



May 6, 2010

Mr. Ken Levine
Interim Director
Sunset Advisory Commission
1501 N. Congress
Austin, TX 78701

Dear Mr. Levine:

Thank you for the opportunity to respond to the recent Sunset Advisory Commission Staff Report on the Public Utility Commission of Texas (PUC), the Electric Reliability Council of Texas (ERCOT) and the Office of Public Utility Counsel (OPC). We sincerely appreciate the extensive effort that you and your staff devoted to the evaluation and assessment of ERCOT's distinct place in the electric market.

ERCOT will confine its remarks and comments to the ERCOT portion of the staff report. Following, please find our comments on the recommendations in the report.

Recommendation 1.1

Require PUC to exercise additional oversight authority of ERCOT by annually reviewing and approving its entire budget and reviewing and approving all uses of debt financing.

ERCOT concurs with this recommendation as it will further clarify the authority already given to the PUC in existing statute, and the specific exercise of the PUC's oversight authority regarding ERCOT's budget and use of debt financing.

Section 39.151 of the Public Utility Regulatory Act (PURA) states, "The commission has complete authority to oversee and investigate [ERCOT's] finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that [ERCOT] adequately performs the organization's functions and duties."

Additionally, PURA 39.151 further states, "The commission shall investigate [ERCOT's] cost efficiencies, salaries and benefits, and use of debt financing and may require [ERCOT] to provide any information needed to effectively evaluate [ERCOT's] budget and the

reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of [ERCOT].”

ERCOT notes that a Legislative mandate directing the PUC to annually review and approve ERCOT’s entire budget as well as its use of debt financing would likely necessitate additional resources by ERCOT to handle inevitable contested fee case proceedings that would result as a consequence.

Recommendation 1.2

Establish that the System Administration Fee vary according to the revenues needed to fund the budget approved by PUC.

ERCOT concurs with this recommendation. As the report states, ERCOT’s current accounting and collection systems already have the capacity to accommodate variations in the System Administration Fee.

Recommendation 1.3

Create a Sunset clause providing for future Sunset reviews of ERCOT, concurrent with reviews of the Public Utility Commission.

ERCOT concurs with this recommendation. A regularly occurring review of ERCOT is certainly appropriate given the vital public service that ERCOT provides.

Recommendation 2.1

Restructure the ERCOT Board to consist of nine directors appointed by PUC, including seven directors unaffiliated with the electric market, and two non-voting, ex-officio directors – the Chair of the Public Utility Commission or a designee, and the Public Utility Counsel.

As the Chair of the current ERCOT Board, there is an inherent conflict in my endorsing or opposing a recommendation that alters the composition of the Board on which I serve. ERCOT Board members strive to serve honorably under the existing structure, but as the Chair of the ERCOT Board, I also understand that Independent System Operators (ISOs) in other states have moved toward an unaffiliated Board structure in the recent past.

ERCOT acknowledges that the Legislature may amend, or change entirely, the composition of the ERCOT Board to advance important policy objectives, and believes this policy decision is best made by the Legislature. Based on experience with the current Board structure, however, ERCOT would be remiss if we did not acknowledge that the current Board—with its hybrid makeup of officials, consumers, unaffiliated Board members and market participants—has played an integral part in the creation of one of the nation’s most vibrant markets for electric competition and most admired market for excellence in maintaining reliability.

Federal Energy Regulatory Commission (FERC) Chairman Jon Wellinghoff recently suggested in the FERC technical conference on February 4, 2010, that the rest of the country may want to follow the lead of ERCOT Board structure, especially given its consumer representation. "I think this is a commendable structure" that should be considered as a model, Wellinghoff said.

The ERCOT Board makes decisions at every one of its meetings that have significant and far-reaching effects on the health and long-term viability of the competitive market. The diversity of positions on the Board provides a formal avenue for the Board to consider the perspectives of the various market participants in the ERCOT market, as well as the views of industrial, commercial, and residential consumers. Additionally, the PUC Chairman is an ex-officio member of the Board, and it is standard practice for all three PUC Commissioners to regularly attend and participate in all ERCOT Board meetings. Likewise, the Public Counsel is a voting member of the Board and participates in all Board meetings.

It is this direct involvement on the Board by public officials, consumers and market participants that provides expertise, a diversity of perspectives and important input for the unaffiliated directors to consider in casting their votes. Indeed, it is the opinion of every unaffiliated ERCOT Board member that the current hybrid Board structure brings immense value to the process and should be retained.

No matter what the composition of the Board, ERCOT submits that the goal should be the same: to ensure the best possible decisions are made in the best interests of the Texas consumers and of a vibrant competitive market.

Recommendation 2.2

Provide that PUC select ERCOT's unaffiliated board directors and have the authority to remove them from office when necessary.

As noted regarding Recommendation 2.1, as the Chair of the current ERCOT Board, there is an inherent conflict in my endorsing or opposing a recommendation that alters the composition of the Board on which I serve. ERCOT believes the method of selecting unaffiliated board directors is a policy decision most appropriately made by the Legislature.

Existing statutory language sets out the criteria that must currently be used when choosing ERCOT Board members. To maintain certification by the PUC as an independent organization, PURA 39.151(g) mandates that ERCOT's Board members must be chosen in accordance with bylaws that are approved by the PUC. Specifically, it states, "The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member."

Recommendation 2.3

Establish the Technical Advisory Committee in statute.

ERCOT concurs with the Sunset Commission staff's intent to ensure that the ERCOT Board "continues to benefit from the technical knowledge of the electric industry" with this recommendation.

However, ERCOT takes no official position as to whether institutional industry knowledge is retained at the Board level through the TAC or some other entity.

Once again, thank you for giving ERCOT the opportunity to address staff's report. We look forward to working with you as this process moves forward.

Sincerely,

A handwritten signature in cursive script that reads "Jan Newton".

Jan Newton
Chairman