



**The Human Resources and Governance (HR&G)
Committee is expected to consider
HR&G Committee Agenda Item 4.2:
Recommendation of HR&G Committee
(on Bylaws Amendments)
at its meeting on July 15, 2013.**

**The Board of Directors is expected to hear the
HR&G Committee's recommendation on this
matter as part of the HR&G Committee Report at
the Board meeting on July 16, 2013.**

**Attached are the Board materials in relation to
these agenda items.**



Date: July 9, 2013
To: Board of Directors
From: Bill Magness, ERCOT Vice-President, General Counsel and Corporate Secretary
Subject: Proposed Bylaws Amendments

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: July 16, 2013

Item No.: 10.1

Issue:

Whether the ERCOT Board of Directors (Board) should approve Bylaws amendments proposed by ERCOT Legal and certain ERCOT Corporate Members.

Background/History:

Bylaws Review and Revision Process

ERCOT currently operates pursuant to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), which were approved by the Public Utility Commission of Texas (PUCT or Commission) on April 16, 2010.

Section 13.1 of the Bylaws, the Public Utility Regulatory Act (PURA) Section 39.151(g), PUCT Substantive Rule Section 25.362(c), and the HR&G Committee Charter provide the requirements and process for approval of any Bylaws amendments. In brief, the Bylaws amendment process may be summarized as follows:

1. **Submission of Proposal:** Any Corporate Member must submit a proposal of its proposed amendment with supporting documentation to the ERCOT Chief Executive Officer (CEO).
2. **Placement of Proposal on Board Agenda After HR&G Committee Review and Recommendation:** The CEO will place such proposal on the Board's agenda in the time and manner prescribed by the Board. Given the delegation of duties from the Board to the HR&G Committee for review of ERCOT's governing documents, the HR&G Committee would first review and make a recommendation to the Board on such proposal prior to placing the proposal on the Board agenda.
3. **Board Recommendation to Corporate Members for Approval:** If the Board votes to approve the proposal, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members, unless the Board in its discretion calls a Special Meeting of the Corporate Members.
4. **Vote by Corporate Members:** Corporate Members must vote using the procedure more particularly described in Section 13.1(d) of the Bylaws. At least four of the seven Market Segments must affirmatively vote to amend the Bylaws.
5. **Filing of Petition for Approval of Bylaws Amendment with the Commission:** If the Corporate Members vote to approve the proposal, then ERCOT Legal will seek the



approval of the Commission by filing a petition for approval of amendments to the Bylaws. Any amendments to the Bylaws shall only be effective upon formal Commission approval.

Status of Review Process

At the May 2013 meeting of the HR&G Committee, members of the Committee directed ERCOT Legal to prepare proposed Bylaws amendments for votes by the Committee and the Board of Directors at the July 2013 meetings with the expectation that any amendments approved by the Board would be presented for vote to the Corporate Members at a Special Meeting of the Corporate Members, which will be called as soon as practicable after the Board's approval (rather than seeking approval at the scheduled Annual Membership Meeting on December 10, 2013). The HR&G Committee is expected to consider the proposed Bylaws changes at its July 15, 2013 meeting and present its recommendations on proposed Bylaws amendments to the Board at the Board's July 16, 2013 meeting.

Summary of Proposed Bylaws Amendments

Bylaws amendment proposals were submitted by three Corporate Members: Calpine Corporation; Macquarie Energy LLC; and Morgan Stanley Capital Group, Inc. Additionally, ERCOT Legal proposed administrative amendments and an amendment to the budget provision of the Bylaws.

ERCOT Legal proposed administrative amendments to various sections of Articles 1-5, 7, 9, 10, and 12-14 to address the following:

- Correct typographical or other scrivener's errors;
- Promote consistency in the use of certain defined terms;
- Update references to the ERCOT oversight rules adopted by the Public Utility Commission of Texas in 2011; and
- Remove obsolete language (e.g., references to the Texas Regional entity as part of ERCOT, Inc.).

