
DRAFT MINUTES OF THE

TEXAS REGIONAL ENTITY ADVISORY COMMITTEE

Room 206, Met Center, 7620 Metro Center Drive, Austin, Texas 78744

December 14, 2009

Committee Members

Michehl R. Gent, Chair		Unaffiliated
A.D. Patton, Vice Chair		Unaffiliated
Barry T. Smitherman	Chairman, Public Utility Commission of Texas	
Mark Armentrout		Unaffiliated
Jan Newton		Unaffiliated
Miguel Espinosa		Unaffiliated
Gary Torrent ¹	Office of Public Utility Counsel	Residential Small Consumer

Other Directors and Segment Alternates

Clifton Karnei	Brazos Electric Cooperative	Cooperative
Nick Fehrenbach	City of Dallas	Commercial Consumer

Other Attendees

Larry Grimm, Texas RE CEO and CCO
Susan Vincent, Texas RE Director, Legal Affairs
Victor Barry, Texas RE Director, Compliance
Jeff Whitmer, Texas RE Manager Compliance Enforcement (via telephone)
Derrick Davis, Texas RE Corporate Counsel
Betty Sachnik, Texas RE Executive Assistant
Todd Brewer, Texas RE Senior Financial Analyst
Sarah Hensley, Texas RE Standards Coordinator
Jennifer Taylor, Texas RE Senior Paralegal
Bridget Headrick, Public Utility Commission of Texas

Call to Order

Pursuant to notice duly given, the meeting of the Texas Regional Entity ("Texas RE") Advisory Committee ("Committee") convened on the above-referenced date. Chair Michehl Gent reviewed the Antitrust Admonition with the Committee, ascertained a quorum was present, and called the open session of the meeting to order at approximately 12:09 p.m. Chair Gent advised since there was a full Texas RE Board of Directors (Board) meeting following the Committee meeting, the Committee would only discuss administrative, HR and governance issues and no compliance issues would be discussed.

¹ Don Ballard designated Gary Torrent as his Alternative Representative for this meeting.

Approval of Previous Minutes

Jan Newton made a motion to approve the minutes of the October 19, 2009 Committee meeting; A.D. Patton seconded the motion. The motion passed by unanimous voice vote.

Texas RE Administrative Update

Larry Grimm provided an information technology (IT) update. Miguel Espinosa asked who had access to the Texas RE portal. Mr. Grimm replied that all registered entities can access their own information in the portal. In response to Chair Gent's question about the number of registered entities, Mr. Grimm commented that there are approximately 220 registered entities.

Mr. Grimm advised the Committee that the North American Electric Reliability Corporation (NERC) accepted the Texas RE 2010 Compliance Monitoring and Enforcement Program and it would be effective as of January 1, 2010, and that Texas RE had already sent out audit packets to registered entities for January 2010 audits, since the audit materials had to be sent 60 days in advance of the audit.

Mr. Grimm updated the Committee on the meetings he and Ms. Vincent had with Federal Energy Regulatory Commission (FERC) and NERC staff on December 7th. He explained that during the meeting with FERC and NERC, they reviewed and discussed the new Texas RE bylaws, amended Delegation Agreement, business plan and budget, and separation plan. Mr. Grimm confirmed that that the meeting seemed to go very well, and he was hopeful that FERC would issue an approval order by May 1st, allowing the separation to go forward. After FERC issues its order, Texas RE will need approximately 60 days to transition staff, human resources (HR) benefits, and standards and compliance activities to the new entity.

Mr. Grimm explained to the Committee that prior to operating as a new entity, Texas RE will have some transitional work to do and that Texas RE will need to fill some of the administrative type positions listed in the 2010 budget prior before the actual separation from ERCOT ISO, in order to ensure a seamless transition. Mr. Grimm stated that the most urgent position to fill is the HR position.

Mr. Grimm informed the Committee that Texas RE has an IT consultant on-site to help with the separation from ERCOT ISO with the goal of having separate IT services by the end of April. The goal is to have a seamless and stable transition and Texas RE staff is working closely with ERCOT ISO to ensure same.

Financial Report (Q&A)

Chair Gent advised the Committee that most of the discussion regarding the financial auditor should be done when the full Board meets. Mr. Espinosa discussed the non-statutory expenses to date and Texas RE cost controls in detail with Todd Brewer. Mr. Brewer confirmed that ERCOT ISO funds Texas RE for Protocol compliance (non-statutory) activities only as applicable expense is incurred, and ERCOT ISO retains any of Texas RE's non-statutory budget that Texas RE does not spend. Mr. Espinosa noted that he would discuss this further with ERCOT ISO staff during ERCOT ISO's Finance and Audit Committee. Ms. Vincent confirmed that when Texas RE separates from ERCOT ISO, it will need to have a contract in place with the Public Utility Commission of Texas and ERCOT ISO to receive payment for non-statutory activities, because it could no longer directly receive funding from Texas RE's system administration fee.

