.

#### **1.1.7. Proceedings Open to the Public**

All hearings, oral arguments, and meetings of the Hearing Body shall be open to the public, and every notice, ruling, order or any other issuance of the Presiding Officer or Hearing Body, and any transcript, made in any proceeding shall be publicly released unless a Party has requested that it be kept confidential in accordance with Texas law, and the Presiding Officer or Hearing Body determines that the information should not be released publicly.

#### **1.1.8 Numbering and Docketing System**

The Staff of the Compliance Enforcement Authority shall maintain a system of numbering proceedings before they are sent to the Hearing Body for a hearing under these procedures. A numbered proceeding shall be created within the Compliance Enforcement Authority upon the issuance of a notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authority, proceeding numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "[RE]", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year. If the proceeding is not settled and becomes a contested matter before the Hearing Body, the Hearing Body's numbering and docketing system shall govern the tracking of such filings while under the Hearing Body's administration.

### **1.2 Hold Harmless**

A condition of a Party invoking these Rules of Procedure and participating in a hearing is that the Party agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, attorneys and experts (outside or in-house), Hearing Body members, Presiding Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This "hold harmless" provision does not extend to matters constituting gross negligence, intentional misconduct, or breach of confidentiality.

### **1.3 Initiation of the Hearing Process**

Except when contesting a Remedial Action Directive pursuant to section 1.5 of these Rules of Procedure, a Registered Entity may file a response or complaint with the Compliance Enforcement Authority and the Filing Clerk requesting a hearing if:

- (a) The Registered Entity contests a Notice of Alleged Violation as to the existence or scope of the alleged violation, the proposed Penalty, or both; or
- (b) The Registered Entity contests the Compliance Enforcement Authority's rejection of Registered Entity's Mitigation Proposal in whole or in part.

A Registered Entity must file its hearing request within forty (40) days after (i) the Registered Entity files its response to the notice of Alleged Violation; or (ii) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's Mitigation Proposal, whichever is applicable. If the Registered Entity does not file a hearing request within the time period set forth in this Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff's stated position on the Registered Entity's Mitigation Proposal, whichever is applicable.

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its disagreement with a Registered Entity's Mitigation Proposal shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's position on the Registered Entity's Mitigation Proposal.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- (a) The Registered Entity's Self-Reporting of a violation;
- (b) The Notice of Alleged Violation and the Registered Entity's response thereto; or
- (c) The Registered Entity's Mitigation Proposal and the Compliance Staff's statement identifying its disagreement with the Registered Entity's Mitigation Proposal.

#### **1.4 General Hearing Procedure**

Except as otherwise specified in this Attachment 2—Rules of Procedure, the procedures and timelines set forth in Chapter 22 shall govern the conduct of a hearing arising under these rules.

##### **1.4.1 Hearing Body**

The Hearing Body, consisting of a quorum of the Commission, shall hear all proceedings brought under these Rules of Procedure, unless the Commission elects to delegate all or part of the proceeding to a Presiding Officer who is a member of the Commission Staff. The Hearing Body is vested with the exclusive authority to issue a final recommendation to the Board for the resolution of the issue(s) presented. The following procedures shall also apply:

- (a) The Hearing Body or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, or to submit questions to the Presiding Officer to submit to a Party or any witness at any such hearing. No more than one member of the Hearing Body may be present for any prehearing conference, status hearing, or evidentiary hearing unless the Hearing Body has complied with the Open Meetings requirements of Texas law.
- (b) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a final recommendation to the Board. In issuing a final recommendation to the Board, the Hearing Body shall consider the Presiding Officer's draft recommendation but shall have the authority to

reject, modify or approve the draft recommendation in whole or in part in issuing its final recommendation.

#### **1.4.2 Technical Advisor**

The Presiding Officer or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not otherwise participate in the proceeding on which such technical advice would be rendered.

If the Presiding Officer or Hearing Body uses a Technical Advisor to assist in any hearing, the Presiding Officer or Hearing Body shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) days of the Technical Advisor's assignment to the proceeding, and Parties to the hearing may raise objections to the Technical Advisor's participation within 10 business days of disclosure.

#### **1.5 Initiation of Remedial Action Directive Hearing**

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Compliance Enforcement Authority will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive in accordance with these Rules of Procedure and Delegation Agreement, Exhibit D, Attachment 1, §10, by filing a written notice with the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following issuance of the Remedial Action Directive. If the Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Registered Entity shall simultaneously file with the Hearing Body Clerk a copy of the notice that it is contesting the Remedial Action Directive.

