PROJECT NO. 38338

RULEMAKING RELATING TO THE ACCOUNTABILITY AND PERFORMANCE OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENTS TO §§25.361, 25.362, AND 25.363 AS APPROVED AT THE FEBRUARY 24, 2011 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.361, relating to Electric Reliability Council of Texas (ERCOT), §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, and §25.363, relating to ERCOT Budget and Fees, with changes to the proposed text as published in the September 3, 2010 issue of the *Texas Register* (35 TexReg 8025). The amendments will make ERCOT more accountable to the commission, consistent with Public Utility Regulatory Act (PURA) §39.151, and introduce additional controls over the budget and fees of this organization. These amendments are competition rules subject to judicial review as specified in PURA §39.001(e). These amendments are adopted under Project Number 38338.

The commission received comments on the proposed amendments from the City of Austin, doing business as Austin Energy (Austin Energy); CPS Energy; the Electric Reliability Council of Texas (ERCOT); the Steering Committee of Oncor Cities (Oncor Cities); Texas Competitive Power Advocates (TCPA), consisting of Calpine Energy Services, LP, Constellation Energy Commodities Group, Exelon Generation (Power Team), GDF-SUEZ Energy Marketing NA, Inc., Gregory Power Partners, LP, International Power America, Inc., LS Power Associates, LP, Luminant Energy, NextEra Energy Resources, PSEG TX, LP, Shell Energy North America (US),

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and Topaz Power Management, LP; Texas Industrial Energy Consumers (TIEC); and TXU Energy Retail LLC (TXU Energy). No public hearing on the amendments was requested.

Austin Energy supported the commission's efforts to further articulate its authority over ERCOT. TIEC supported improving the efficiency, transparency, and accountability of ERCOT, through commission oversight. The Oncor Cities supported the commission's objective in the amendments, but addressed several instances in which they asserted that the affected rules could be enhanced, in addition to the amendments. TCPA supported the portions of the amendments that would update the rules, eliminate duplication, or clarify the rules. It expressed deep concern, however, with amendments that would substitute the commission's judgment for that of ERCOT's governing board and management, excessively circumscribe ERCOT's ability to manage its responsibilities, or increase ERCOT's credit risk. TCPA expressed the view that it is important for ERCOT to have the authority and flexibility to manage its own internal affairs, so that it can attract and retain the talent needed to manage the grid and operate its markets.

Preamble Question Concerning Setting of the Administrative Fee

In the preamble to the proposed amendments, the commission posed the question of whether it would be appropriate for the commission to adopt a change in the way the ERCOT administrative fee is set, consistent with the recommendation of the Sunset Advisory Commission, in connection with the adoption of the amendments. Several commenters responded to the preamble question concerning the possibility of changing how the ERCOT administrative fee is set. TIEC argued that there are significant questions that need to be answered before the commission adopts a rule requiring a change in how the fees to cover

ERCOT costs are charged. TXU Energy urged the commission to retain the current method for changing the administrative fee, asserting that certainty in the level of the fee is important for retail providers. ERCOT suggested that the commission not adopt changes in the way that the fee is set, because this is an issue that the Sunset Advisory Commission raised for action by the Legislature. ERCOT stated that the Legislature might adopt a different solution than what the commission has proposed under this rule, so it would make more sense to wait until the Legislature meets and considers the Sunset issues. ERCOT also stated that the commission has previously expressed a preference for considering changes in the fee in connection with a request to increase the fee. TCPA recommended that this issue not be addressed now, but rather after the legislative session and in the context of a more specific proposal.

Commission Response

The commission declines to adopt a change to the manner in which the ERCOT administrative fee is set at this time, because the Legislature may take action on this issue during the current legislative session.

Section 25.361

ERCOT suggested that, to avoid confusion, instead of the term in proposed §25.361(a), "ERCOT rule," the term "ERCOT Protocols" should be used to refer to ERCOT's market rules and operating guides, and that the governance rules should be referred to as "ERCOT corporate governance documents." It made this suggestion to avoid confusion and because, in its view, different requirements may be appropriate for governance documents and market and operating rules.

ERCOT suggested that the statement of its functions in §25.361(b) be updated to refer to its obligations under 2005 amendments to the Federal Power Act and that other changes be made to reflect current operations and procedures. ERCOT suggested that proposed §25.361(c), which addresses commercial functions, not be adopted, because it is confusing and because ERCOT does not perform commercial functions.

Commission Response

The commission disagrees with ERCOT that use of "ERCOT Protocols" would be less confusing than the term "ERCOT rules." The commission believes that as long as the term used in the rule is clearly defined, it should not engender confusion. The commission has not changed §25.361(a) to exclude a statement of general policy relating to the organization or governance of ERCOT from the definition of "ERCOT rule" but concludes that the provisions relating to review of statements of general policy relating to the organization and governance should essentially be the same as the provisions relating to the review of other ERCOT rules. The commission has deleted the current §25.361(c), which referred to commercial functions, because the commission agrees that ERCOT does not perform commercial functions. The commission also has incorporated ERCOT's proposed changes to reflect current operations and procedures, but has elected not to modify the rule to add a reference to ERCOT's compliance with federal law, including NERC standards. The commission concludes that it is not appropriate to address ERCOT's obligations under federal law in this rule.