In response to Mr. Espinosa's question about what will happen to any remaining Texas RE statutory funds when the new Texas RE takes over activities, Ms. Vincent explained there would be a settlement statement issued, identifying all assets, including bank accounts. She explained that the current Texas RE Board and the board of the new Texas RE entity would both need to approve this settlement statement, and the statement would then be submitted to NERC and FERC for approval.

Chair Gent and Mr. Espinosa discussed the cash reserves with Mr. Brewer and Mr. Grimm. Mr. Grimm confirmed that Texas RE has not spent any of its cash reserve and it has a 60 day cash reserve for 2009 and a 75-day cash reserve for 2010.

Chair Gent moved onto the recommendation of the financial auditor. Phillip Gunn and Taylor Sisson of Ernst & Young gave a short presentation (contained in the materials) about how they will conduct the 2009 (E&Y) financial statement audit of Texas RE. The auditors stated that Ernst & Young is charging a fixed fee of \$30,000 to conduct the 2009 financial audit, and there would be no expenses billed to Texas RE for the audit.

In response to Dr. Patton's request for an explanation of regulatory liability, Mr. Brewer explained that this was an accounting term, meaning money left-over from a previous year (or years) used to reduce assessments at some future point, similar to deferred revenue.

Mr. Espinosa asked whether there were any other businesses or services outside the scope of the audit that would require a certificate of independence by E&Y. Mr. Brewer stated there was not and that the only service E&Y will provide Texas RE is the audit.

Chair Gent questioned how E&Y could conduct the audit of Texas RE and also be the auditor for ERCOT ISO. Mr. Gunn advised E&Y has no independence conflict providing the audit services for the two entities since Texas RE is still a part of ERCOT, and some of the procedures the auditors will perform will be done as part of the ERCOT ISO engagement. The auditors stated that they will perform a detailed audit of Texas RE at the granular level and look at more transactions.

Chair Gent asked what would happen if the auditors encounter any fraud issues. The auditors stated they would make management immediately aware if any fraud issues were detected and they would also report their findings to the Advisory Committee, as stated in their letter of engagement.

Miguel Espinosa made a motion to recommend a Ernst & Young as the financial auditor for Texas RE. Mark Armentrout seconded the motion. Ms. Newton stated that she preferred different language in the decision template regarding the auditors. Ms. Newton requested that the motion be amended to state Ernst & Young is selected as the most qualified firm, not just the least expensive audit firm, because this was critical to the recommendation by the Advisory Committee.

Miguel Espinosa agreed to amend the motion as requested, and Mark Armentrout seconded. The motion to recommend the auditors passed by unanimous voice vote.

Human Resources & Governance Issues

Ms. Vincent reviewed the requested changes to the bylaws that had been received since the Board's last review, included changing the name of the entity, an explanation about the formation directors and the nominating committee, and the removal of River Authorities from the Cooperative Utility Sector. She noted that the nominating committee would be comprised of the formation directors and two stakeholder representatives. Chair Gent asked for an explanation of how the parallel Texas RE Boards would operate. Ms. Vincent explained that the operation of Texas RE would stay in the current organization until after FERC approves the new delegation agreement and gives Texas RE staff time to implement a transition to the new corporation. Ms. Vincent explained the new board needed to be formed in January for purposes of administrative approvals required by NERC and FERC and to form a nominating committee for the new Independent Directors. Texas RE would continue operating and performing the delegated activities until after FERC approved the new delegation agreement and budget and provided an implementation period, during which Texas RE would transfer all employees to the new corporation. The new board would not take compliance-related actions until FERC approved the delegation agreement, bylaws and budget. In response to questions from the Committee, Ms. Vincent stated that she understood from FERC staff that the FERC approval could come in May, and the approval would start the 60 day time period to make all the transitions into the separate company. She explained that there will be a settlement statement, describing all of the corporate assets, including bank accounts, for the current Board and the new board to review and approve after the FERC approval. All new activities going forward after the separation date would occur under the new entity's name, Texas Reliability Entity, Inc. The Texas Regional Entity would no longer exist at that point, based upon the amended ERCOT ISO Bylaws approved at the membership meeting in December.

Mr. Armentrout asked when the certificate of formation would be filed. Ms. Vincent said the certificate of formation would be filed immediately after January 1, 2010. NERC will not approve the delegation agreement or budget until these documents were approved by Texas Reliability Entity, Inc. Ms. Vincent discussed the steps Texas RE must take to get approval to operate as a new organization, separate from ERCOT ISO.

Ms. Newton noted that the new board's primary task would be to locate new directors, with assistance from a search firm. In response to Ms. Newton's request, Ms. Vincent explained to the Committee the preference of NERC and FERC that the current board members have no ties to the ERCOT ISO board, to show true independence. Ms. Vincent stated that quickly locating independent board members with no ties to ERCOT ISO would be very difficult on short notice.

