

|                               |   |                           |
|-------------------------------|---|---------------------------|
| PETITION OF ELECTRIC          | § | PUBLIC UTILITY COMMISSION |
| RELIABILITY COUNCIL OF TEXAS, | § |                           |
| INC. FOR APPROVAL OF BYLAWS   | § | OF TEXAS                  |
| AMENDMENTS                    | § |                           |

**PETITION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR APPROVAL OF BYLAWS AMENDMENTS**

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and, pursuant to P.U.C. SUBST. R. § 25.362, respectfully requests Commission approval of amendments to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.*<sup>1</sup> (Bylaws). The proposed amendments were approved by ERCOT’s Board of Directors on July 16, 2013, and by vote of ERCOT’s Corporate Members on August 8, 2013. A red-lined document showing the proposed Bylaw amendments is appended to this Petition as *Attachment A*.

Accordingly, ERCOT respectfully requests that the Commission assign a docket number to this matter and approve these amendments to the Bylaws.

**I. BACKGROUND**

A. Bylaws Review and Revision Process

ERCOT currently operates pursuant to the Bylaws, which were approved by the Commission on April 16, 2010. Section 13.1 of the Bylaws, Public Utility Regulatory Act (PURA) § 39.151(g),<sup>2</sup> P.U.C. SUBST. R. § 25.362(c), and the Charter of the Human Resources and Governance (HR&G) Committee of the ERCOT Board of Directors 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).

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<sup>1</sup> The *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.*, were approved by the Commission on April 16, 2010.

<sup>2</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2012) (PURA), PURA § 39.151(g).

2. Placement of Proposal on Board of Directors Agenda After HR&G Committee Review and Recommendation: The CEO will place such proposal on the agenda of the ERCOT Board of Directors (Board) 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.

B. Board Recommendation of Bylaws Amendments to Corporate Members

After consideration and recommendation by the HR&G Committee, at the July 16, 2013 Board meeting, the Board recommended approval of the proposed Bylaws amendments as identified in *Attachment A* to the Corporate Members.

1. HR&G Committee Review and Recommendation

At its July 15, 2013 meeting, the HR&G Committee took separate votes on each proposed set of Bylaws amendments and recommended that the Board approve two sets of amendments proposed by ERCOT Legal, one set of amendments proposed by Corporate Member Morgan Stanley Capital Group, Inc. (Morgan Stanley), and one set of amendments proposed by Corporate Member Calpine Corporation (Calpine), which are described in further detail in Section IV. below, and identified more particularly in *Attachment A*.

At its meeting on November 5, 2012, the HR&G Committee initiated its review process for any Bylaws amendments during 2013. Over the course of its meetings since November 5, 2012 (that is, at its 2013 meetings on January 14, March 18, May 13 and July 15), the HR&G Committee developed a timeline for its review of Bylaws amendments, solicited Bylaws amendments from ERCOT Legal and Board members, and ultimately considered amendments proposed by ERCOT Legal and Corporate Members.

At its May 13, 2013 meeting, after hearing from the Corporate Member proponents of the Bylaws amendments, the HR&G Committee directed ERCOT Legal to streamline the review process so that the Bylaws amendments could be approved by the Corporate Members and the Commission prior to the close of the 2014 ERCOT Membership application process which occurs on November 8, 2013, rather than pursue the original schedule for approval by the Corporate Members at the 2013 Annual Meeting in December 2013. In addition, prior to the July 15, 2013 HR&G Committee meeting, ERCOT Legal reviewed and discussed the proposed Bylaws with Commission counsel and staff.

At its July 15, 2013 meeting, prior to making its recommendations on each set of Bylaws amendments to the Board, the HR&G Committee again considered comments from ERCOT Legal and Corporate Members, as well as advisory recommendations of the Technical Advisory Committee (TAC), which had considered the amendments to the Bylaws at the June and July 2013 TAC meetings.<sup>3</sup>

## 2. Board Acceptance of HR&G Recommendations

At its July 16, 2013 meeting, the Board received the HR&G Committee report on all of the Bylaws amendments it had considered. At the same meeting, the Board voted to accept the recommendations of the HR&G Committee to approve Bylaws amendments proposed by ERCOT Legal, Morgan Stanley and Calpine and to recommend that the Corporate Members approve such proposed Bylaws amendments. Also, at its July 16, 2013 meeting, the Board voted to call a Special Meeting of the Corporate Members for a vote to approve the proposed Bylaws amendments as soon as practicable.

