



MEMORANDUM

To: Human Resources and Governance Committee (Committee)
From: Susan M. Westbrook, Assistant General Counsel
Date: September 12, 2011
Re: Review of Employee and Directors Ethics Agreements

The calendar of the Committee periodically includes as a standing item the Committee's review of the ERCOT Employee and ERCOT Director/Segment Alternate Ethics Agreements.

The Director/Segment Alternate Ethics Agreement was last reviewed and substantive changes approved at the February 17, 2009 meeting of the ERCOT Board of Directors (Board). A copy of the current agreement is attached as Exhibit A.

The Employee Ethics Agreement was last reviewed and substantive changes approved at the August 18, 2009 meeting of the Committee. At its meeting on July 17, 2011, the ERCOT Board of Directors approved a modification to the ERCOT Conflict of Interest Corporate Standard limiting investment prohibitions included in the Agreement to ERCOT employees, their spouses or domestic partners, and dependent children. Corresponding revisions to the Employee Ethics agreement are reflected in the red-lined version attached as Exhibit B.

Also attached as Exhibit C is a chart comparing the two agreements and highlighting the applicability of various provisions to Affiliated Board members and Unaffiliated Board members.



Exhibit A

Ethics Agreement for Directors and Segment Alternates

Electric Reliability Council of Texas, Inc. (“ERCOT”) is a Texas non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act. ERCOT has been formed for the limited purpose of: promoting the reliable and efficient operations of electric power systems, ensuring open access for all users of the ERCOT transmission and distribution systems on a non-discriminatory basis, coordinating activities within the region of the Electric Reliability Council of Texas and as liaison to the North American Electric Reliability Corporation, performing the functions of an Independent Organization, and engaging in any lawful act and activity consistent with the foregoing for which corporations may be formed under the Texas Non-Profit Corporation Act. ERCOT is certified as the Independent Organization for the ERCOT Region by the Public Utility Commission of Texas (“PUCT”).

The management of ERCOT is vested in a Board of Directors (“Board”) and such committees of the Board that the Board may, from time to time, establish. It is the duty of the Board to initiate any specific action required, in their opinion, to fulfill the purposes of ERCOT as stated above, within the limitations of the Articles of Incorporation, applicable laws and the Bylaws, as may be amended from time to time.

1. Potential Conflicts of Interest

Each Director and Segment Alternate of ERCOT shall have an affirmative duty to disclose to the Board, any actual or potential conflicts of interest of the Director, Segment Alternate, or his employer where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board as required by the Bylaws. A Director or Segment Alternate with a direct interest in a matter, personally or via his employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in the Market Segment of a Director or Segment Alternate or a general interest of some or all Market Participant Directors or Segment Alternates in a matter does not constitute direct interest. Any disclosure of a direct interest by a Director or Segment Alternate shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, if the Director or Segment Alternate recuses himself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

Each Director and Segment Alternate must disclose all personal relationships (including household member or family member (spouse, parent, child, or sibling, including step and adoptive relatives) relationships) with ERCOT vendors to the Board. Such relationships include: current ties (within the last two years) as a director, officer, or employee of an ERCOT vendor; direct business relationships, other than retail customer relationships, with an ERCOT vendor;



and directly or indirectly owning or holding at least five percent (5%) of voting securities of an ERCOT vendor.

ERCOT may not make any loan to a Director or Segment Alternate of ERCOT. A Director or Segment Alternate may lend money to and otherwise transact business with, ERCOT except as otherwise provided by the Bylaws, the Articles of Incorporation, and applicable law. Such a person transacting business with ERCOT has the same rights and obligations relating to those matters as other persons transacting business with ERCOT. If a Director, a Segment Alternate, or member of his immediate family is an officer or director, is employed by, or owns or has a beneficial interest in more than ten percent of the stock in a bank or other financial institution that would otherwise be a Qualified Institution (as defined in ERCOT's Investment Corporate Standard), such Director or Segment Alternate shall provide full disclosure of such stock holdings or relationship in documented form to be filed with the permanent records of ERCOT. ERCOT may not borrow money from, or otherwise transact business with, a Director or a Segment Alternate unless the transaction is described fully in a legally binding instrument and is in ERCOT's best interests. ERCOT may not borrow money from, or otherwise transact business with, a Director or a Segment Alternate without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

2. Independence of Unaffiliated Directors

Unaffiliated Directors of ERCOT are required to maintain independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:

- An Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:
 - Current or recent ties (within the last two years) as a director or officer of a Market Participant or its Affiliates;
 - Current or recent ties (within the last two years) as an employee of an ERCOT Member or North American Electric Reliability Corporation-Registered Entity operating in the ERCOT Region;
 - Direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and
 - To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
- An Unaffiliated Director shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT Board member, including the Delegated Authority pursuant to the Bylaws.



