



To: Human Resources & Governance (HR&G) Committee
From: Bill Magness, Vice President, General Counsel and Corporate Secretary
Date: August 12, 2011
Re: Recommendation regarding ERCOT Bylaws and Board Policies and Procedures

July 18, 2011 HR&G Committee Meeting Discussion

At its July 18, 2011 meeting, the HR&G Committee, the Committee members discussed alternatives for addressing the amendments to the Public Utility Commission of Texas (PUCT) rules regarding ERCOT oversight (Oversight Rules), which became effective on March 22, 2011. After discussion, the Committee members declined to make a recommendation to the Board on any proposed modifications to the Bylaws at the July 18, 2011 meeting, and requested that ERCOT staff return with alternatives (as discussed at the July 18, 2011 meeting) at the August 15, 2011 meeting.

Possible Alternatives regarding Bylaws

Possible alternatives for addressing the Oversight Rules, include any of the following:

1. Modifying Section 4.10 of the ERCOT Bylaws (Bylaws) to underscore that the Board Policies and Procedures (Board P&P) are consistent with the ERCOT Articles of Incorporation (Articles), the Bylaws, and applicable PUCT rules.
 - o Possible considerations for this alternative:
 - a. Lessen the frequency for Bylaws revisions.
 - b. Allow the Board to modify the Board P&P, as needed, so long as consistent with ERCOT's governing documents and applicable legal requirements. Such modifications would without initiating the process of requiring approval of the Corporate Members or the PUCT.
 - c. Rely on Section 14.2 (Legal Construction) of the Bylaws to construe the provisions of the Bylaws to conform to current legal requirements, as the Board has been doing since the effective date of the Oversight Rules. For example, the current wording of Section 4.3(b)(5) of the Bylaws allows the seating of an Unaffiliated Director prior to PUCT approval, which is now prohibited by the Oversight Rules.
 - d. Defer any administrative "housekeeping" changes.
 - e. Require:
 - (1) Recommendation by the HR&G Committee;
 - (2) Approval by the Board;
 - (3) Approval by the Corporate Members; and
 - (4) Approval by the PUCT.
2. Streamlining the Bylaws so that most procedural matters are addressed in the Board P&P; and modifying the Board P&P.
 - o Possible considerations for this alternative:
 - a. Same as possible considerations (a), (b) and (e) noted in Paragraph 1 above.
 - b. Allow ability to address:
 - (1) Wording provisions which conflict with the Oversight Rules.
 - (2) Administrative "housekeeping" changes.

3. Making no changes to the Bylaws.
 - o Possible considerations for this alternative:
 - a. Rely on Section 14.2 (Legal Construction) of the Bylaws to construe the provisions of the Bylaws to conform to current legal requirements, as the Board has been doing since the effective date of the Oversight Rules.
 - b. Would result in the Bylaws remaining inconsistent with parts of the Oversight Rules (although the Oversight Rules would override those portions of the Bylaws).
 - c. Would not provide an opportunity to complete administrative “housekeeping” changes.
 - d. Does not require approval by the Board, Corporate Members, or PUCT.

Recommended Elements of Non-Profit Corporation’s Bylaws

The following is a list of recommended elements of a non-profit corporation’s bylaws which has been compiled from various sources, including the State Bar of Texas, the American Bar Association, and the National Association of Corporate Directors:

Identifying Information

- Name of the organization
- Purpose and powers of the organization
- Physical location of the organization’s office

Board of Directors

- The number of directors and their terms of office
- Method of electing new directors
- Required meetings of the board
- Other ways the board may act
- Types of notices required for directors

Members

- Requirements for membership
- Terms of membership
- Powers of members

Officers

- Process for election of officers
- Duties of officers
- Process of determining officer compensation

Committees

- Process of creating committees
- Duration of committees once created
- How committees shall conduct themselves

Generally, as a matter of best corporate practice, the Bylaws would not be modified frequently and any matters which are subject to frequent change would be addressed separately, such as,

through other Board-approved policies. If the Board chooses to revise the ERCOT Bylaws in accordance with these guidelines, ERCOT Legal will prepare a document that identifies which portions of the current Bylaws we would propose remain in the Bylaws and which would migrate to the Board Policies and Procedures.

I look forward to discussing these matters with the HR&G Committee at its August 15, 2011 meeting and obtaining further direction on these matters.