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<sup>3</sup> TAC did not formally review the administrative and clerical “clean-up” amendments proposed by ERCOT Legal staff, but expressed no opposition to the administrative and clerical amendments.

C. Corporate Member Approval of Bylaws Amendments

On July 18, 2013, pursuant to the direction of the Board, ERCOT issued its notice of Special Meeting of Corporate Members to be held on August 8, 2013 (Special Meeting) for a vote to approve four proposed amendments to the Bylaws. A copy of the Special Meeting notice is provided for reference as *Attachment B*. On August 8, 2013, the Special Meeting was held and the Corporate Members voted to approve all four proposed amendments to the Bylaws.

**II. STATEMENT OF JURISDICTION AND AUTHORITY**

The Commission has jurisdiction over this matter pursuant to PURA §39.151 and P.U.C. SUBST. R. 25.362(c)(5).

**III. IDENTIFICATION OF APPLICANT**

The name and address of the Applicant is Electric Reliability Council of Texas, Inc., 7620 Metro Center Drive, Austin, Texas 78744.

The name, address, telephone, and facsimile numbers of Applicant's authorized representatives are as follows:

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**IV. SUMMARY OF BYLAWS AMENDMENTS**

The four amendments to the ERCOT Bylaws, which were recommended to the Corporate Members by the Board and subsequently approved by the Corporate Members, are fully redlined in *Attachment A*.

The following is a summary of such amendments:

1. Administrative and clerical amendments proposed by ERCOT Legal.

ERCOT Legal proposed administrative and clerical amendments 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 Commission in 2011; and
  - Remove obsolete language (*e.g.*, references to the Texas Regional Entity as part of ERCOT).
2. Budget provision amendment proposed by ERCOT Legal.

PURA Subsection 39.151(d-1) has been modified as part of the 2013 Sunset Bill to provide the Commission with the right to review ERCOT’s proposed budgets either annually or biennially. ERCOT Legal proposed an amendment to Article 10 (Expenses Books and Records), Subsection 10.3(a), to give the Board flexibility to approve a budget for one or more fiscal years.

3. Amendment proposed by Corporate Member Morgan Stanley.

Morgan Stanley proposed an amendment to Article 5 (Technical Advisory Committee), Subsection 5.1(c), so that 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.

4. Amendment proposed by Corporate Member Calpine.

Calpine proposed an amendment to Article 2 (Definitions), Subsection 2.1, to include within the definition of “Affiliate” a range of ownership between five and 20 percent 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.

## V. NOTICE PROVIDED BY ERCOT

ERCOT will post its Petition for Approval of Amendments to Amended and Restated Bylaws to its website at [http://www.ercot.com/about/governance/legal\\_notices](http://www.ercot.com/about/governance/legal_notices); send a copy of its Petition via first-class U.S. mail to the parties of record in ERCOT’s last fee case, Docket No. 31824 *Application of the Electric Reliability Council of Texas for Approval of the ERCOT System Administration Fee*; and provide Notice of its Petition via electronic mail to ERCOT’s email exploder lists of committees as follows:

- ERCOT Board of Directors and Others;
- Technical Advisory Committee and Others (TAC);

- Retail Market Subcommittee (RMS);
- Wholesale Market Subcommittee (WMS);
- Reliability and Operations Subcommittee (ROS);
- Commercial Operations Subcommittee (COPS); and
- Protocol Revisions Subcommittee (PRS).

ERCOT will file an affidavit attesting to the completion of its proposed notice.

## **VI. REQUEST FOR EXPEDITED PROCEDURAL SCHEDULE**

ERCOT proposes the following procedural schedule, which aims toward approval of the amendments to the Bylaws at the October 3, 2013 Commission Open Meeting.

ERCOT requests this expedited schedule so that the amendments to the Bylaws may be approved by the Commission and, thus, become effective for the 2014 ERCOT Membership application process, which ends on November 8, 2013. The Commission's approval of the amendment revising the Affiliate definition would affect one or more Corporate Members' ability to qualify for a particular Market Segment for the 2014 ERCOT Membership Year and to allow the possibility of having such Corporate Member employees be elected to seats on the Board, the TAC, and its subcommittees for such a Market Segment for the 2014 ERCOT Membership Year.