Section 25.362

TIEC and Oncor Cities urged the commission to retain a provision in current rules that makes it clear that commission rules take precedence over ERCOT protocols. The Oncor Cities supported the commission's intent to strengthen its oversight of ERCOT's operating practices, procedures, and governance, but argued that the rule should make it clear that the commission's review of these matters will afford interested persons an opportunity to participate, so that the review would be conducted through a rulemaking proceeding or contested case. ERCOT suggested that proposed §25.362(c) be clarified with respect to whether an interested person could appeal the decision of the ERCOT governing board to amend its governing documents, if the documents have been amended in response to a commission order. TCPA argued that the proposal to permit the commission to review ERCOT governance documents was unwarranted and unnecessary and could lead to a large number of contested cases involving provisions of these documents. TCPA stated that the Oncor Cities had suggested several instances in which the commission should make it clear that the review of ERCOT actions contemplated in the rules should be done through contested cases. TCPA opposed the extensive review of ERCOT actions through contested cases, emphasizing the cost that would be involved in such reviews and the potential for disruption of ERCOT operations. TCPA supported ERCOT's suggestion that the review process in §22.251 (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct) be used for commission review of ERCOT decisions. ERCOT suggested other clarifications to the provisions of the rule relating to appeals of ERCOT decisions. TCPA supported a provision stating that the independent market monitor and the commission's reliability monitor could comment on proposed ERCOT rule changes, but it urged that this

provision recite that such comments are encouraged because of the independent perspective of these entities.

The Oncor Cities opposed the repeal of provisions of current rules that specify how requests by members of the public for ERCOT documents in the possession of the commission are processed. The Oncor Cities expressed the view that predictability in the handling of such requests is important. The Oncor Cities also requested that the rule make it clear that ERCOT information is to be accessible to the public unless it is protected by law, protocols, or a commission rule or order. ERCOT suggested that §25.362(e) be modified to make it clear that ERCOT would be required to provide information to any commissioner making a request for information.

Commission Response

The current rule includes a provision that commission rules take precedence over the ERCOT protocols, and the commission concludes that, in view of its statutory obligation to oversee the management and operation of ERCOT, such a provision should be retained. Concerning the comments about commission review of ERCOT governance documents, the commission concludes that the rule should make it clear that the scope of its oversight includes the review of ERCOT's articles of incorporation and by-laws on the application of an interested person. Historically, there have not been a large number of requests for review of ERCOT rules or decisions. The rule provides that an application for review of an ERCOT decision shall be processed in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). In response to

ERCOT's comment, it is unnecessary to expressly state whether an interested person may appeal the decision of the ERCOT governing board to amend its governing documents, if the documents have been amended in response to a commission order, because the rule clearly permits a review in such circumstances. Even where the change in the governing documents has been made at the direction of the commission, a review may be appropriate to ensure that the changes are consistent with the commission order or rule that required the change.

The commission is adding a provision in subsection (c) that would obviate the governing board's review and approval of an audit that the commission directs ERCOT to carry out. This issue arose recently in connection with the commission's desire to conduct an audit of the cost over-runs associated with the implementation of a nodal congestion management system for the ERCOT market. In view of the extent of the commission's authority over the organization, it concludes that the board does not have the ability to decline to conduct an audit that the commission orders ERCOT to conduct.

In response to TCPA's comments that language should be added about the independent market monitor and the commission's reliability monitor having independent perspectives, the commission has not added such language because it is unnecessary. In response to ERCOT's comments, §25.362(e) has been changed to state that ERCOT is required to provide information to any commissioner or a commissioner's designee making a request for information. Concerning Oncor Cities' opposition to repeal of provisions that specify how requests by members of the public for ERCOT documents in the possession of the

commission are processed, the commission has repealed some of these provisions because the Public Information Act addresses how such requests are processed. The commission is retaining provisions that permit the commission, in the absence of a request for information under the Public Information Act, to conduct a proceeding to review whether a document for which a claim of confidentiality has been asserted warrants that designation. The commission concludes that there may be circumstances in which a person has designated a document or other record as confidential when the circumstances do not warrant treating the document or record as confidential under Texas law. In these circumstances, the commission concludes that it has the authority to assess the facts and law and declassify the document or record, so that it may be made available to the public. The commission rules reflect the position that because ERCOT is performing a vital public service, its records should be available to the public, unless there is a legally-sufficient basis for classifying a record as confidential.

Conflict of Interest Provisions

The proposed amendment included a provision to disqualify a person from serving as an unaffiliated director of the governing board of ERCOT if the person was employed by or had in the last year been employed by a market participant that was eligible for membership on the governing board. TCPA opposed this provision to the extent that it did not apply to service as a representative of consumer interests on the board. TCPA did not oppose the concept of a disqualification of interested persons from serving as an unaffiliated director. TCPA asserted that consumer representatives other than the residential consumer representative should be subject to this disqualification, if it is adopted. Oncor Cities supported the proposed

disqualification provision. They expressed the view that the disqualification provision is important in order to ensure the independence of the unaffiliated directors, but that the consumer representatives should be excluded from the disqualification, so that capable applicants would not be disqualified because of their employment with an electricity customer in the ERCOT region. TCPA opposed the provision that would permit an ERCOT director to be removed from office for a violation of a policy, as opposed to a rule or law. TCPA contended that the commission does not have the authority to either approve or disapprove directors. TCPA suggested that the provision that would allow the commission to review the appointment of a director should be modified, so that the only issues the commission could consider in conducting this review would be whether the organization and the person nominated as director meet the qualifications. TCPA also stated that the proposed provision that would not permit a director who has been nominated by the governing body to begin serving as a director until the commission approves the director's service is contrary to ERCOT bylaw amendments that were recently approved by the commission. TCPA recommended amending the proposed restriction on the service of an unaffiliated director that would preclude the director from representing a market participant at ERCOT following the director's tenure on the board. Under the proposed amendment, this restriction would apply for two years after a director ceased his service as a director; TCPA recommended reducing the duration of this restriction to one year.

