



To: Human Resources & Governance (HR&G) Committee
From: Bill Magness, Vice President, General Counsel and Corporate Secretary
Date: July 11, 2011
Re: Proposed Modifications to ERCOT Bylaws and Board Policies and Procedures

Implementation of ERCOT Oversight Rules

At its February 24, 2011 Open Meeting, the Public Utility Commission of Texas (PUCT) adopted amendments to its rules regarding ERCOT oversight. These rules became effective on March 22, 2011. The HR&G Committee initially considered the potential impacts of the PUCT's rule on ERCOT's governance documents and processes at its meeting on March 21, 2011.

At the time of this HR&G Committee meeting on March 21, 2011, the Texas Legislature was still in session and was considering the Sunset bill which related in part to ERCOT corporate governance matters. After discussion during its March and April 2011 meetings, the HR&G Committee determined that the most prudent course of action would be to await the outcome of the Sunset legislation and then make changes to any ERCOT governing documents based on the Legislature's direction.

A proposed timeline for implementation of the changes related to the PUCT's rules regarding ERCOT oversight was presented to the HR&G Committee on June 20, 2011. The timeline is attached to this document for reference and convenience.

On June 29, 2011, the Legislature adjourned its regular and special sessions without passing the Sunset bill. As such, ERCOT Legal has prepared proposed modifications to the ERCOT Amended and Restated Bylaws (Bylaws) and the ERCOT Board Policies and Procedures (Board P&P) for the HR&G Committee's consideration.¹ Clean and red-lined versions of these documents are attached for your review and comment.

Proposed Modification to the Bylaws and Board Policies and Procedures

The proposed modifications to the Bylaws and Board P&P fall into two general categories:

1. Changes that ERCOT Legal believes are required to satisfy the new PUCT rules on ERCOT oversight, specifically as noted in:
 - a. The Bylaws:
 - i. Section 4.3(b)(5);
 - ii. Section 4.3(c);
 - iii. Section 4.3(f);
 - iv. Section 4.5 [new subsections (b), (e) and (f)];
 - v. Section 4.10;
 - vi. Section 7.1;
 - vii. Section 7.2;
 - viii. New Sections 7.3 and 7.4;

¹ On July 7, 2011, Commissioner Anderson proposed that the PUCT open P.U.C. Substantive Rule § 25.362(g)(5) for the limited purpose of addressing the Commission's authority to remove Unaffiliated Directors; however, as of the date of this memorandum, there has been no change to the PUCT Rules on ERCOT oversight.

- ix. Section 9.3 [new subsection (j)];
 - x. Section 10.1(b);
 - xi. Section 10.3 [new subsection (b)]; and
 - xii. Section 10.4 [new subsection (b)];
 - b. The Board P&P:
 - i. Section 2.4.4;
 - ii. Section 2.4.5;
 - iii. Section 2.4.7;
 - iv. Section 3.3; and
 - v. Section 7.3.2.
2. Other suggested administrative and clarifying changes as part of the periodic review of these governing documents (with the last review by the HR&G Committee and the Board occurring at year end in 2009).

As you will see, the proposed administrative and clarifying changes constitute the vast majority of the suggested modifications in these documents. If the Board chooses to only make changes to comply with the PUCT rule and defer other changes, the administrative amendments would not be made at this time. For ease of review, the clean versions of these documents have been highlighted to identify solely those sections which have been modified for the purpose of satisfying the requirements of the PUCT rule.

Please note that, upon further review, ERCOT Legal does not recommend any changes to the Finance and Audit Committee Charter or the Human Resources and Governance Committee Charter since any Board actions are addressed directly through the Bylaws and the Board P&P.

I look forward to discussing these matters with the HR&G Committee at its July 11, 2011 meeting.

**Proposed Timeline for Implementation of Changes to ERCOT Governing Documents
Initially Considered During the June 20, 2011 HR&G Committee Meeting**

July 11, 2011: ERCOT Legal provides draft amendments to governing documents and appropriate background as part of Board materials posted for July 2011 Committee and Board meetings.

July 18, 2011: Discussion of draft amendments at HR&G Committee meeting.

Between the July and August Board meetings, ERCOT Legal will refine the language based on discussion at the July Board meeting and meet with PUCT staff to solicit input on the draft language.

August 15, 2011: HR&G Committee considers amendment language with any revisions made since the July 2011 meeting. If the Committee is satisfied with the language, the Committee votes to recommend it to the full Board.

August 16, 2011: If the HR&G Committee recommends adoption of amendment language, the full Board could vote to approve the amendments at its August 2011 meeting (or defer the matter to a future Board meeting). At this meeting, the Board could also authorize ERCOT Legal to file a petition for approval of the amended Bylaws at the PUCT once the Bylaws are approved by ERCOT's Corporate Members.

August 17, 2011: If the Board approves the amendments at its August 16, 2011 meeting, ERCOT staff will send notice of a meeting of the ERCOT Corporate Members to vote on Bylaws changes.

September 7, 2011: Meeting of ERCOT Corporate Members. A meeting will be held if ERCOT does not receive sufficient votes by proxy to approve or reject the proposed Bylaws amendments; if sufficient votes are received, no physical meeting is necessary.

September 16, 2011: ERCOT Legal files a petition for PUCT approval of the amended Bylaws.