The Hearing Body Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene.



## **Exhibit E — Funding**

### **1. Scope of activities funded through the ERO funding mechanism**

Texas Reliability Entity, Inc. ("Texas RE") shall include in its annual budget submission to the North American Electric Reliability Corporation ("NERC") amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

### **2. Allocation of Costs**

Texas RE shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method or methods of allocating and calculating such dues, fees, or charges has been submitted to and approved by NERC and the Commission, in accordance with Section 8(b) of the delegation agreement. Texas RE shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net-energy-for load or such other data or information as is necessary to allocate and calculate Texas RE's dues, fees, or charges under any other method of allocation or calculation that is to be used.

### **3. Collection of Funding**

(a) NERC, Texas RE, and Electric Reliability Council of Texas, Inc. ("ERCOT") have agreed that ERCOT shall act as the billing agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities, ERCOT Qualified Scheduling Entities ("QSEs"), or such other entities as agreed by NERC, Texas RE, and ERCOT. ERCOT and Texas RE agree that ERCOT shall: (i) issue all invoices to load-serving entities, QSEs, or other agreed entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoice; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC quarterly, in a timely manner. Texas RE shall confirm that ERCOT complies with these obligations, and shall notify NERC promptly of any compliance failures.

NERC shall submit invoices on a quarterly basis to ERCOT covering the NERC and Texas RE budgets approved for collection for the ERCOT region. Within ten (10) business days after receiving this quarterly invoice, ERCOT will electronically transfer to NERC the amount reflected in the invoice, in immediately available funds, unless ERCOT has been unable to collect and does not reasonably believe it can collect such amount from load-serving entities, QSEs, or other agreed entities, after exercise of commercially reasonable efforts. On the same day as ERCOT makes each electronic transfer of funds to NERC, ERCOT will

send an e-mail to the Chief Financial Officer of NERC and the Chief Executive Officer of Texas RE either (i) confirming that the full invoiced amount has been electronically transmitted to NERC or (ii) stating that ERCOT is unable to collect the full amount of the NERC invoice and reasonably believes that it will not be able to collect the full amount of the NERC invoice from load-serving entities, QSEs, or other agreed entities after exercise of commercially reasonable efforts and confirming the amount that has been transmitted to NERC. In the event ERCOT is unable to transfer to NERC the full invoiced amount, ERCOT shall also send to NERC and Texas RE a listing of any load-serving entity, QSE or other agreed entity that has not fully paid its load ratio share and an itemization of the collections that ERCOT received, by entity and amount. ERCOT will maintain a detailed list of the entities from which payments were collected and the amount collected from each entity.

ERCOT and Texas RE agree that they shall not in any way use their position as billing or collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of Texas RE's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this agreement. ERCOT's confirmation of its agreements as set forth in this Paragraph 3 is attached hereto as Attachment 1.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund Texas RE's costs identified in Section 1 of this Exhibit E in four equal quarterly payments, within ten (10) business days after receiving the remittance from ERCOT.

#### **4. Application of Penalties**

All penalty monies received by Texas RE shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity.

#### **5. Description of Non-Statutory Activities**

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this Exhibit E (such functions and activities referred to in this Section 5 as "statutory activities"), Texas RE will also perform the following other functions and activities (referred to in this Section 5 as "non-statutory activities") at least through December 31, 2010:

- Investigation of market participants' compliance with the ERCOT Protocols and Operating Guides which contain the Regional criteria for planning and operating reliable interconnected bulk electrical systems in the ERCOT region, and assistance or cooperation in enforcement of violations ("ERCOT Compliance Activities"), so long as the ERCOT Compliance Activities do not conflict with the statutory activities, including: (i) maintaining a record of all material occurrences of non-compliance with ERCOT procedures and tracking recurrence of such material occurrences of non-compliance; (ii) promptly providing information to and responding to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures; (iii) maintaining a record of the resolutions of such material occurrences of non-

compliance and of corrective actions taken by the market participants in each instance; and (iv) informing the Public Utility Commission of Texas Staff immediately if the material occurrence of non-compliance is not resolved.

- Development of policies, processes, standards, and procedures to implement the ERCOT Compliance Activities.