TIEC raised questions about the process in proposed §25.362(h) by which the commission would review candidates for executive positions in ERCOT management, and noted that the public scrutiny involved in this review might dissuade some persons from seeking such positions. ERCOT suggested that the commission review be conducted in a manner that would preserve the

confidentiality of the identity of an applicant. TCPA argued that the provision for the commission to review the appointments of ERCOT executives is beyond the commission's authority and unwarranted.

Commission's Response

The commission has decided not to adopt an amendment that would disqualify a person from serving as an unaffiliated director who has been employed by a market participant. The commission believes that this provision would unnecessarily restrict the pool of otherwise qualified candidates. The commission agrees in part with TCPA's comments concerning the removal of a director for violating a "policy adopted under this subsection." This commission concludes that this provision, which applies to all board members, should set out a clear standard for removal, and it has, therefore, modified §25.362(g)(2)(B) and (3)(A) and (B) to refer to a violation of a *written* ERCOT policy. A violation of written ERCOT policy could constitute a major breach of a director's duties, and therefore be a basis for removal. The commission has also added violations of a commission rule or an applicable statute to the grounds for removal. The rules and statutes are written sources of policy that affect the organization and the markets it operates, and violations of them would be a serious matter that might warrant removal.

The commission disagrees with TCPA that it does not have the authority to review and approve or disapprove an individual's appointment to or removal from the governing board or to review candidates for executive positions in ERCOT management. Under PURA §39.151(d), the commission "has *complete* authority to oversee and investigate the

organization's finances, budgets and operations." (Emphasis added.) Both ERCOT's governing board and management have direct authority over ERCOT's finance, budget, and operations and thus the commission has authority to review appointments to and removals from the governing board and candidates for ERCOT executive positions. This review is an important oversight tool that the commission believes should be used to ensure the efficiency and cost-effectiveness of the organization. In view of the particularly emphatic statement of the extent of the commission's authority over ERCOT in PURA §39.151(d), the commission is taking additional steps, described below, to strengthen its oversight of ERCOT. The commission does not believe, however, that the rules being adopted, even with these changes, represent an exercise of the full extent of the commission's authority over ERCOT under current law.

The commission does not agree with TCPA's suggestion to limit the scope of the commission's review of an ERCOT board appointment to an individual's qualifications to serve on the governing board or whether an organization is qualified to place a member on the board as a representative of a market sector. The commission concludes that it needs broad discretion to review appointments, in order to carry out its statutory responsibility in overseeing ERCOT. The commission is not adopting a requirement that directors appointed from the various market sectors be approved by the commission, but where the commission reviews the appointment of an unaffiliated director, it is important for the commission to review the appointee's qualifications to determine that the appointee has appropriate qualifications and does not have an inappropriate interest in a market participant.

Concerning TCPA's comment about a director who has been nominated by the governing body serving as a director prior to the commission's approval of the director's service, the commission is adopting this proposed amendment. While existing practice permits a person to serve prior to commission approval, the commission concludes that it should review a nominee's qualifications before the nominee begins serving, in order to ensure that the persons serving in this important role are qualified for the position and free from conflicts of interest that might affect the impartial performance of their duties. The commission is also making it clear that the same requirement for prior commission approval applies when a serving unaffiliated board member is reappointed to the board.

The commission agrees with TCPA's proposal to modify the provision that would prohibit an unaffiliated director from representing a market participant at ERCOT after the person ceases to serve as a member of the governing board. Instead of the two-year prohibition in the proposed rule, the commission is adopting a one-year prohibition. A two-year restriction would likely deter qualified persons seeking to serve on the ERCOT board to a greater extent than a one-year restriction. The commission believes that there are legitimate conflict-of-interest concerns with a former unaffiliated board member representing market participants before the governing body and its committees and subcommittees that are appropriately addressed by such a prohibition, but that a one-year restriction better balances the goals of having a large pool of qualified applicants and avoiding conflicts of interest. One of the additional steps that the commission is taking to strengthen its oversight of ERCOT is to include a provision in the rule that permits the

commission to remove an unaffiliated board member without cause. As noted above, the statute expresses quite emphatically that the commission is to oversee ERCOT, and the commission believes that there may be circumstances in which the removal of a board member without cause would be warranted. For example, if a board member is out of step with policies or preferences that have been articulated by the commission, it might be appropriate to remove the board member. The commission is also adopting a requirement that the compensation of unaffiliated board members and the chief executive officer be submitted to the commission for review. The commission concludes that, as a matter of good practice and effective oversight, the commission should review these compensation arrangements.

