Date: October 12, 2010
To: Board of Directors
From: Bill Magness, Vice President and General Counsel
Subject: 2010 Annual Meeting Elections of Board of Directors and Technical Advisory Committee Representatives

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: October 19, 2010
Agenda Item No.: 11

Issue:
Whether to approve a one-time change from past practice to synchronize the annual seating of the Board with the calendar year and, thus, to allow at the 2010 Annual Meeting of Corporate Members for elections related to the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) and the Technical Advisory Committee (TAC) Representatives, both for terms from December 15, 2010, through December 31, 2010, and also from January 1, 2011, through December 31, 2011.

Background/History:

Past Practice of Seating of Board Members:
In recent years, the ERCOT Corporate Members elected ERCOT's 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.

Resulting 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 on all Board members who served during a particular 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's is expected to transition completely to the Nodal market on December 1, 2010. If past practice holds, a new Board would be seated on December 14, 2010, and 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.

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 – For an immediate change in the seating of the Board, beginning with the 2011 Board, direct the Segments and the Corporate Members to hold two elections for both the Board and the TAC Representatives at the 2010 Annual Meeting of Corporate Members – one for a term of two weeks from December 15, 2010 through December 31, 2010, and the other for a term coinciding with the 2011 calendar year.

  In order to satisfy the Board's direction as discussed during the September 21, 2010 meeting and to implement an immediate, one-time change from past practice to synchronize the service of the 2011 Board with the calendar year of January 1, 2011 to December 31, 2011, ERCOT Legal would recommend the following:

  - Allow the current 2010 Board members to serve at the Board Committee meetings on December 13, 2010, and the Board meeting on December 14, 2010, since their term will still be in effect through December 14, 2010;
  - Pursue a one-time action which would be viewed as technically inconsistent with the Bylaws provisions requiring Market Participant Directors and TAC Representatives to serve a term of one year as follows:
    - Direct the Segments to hold their timely elections for confirmation by the Corporate Members at the 2010 Annual Meeting on December 14, 2010, for:
      - The Board for a term from December 15, 2010, through December 31, 2010, with a recommendation to maintain the current 2010 Board members through year end; and
      - The Board for a term from January 1, 2011, through December 31, 2011 (2011 Board);
    - 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:
      - TAC Representatives for a term from December 15, 2010, through December 31, 2010, with a recommendation to maintain the current TAC Representatives through year end; and
      - TAC Representatives for a term from January 1, 2011, through December 31, 2011 (2011 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 December 15, 2010, through December 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).

- Option 2 – Pursue formal amendments to the Bylaws and defer modification to Board seating process until the seating of the 2012 Board.

The most conservative approach 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.

In order to implement an immediate, one-time change from past practice to synchronize the service of the 2011 Board with the calendar year of January 1, 2011 to December 31, 2011, ERCOT Legal respectfully recommends that the Board vote to approve Option 1.

Key Factors Influencing Issue:

Bylaws Requirements:

- The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of Technical Advisory Committee (TAC). [Section 4.3(a)(3) in part]
- The term for all Market Participant Directors shall be for one year. Any Market Participant Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be staggered three year terms unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. [Section 4.3(c)]
- The Board shall confirm the Representatives of the TAC and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. [Section 4.8 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. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. [Section 5.1(g) in part]
- No Director or Segment Alternate shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. [Section 4.3(f)]

Alternatives:

The following options are within the Board's discretion:

- For the most immediate resolution to this issue, approve Option 1 as described above;
- Approve Option 2 as described above; or
- Take no action so that the past practice of electing the Board members and TAC Representatives at the 2010 Annual Meeting to serve immediately is continued, which would require the Board meeting to commence after the Annual Meeting on December 14, 2010.

Conclusion/Recommendation:

If the Board supports the most immediate change to the seating of the Board in mid-December and to synchronize the annual seating of the Board with the calendar year, ERCOT Legal recommends that the Board approve Option 1 – a one-time change from past practice to allow at the 2010 Annual Meeting of Corporate Members for elections related to the ERCOT Board and the TAC Representatives, both for terms from December 15, 2010, through December 31, 2010, and also from January 1, 2011, through December 31, 2011.

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
BOARD OF DIRECTORS RESOLUTION

WHEREAS, after due consideration of the alternatives, the Board of Directors (Board) of Electric Reliability Council of Texas Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to approve a one-time change from past practice to synchronize the annual seating of the Board with the calendar year and, thus, to allow at the 2010 Annual Meeting of Corporate Members for elections related to the ERCOT Board and the Technical Advisory Committee (TAC) Representatives, both for terms from the 2010 Annual Meeting date, through December 31, 2010, and also from January 1, 2011, through December 31, 2011.

THEREFORE, BE IT RESOLVED, that ERCOT is hereby authorized and approved to do the following:

1. Pursue a one-time action to:
    a. Direct the Segments to hold their timely elections for confirmation by the Corporate Members at the 2010 Annual Meeting for:
        i. The Board for a term from December 15, 2010, through December 31, 2010, with a recommendation to maintain the current 2010 Board members through year end (that is, for two weeks and not for a full-year term); and
        ii. The Board for a term from January 1, 2011, through December 31, 2011 (2011 Board); and
    b. 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 for:
        i. TAC Representatives for a term from December 15, 2010, through December 31, 2010, with a recommendation to maintain the current 2010 TAC Representatives through year end (that is, for two weeks and not for a full one-year term); and
        ii. TAC Representatives for a term from January 1, 2011, through December 31, 2011 (2011 TAC Representatives);
2. Direct ERCOT Legal to consider anticipated service by the Board and TAC Representatives in connection with any future amendments to the Bylaws; and
3. Direct ERCOT Legal to review actions taken, if any, by the Board serving during December 15, 2010, through December 31, 2010, for ratification by the 2011 Board at their regularly-scheduled January 2011 Board meeting.

CORPORATE SECRETARY'S CERTIFICATE

I, Bill Magness, Corporate Secretary of ERCOT, do hereby certify that, at its October 19, 2010 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of October, 2010.

_____
Bill Magness
Corporate Secretary