Texas RE shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs and expense it incurs in the performance of its non-statutory functions separately from the costs and expense it incurs in the performance of its statutory functions:

- A. Texas RE segregates the funding for its statutory activities and non-statutory activities by recording the funding transactions in separate and distinct general ledger accounts, in accordance with Generally Accepted Accounting Principles.
- B. Texas RE utilizes and must maintain a time recording and expense management system under which employee time and expenses incurred in the conduct of non-statutory activities will be tracked to ensure that they are not funded by NERC remittances intended for the funding of statutory activities.
- C. Texas RE has adopted a detailed system of Account Codes, Department Codes and Activity Codes which are used in recording expenses. The Activity Codes are specific to statutory activities and non-statutory activities. The Texas RE Activity Codes are modeled on the NERC Functional Categories. Texas RE shall use Department Codes that are unique to Texas RE to record all costs and expenses incurred by Texas RE for statutory activities and non-statutory activities.
- D. Texas RE shall use Activity Codes to appropriately track its costs for statutory activities separately from its costs for non-statutory activities.
- E. Where employee time or an expense affects multiple activities, Texas RE will use an accurate basis of allocation of the time or expense between the activities being performed based on specific metrics, such as time tracking, data observations or total cost input. Total cost input relates the portion of the expense to the total expense to establish an appropriate method to allocate.

Texas RE shall provide its budget for such non-statutory activities to NERC at the same time that Texas RE submits its annual budget request to NERC pursuant to Section 1. Texas RE's budget for non-statutory activities that is provided to NERC shall contain a detailed list of Texas RE 's non-statutory activities. Texas RE agrees that no costs of non-statutory activities are to be included in the calculation of Texas RE dues, fees, and other charges for its statutory activities pursuant to this Agreement.

## Attachment 1 to Exhibit E

## Confirmation of Electric Reliability Council of Texas, Inc.

Electric Reliability Council of Texas, Inc. (ERCOT), the Independent System Operator (ISO) for the ERCOT region, has agreed to act as the billing agent on behalf of NERC to bill and collect assessments for the costs of activities under Section 215(c) of the Federal Power Act from load-serving entities, Qualified Scheduling Entities (QSEs), or such other entities as agreed by North American Electric Reliability Corporation (NERC), Texas Reliability Entity, Inc. (Texas RE), and ERCOT. ERCOT agrees that ERCOT shall: (i) issue all invoices to load-serving entities, QSEs, or other agreed entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoice; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC on a quarterly basis, in a timely manner.

On a quarterly basis, NERC will send ERCOT an invoice covering the NERC and Texas RE budgets approved for collection for the ERCOT region. Within ten (10) business days after receiving this invoice, ERCOT will electronically transfer to NERC, in immediately available funds, the amount reflected in the NERC invoice, unless ERCOT has been unable to collect and does not reasonably believe it will be able to collect this amount from load-serving entities, QSEs, or other agreed entities after exercise of commercially reasonable efforts. On the same day as ERCOT makes its electronic transfer of funds to NERC, ERCOT will send an e-mail to the Chief Financial Officer of NERC, copying the Texas RE Chief Executive Officer either (i) confirming that the full invoiced amount has been electronically transmitted to NERC; or, (ii) stating that ERCOT is unable to collect the full amount of the NERC invoice and reasonably believes that it will not be able to collect the full amount of the NERC invoice from load-serving entities, QSEs, or other agreed entities after exercising commercially reasonable efforts and confirming the amount that has been transmitted to NERC. In the event ERCOT is unable to transfer to NERC the full invoice amount, ERCOT shall also send to NERC and Texas RE a listing of any load-serving entity, QSE, or other agreed entity that has not paid its load ratio share and an itemization of the collections that ERCOT received by entity and amount. ERCOT shall maintain a detailed list of the entities from which payments are collected and the amount collected from each entity.

ERCOT agrees that it shall not in any way use its position as billing or collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of Texas RE's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this agreement.

Electric Reliability Council of Texas, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

approved by the current Texas RE Board (particularly if the New Texas RE membership also formally approved the Bylaws). However, the NERC Board of Trustees requires that the Board of New Texas RE formally approve the Bylaws, new Amended Delegation Agreement, and Amended 2010 Business Plan and Budget of New Texas RE before NERC will approve and submit the documents to FERC for approval.