Concerning ERCOT executives, the commission determines that it is appropriate for it to approve only the selection of ERCOT's chief executive officer (CEO) and not the chief operating officer or vice-presidents. The commission believes that the CEO should have the discretion to select his or her management team, and that the selection of an effective management team may require the evaluation of intangible factors that the commission would have difficulty assessing. The commission is adding to this rule a prohibition against a member of the commission seeking the position of chief executive officer of ERCOT. The Sunset Advisory Commission made this recommendation to the Texas Legislature, and the commission concludes that this is an appropriate requirement to be implemented immediately.

The commission recognizes the concerns that TIEC has expressed about the value of confidentiality in hiring ERCOT executives, but it declines to adopt TIEC's proposal to require that the process for reviewing candidates for executive positions at ERCOT be done confidentially. The commission believes that the requirement that ERCOT provide information to the commissioners concerning the selection of a CEO will afford the commissioners the opportunity to monitor the selection of a CEO in a way that will not deter qualified candidates from being considered. Thus the objectives espoused by TIEC can be met without adopting this proposal.

Reports

In connection with proposed §25.362(i), relating to reports, TIEC urged the commission to require that the report on needed resources include within its scope all technologies that would be feasible to meet system energy needs. TIEC also urged caution in connection with reporting requirements, and recommended that the commission not adopt reporting requirements that are not necessary. The Oncor Cities urged the commission to retain a provision of the current rule that requires ERCOT to periodically file reports on its governance, budget, operations, and other responsibilities. ERCOT suggested that the commission adopt a more rational schedule for the reports required under this section. ERCOT suggested that proposed 25.362(l), relating to approval of a strategic plan, be modified to include criteria for modifying the strategic plan.

Commission's Response

The commission largely agrees with ERCOT's proposed changes to the reporting requirements in §25.362. Section 25.362 has been modified to incorporate ERCOT's

suggested changes in order to streamline the filing of the various reports that ERCOT is required to file with the commission. The commission further agrees with ERCOT that it should not file a summary of internal audit findings, but rather the actual reports themselves, to avoid any confusion or difference of opinion as to whether a summary accurately reflects the report and to reduce ERCOT's workload. The commission believes that the reports that are being required under these amendments do not include any that are not valuable to the commission in conducting its oversight of ERCOT, but that they will provide valuable information to the commission and public concerning ERCOT governance, budget, operations, and responsibilities, consistent with the Oncor Cities' suggestion. The commission also believes that the required reports are consistent with TIEC's concerns that the report on resources include all technologies.

The ERCOT region experienced rolling blackouts on February 2, 2011 as a result of the inability of a large number of electric generating plants to operate or start when requested to do so, and ERCOT failed to provide adequate advance notice about the problem or that the blackouts would begin. The commission is adding several planning and reporting requirements that should enhance ERCOT's ability to deal with operational contingencies, communicate more effectively with the commission, state and local government and the public, and facilitate the commission's oversight of ERCOT's contingency plans and operations. These requirements include the requirement to develop and submit to the commission a risk management plan to deal with significant operating risks, an emergency communications plan outlining how ERCOT will communicate information concerning an actual or impending large-scale disruption of electric service, and an assessment of the

reliability of the ERCOT system during extremely hot or cold weather. Under current rules, ERCOT is required to communicate by telephone with the executive director of the commission during an event that threatens electric reliability. The commission is adding a requirement that ERCOT also communicate by telephone with the chairman of the commission or the chairman's designee during such an event. The commission is also adopting an additional financial reporting requirement, not directly related to the February event, to provide information on any derivative transactions ERCOT enters into. These additional requirements represent areas where the commission believes that additional information from ERCOT is essential to its oversight of the organization. Finally, the commission is directing ERCOT to submit a report on an annual basis assessing whether the governing board should continue to meet on a monthly basis or at some different interval. The commission concludes that, as a matter of good practice, ERCOT and the commission should consider whether meetings at a different interval would be more appropriate.

Section 25.363

TCPA argued that the commission does not have the authority to require that ERCOT submit its budget for commission review, and that the statutory provisions relating to an independent organization do not authorize the commission to micromanage ERCOT. TCPA argued that the following oversight proposals in proposed §25.263(a) are beyond the commission's authority, are unwarranted, and would impair ERCOT's flexibility: (1) the prohibition against implementing a budget without commission approval; (2) the prohibition against incurring expenses or capital outlays in excess of amounts approved by the commission; (3) the prohibition

against incurring new debt without commission approval; and (4) the prohibition against hiring employees in excess of any limit established by the commission. Austin Energy argued that the staffing limit in the proposed rule should not be adopted, because it would impair the organization's flexibility in meeting operating contingencies. TCPA argued that the requirements in proposed §25.363(d) for the review of the budget, borrowing, staffing, and strategic plan would create inordinate resource burdens for ERCOT and the commission.

TIEC supported the adoption of processes for annual review of the budget and for commission review of new debt, but it urged the commission to adopt processes that are as efficient as possible and avoid allowing the processes to be used by persons to air unrelated grievances. The Oncor Cities also supported strengthening of the oversight of the ERCOT budget, but they argued that the commission should make it clear that interested persons would have an opportunity to participate in any proceeding to review the budget, a change in the fees, or new debt.