3. Prohibited Acts

As long as ERCOT exists, no Director or Segment Alternate may:

- Do any act in violation of the Articles of Incorporation or the Bylaws.
- Do any act in violation of a binding obligation of ERCOT except with the Board’s prior approval.
- Do any act with the intention of harming ERCOT or any of its operations.
- Receive an improper personal benefit from the operation of ERCOT.
- Use ERCOT’s assets, directly or indirectly, for any purpose other than in furtherance of ERCOT’s exempt purposes.
- Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will.
- Use ERCOT’s name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT Region.
- Disclose any of ERCOT’s or ERCOT Member’s business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.
- Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Energy Regulatory Commission (“FERC”) rules or become subject to any plenary jurisdiction of FERC.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing as described in Article 3 of the Bylaws.

The Ethics Agreement is not intended to alter in any way the duties, obligations and rights of Directors or Segment Alternates as set forth in the Articles of Incorporation, Bylaws and applicable law, as they may be amended from time to time, nor does it create any third party rights, claims or causes of action. To the extent, if any, that the Ethics Agreement is inconsistent with the Articles of Incorporation, Bylaws or applicable law, the Articles of Incorporation, Bylaws and applicable laws, as they may be amended from time to time, shall control. Directors and Segment Alternates will be required to reaffirm the Ethics Agreement on an annual basis.

By my signature I, _____, acknowledge that I have read and understand the above Ethics Agreement and agree to be bound by its terms.

Director/Segment Alternate Signature: _____

Date: _____



Exhibit B

EMPLOYEE ETHICS AGREEMENT

Employees of Electric Reliability Council of Texas, Inc. (“ERCOT”) must conduct ERCOT’s business with integrity and total objectivity toward ERCOT, all ERCOT Members and Market Participants (as listed on ERCOT’s public website) in compliance with *all* applicable laws, rules, and regulations, NERC Rules of Procedure, ERCOT Protocols ERCOT corporate policies and standards, and operating procedures and this Employee Ethics Agreement. ERCOT will not tolerate fraud, misconduct or violations of the Employee Ethics Agreement or Code of Conduct.

Confidential Information

Employees who receive Confidential Information in the course of their employment must maintain the confidentiality of such Confidential Information and must take reasonable actions and precautions to prevent unauthorized disclosure of same.

“Confidential Information” means all information marked “Confidential” or defined as “Confidential Information” in Section 1500 of the NERC Rules of Procedure and all information defined as “Protected Information” in Section 1.3 of the ERCOT Protocols, and specifically includes all documents, knowledge, electronic, tangible or intangible information provided which is or includes any of the following:

- Information, technical data or know-how which relates to the business, services or products of, ERCOT, owners, operators and users of the bulk power system, including Registered Entities on NERC’s Compliance Registry and ERCOT’s Members and Market Participants, or any of their consultants or vendors, which was developed or acquired by that business and which is proprietary or competitively or commercially sensitive;
- Critical Energy Infrastructure information;
- Personnel information that identifies or could be used to identify a specific individual or reveals personnel, financial, medical, or other personal information;
- Work papers, including any records produced for or created in the course of an evaluation or audit;
- Investigative files, including any records produced for or created during the course of an investigation; or
- Cyber Security Incident information. or

Conflicts of Interest

Employees must conduct ERCOT’s business free from the influence of any Conflict of Interest of the employee or any of the following: the employee’s spouse or domestic partner and dependent child or stepchild (“Dependent Parties); (“Related Parties”): the employee’s immediate family (parents and stepparents, children and stepchildren, siblings and stepsiblings); the employee’s spouse or domestic partner; and household members (including roommates). the employee’s parents and step-parents, siblings and step-siblings, and any other individual living in the employee’s household (“Related Parties”).