Dr. Patton had several questions about the November 24th "straw" membership meeting. Ms. Vincent explained that the straw members unanimously voted on the name change and to accept the new bylaws, delegation agreement and a budget summary. Dr. Patton asked to see the minutes of the meeting and commented that he believed it is essential that the straw membership meeting minutes be distributed to the Committee. Ms. Vincent said the minutes would be posted by day's end. Dr. Patton and Chair Gent asked how many attended the straw membership meeting. Ms. Vincent stated approximately 40 people attended from registered entities. Chairman Smitherman informed the Committee that he had attended the meeting. He said that there was a lack of controversy on the documents presented and the meeting was quickly over. Chair Gent noted that more than 40 attendees shows there was interest by the members and the fact the meeting was over quickly shows a lack of controversy among the members and that is important for the Committee to note.

Dr. Patton raised concern about the definition of "Reliability Standard" in the Delegation Agreement and the language in bullet 3 on page 4 of 28 of the Standard Development Process,

Exhibit C to the delegation agreement, was very poorly drafted. Ms. Vincent noted the language is pro forma language that is in all regional entity delegation agreements, based upon the Federal Power Act and FERC requirements and cannot be changed, at least at this time. [Note, the Reliability Standards definition is from section 215(a)(3) of the Federal Power Act.] Mr. Grimm stated negotiations are taking place and that he could bring up some of the pro forma language concerns on his weekly call with the other regional entities and NERC.

Jan Newton made a motion to recommend approval of the bylaws and the amended delegation agreement in the materials and the formation directors listed in the materials. A.D. Patton seconded the motion. The motion passed by unanimous voice vote.

After the vote, Chair Gent wanted to make sure the Committee understood the motion included appointment of the following to the new Texas RE board: Larry Grimm, Jan Newton, Michael Gent and Miguel Espinosa. They would serve as initial directors of the new Texas RE. The Committee voiced unanimous agreement.

The Committee discussed the Amended 2010 Business Plan and Budget. Mr. Grimm noted that FERC staff told Mr. Grimm and Ms. Vincent that Texas RE should consider adding more compliance staff than what was contained in the 2010 Budget that had been approved by the Board in June. Mr. Grimm commented to the Committee that he would wait to see how the work evolves before making any recommendations for additional compliance staff. Chair Gent discussed the \$1.3 million needed for start up costs and ongoing expenses of \$716,000, plus another \$300,000 for corporate services and board support. Mr. Espinosa asked if the \$1.3 million was a capital expense. Mr. Brewer advised yes, the \$1.3 million was a one-time cost, plus the board search fee and that the additional \$1.10 million was an ongoing cost. Chair Gent noted that was the cost of independence, a 32% increase on what was previously approved. Dr. Patton asked if the budget included the engineering person with planning experience and Ms. Vincent explained that this position had already been included in the base budget. In response to Chair Gent's question about whether the amended budget included the \$400,000 previously approved for TFEs, Mr. Grimm confirmed the \$400,000 had already been included in the approved 2010 Budget. Mr. Armentrout requested to see copies of the approved 2009 budget and the originally approved 2010 budget for comparison purposes. Mr. Brewer stated that he would provide copies of those materials.

Ms. Newton commented that it was terribly expensive to create a separate organization, and she reminded the Committee that Texas RE was originally formed as a division of ERCOT ISO for efficiency and to be economical. She further that Texas RE was separating from ERCOT ISO to remove any perception of conflicts of interest. She advised the Committee they could not make decisions based just on the expense and the budget as there were other reasons to consider besides costs. Ms. Newton asked that the minutes reflect that the Board was created to provide efficiencies, handle responsibilities and that the Board operated within its approved structure. Ms. Newton would like the minutes to reflect that the Board worked diligently to separate their responsibilities and do what was in the best interest of both organizations. She noted the Board needed to comply with FERC's request and to do so as economically as possible because separation was the appropriate path forward.

Ms. Vincent commented that Texas RE is currently using ERCOT ISO equipment and the costs to purchase or replace that equipment is one of the biggest expenses of the startup. Chairman Smitherman stated that the Committee should be proud that for a couple of years they were able to operate using some of the resources of ERCOT ISO and gain those efficiencies. He reminded the Committee that those who came before pushed diligently for that structure and it saved money. He noted that other events have transpired, and we are now in a period of time when more regulation seems to be in fashion, but the greater independence was better. Ms.

Newton noted the Board started the Texas RE division to do what it was charged to do and to do it economically, and this Board achieved that when many others did not. Ms. Newton said that Texas RE needs to focus on its primary function (compliance) and noted that the Board decided to separate from ERCOT ISO to increase the perception of independence before FERC advised them to do so.

Upon Chair Gent's request for a motion Jan Newton made a motion for recommendation of approval of the Amended 2010 Budget and Business Plan; A.D. Patton seconded the motion. It was approved by unanimous voice vote.

Mr. Armentrout requested that staff continue to use the Separation Plan to keep the Board up to date on the steps for separation. Ms. Vincent stated that she will periodically update the separation plan and post it on the Texas RE website when things are updated.

The Committee discussed and accepted the proposed 2010 meeting calendar, which noted the various matters the Committee would need to consider in upcoming meetings. Ms. Vincent noted that the next Committee meeting was scheduled for January 19, 2010.

Adjournment

Chair Gent adjourned the Committee meeting at approximately 1:20 p.m.