ERCOT has filed five dockets since 2001 seeking approval of amendments to its bylaws, only one party has intervened in these proceedings, and all have been approved without the need for discovery or hearing.<sup>4</sup> Based on that history, and on the extensive review the proposed Bylaws amendments have already received in the ERCOT TAC and Board processes (including their acceptance by the ERCOT Board and approval by ERCOT Corporate Members), ERCOT is confident that its proposed schedule is feasible in the context of this proceeding. ERCOT's proposed schedule provides twenty (20) days for parties to intervene. Moreover, as noted above, ERCOT will provide extensive notice to affected parties prior to the publication of its application in the *Texas Register*. ERCOT's request for a 20-day intervention period conforms with P.U.C.

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<sup>4</sup> ERCOT began filing petitions for the approval of Governance Changes (specifically for Amended and Restated Bylaws) in 2001, in Docket No. 24932. Since that time, ERCOT has filed four additional petitions for approval of Amended and Restated Bylaws in P.U.C. Docket Nos. 26861, 32025, 34427, and 37852. Only one party intervened in Docket No. 34427. No other parties intervened in ERCOT's prior Bylaws amendment proceedings.

PROC. R. 22.104, which permits intervention motions to be filed within forty-five (45) days of “the date an application is filed with the commission,” but provides that intervention deadlines may be adjusted based on an order of the presiding officer in a particular docket. Given the history of ERCOT’s prior proceedings for approval of amendments to bylaws, the notice already provided by ERCOT, and the need to obtain Commission approval as quickly as feasible, ERCOT submits that a 20-day intervention period is reasonable in this docket.

If no interventions or hearing requests are filed, ERCOT requests completion of the proceeding pursuant to the Commission’s procedural rules for informal disposition of uncontested dockets.<sup>5</sup> The informal process authorizes the Presiding Officer to file a Proposed Order that is eligible for consideration by the Commission twenty (20) days after it is filed.

Assuming informal disposition is possible, ERCOT proposes the following procedural schedule:

|  |                    |
|--|--------------------|
| ERCOT posts Petition to its website and provides notice (as described in Section V. herein)  | August 13, 2013    |
| <i>Texas Register</i> publication of the Commission’s Notice of Petition for Approval of Bylaws Amendments   | August 23, 2013    |
| Deadline to Intervene (within 20 days from the date the Petition is filed with the Commission)   | September 2, 2013  |
| Deadline for Intervenors to request a hearing; Deadline for Intervenor comments on the merits if no hearing requested  | September 9, 2013  |
| Deadline for Commission Staff to request a hearing; Deadline for Commission Staff’s recommendation if no hearing requested   | September 16, 2013 |
| Deadline for ERCOT to request a hearing; Deadline for ERCOT’s response to Intervenor comments and Commission Staff’s recommendation if no hearing requested; Deadline for Parties’ proposed order, if no disputed issues | September 18, 2013 |
| Proposed Order filed by Presiding Officer for approval, pursuant to P.U.C. PROC. R. § 22.35(b)(2)  | September 23, 2013 |
| Consideration of Proposed Order at Commission Open Meeting   | October 3, 2013    |

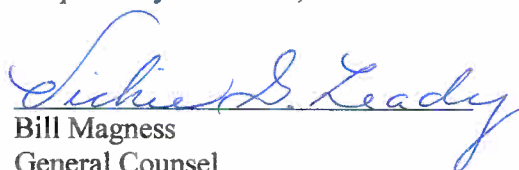
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<sup>5</sup> See P.U.C. PROC. R. § 22.35.

## VII. CONCLUSION

ERCOT respectfully requests that the Commission approve all of the amendments to the Bylaws approved by the Corporate Members, as described in this Petition and in substantially the same form as those identified in *Attachment A*, save and except any scrivener's errors, adopt the procedural schedule requested by ERCOT in this Petition, and grant ERCOT all other relief to which it is entitled.

Respectfully submitted,



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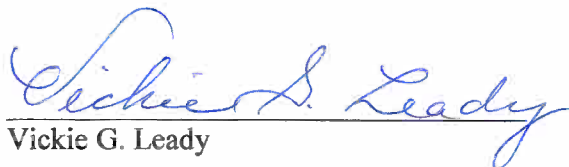
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ATTORNEYS FOR ELECTRIC  
RELIABILITY COUNCIL OF TEXAS, INC.

