Update on 2010 Annual Meeting of ERCOT Corporate Members

Bill Magness
Vice-President, General Counsel and
Corporate Secretary

Board of Directors Meeting
October 19, 2010

ERCOT Public

Overview

- Board Feedback regarding Annual Meeting
- Date of 2010 Annual Meeting of Corporate Members
- Proposed Meeting Schedule and Locations for December 13-14, 2010
- Proposed Seating of Board Members for Year End 2010 and 2011

Board Feedback regarding Annual Meeting

ERCOT Legal received the following feedback from individual Board members regarding the Annual Meeting:

- Avoid potential confusion of having the outgoing Board serve at Committee meetings on the morning of the Annual Meeting and the incoming Board serve at the Board meeting after the Annual Meeting on the same day; but on balance, maintain the same schedule since the confusion was minimal

- Coordinate the election of new Board members to begin their term on January 1, 2011, through December 31, 2011, to allow for future Board terms to sync with the calendar year and to facilitate easier preparation of certain of ERCOT's required informational tax filings

- Create a conference for Corporate Members in conjunction with the Annual Meeting, perhaps beginning next year

- Consider holding the Annual Meeting at breakfast rather than at lunch

Date of 2010 Annual Meeting of ERCOT Corporate Members

Bylaws Requirements:

- "Corporate Members shall meet at least annually on a date and at a place to be established by the Board ('Annual Meeting')." [Section 3.7 in part]
- "The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members." [Section 4.6(a) in part]

Prior Approval of 2010 Annual Meeting Date by 2009 Board:

On September 15, 2009, the ERCOT Board approved both an ERCOT Board meeting and the 2010 Annual Meeting of ERCOT Corporate Members to be held on December 14, 2010.

ERCOT Legal Recommendation:

ERCOT Legal respectfully recommends maintaining the Board-approved date of **December 14, 2010** for the **2010 Annual Meeting of Corporate Members** since this date has been published for more than a year and it coincides with the regularly-scheduled December 2010 Board meeting date (as required by the Bylaws). No Board vote is necessary to maintain this previously scheduled date.

Proposed Meeting Schedule and Locations for December 13-14, 2010

Based on discussions at the September 21, 2010 Board meeting and upon further review, ERCOT Legal respectfully proposes the following schedule for consideration:

Date	Meeting	Estimated Time	Location
Monday, **December 13, 2010**	Finance & Audit Committee Meeting	12:30 p.m. to 3:00 p.m.	Met Center
	H.R. & Governance Committee Meeting	3:00 p.m. to 5:00 p.m.	Met Center
Tuesday, **December 14, 2010**	Board of Directors Meeting	8:00 a.m. to 10:00 a.m. (recess to lunch)	Met Center
	2010 Annual Meeting of Corporate Members	11:00 a.m. to 12:30 p.m.	Hotel Near Met Center (TBD)
	Board of Directors Meeting – Continued	1:30 p.m. to 5:00 p.m.	Met Center

ERCOT staff is currently planning an offsite luncheon for the 2010 Annual Meeting of Corporate Members due to:

- Limited seating capacity at the Met Center (estimated using 2009 Annual Meeting attendance);
- Meeting costs which are reasonable in light of membership dues and which are in line with historical costs for the Annual Meeting; and
- Most importantly, the need for in-person attendance of Corporate Members for voting items, including election of Board members and Technical Advisory Committee Representatives.

Proposed Seating of Board Members for Year End 2010 and 2011

Past Practice of Seating of Board Members:

In recent years, the Corporate Members elected the new Board members at their Annual Meeting in mid-December; and the newly-elected Board would serve at a Board meeting immediately after such Annual Meeting on the same day.

As such, the Board's service would begin in mid-December and end in the following mid-December. The Board's service did not coincide with the calendar year. Similarly, the Technical Advisory Committee Representatives' service tracked the Board's annual term and did not coincide with the calendar year.

Board's Feedback on Past Practice:

ERCOT Legal received mixed feedback on this past practice from current Board members; however, of those Board members who provided feedback, the majority supported ERCOT Legal performing research to determine a way to implement an immediate, one-time change from past practice to synchronize the incoming Board's service with the calendar year.