New Texas RE quickly needs to identify Initial Directors that will form the corporation and have at least one meeting to formally approve the New Texas RE Bylaws, New Delegation Agreement, and Amended 2010 Business Plan and Budget. Because New Texas RE Initial Directors will probably not qualify as Independent Directors, language was added to Article VI Section 3 to allow the Initial Board to conduct administrative business (including the approval of contracts and budgets) prior to having three Independent Directors.

In addition, because the Initial Directors will hold at least one meeting before Independent Directors were approved, language was added to Article IV Section 2(c) of the Bylaws to set forth the composition of the Initial Nominating Committee, as follows:

“The Initial Nominating Committee will consist of the Initial Directors except the Management Director (as defined in Article IV, Section 3), and at least two other persons selected by these Initial Directors to represent the interests of the Membership.”

Most of the other modifications to the Bylaws requested by NERC's counsel are primarily clarifications. If any additional modifications are requested or required by NERC or FERC at or after the December 7, 2009 pre-filing meeting, Texas RE staff will discuss these modifications with the Board at the December 14, 2009 meeting. No other requested modifications are known at this time.

#### B. Delegation Agreement Differences

The primary differences between the approved current Texas RE Amended and Restated Regional Delegation Agreement and the New Delegation Agreement are due to the governance changes that are set forth in the new Texas RE Bylaws. The primary changes are that New Texas RE is not affiliated with any registered entity and has different membership Sectors than current Texas RE. It also has a different group of hybrid directors.

The Hearing Process, which is included in Exhibit D and Attachments 1 and 2 to the New Delegation Agreement, has only been slightly modified to have the PUCT, as the hearing body, submit its recommendation to the New Texas RE board of directors (or a committee thereof), instead of to the New Texas RE CEO. The Standards Development Process (Exhibit C to the Delegation Agreement) has some intended efficiency improvements and it now includes the required quorums and voting mechanisms for the Standards Development Committee as well as the Ballot Body (which were previously included in procedure documents).

#### C. Initial Director Recommendation

Time is of the essence for the selection of Initial directors. In order for the NERC Board of Trustees to approve the New Texas RE Bylaws, New Delegation Agreement, and Amended 2010 Business Plan and Budget at or before its February 16, 2010 meeting (for filing with FERC near the end of February), the New Texas RE Initial Directors will need to be selected to form New Texas RE in early January, and the Initial Directors will need to schedule and hold a meeting before the end of January to approve the required documents and to establish a Nominating Committee to screen and select new Independent Directors.

It will likely not be possible to select three new Independent Directors to serve as the Initial Directors and meet the planned time schedule. Texas RE staff proposes that, subject to approval by NERC and by FERC staff at the pre-filing meeting, New Texas RE form the new corporation with the following four directors: Larry Grimm as the CEO of Texas RE and three current Texas RE Unaffiliated Directors. Texas RE staff suggests that the Board Chair, Advisory Committee Chair, and Miguel Espinosa, as the Director with financial expertise, be recommended to serve as the Initial Directors. If NERC or FERC do not allow current Directors to serve as the Initial Directors, Texas RE staff will locate different Initial Directors.

Texas RE respectfully requests that the Board approve the revised Bylaws, as set forth in Exhibit A, and the New Delegation Agreement, as set forth in Exhibit B, and recommend Initial Directors for New Texas RE.

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**Key Factors Influencing Issue:**

Desire to have the current Texas RE Board approve the revised Bylaws and New Delegation Agreement and to recommend formation Directors to allow Texas RE staff to have its required documents formally approved in time for the February NERC Board of Trustees meeting.

**Alternatives:**

- Approve the revised Bylaws and New Delegation Agreement
- Suggest modifications to the Bylaws or New Delegation Agreement
- Recommend Initial Directors

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**Conclusion/Recommendation:**

Texas RE respectfully requests that the Board (1) approve the revised Bylaws attached hereto as Exhibit A; (2) approve the New Texas RE Delegation Agreement attached hereto as Exhibit B; and (3) recommend Initial Directors for New Texas RE.