ERCOT suggested that only the commission or commission staff should be able to initiate a review of the ERCOT budget through a contested case. ERCOT also urged that the user fees it changes or initiates be reviewed through an exception process, based on procedural rule 22.251, so that if no person requests a review of the user fee, it would go into effect following approval by the ERCOT governing board. ERCOT also requested that, if the commission adopts provisions for the review of the issuance of debt, it be permitted to use any additional indebtedness authorized by the commission. Under the process requested by ERCOT, the initial issuance of debt or consummation of a credit agreement would require commission review, but

ERCOT's draw on a line of credit that the commission has approved would not require additional approval. ERCOT requested that, if the commission adopts a staffing limit, it be permitted to exceed the limit in exigent circumstances. ERCOT also suggested that the list of the functions that are required to be performed need not be included in this section.

The Oncor Cities opposed the repeal of the requirement in current rules that a test year be used as the baseline for a budget that is subject to commission review. ERCOT supported the repeal of the use of a historical or future test year, arguing that the review of its budget should be based on the costs of performing its functions during the budget year.

Commission Response

The commission disagrees with TCPA's position that the commission does not have the authority to approve ERCOT's budget, expenses, or capital outlays in excess of predetermined limits, the issuance of debt, and staffing limits. PURA §39.151(d) provides the commission with "*complete* authority to oversee and investigate the organization's finances, budgets and operations" of ERCOT. (Emphasis added.) ERCOT's budget, expenses and capital outlays and ability to issue debt are clearly related to either or both ERCOT's finances and budget. The proposed staffing restrictions are related to the budget and operations. PURA permits the commission "complete" authority over these areas and hence it has the authority to adopt the proposed rule amendments. The commission concludes that additional control of ERCOT expenditures is warranted. Accordingly, the commission is adopting these proposed amendments with the exception of the amendment related to staffing limits. The commission believes that adopting a staffing limit would

unnecessarily restrict ERCOT in adapting to operating contingencies. The commission believes that TCPA's fears of commission micromanagement of ERCOT and claims of inordinate burdens on commission and ERCOT resources are not well founded, and that the additional review that is being adopted is consistent with the level of oversight contemplated by PURA §39.151. Because most of the reviews will occur on an annual basis, the burden on the commission and ERCOT should not be excessive. The commission is also adopting the provision suggested by ERCOT for the review of user fees based on P.U.C. PROC. R. §22.251. User fees are a significantly smaller source of revenue than the system administrative fee, and the commission agrees that a streamlined process for putting changes in user fees into effect is appropriate.

The commission believes, as suggested by ERCOT, that a request for commission approval of its expenses and capital outlays should not be based on a historical or future test year data. The rule, instead, bases approval of the budget on the costs of performing the functions required by law. The rule establishes costs that may be recovered and costs that are prohibited and requires ERCOT to establish a system of accounts that is consistent with the rule. In view of these controls and the requirement that ERCOT file quarterly financial reports with the commission, the commission concludes that the rule will afford the commission adequate means to review the ERCOT budget and will afford interested persons an effective opportunity to participate in proceedings to amend the budget or administrative fee. The commission has deleted the list of functions from this section, because they are described in more detail in another section of the rules.

All comments, including any not specifically referred to herein, were fully considered by the commission. In adopting these amendments, the commission makes other modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151, which grants the commission the authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants; provides that an independent organization is directly responsible and accountable to the commission; provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs its functions and duties; and requires an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters. In addition, this section permits the commission to prescribe a system of accounts for an independent organization; conduct audits of an independent organization relating to the performance of its functions or its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit; inspect an independent organization's facilities, records, and accounts; and assess administrative penalties against an independent organization. This section also authorizes the commission to approve and charge a reasonable and competitively neutral rate to cover the independent organization's costs. This section directs the commission to investigate

the organization's cost efficiencies, salaries and benefits, and use of debt financing and permits the commission to require an independent organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or the effectiveness or efficiency of the organization.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.361. Electric Reliability Council of Texas (ERCOT).

(a) **Applicability.** This section applies to the Electric Reliability Council of Texas (ERCOT). It also applies to transmission service providers (TSPs) and transmission service customers, as defined in §25.5 of this title (relating to Definitions), with respect to interactions with ERCOT. For the purpose of this section and §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance), an ERCOT rule is a market protocol, operating guide, market guide, or other procedure that constitutes a statement of general policy and that has an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system in the ERCOT region.

(b) **Functions.** ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) §39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region. ERCOT shall:

(1) administer, on a daily basis, the operational and market functions of the ERCOT system, including procuring and deploying ancillary services, scheduling

resources and loads, and managing transmission congestion, as set forth in this chapter, commission orders, and ERCOT rules;

(2) administer settlement and billing for services provided by ERCOT, including assessing creditworthiness of market participants and establishing and enforcing reasonable security requirements in relation to their responsibilities under ERCOT rules;

(3) serve as the single point of contact for the initiation of transmission services;

(4) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;

(5) provide for non-discriminatory access to the transmission system, consistent with this chapter, commission orders, and ERCOT rules;

(6) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;

(7) coordinate and schedule planned transmission facility outages;

(8) perform system screening security studies, with the assistance of affected TSPs;

(9) plan the ERCOT transmission system, in accordance with this section;

(10) establish and administer procedures for the registration of market participants;

(11) manage and operate the customer registration system;

(12) administer the renewable energy program, unless the commission designates a different person to administer the program;

(13) monitor generation planned outages;

(14) disseminate information relating to market operations, market prices, and the availability of services, in accordance with this chapter, commission orders, and the ERCOT rules;

(15) operate an electronic transmission information network; and

(16) perform any additional duties required under this chapter, commission orders, and ERCOT rules.