Any circumstance which might influence or appear to influence the employee to promote the interest of himself or a Related Party or to provide undue benefit to a Supplier or Market Participant must be disclosed so ERCOT management can evaluate the potential Conflict of Interest. “Conflicts of Interest” are defined in CS5.18, *Conflict of Interest Corporate Standard*. Examples include, but are not limited to:

1. **Interest in Supplier** - The employee, [a Dependent Party](#) or a Related Party has a financial interest, including employment or ownership, in a Supplier currently doing business with ERCOT or in a Supplier that seeks to do business with ERCOT, if that employee has any influence over the selection of the Supplier or is involving in managing or otherwise directing the ERCOT-Supplier relationship in any way. However, the following interests in a Supplier are **not** considered Conflicts of Interest:
 - (a) ownership of less than one percent (1%) of the publicly-traded equity securities of a Supplier, the securities are held as an investment, and the employee or Related Party does not have representation on the Supplier’s board of directors (or equivalent governing body), and does not exercise influence over the entity’s day-to-day management decisions;
 - (b) ownership of mutual funds holding securities of the Supplier.
2. **Interest in Market Participant** – The employee, [a Dependent Party](#) or a Related Party has a financial interest, including ownership or employment, in a Market Participant, **except for** ownership of mutual funds holding securities of the Market Participant.
3. **Conflicting Services** – The employee, [a Dependent Party](#) or a Related Party performs concurrent services for ERCOT and for Market Participants, Suppliers or other entities that have a business relationship with ERCOT.
4. **Personal Benefit** – An ERCOT business decision will result in personal gain or loss to the employee, [a Dependent Party](#) or a Related Party, other than gains or losses common to all employees and their [Dependent Parties and](#) Related Parties.

An employee who becomes aware of a potential or actual Conflict of Interest must immediately inform the Legal Department to allow ERCOT officers to evaluate the situation. After full disclosure by the employee, ERCOT officers may agree to conditions that appropriately limit any potential influence from a Conflict of Interest.

Securities Laws

Employees may not trade in securities of third-parties (such as Suppliers) if, because of their position with ERCOT, they have access to material non-public information about that third-party.

Anti-trust Laws

Employees must abide by the ERCOT *Anti-trust Compliance Corporate Standard* (CS1.10) and all applicable anti-trust laws.



Non-Solicitation

In consideration for receiving ERCOT’s Confidential Information, employees shall not, while employed by ERCOT and for a period of one year from the date of separation of employment with ERCOT, either directly or indirectly solicit, induce or encourage any ERCOT employee or consultant to either terminate employment or contract with ERCOT or accept employment with any other entity. The term “solicit, induce or encourage” includes, but is not limited to, initiating communications with an ERCOT employee relating to possible employment, offering bonuses or additional compensation or referring ERCOT employees to personnel, recruiters or other agents.

Reporting Questions or Concerns

Any employee with concerns or questions about these requirements and prohibitions should contact the Legal Department or file an anonymous report through EthicsPoint (www.ethicspoint.com or 1-866-384-4277) or other available ERCOT anonymous reporting tool, if any.

Disclosure of Conflicts

After reviewing the ERCOT Code of Conduct and Employee Ethics Agreement, I wish to disclose the following potential Conflict(s) of Interest:

Check this box if you have no Conflicts of Interest to report.

Potential Conflicts of Interest:

Name: Relationship to Employee:

Description of Potential Conflict:

Potential Conflicts of Interest:

Name: Relationship to Employee:

Description of Potential Conflict:

Disclosure of Arrest

I have been arrested by law enforcement authorities within the last 12 months for the following alleged offenses:

Check this box if you have no arrests to report.

State: County: City: Date of Arrest:

Nature of Alleged Offense:

Disposition: Dismissed Pending Convicted Probation/Deferred

Adjudication

State: County: Date of Arrest:

Nature of Alleged Offense:

Disposition: Dismissed Pending Convicted Probation/Deferred

Adjudication



Other Disclosure(s) [Please include any disclosures relating to CS5.14.7, *Driving on Company Business Corporate Standard*]:

Employee Agreement

By checking the box, I confirm and acknowledge that:

(i) I have read and understand the requirements of the ERCOT Code of Conduct, this Employee Ethics Agreement, the *Antitrust Compliance Corporate Standard* (CS1.10), the *Confidentiality Corporate Standard* (CS5.19), *The Fraud Prevention and Whistleblower Corporate Standard* (CS5.38); the *Acceptable Use Corporate Standard* (CS7.1), and the ERCOT Employee Corporate Standards Manual (CS5.1-5.42);

(ii) I agree to be bound by and comply with all applicable laws, rules and regulations, all ERCOT corporate policies and standards, operating procedures and Protocols and the NERC Rules of Procedure; and

(iii) I agree to maintain the confidentiality of all Confidential Information; and

(iv) If I have signed any previous ERCOT Ethics Agreement, I further confirm that I have complied with those requirements since the date of such previous Ethics Agreement(s); and

(v) I have made complete disclosure herein of any potential Conflict of Interest involving me or my [Dependent Parties or](#) Related Parties; and

(vi) If I become aware of a Conflict of Interest involving me or my [Dependent Parties or](#) Related Parties, or if any information I disclosed herein changes, I will promptly notify the Legal Department in writing and

(vii) I will be subject to disciplinary action, termination, injunction and/or all other available legal or equitable remedies for any violations of applicable laws, rules, and regulations, NERC Rules of Procedure, ERCOT Protocols, ERCOT corporate standards, policies and operation procedures and this Employee Ethics Agreement, whether my violation is intentional or careless.