Proposed Seating of Board Members for Year End 2010 and 2011 - Continued

Effect on ERCOT's Form 990 Reporting Requirements:

ERCOT is required to file an annual informational tax return, known as the Form 990, with the Internal Revenue Service (IRS). Beginning with tax year 2008, the IRS revised the Form 990 to focus heavily on corporate governance matters. As part of its Form 990 preparation for tax years 2008 and 2009, ERCOT Staff was required to report annually on all Board members who served during a calendar year (including those Board members who served for just two weeks during the December of the reported year).

Anticipated Timing of Nodal Go-Live on December 1, 2010:

ERCOT is expected to transition completely to the Nodal market on December 1, 2010. If past practice holds, a new Board would be seated on the date of the 2010 Annual Meeting of Corporate Members (that is, on December 14, 2010); there is no guarantee that all of the same Market Participant Directors who have become familiar with the Board's review of the Nodal Program over the last year would be re-elected to serve for the 2011 year.

Proposed Seating of Board Members for Year-End 2010 and 2011 - Continued

Key Bylaws Requirements:

- "The term for all Market Participant Directors shall be one year." [Section 4.3(c) in part]
- "All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one year." [Section 5.1(g) in part]

Proposed Seating of Board Members for Year-End 2010 and 2011 - Continued

ERCOT Legal Recommendation:

The Board asked that ERCOT Legal develop options to implement a one-time change to synchronize the seating of the Board members with the calendar year as soon as possible.

- **Option 1 – Direct the Segments and the Corporate Members to hold two elections for both the Board and the TAC Representatives at the 2010 Annual Meeting – (a) for a two-week, year-end term, and (b) for a one-year term coinciding with the 2011 calendar year.**

  - Pursue one-time actions to:
    - Direct the Segments to hold their timely elections for confirmation by the Corporate Members at the 2010 Annual Meeting on December 14, 2010, for:
      - Two-Week, Year-End Term: The Board for a term from December 15-31, 2010, with a recommendation to maintain the current 2010 Board members through year end; and
      - One-Year Term: The Board for a term from January 1, 2011, through December 31, 2011 (2011 Board); and
    - Since Directors and Segment Alternates cannot serve on TAC or its subcommittees, or their task forces or working groups, direct the Segments to hold their timely elections for confirmation by the Corporate Members at the 2010 Annual Meeting on December 14, 2010, for:
      - Two-Week, Year-End Term: TAC Representatives for a term from December 15-31, 2010, with a recommendation to maintain the current 2010 TAC Representatives through year end; and
      - One-Year Term: TAC Representatives for a term from January 1, 2011, through December 31, 2011 (2011 TAC Representatives);

Proposed Seating of Board Members for Year End 2010 and 2011 - Continued

ERCOT Legal Recommendation – Continued:

- **Option 1 – Continued**:
  - No filing of an amendment to the Bylaws to provide for this one-time change due to the limited timeframe (which does not currently allow time for the necessary approvals by the Corporate Members and the Public Utility Commission of Texas). ERCOT Legal notes that this action is not technically consistent with the Bylaws provisions regarding one-year terms for Market Participant Directors and TAC Representatives;
  - Bylaws can be amended through the formal process in the future, if desired, to note anticipated Board and TAC Representatives service during the calendar year; and
  - Actions taken, if any, by the Board serving during two-week term from December 15-31, 2010, can be ratified by the 2011 Board at their regularly-scheduled January 2011 Board meeting (like the process used for ratification of actions taken at Urgent Board meetings).

Proposed Seating of Board Members for Year End 2010 and 2011 - Continued

<u>ERCOT Legal Recommendation – Continued</u>:

- **Option 2 – Pursue formal amendments to the Bylaws and defer modification to Board seating process until the seating of the 2012 Board.**
  - The only other alternative would be to defer any modification to the Board seating process until a formal amendment to the Bylaws is approved for changing such process. The timeline for pursuing such a modification (including approval by the Corporate Members and by the Public Utility Commission of Texas) prohibits any change occurring with regard to the upcoming seating of the 2011 Board, but would allow for such a possible change by the seating of the 2012 Board.

If the Board supports the most immediate resolution to this issue, ERCOT Legal recommends Option 1. A decision template on this matter has been included in the Board's materials for this meeting.