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

, 2009

WHEREAS, the Board of Directors of Texas Regional Entity, a division of the Electric Reliability Council of Texas, Inc. (Board), a Texas non-profit corporation, has determined it to be desirable and in the best interest of Texas Regional Entity to approve the Bylaws which are attached hereto as Exhibit A, for a legally separate new corporation named Texas Reliability Entity, Inc. to become the successor regional entity for the ERCOT region; and

WHEREAS, the Board has determined it to be desirable and in the best interest of Texas Regional Entity to approve the Amended and Restated Regional Delegation Agreement between Texas Reliability Entity, Inc., and North American Electric Reliability Corporation (New Delegation Agreement), which is attached hereto as Exhibit B; and

WHEREAS, the Board agrees that it is in the best interest of Texas Regional Entity for the following individuals to serve as the formation directors or "Initial Directors" of Texas Reliability Entity, Inc.: (1) Larry Grimm as Chief Executive Officer; (2) \_\_\_\_\_; (3) \_\_\_\_\_; and (4) \_\_\_\_\_.

THEREFORE be it RESOLVED, that the Board hereby approves the Bylaws which are attached hereto as Exhibit A and incorporated herein for all purposes; and

Be it further RESOLVED, that the Board hereby approves the New Delegation Agreement which is attached hereto as Exhibit B and incorporated herein for all purposes; and

Be it further RESOLVED that the Board hereby recommends the following individuals to serve as the Initial Directors of Texas Reliability Entity, Inc.:

1. Larry Grimm as Chief Executive Officer;
2. \_\_\_\_\_;
3. \_\_\_\_\_; and
4. \_\_\_\_\_.

CORPORATE SECRETARY'S CERTIFICATE

I, Susan Vincent, Corporate Secretary of Texas Regional Entity, do hereby certify that, at the December 14, 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

**BYLAWS**  
**OF**  
**TEXAS ~~REGIONAL~~RELIABILITY ENTITY, INC.**

(A Texas Non-Profit Corporation)

Approved on \_\_\_\_\_, ~~2009~~2010

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## ARTICLE I. DEFINITIONS

**Section 1. Definitions.** The capitalized terms used in these Bylaws of Texas ~~Regional~~Reliability 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 entity controlling, controlled by or under common control with the entity under consideration, and includes any entity (i.e., any commercial enterprise) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. 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 or having 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) “Initial Director” means a Director named in the Certificate of Formation and seated for formation of the Corporation.

(j)(k) “Member” means a member of the Corporation pursuant to Article III of these Bylaws.

(k)(l) “NERC” means North American Electric Reliability Corporation, the entity certified by FERC as the ERO on July 20, 2006.

(l)(m) “NERC Rules of Procedure” means the Rules of Procedure that are adopted by NERC and approved by the Commission.

(m)(n) “PUCT” means the Public Utility Commission of Texas.

(n)(o) “OPUC” means the Texas Office of Public Utility Counsel.

(o)(p) “Regional Entity” means an entity with a Delegation Agreement with NERC, as ERO, including the following organizations, in addition to Texas Regional Reliability 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).

(p)(q) “Regional Reliability Standard” means a standard for the ERCOT Region that is proposed and approved in accordance with the Texas RE Standards Development Process, as set forth in Exhibit C to the Delegation Agreement, and either, (i) sets more stringent reliability requirements than a national Reliability Standard, or (ii) covers matters not covered by a national Reliability Standard.

(q)(r) “Registered Entity” means an entity that is registered with NERC and listed on the NERC Compliance Registry (available at [www.nerc.com](http://www.nerc.com)).

(r)(s) “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.

~~(s)~~(t) “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.

~~(t)~~(u) “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; 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 Business Organizations Code.

**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 only to any 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 entity that is eligible to be a Member of the Corporation in accordance with Article III, Section 1 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 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.

**Section 4. Membership Sectors.** Each Member shall elect to be assigned to one of the following membership Sectors:

(a) **System Coordination and Planning:** An entity that is registered with NERC as a Reliability Coordinator (RC), Balancing Authority (BA), Planning Authority (PA), Resource Planner (RP), or Interchange Authority (IA).

(b) **Transmission and Distribution:** An entity that is registered with NERC as a Transmission Owner (TO), Transmission Planner (TP), Transmission Service Provider (TSP), Distribution Provider (DP), and/or Transmission Operator (TOP)-) and is not a Cooperative or Municipal Utility.

(c) **Cooperative or River Authority Utility:** An entity that is (a) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter; or (b) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or (c) a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; ~~or (d) a River Authority as defined in Tex. Water Code §30.003 that and~~ is registered with NERC for at least one registeredreliability function.