ERCOT Legal proposed the following amendment to the budget provision:

Article 10 (Expenses Books and Records), Subsection 10.3(a) – allow the Board to approve a budget for one or more fiscal years. This change is in response to the recent changes in PURA that authorize the PUCT to approval annual or biennial budgets for ERCOT.

Morgan Stanley Capital Group, Inc. proposed the following amendment:

Article 5 (Technical Advisory Committee), Subsection 5.1(c) – TAC representatives who are not present and have not designated a proxy, as well as those who abstain from voting, will not have their votes included in the total number of votes for purposes of calculating the requisite percentage of affirmative votes required for action.

Calpine Corporation proposed the following amendment:

Article 2 (Definitions), Subsection 2.1 – include within the definition of "Affiliate" a range of ownership between 5% and 20% of the voting securities of another entity, where there is no shared parent company or actual exercise of substantial influence or



control, allowing the Board to determine whether the entities are Affiliates for purposes of determining Member Segment and voting rights.

Macquarie Energy LLC proposed the following amendment:

Article 4 (Board of Directors), Subsection 4.3(a)(4) – allow employees of a Member or an entity that owns or controls a Member to serve as Directors and Segment Alternates for the Independent Power Marketer and Independent REP Segments.

Key Factors Influencing Issue:

Section 13.1 of these Bylaws, the Public Utility Regulatory Act (PURA) Section 39.151(g), PUCT Substantive Rule Section 25.362(c), and the HR&G Committee Charter provide the requirements and process for approval of any Bylaws amendments.

Bylaws amendment proposals have been submitted by three Corporate Members and ERCOT Legal.

At the May 2013 meeting of the HR&G Committee, members of the Committee directed ERCOT Legal to prepare proposed Bylaws amendments for votes by the Committee and the Board of Directors at the July 2013 meetings with the expectation that any amendments approved by the Board would be presented for vote to the Corporate Members at a Special Meeting of the Corporate Members, which will be called as soon as practicable after the Board's approval (rather than seeking approval at the scheduled Annual Membership Meeting on December 10, 2013). The HR&G Committee is expected to consider the proposed Bylaws changes at its July 15, 2013 meeting and present its recommendations on proposed Bylaws amendments to the Board at the Board's July 16, 2013 meeting.

If the Board accepts the HR&G Committee recommendations on the proposed Bylaws amendments, the Board must vote to approve the amendments for presentation to the Corporate Members for a vote on the amendments.

Conclusion/Recommendation:

ERCOT staff respectfully recommends that the Board vote to accept the recommendations of the HR&G Committee and approve the proposed Bylaws amendments individually for recommendation and presentation to the Corporate Members as soon as reasonably possible.



ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
BOARD OF DIRECTORS RESOLUTION

WHEREAS, after due consideration of the alternatives and upon consideration of the recommendations of its Human Resources and Governance (HR&G) Committee, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to approve certain amendments to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), in substantially similar form as those attached hereto as Attachment A, for recommendation and presentation to the Corporate Members as soon as reasonably possible;

THEREFORE, BE IT RESOLVED, that the Board hereby:

- (1) Approves the amendments to the Bylaws, in substantially similar form as those attached hereto as Attachment A, for recommendation and presentation to the Corporate Members as soon as reasonably possible; and
- (2) Authorizes ERCOT Legal to:
 - a. Present such approved amendments, in substantially similar form as those attached hereto as Attachment A, for recommendation to the Corporate Members as soon as reasonably possible;
 - b. File a petition with the Public Utility Commission of Texas (Commission) for approval of any Bylaws amendments approved by the Corporate Members, to be effective upon Commission approval; and
 - c. Judiciously correct any scrivener's errors (such as, clerical, typographical, spelling, formatting, numbering or drafting errors) in the amendments or Bylaws as needed to reflect intended meaning accurately.

CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its July 16, 2013 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of July, 2013.

Vickie G. Leady
Assistant Corporate Secretary