(c) **Liability**. ERCOT shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities.

(d) **Planning.** ERCOT shall conduct transmission system planning and exercise comprehensive authority over the planning of bulk transmission projects that affect the transfer capability of the ERCOT transmission system. ERCOT shall supervise and coordinate the other planning activities of TSPs.

(1) ERCOT shall evaluate and make a recommendation to the commission as to the need for any transmission facility over which it has comprehensive transmission planning authority.

(2) A TSP shall coordinate its transmission planning efforts with those of other TSPs, insofar as its transmission plans affect other TSPs.

(3) ERCOT shall submit to the commission any revisions or additions to the planning guidelines and procedures prior to adoption. ERCOT may seek input from the commission as to the content and implementation of its guidelines and procedures as it deems necessary.

(e) **Information and coordination.** Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this chapter, commission orders, and ERCOT rules. ERCOT shall maintain the confidentiality of competitively sensitive information and other protected information, as specified in §25.362 of this title. Providers of transmission and ancillary services shall maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.

(f) **Interconnection standards.** ERCOT may prescribe reliability and security standards for the interconnection of generating facilities that use the ERCOT transmission network. Such standards shall not adversely affect or impede manufacturing or other internal process operations associated with such generating facilities, except to the minimum extent necessary to assure reliability of the ERCOT transmission network.

(g) **ERCOT administrative fee.** ERCOT shall charge an administrative fee, and the fees it charges are subject to commission approval, in accordance with this chapter.

(h) **Reports.** Each TSP and transmission service customer in the ERCOT region shall on an annual basis provide to ERCOT historical information concerning peak loads and resources connected to the TSP's system.

(i) **Anti-trust laws.** The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.

(j) **Decertification.** ERCOT shall be subject to decertification as an independent organization in accordance with §25.364 of this title (relating to Decertification of an Independent Organization).

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

(a) **Purpose.** This section provides standards for the governance of an independent organization within the ERCOT region.

(b) **Application.** This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under PURA §39.151.

(c) **Adoption of rules by ERCOT and commission review.** ERCOT shall adopt and comply with procedures concerning the adoption and revision of ERCOT rules.

(1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of market protocols, operating guides, planning guides, and market guides, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.

(2) ERCOT staff, the independent market monitor, and the commission's reliability monitor may comment on any proposed change in ERCOT rules that affects the operation and competitiveness of markets operated by ERCOT or reliability of the electric network in ERCOT.

(3) If the findings of a commission-mandated audit of ERCOT operations or governance indicate the need for a change in operating practices or procedures or governance rules, ERCOT shall develop and submit to the commission a plan for implementing the changes. ERCOT shall implement the plan, as approved by the

commission. Commission-mandated audits, as contemplated in PURA §39.151(d) and (d-1), shall be funded by ERCOT and do not require approval by the governing board of ERCOT.

(4) The commission may review a provision of ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule on the application of an interested person, including commission staff and the Office of Public Utility Counsel.

(5) The commission shall process requests for review of a provision of ERCOT's articles of incorporation or by-laws, a new or amended ERCOT rule, or ERCOT decision in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). A request for review under this subsection initiated by the commission, commission staff, or the Office of Public Utility Counsel is not subject to the alternative dispute resolution requirements in §22.251(c) of this title, (which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), Section 21 of the Protocols (Process for Protocol Revision), or other applicable ERCOT procedures. In addition, the commission may, for good cause, waive the requirement that a complaint be filed within the time prescribed in §22.251(d) of this title.

(d) **Access to meetings.** ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed

during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the governing board shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) **Access to information.** This subsection governs access to information held by ERCOT.

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operations, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT shall notify the requester of the expected delay and the anticipated date that the information may be available. ERCOT's procedures regarding access to records shall be consistent with this chapter and commission orders.

(A) Information submitted to or collected by ERCOT pursuant to requirements of ERCOT rules shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules, except as otherwise provided in this subsection.

(B) ERCOT shall promptly respond to a request from the commission, a commissioner, a commissioner's designee, the commission executive

director, or the executive director's designee for information that ERCOT collects, creates or maintains, in order to provide the commission access to information that the commission, a commissioner, a commissioner's designee, the executive director, or the executive director's designee determines is necessary to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets.

(C) In the absence of a request for information under the Texas Public Information Act, Texas Government Code Annotated, the commission staff may seek to release information that the commission has in its possession or has access to that has been designated as Protected Information under ERCOT rules, and the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested-case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under law.

(D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of the assertion.

(2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in the Texas Public Information Act.

(f) **Conflicts of interest.** ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.

(g) **Qualifications, selection, and removal of members of the governing board.** ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection or violates an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute.

(3) The procedures adopted under paragraph (2) of this subsection shall:

(A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection or has violated an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute; and

(B) Specify how decisions concerning the qualification of an individual or whether an individual has violated an ERCOT rule or written ERCOT policy or procedure adopted under this section, or commission rule, or applicable statute will be made.