(d) **Municipal Utility:** A municipally owned utility as defined in PURA §11.003 and is registered with NERC for at least one registeredreliability function.

(e) **Generation:** An entity that is registered with NERC as a Generator Owner (GO) or Generator Operator (GOP).

(f) **Load-Serving and Marketing:** An entity that is registered with NERC as a Load Serving Entity (LSE), a Purchasing-Selling Entity, or any newly defined NERC ~~Function~~reliability function for demand response.

## **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.

(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. Any disputes regarding appropriateness of a Member's Sector will be decided by a majority vote of the Board.

(d) A company or entity that is an Affiliate of a Member may hold a separate membership in a different Sector, so long as the legal entities have different NERC Compliance Registry Numbers under which they are currently registered for the applicable NERC ~~Function~~reliability function.

(e) A Member must continue to vote in the same Sector for a minimum of the remainder of the fiscal year in which it becomes a Member 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 which 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.

**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 of the Corporation, 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 entity 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) four (4) 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 OPUC (or another employee of OPUC designated by ~~the~~Texas Public Counsel), as an *ex officio* non-voting member, representing the interests of residential and small commercial electricity consumers; (iv) the CEO of the Corporation as a voting member; (the "Management Director"); (v) the chair of the Member Representatives Committee as a voting member; and (vi) the vice chair of the Member Representatives Committee as a voting member. The Directors who are the chair and vice chair of the Member Representatives Committee will be collectively referred to herein as "Affiliated Directors." Each Director ~~and, including the~~ Affiliated Director, Directors and 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, including ERCOT ISO, and 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 status 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 Directors named as Initial Directors, who are the Directors seated for formation of the Corporation, will serve only until the first membership meeting of the Corporation, at which Independent Directors are elected. If an Initial Director is qualified to be an Independent Director and elected by the membership, such Director's ~~initial~~ term as an Initial Director shall not be counted for purposes of term limits. For the originally elected Independent Directors, two positions will have three year terms, one position will have a two year term, and one position will have a one year term. The term for the Affiliated Directors who are chair and vice chair of the Member Representatives Committee shall be one year, and the terms of the *ex officio* Directors will not expire.

(c) Selection.

(1) Except for the selection of the ~~Independent Directors to serve as~~ Initial Directors, 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~~ Except for the original Nominating Committee appointed by the Initial Directors ("Initial Nominating Committee"), the Nominating Committee shall consist of all Independent Directors except those whose terms expire during the current year and are seeking re-election and Affiliated Directors and such other persons with such qualifications as the Board shall specify (provided that such other persons may not vote), provided that the Independent Directors shall constitute a majority of the voting members of the Nominating Committee. The Initial Nominating Committee will consist of the Initial Directors except the Management Director (as defined in Article IV, Section 3), and at least two other persons selected by these Initial Directors to represent the interests of the Membership. The PUCT Chair may choose to participate on the Nominating Committee. If any Nominating Committee should have only two eligible

Independent Directors for any reason, the requirement that Independent Directors must constitute a majority of the voting members will be removed to allow both Affiliated Directors to participate on the Nominating Committee. The Nominating Committee may retain an executive search firm to locate and present candidates with the required qualifications, as set forth in Article IV, Section 2(a).

(2) 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 shall reflect 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.

(3) ~~Except for the selection of Independent Directors to serve as the Initial Directors, 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 who 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. The chair and vice chair of the Member Representatives Committee may designate each other or may designate an Independent Director as their proxy if unable to attend a Board meeting.

**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 and Vice Chair shall each be one of the Independent Directors.

**Section 5. Vacancies and Removal.**

(a) 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 as follows:~~

(1) ~~For an Independent Director, by the election of a new Independent~~ Director at the next annual election of Directors to fill the remainder, if any, of the term of the departed ~~Independent~~ Director. ~~Provided 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 ~~Independent~~ Director.

(2) For the Management Director, by the appointment of a new CEO or interim CEO to fill the vacancy.

(3) For an ex officio Director, by the appointment of a new PUCT Chair or Texas Public Counsel by whomever had the right to appoint such Director.

(4) For an Affiliated Director, by the election of a new chair or vice chair, as applicable, by the Member Representative Committee.

~~(a)~~(b) 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 ~~any voting~~ 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 5.~~**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 Directors, 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 to elect 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.**

(a) 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.

(b) Except as otherwise expressly provided in the Corporation's Certificate of Formation, these Bylaws, or applicable law, Members shall vote by Sector and each Sector shall have one vote.

