



**To:** Human Resources and Governance (HR&G) Committee  
**From:** Bill Magness, ERCOT Vice President, General Counsel and Corporate Secretary  
**Date:** January 7, 2013  
**Re:** 2013 Bylaws Revision Review Process

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At its November 5, 2012 meeting, the HR&G Committee affirmed its intention to defer approval of any proposed Bylaws changes until the conclusion of the 2013 legislative session. The Committee agreed to begin a process of reviewing potential changes, and to move forward on recommending any approved changes to the Board no earlier than the July 2013 Board meeting.

As of this meeting, ERCOT has received two specific requests for revisions to the Bylaws. These requests were presented to the Committee at its November 2012 meeting, and are included with this memorandum for ease of reference. In addition, ERCOT Legal is preparing a redline version of the Bylaws that includes what we intend to be administrative changes; these proposed changes would not substantively alter the Bylaws, but rather would clarify ambiguities or correct drafting errors.

ERCOT Legal personnel, led by General Counsel Bill Magness and Assistant General Counsel Vickie Leady, will coordinate the Bylaws review process. We suggest the review of the administrative changes begin with ERCOT Legal distributing the redlined Bylaws to Committee members between the January and March HR&G Committee meetings. This would provide Committee members ample time to review the proposed changes and provide comments and guidance to ERCOT Legal prior to the March 18, 2013 HR&G Committee meeting.

Our goal is to deliver to the March HR&G Committee meeting a redline draft that incorporates feedback from the Committee, and highlights issues that merit further discussion by the full Committee. If the Committee's review of the administrative changes spurs discussion of other potential changes, ERCOT Legal will circulate the additional edits for review between the March and May meetings, with a goal of developing a comprehensive draft for Committee review at its May 13, 2013 meeting.

We would appreciate the Committee's guidance on whether to proceed with this proposed process, and on any other feedback on issues associated with the proposed Bylaws changes. I look forward to discussing these matters with you at the HR&G Committee meeting on January 13, 2013.



## Appendix A

### Requested Amendments to the ERCOT Bylaws Presented At November 2012 HR&G Committee Meeting

1. Amend ERCOT Bylaws, Article 5 (Technical Advisory Committee), Subsection 5.1(c).

(c) Fifty-one percent (51%) of the eligible, Seated Representatives of TAC shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum. Affirmative votes of: (i) two-thirds of the Eligible Voting Representatives of TAC; and (ii) at least 50% of the total Seated Representatives shall be the act of TAC. For purposes of voting on TAC, TAC representatives who **are not present or** abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.

*The amendment was proposed by Mr. Clayton Greer (Morgan Stanley), who provided the following explanation for the proposal:*

The reason for this change is that the current language effectively turns the vote of someone who is not present to a "No" vote when the calculation is made for passage. We could actually have a quorum present, but not have the ability to pass a single voting item due to the procedure. The change will revise these votes to the same effect as a vote of "abstain," which is done in other bodies.

2. Amend ERCOT Bylaws, Article 4 (Board of Directors), Subsection 4.3(a)(4).

(a) Selection of Market Participant Directors and Segment Alternates: ...

(4) Each Market Participant Director and each Segment Alternate, except as provided above for the Commercial Consumer Director, must be an employee of a Member, **or a company which directly or indirectly controls Member**. Unless otherwise provided in these Bylaws, if an employee of a Member **or a company which directly or indirectly controls Member** is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member, **controlling entity** or organization as he or she was at the time of such election or appointment.

*The amendment was proposed by Mr. Vanus Priestley (Macquarie), who provided the following explanation for the proposal:*

The current bylaws prohibit members of the Independent REP and Independent Power Marketer segment with common corporate structures to participate on the ERCOT Board. Specifically section 4.3(a)(4) limits market participant directors to "employees" of a member. Currently the Independent Generator and Investor Owned Utility Segments have provisions in the bylaws that allow their representatives to be employees of a controlling company. The bylaws change provided will expand that ability to the Independent REP, and Independent Power Marketer segments. Evident by the fact that it does not apply to Independent Generators and Investor Owned Utilities, the limitation does not appear to have a specific purpose.