## CERTIFICATE OF SERVICE

I, Vickie G. Leady, attorney for ERCOT, certify that a copy of this document was served in this proceeding on August 13, 2013 in the following manner: by facsimile or first-class U.S. mail.



Vickie G. Leady





**Attachment A**

**THIRD<sup>[A1]</sup> AMENDED AND RESTATED BYLAWS**

**OF**

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

**(A Texas Non-Stock, Non-Profit Corporation)**

**Approved on April 16, 2010 \_\_\_\_\_, 201**

## ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc., a Texas non-stock, non-profit corporation [A2] (“ERCOT”), shall be located at such place in Texas as the ERCOT Board of Directors (the “Board”) may determine. Additional offices may be established and maintained at such place or places as the Board may from time to time designate.

Section 1.2 Registered Office and Registered Agent. ERCOT will maintain a registered office and a registered agent in Texas. The Board may change the registered office and the registered agent as permitted in the Texas Non-Profit Corporation Act.

Section 1.3. Intentionally Omitted. [A3]

## ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

- Affiliate.** This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In the case of (i) or (ii) above, where one entity owns or holds at least five percent, but less than 20 percent, of the voting securities of another entity, and the relationships in (iii) and (iv) do not exist, the Board shall have the discretion to determine whether or not the entities are Affiliates of one another for the purpose of determining Member Segment and voting rights. Similarly,– In [A4] cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.
- Consumers.** Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.
- Commercial Consumers.** A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater

than 1000 kilowatts. An entity applying for ERCOT membership as either a Small Commercial Consumer or a Large Commercial Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators and the interest is of such an extent or nature that its decisions might be affected or determined by it. The ~~three Board~~<sup>[A5]</sup> Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

4. **Cooperative.** An entity operating in the ERCOT Region that is:
- a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
  - b. a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas;
  - c. a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or
  - d. a River Authority as defined in Tex. Water Code §30.003.

~~5.~~ ~~Intentionally Omitted.~~<sup>[A6]</sup>

~~6.5.~~ **Director.** A member of the Board of ERCOT.

~~7.6.~~ **Eligible Voting Director.** A Seated Director of the Board of ERCOT other than the *ex officio* Director who is the Chairman of the Public Utility Commission of Texas (“PUCT”), pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.

~~8.7.~~ **Eligible Voting Representative.** A Seated Representative, pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.

~~9.8.~~ **Entity.** An Entity includes an organization and all of its Affiliates.

~~10.9.~~ **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas, as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.

~~11.~~10. **ERCOT Region.** The geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

~~12.~~ ~~Intentionally Omitted.~~<sup>[A7]</sup>

~~13.~~ ~~Unaffiliated Director. A Director who is unaffiliated with a Market Participant as qualified under Section 4.3(b).~~<sup>[A8]</sup>

~~14.~~11. **Independent Generator.** Any entity that is not a Transmission and Distribution (“T&D”) Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.

~~15.~~12. **Independent Power Marketer.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.

~~16.~~13. **Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (“REP”) under Public Utility Regulatory Act (“PURA”) §39.352 and that is not an Affiliate of a T&D Entity. For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.<sup>[A9]</sup>

~~17.~~14. **Industrial Consumers.** An industrial consumer is a consumer with at least one meter with average monthly demand greater than 1 megawatt consumed within the ERCOT Region engaged in an industrial process.

~~18.~~15. **Investor-~~Owned~~ Utility (“IOU”).**

a. An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an entity described in (a), (b) or (c);

b. A public utility holding company of any such electric utility.

16. **Market Participant.** For purposes of these Bylaws, a Market Participant is (i) any entity that engages in any activity that is in whole or in part the subject of the ERCOT Protocols and has, or should have, a contract regarding such activities with ERCOT or (ii) any entity that qualifies for ERCOT membership.

17. **Market Segment.** For purposes of these Bylaws, any of the segments (all of which are defined within this Article 2 of these Bylaws) as follows:

- a. **Cooperative;**
- b. **Independent Generator;**
- c. **Independent Power Marketer;**
- d. **Independent REP;**
- e. **IOU;**
- f. **Municipal; or**
- g. **Consumer (including: (1) Commercial Consumer comprised of Small Commercial Consumer and Large Commercial Consumer, (2) Industrial Consumer or (3) Residential Consumer).**

18. <sup>[A10]</sup>**Market Segment Director.** A Director who has been elected by one of the Market Segments<sup>[A11]</sup>.