(c) 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 Sectors of the Corporation at a meeting 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, during, 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 to an email distribution list to which Members may subscribe and by posting on the Corporation 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 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. The results of such voting will be posted on the Corporation's website.

**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. The results of any action taken without a meeting, as described above, will be posted on the Corporation's website.

## **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 The Board consisting of the Initial Directors ("Initial Board") may conduct only organizational business of the corporation, including but not limited to approving these Bylaws, authorizing the opening of a bank account, appointing officers, approving the Delegation Agreement and reviewing and approving the Corporation's business plan and budget. The quorum necessary for transaction of business by the Initial Board shall be a majority of the Initial Directors, either in person or by proxy, at meetings at which a quorum is present. Thereafter, 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 at least three Independent Directors, and (ii) actions by the Board shall be deemed 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 but in no case less than four votes.

**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 and at least ten (10) business days prior to the scheduled meeting; provided however that the Board may meet on urgent matters on such shorter notice, not less than two (2) hours, as the person(s) calling such meeting may deem necessary for appropriate for urgent matters (emergency conditions threatening health or safety or a reasonably unforeseen situation). 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, during, 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 and sent via email to an email distribution list to which ~~Corporate~~ Members and the public may subscribe 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 4~~VI 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 the removal of all Officers shall be confirmed by the Board. The Management Director shall not participate in votes electing, approving, or removing Officers. 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- ("CEO").** 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.

**Section 5. Vice Presidents.** The CEO may select such other Corporate officers as he or she deems appropriate, subject to Board approval. Any such officer shall perform such other duties and possess such 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 COMMITTEE

**Section 1. Requirement.** The Corporation shall have a Reliability Standards 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 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 Member Representatives Committee shall provide its advice and recommendation to the Board through its chair and the vice chair, who also serve as the Affiliated Directors on the Board. 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~~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, through its elected chair and vice chair.

**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. 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 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.

(d) A Sector may elect an Alternate to serve in place and at the convenience of the Sector's Member Representatives Committee Representative(s) in the event a Member Representatives Committee Representative cannot attend a Member Representatives Committee meeting.

**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 and be the Affiliated Directors on the Board. The selected chair and vice chair may not be representatives of the same Sector ~~or NERC function~~ and may not concurrently serve on the Board of ERCOT ISO. 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 may be 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, 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. For those Sectors that have elected an Alternate, the Alternate will fill a vacancy left by the Sector's Member Representative and a new Alternate will be elected by the Sector.



**Section 6. Meetings of the Member Representatives Committee.** The Member Representatives Committee will plan and hold quarterly meetings, at a time and place determined by the Member Representatives Committee, normally shortly before the regular meetings of the Board, 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 Representatives on 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~~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 the presence, in person or by proxy, of two-thirds of the voting Representatives on the Member Representatives Committee entitled to attend. ~~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. Alternates and Proxies.** Member Representatives may designate another Member Representative or an employee of the Member Representative as a proxy if both the Member Representative and the Sector Alternate are unable to attend a Members Representative Committee meeting. ~~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.~~

**Section 10. 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 the members of 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 members to such standing committees and other committees of the Corporation that are representative of Members, other interested parties, and the public, that provide for balanced decision-making and that include persons with sufficient 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 including 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 any Management Director, Affiliated Director, or *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 his or her 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. 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. 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, 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 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 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 action of the Membership, as set forth below. 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. These Bylaws may be altered, amended, or repealed as follows:

(a) Any Director or ~~Corporate~~ Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.

(b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board and within 95 days of the request.

(c) If the proposal is approved by an act of the Board as set forth in Article VI, Section 3, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members unless the Board in its discretion calls a Special Meeting of the Corporate Members to vote on the proposal or determines to seek Membership approval without a meeting as provided in Article V, Section 4.

(d) If the proposal is not approved by the Board, the Members of the Corporation may call a meeting, pursuant to Article V, Section 1(b), for the purpose of voting on a proposal not approved by the Board. Any such proposal must be approved by a vote of five of the six Sectors at a meeting of Members called for that purpose or by written consent of five 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 V, Section 2.

## 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 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 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 is in the Corporation's best interests, and is on terms no less favorable to the Corporation than could be obtained in an arms-length transaction. 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. Engaging in 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 any of the Corporation's non-public books and records 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.