I agree to the foregoing terms.



**Exhibit C
COMPARISON OF ERCOT DIRECTOR ETHICS AGREEMENT
EMPLOYEE ETHICS AGREEMENTS/CONFLICTS OF INTEREST CORPORATE STANDARD**

	Description	Unaffiliated Directors and Related Parties	Affiliated Directors and Related Parties	Employees and Related Parties
1	Employment by or management of ERCOT or NERC-registered entity operating in ERCOT region	Current and within previous 2 years prohibited	n/a	n/a
2	Employment by Market Participant	Current and within previous 2 years prohibited	n/a	Prohibited for employee; prohibited for Related Parties if Employee’s objectivity may be compromised
3	Contract services to Market Participant	Current and within previous 2 years prohibited	n/a	Prohibited if Employee’s objectivity may be compromised
4	Management of Market Participant	Current and within previous 2 years prohibited	n/a	“Interest” in Market Participant prohibited
5	Direct business relationship with Market Participants and Affiliates	Retail customer relationship permitted; otherwise prohibited	n/a	Retail customer relationship permitted; otherwise “interest” in Market Participant prohibited
6	Ownership in or controlling interest in Market Participant	Ownership via blind trust permitted; otherwise prohibited	n/a	Ownership via mutual funds permitted; otherwise prohibited
7	Employment by ERCOT Vendor	Relationship with vendor, current or within previous 2 years, must be disclosed	Relationship with vendor, current or within previous 2 years, must be disclosed	Prohibited if Employee’s objectivity may be compromised
8	Services to ERCOT Vendor	Relationship with vendor, current or within previous 2 years, must be disclosed	Relationship with vendor, current or within previous 2 years, must be disclosed	Prohibited if Employee’s objectivity may be compromised
9	Management of ERCOT Vendor	Relationship with vendor, current or within previous 2	Relationship with vendor, current or within previous	Prohibited if Employee’s objectivity may be



	Description	Unaffiliated Directors and Related Parties	Affiliated Directors and Related Parties	Employees and Related Parties
		years, must be disclosed	2 years, must be disclosed	compromised
10	Ownership or controlling interest in ERCOT Vendor	Ownership of 5%+ voting securities must be disclosed	Ownership of 5% or more voting securities must be disclosed	Passive investment of up to 1% of publicly traded Vendor and ownership via mutual funds permitted; otherwise prohibited
11	Ownership interest in Qualified Institution	Ownership of 10% + stock must be disclosed; recusal required	Ownership of 10%+ stock must be disclosed; recusal required	
12	Employment by or services to non-vendor entity doing business with ERCOT	Prohibited if independent judgment would be compromised		Employee services permitted only if approved by ERCOT management
13	Activity for personal benefit contrary to ERCOT's interest	Prohibited	Prohibited	Prohibited
14	Unique direct interest in matter before the Board	Disclosure required; recusal required	Disclosure required; recusal required	
15	Violation of Articles of Incorporation or Bylaws	Prohibited	Prohibited	
16	Violation of binding obligation of ERCOT	Prohibited except with prior approval of Board	Prohibited except with prior approval of Board	
17	Intentional harm to ERCOT	Prohibited	Prohibited	
18	Improper use of ERCOT assets	Prohibited	Prohibited	Prohibited
19	Improper use of ERCOT employment			Prohibited
20	Improper use of ERCOT name or trademarks	Prohibited	Prohibited	
21	Improper disclosure of ERCOT or Market Participant confidential information	Prohibited	Prohibited	Prohibited
22	Any action causing ERCOT or any Member to come under	Prohibited without prior written notice to ERCOT and Members	Prohibited without prior written notice to ERCOT	



	Description	Unaffiliated Directors and Related Parties	Affiliated Directors and Related Parties and Members	Employees and Related Parties
	FERC jurisdiction			
23	Wrongful transfer/disposal of ERCOT property/assets	Prohibited	Prohibited	
24	Trading third party securities on basis of non-public information obtained through ERCOT			Prohibited