(4) A decision concerning an individual or organization's qualification or an individual's removal from the governing board is subject to review by the commission.

(5) ERCOT shall notify the commissioners when a vacancy occurs for an unaffiliated member of the governing board. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of an unaffiliated member of the governing board is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection. An unaffiliated board member whose three-year term has expired shall, if reappointed by the ERCOT governing board, cease serving as a member of the governing board until the reappointment is approved by the commission. The commission may remove an unaffiliated member of the governing board without cause. Compensation, per diem and travel reimbursements to be paid to unaffiliated members of the governing board shall be subject to commission review and approval.

(6) A member of the governing board of ERCOT appointed after the effective date of this paragraph who serves as an unaffiliated member may not represent a market participant before the governing board of ERCOT, the ERCOT technical advisory committee, or any of its subcommittees or working groups, for a period of one year after the person ceases to serve as a member of the governing board.

(h) **Chief executive officer.** The appointment of the chief executive officer of ERCOT is subject to commission approval. ERCOT shall notify the commissioners when a vacancy occurs for the chief executive officer. ERCOT shall provide information to the commissioners concerning the process for selecting a new chief executive officer, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. A person may not seek the position of the ERCOT chief executive officer while serving as a commissioner. Compensation to be paid to the ERCOT chief executive officer shall be subject to commission review and approval.

(i) **Required reports and other information.** ERCOT shall file with the commission the reports and provide the information required by this subsection.

(1) **Annual report.** ERCOT shall file an annual report with the commission, not later than 120 days after the end of the year. The annual report shall include:

(A) A strategic plan, including a statement of the mission and vision of the organization, a summary of the industry environment in which it operates, a description of the major challenges it faces, and key strategies it intends to employ to perform its functions and meet its challenges.

(B) A long-term organizational plan including:

(i) An overview of the major systems, including both hardware and software, operated by ERCOT, including descriptions of the functionality provided, estimates of remaining useful life,

estimates of ongoing maintenance and upgrade costs, and evaluations of the performance of each system;

(ii) A description of major capital projects completed in the prior budget year and those expected to be completed in the following budget year, including an explanation of why each project is needed to assist ERCOT in meeting its responsibilities or the benefits it would provide to market participants or consumers;

(iii) A schedule summarizing ERCOT's sources and uses of funds for a six-year period beginning with the last historic calendar year and projections for the next five calendar years;

(iv) Long-term goals for all ERCOT activities;

(v) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations during the current budget year; and

(vi) Any other information requested by the commission.

(C) Financial information including:

(i) A copy of an independent audit of ERCOT's financial statements for the report year;

(ii) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year, a schedule showing the variance between actual and budgeted revenues and costs, and a schedule showing the assets and liabilities (including level and types of debt);

(iii) The annual board-approved budget;

(iv) A description of any derivative transactions entered into by ERCOT; and

(v) Any other financial information requested by the commission.

(2) **Operations report and plan.** No later than January 15 of each year, ERCOT shall file an operations report and plan. The commission may initiate a review of the plan, at its discretion. The report and plan shall contain the following information:

(A) A copy of an independent audit of ERCOT's market operation for the report year;

(B) A summary of key market operations statistics, including prices and quantities of energy and capacity purchased in the markets operated by ERCOT;

(C) A summary of key reliability statistics;

(D) A summary of transmission planning and generation interconnection activities and the most recent report on capacity, demand and reserves;

(E) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, operation of energy and capacity markets, managing transmission congestion, transmission planning and interconnection of new generating plants, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail

electric providers and to the North American Electric Reliability Corporation and Texas Reliability Entity;

(F) A risk management plan that identifies any significant risks to system reliability, the operation of ERCOT's energy and capacity markets, its management of transmission congestion, and any other risks that would significantly disrupt the sale and delivery of electricity within the ERCOT region, and the measures that might be taken to mitigate such risks;

(G) An emergency communications plan that describes how ERCOT will communicate to market participants, government officials, and the public information concerning actual or likely disruptions of electric service that would affect a significant number of customers;

(H) An assessment of the reliability and adequacy of the ERCOT system during extremely cold or extremely hot weather conditions, including information regarding steps to be taken by power generation companies and utilities to prepare their assets for extreme weather events; and

(I) Identification of existing and potential transmission constraints, and the need for additional transmission, generation or demand response resources within the ERCOT region. The report shall include projections of changes in demand, the capability of generation, energy storage, and demand response resources, projected reserve margins, alternatives for meeting system needs, and recommendations for meeting system needs.

(3) **Quarterly reports.** ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:

(A) Any internal audit reports that were produced during the reporting quarter;

(B) A report on performance measures, as prescribed by the commission;

(C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:

(i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;

(ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;

(iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and

(D) Any other information the commission may deem necessary.

(4) **Emergency reports.** If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the operation or competitiveness of the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the chairman of the commission, or the chairman's designee, and the executive director of the commission, or the executive director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of

the following business day after becoming aware of such event or situation, unless the executive director specifies, in writing, that the report may be delayed. The executive director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report.

(5) **Meeting Periodicity Report.** Beginning with the effective date of this section, ERCOT shall recommend annually to the commission the periodicity of governing board meetings. ERCOT's recommendation shall be based on an examination of the frequency of meetings conducted by similar organizations and shall include an estimate of the costs associated with meeting more frequently than once per quarter.