19. **Member.** ~~The~~<sup>A</sup> ~~corporate~~<sup>[A12]</sup> ~~Member~~ of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of these Bylaws—or the ~~Member's~~ appointed representative as the context so requires.<sup>[A13]</sup>

20. **Municipal.** An entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either:

- a. a municipal owned utility as defined in PURA §11.003 or
- b. a River Authority as defined in Tex. Water Code §30.003.

~~21. Intentionally Omitted.~~<sup>[A14]</sup>

~~22.~~<sup>21.</sup> **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.

~~23. Intentionally Omitted.~~<sup>[A15]</sup>

~~24.~~<sup>22.</sup> **Residential Consumers.** The appointed Board Director representing residential consumer interests, an organization or agency representing the interests of residential consumers in the ERCOT Region, or the Residential Consumer Technical Advisory Committee (“TAC”) Representative. An entity applying for ERCOT membership as a Residential Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or

generators. The ~~three Board~~<sup>[A16]</sup> Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

~~25.~~<sup>23.</sup> **Seated Director.** A Director, or their designated Segment Alternate when serving in their stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a “Seated Director”.

~~24.~~ **Seated Representative.** A TAC Representative (as defined in Section 5.1 of these Bylaws) or a member of a subcommittee of TAC, or their designated alternate representatives when serving in their stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a “Seated Representative”.

~~26.~~<sup>25.</sup> **Segment.** For purposes of these Bylaws, a “Segment” refers to a Market Segment as defined in this Article 2 of these Bylaws.<sup>[A17]</sup>

~~27.~~ **Segment Alternate.** ~~An elected~~ designated alternate Board representative, duly elected by his respective Market Segment, who can attend and vote at meetings in the absence of the respective a Market Segment Director and vote on the absent Director’s behalf in the event that such Director cannot attend a Board meeting (including while such Director is unable to attend a Board meeting or while such Director’s seat is vacant). Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.<sup>[A18]</sup>

~~28.~~ ~~Intentionally Omitted.~~<sup>[A19]</sup>

~~26.~~ **Transmission and Distribution Entity.** Any entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a “retail electric utility,” as defined in PURA §37.001, operating in the ERCOT Region.

~~27.~~ **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant and who meets the requirements identified in Section 4.3(b).<sup>[A20]</sup>

## ARTICLE 3 MEMBERS

### Section 3.1 Membership.

(a) Members must qualify in one of the following segments as defined in Article 2:

(1) Cooperative;

- (2) Independent Generator;
- (3) Independent Power Marketer;
- (4) Independent REP ~~(For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP)~~<sup>[A21]</sup>;
- (5) Investor-Owned Utility;
- (6) Municipal; or,
- (7) ~~Consumer~~ in one of —three subsegments: (i) Commercial (which is further divided into Large and Small Commercial Consumer); (ii) Industrial; and (iii) Residential. ~~The Commercial Consumer subsegment is further divided into Large and Small Commercial Consumers.~~<sup>[A22]</sup>

- (b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.
- (c) The Board may adopt and amend Member application procedures.

Section 3.2 Membership Types and Voting Rights. ERCOT Members may be Corporate Members, Associate Members, or Adjunct Members as hereinafter described:

- (a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation and these Bylaws).
- (b) Associate Members – shall have the rights and obligations as described in these Bylaws excluding the right to vote on any matter submitted to the general Membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation and these Bylaws).
- (c) Adjunct Members – may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Corporate or Associate Member. Adjunct Members shall have no right to vote on any matter submitted to the general Membership nor any right to be elected or appointed to the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

Section 3.3 Obligations of All Members.

- (a) Each Member must comply with any applicable planning and operating criteria, procedures and guides adopted by or under the direction of the Board to maintain electric system reliability, coordinate planning, promote comparable access to the transmission system by all users and to further the exempt purposes of ERCOT.
- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's request as necessary for the furtherance of the exempt purposes or activities of ERCOT and consistent with PUCT rules relating to confidentiality.

Section 3.4 Annual Member Dues. Each Member annually shall pay dues to ERCOT (the "Annual Member Dues"). Each Member shall pay its Annual Member Dues within thirty (30) days after receipt of ERCOT's annual statement of such dues. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Dues for Corporate Members shall be \$2,000. Annual Member Service Fees ~~Dues~~<sup>A23</sup> for Associate Members shall be \$500. Annual Member Dues for Adjunct Members shall be \$500. The Annual Member Dues for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership. Office of Public Utility Counsel ("OPUC") and the appointed Residential Consumer TAC Representative(s) shall be eligible to be Corporate Members without the payment of Annual Member Dues. Any Member may request that the Member's Annual Member Dues be waived by the Board of Directors for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his designee in writing (signed by a duly authorized representative of the Member) the name of the person thus appointed. For Corporate Members, such appointed representative shall also act on behalf of the Corporate Member at all meetings of the Corporate Members.

Section 3.6 Participation.

- (a) No Entity shall simultaneously hold more than one Corporate Membership. Any Entity may also simultaneously have a maximum of one seat on each of the following: the Board, ~~and TAC, and the Regional Standards Committee~~<sup>A24</sup>.
- (b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member Dues for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has ~~elected~~ applied to be and has been approved by ERCOT to meet the minimum qualifications as a Corporate Member of a Segment, the Entity must continue to vote in that Segment for a minimum of one (1) year. If, at any point during the membership year, an Entity no longer meets the qualifications for the Segment for which it was originally approved by ERCOT—so-elected<sup>A25</sup>, the Entity may not vote in that Segment; however, that Entity may then immediately elect to become a Corporate



Member in any Segment for which it does qualify. Except as otherwise provided in these Bylaws, an Associate Member may be selected by the Corporate Members of a Segment in which the Associate Member participates to serve as a voting member of the Board, TAC or any subcommittee of the Board or TAC.

- (c) Subject to any specific provisions in these Bylaws or the Articles of Incorporation, each Corporate Member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate Members. A Corporate Member in good standing is one that is not in arrears for payment of its Annual Member Dues for a Corporate Membership or payment of any other fees owed to ERCOT unless in good faith disputed, is not in breach of any contract with ERCOT, and is not suspended or expelled as a Corporate Member as of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters unless and [A26] until they have regained good standing.

### Section 3.7 Meetings of the Corporate Members.

- (a) Corporate Members shall meet at least annually on a date and at a place to be established by the Board (“Annual Meeting”). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other business as may be properly brought before them.
- (b) Special meetings of the Corporate Members may be called by the Board.
- (c) Written or printed notice of any meeting of the Corporate Members shall be delivered to each Member at least three weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail, facsimile, or email. Notice shall include an agenda explaining the purpose of the meeting and any business upon which the Corporate Members will be requested to vote.
- (d) The record date for determining Corporate Members entitled to notice shall be on the Friday which is at least thirty days but not more than thirty-six days prior to the meeting date.
- (e) Representation at any meeting of ERCOT of at least fifty-one percent (51%) of the Corporate Members, in person or by proxy, shall constitute a quorum for the transaction of business at such meeting; and abstentions do not affect calculation of a quorum. Except as otherwise provided in these Bylaws, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members. For purposes of voting of the Corporate Members, Corporate Members who 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.
- (f) Written proxies may be used for meetings of the Corporate Members in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of the Corporate Members, proxies shall count towards a quorum.

- (g) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted. Corporate Members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken without a meeting, notice of the proposed action shall be provided to Corporate Members in accordance with Section 3.7(c).

Section 3.8 Sanction, Suspension, Expulsion, or Termination of Members. No Member, either a Member organization or a Member representative, may be sanctioned, expelled or suspended, and no Membership or Memberships in ERCOT may be terminated or suspended except pursuant to ~~the following~~ procedure, ~~absent a Board resolution providing an alternative procedure, that is which is intended to be~~ fair and reasonable and ~~is~~ carried out in good faith, ~~absent a Board resolution providing an alternative procedure. The Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member. In the event that the Board does not adopt procedures, the following procedures shall apply.~~<sup>[A27]</sup>

- (a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in ERCOT's records.
- (b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to participate in the hearing at his, ~~her~~<sup>[A28]</sup> or its own expense, and to present and cross-examine any witnesses. The hearing shall be conducted at the next meeting of the Board for which there is time to give proper notice.
- (c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.
- (d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, sanction or termination. Any such proceeding before the Board will be subject to the hearing requirements described in (b) of this section.