(j) **Compliance with rules or orders.** ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, any provision of this chapter, or a commission order. If ERCOT fails to comply with PURA, any provision of this chapter, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

(1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.

(2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.

(3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

(4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.

(5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

(6) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

(k) **Priority of commission rules.** This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.

§25.363. ERCOT Budget and Fees.

(a) **Scope.** This section applies to the budget of and all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under PURA §39.151.

(1) A fee or rate that was in effect on the effective date of this section shall remain in effect and shall not be changed, except as provided in this section.

(2) ERCOT shall not implement any new or modified budget, rate or fee without commission approval, except as otherwise provided by this section.

(3) ERCOT shall not incur expenses or capital outlays in any year that exceed the amounts approved by the commission, except in the case of an emergency that impairs its ability to conduct is functions.

(4) ERCOT shall not incur debt or defer scheduled principal repayments of debt without commission approval. ERCOT shall seek approval of any loan or agreement to provide a line of credit from a bank or other institution, the issuance of bonds or notes, and any arrangements that would permit it to issue bonds or permit the issuance of bonds on its behalf at a later date. This paragraph does not require approval of a contract to lease equipment or other property used in normal operations or approval of a loan or draw on an existing line of credit or other credit arrangement that has been approved by the commission.

(b) **System of accounts and reporting.** For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally

Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the fee-filing application approved by the commission and the long-term operations plan prescribed by §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance). The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each major activity conducted by ERCOT. ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

(c) **Allowable expenses.** Expenses and capital outlays in the budget shall be based upon ERCOT's expected cost of performing its required functions as described in PURA §39.151(a) and this chapter. To determine whether the costs are reasonable and necessary, the commission may consider the budget justification provided by ERCOT, the ERCOT long-term operations plan, costs incurred by market participants and other independent system operators for similar activities, costs incurred in prior years, capital projects identified in the budget, and to any other information and data considered appropriate by the commission.

(1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151 and this chapter shall be included in allowable expenses.

(2) Allowable expenses, to the extent they are reasonable and necessary may include, but are not limited to the following general categories:

(A) Operating expenses, which include salaries and related benefits, direct advertising for the specific purpose of recruiting employees, legal and consulting services, hardware and software maintenance and licensing, insurance, employee training and travel, and depreciation;

(B) Facility and equipment costs, and other long-lived investments;

(C) Debt service (interest plus principal reduction) and other reasonable and necessary costs of capital to fund investments in property and facilities, and other capital expenditures that are used and useful in performing the functions of an independent organization;

(D) Expenses associated with fees and dues charged by organizations setting electric or energy business practices and communications standards (*e.g.*, North American Electric Reliability Council, North American Energy Standards Board, and ISO/RTO Council) of which ERCOT is a member; and

(E) Actual expenditures for public service announcements and community education efforts, provided that the total sum of all such items allowed in the cost of service shall not exceed 0.05% of the annual ERCOT revenue requirement or $50,000, whichever is less.

(3) The following are not allowable as a component of expenses:

(A) Legislative advocacy expenses, whether made directly or indirectly;

(B) Funds expended in support of political candidates, movements or causes;

(C) Funds expended promoting religious causes;

(D) Funds expended in support of or in acquiring membership in social, recreational, or fraternal clubs or organizations;

(E) Funds expended for advertising, marketing, or other promotions, which includes, but is not limited to:

(i) promotional goods;

(ii) efforts to increase name recognition;

(iii) radio, television, newspaper or other media advertising; except as otherwise expressly authorized; and

(F) Any expenditure found by the commission to be unreasonable, unnecessary, not in the public interest, or not sufficiently supported by the fee-filing package and accompanying evidence.

(d) **Commission review and action.** The ERCOT annual budget and any change in the system administration fee are subject to review by the commission. Prior to the submission of a proposed budget or change in the system administration fee to the governing board for its approval, ERCOT shall consult with commission staff designated by the executive director in connection with the development of the budget and shall provide to the staff information concerning budget strategies, staffing requirements, categories of expenses, capital outlays, exceptional expenses and capital items, and proposals to incur additional debt. ERCOT shall file with the commission its board-approved budget, budget strategies, and staffing needs, with a justification for all

expenses, capital outlays, additional debt, and staffing requirements. The commission may approve, reject or modify the budget and budget strategies.

(e) **Performance measures.** The commission may adopt performance measures to assess ERCOT's fiscal and operating performance.

(f) **User Fees.** ERCOT may charge reasonable user fees for services provided by ERCOT to any market participant or other entity. User fees do not include the system administration fee and the ERCOT nodal implementation surcharge. A new or revised user fee may be approved by the ERCOT governing board, without the filing of an application under §22.252 of this title (relating to Approval of ERCOT Fees and Rates). Any affected entity, including the commission staff and the public counsel, may file an appeal of the establishment or revision of a user fee, in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct), except that the provisions of §22.251(c) of this title (which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), or Section 21 of the Protocols (Process for Protocol Revision), or other Applicable ERCOT Procedures) shall not apply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.361, relating to Electric Reliability Council of Texas (ERCOT), §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, and §25.363, relating to ERCOT Budget and Fees are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 2nd DAY OF March 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER

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