Section 3.9 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of ERCOT at any time upon written notice to the CEO, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or TAC and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of Annual Member Dues for a fiscal year, the Member shall be obligated to pay its Annual Member Dues for the full fiscal year within which such termination is effective.

Section 3.10 Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board may choose to reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 3.11 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and ERCOT Protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member, or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction maintenance and operation of its own facilities, present and future. A Member has no interest in specific property of ERCOT and waives the right to require a partition of any ERCOT property.

## ARTICLE 4 BOARD OF DIRECTORS

Section 4.1 Powers. The affairs of ERCOT shall be managed by the Board ("Board").

Section 4.2 The Board. The Board shall ~~be composed of include~~ a total of sixteen (16) Directors ~~apportioned among the Segments~~ as follows:

- (a) The Chair of the PUCT as an *ex officio* non-voting Director;
- (b) The Public Counsel of OPUC as an *ex officio* voting Director representing Residential Consumers and Small Commercial Consumers;
- (c) The CEO as an *ex officio* voting Director;
- (d) Six (6) voting Directors elected by their respective Segments as follows:
  - 1. One (1) Independent Generator and one (1) Segment Alternate;
  - 2. One (1) IOU and one (1) Segment Alternate;

~~1.~~ One (1) Independent Power Marketer and one (1) Segment Alternate;  
~~2.~~~~3.~~

~~3.~~~~4.~~ One (1) Independent REP and one (1) Segment Alternate;

~~4.~~~~5.~~ One (1) Municipal and one (1) Segment Alternate;

~~5.~~~~6.~~ One (1) Cooperative and one (1) Segment Alternate;

~~(e) Three (3) Consumers: the Public Counsel, representing Residential Consumers and Small Commercial Consumers, as an *ex officio* voting member, ~~o~~One (1) voting Director representing Industrial Consumers;~~

~~(f) One (1) voting Director representing Large Commercial Consumers; and one (1) Industrial; and~~

~~(b)(g) Five (5) voting Directors selected as Unaffiliated Directors;~~

~~The CEO as an *ex officio* voting member; and~~

~~The Chair of the PUCT as an *ex officio* non-voting member.~~

#### Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

(a) Selection of ~~Market Participant~~Segment <sup>[A29]</sup> Directors and Segment Alternates.;

(1) For Consumer Directors, the following shall apply: The Director from the Commercial Consumer subsegment shall be selected by the Large Commercial Consumer Corporate ~~Members and must be an employee of a Large Commercial Consumer which is a Large Commercial Consumer Member of ERCOT.~~ <sup>[A30]</sup> If there are no Large Commercial Consumer Corporate Members, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director. The Industrial Consumer Director shall be elected by the Industrial Consumer Corporate Members ~~of that subsegment.~~ <sup>[A31]</sup>

(2) Within each Market Participant ~~elected~~ Segment represented on the Board (except for the Consumer Segment which follows the process described in Section 4.3(a)(1)), only Corporate Members of the respective Membership Segment ~~described~~ for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat. <sup>[A32]</sup>

(3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at

least two-thirds of members of that Segment and may conduct elections as needed to fill any Director or Segment Alternate vacancies<sup>[A33]</sup>.

- (4) Each Market Participant Segment<sup>[A34]</sup> Director and each Segment Alternate, except as provided above for the with regard to the Residential Commercial<sup>[A35]</sup> Consumer Director, must be an employee of a Corporate or Associate<sup>[A36]</sup> Member. Unless otherwise provided in these Bylaws, if an employee of a 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 or organization as he or she was at the time of such election or appointment.

(b) Selection of Unaffiliated Directors.÷

- (1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO. The Chair and Vice-Chair of the Nominating Committee shall be the Chair and Vice-Chair of the Board, respectively, absent a request for an election of these positions by a member of the Nominating Committee.<sup>[A37]</sup>

- (2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:

(i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.

(ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:

a. An Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:

1. Ceurrent or recent ties (within the last two years) as a director, or officer of a Market Participant or its Affiliates.;

~~2. Unaffiliated Directors or family members (any spouse, parent, spouse or a parent, child or sibling, including step and adoptive relatives and household member) shall not have eCurrent or recent ties (within the last two years) as an employee of an ERCOT Member or NERC-Registered Entity operating in the ERCOT Region.;~~

2.

~~3. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have dDirect business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and~~

b. \_\_\_\_\_

~~1.4. 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.~~

[A38]

e.b. ~~An Unaffiliated Directors 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 these Bylaws.~~[A39]

(iii) Residence in the State of Texas preferred.

(iv) Other criteria as approved by the Board.

(3) The Nominating Committee ~~or its subcommittee~~ [A40] shall interview the qualified candidates; and ~~the Nominating Committee shall~~ [A41] select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.

(4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) ~~as needed~~ [A42] ~~to fill Unaffiliated Director positions~~. A proposed Unaffiliated Director(s) that is approved by at least four out of seven Segments shall ~~become be elected as~~ [A43] an Unaffiliated Director(s). ~~Upon approval of election by the Membership, the proposed ERCOT staff shall file a petition for approval of the Unaffiliated Director(s) shall be filed with the PUCT for approval.~~ [A44]

(5) ~~Pending PUCT approval, tThe Membership-approved elected Unaffiliated Director(s) shall be seated at the Annual Meeting only upon approval by the PUCT. Should the PUCT not approve the Unaffiliated Director(s), the Seated Director(s) shall remain seated until a new Unaffiliated Director(s) is elected and approved in accordance with the process set forth above. If elected by the Membership, an Unaffiliated Director shall not begin service for his initial term~~

and be seated on the Board until the PUCT approves such election. An Unaffiliated Director who has been elected by the Membership for any renewal term shall cease service on the Board upon expiration of the Unaffiliated Director's current term and shall not be re-seated on the Board for a renewal term until the PUCT approves such election of the Unaffiliated Director for a renewal term. If the PUCT does not approve of the Unaffiliated Director for any of the initial or renewal terms, then the Nominating Committee shall recommend another Unaffiliated Director candidate to the Membership for election and, if elected by the Membership, for approval by the PUCT as soon as reasonably possible.<sup>[A45]</sup>

- (c) Terms. The term for all Market Participant Segment<sup>[A46]</sup> Directors shall be for one year. Any Market Participant Segment<sup>[A47]</sup> Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be ~~staggered~~ three year terms, which shall be staggered to the extent possible,<sup>[A48]</sup> unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. In order to serve on the Board during their terms, all Directors and Segment Alternates shall continuously remain in good standing and meet their respective minimum requirements and qualifications of their Director and Segment Alternate positions, respectively.<sup>[A49]</sup>
- (d) Director Voting Weights. All voting Directors shall have a single vote each.
- (e) Alternates and Proxies. Market Segment Directors serving in Segments<sup>[A50]</sup> with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director, preferably an Unaffiliated Director whenever possible,<sup>[A51]</sup> as a proxy if unable to attend a Board meeting. Consumer Directors<sup>[A52]</sup> and *ex officio* Directors may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Director.
- (f) Prohibitions on Certain Stakeholder Memberships and Representations. With the exception of the Public Counsel and representatives of OPUC, No<sup>[A53]</sup> Director or Segment Alternate shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. For a period of one year from the last date of service as an Unaffiliated Director, the former Unaffiliated Director shall not represent a Market Participant before the Board, TAC, any of TAC's subcommittees, task forces or working groups.<sup>[A54]</sup>

Section 4.4 Chair and Vice Chair. Annually and as needed<sup>[A55]</sup>, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. The Chair shall be one of the Unaffiliated Directors. The Vice Chair shall be an Unaffiliated Director who may serve as needed in the Chair's absence (including a vacancy of the Chair position).<sup>[A56]</sup> The CEO shall not be qualified to act as the Vice Chair.

Section 4.5 Vacancies and Removal.

(a) ~~A vacancy of a Director or Segment Alternate position will occur if: (1) if the respective Director, other than an Unaffiliated Director, or Segment Alternate elected or appointed is no longer employed by the Entity for which the Director or Segment Alternate was employed at the time of his/her<sup>[A57]</sup> election or appointment; (2) the respective Director or Segment Alternate resigns his Director or Segment Alternate position from the Board. A vacancy will also occur through any other resignation of a Director from the Board; or (3) the Director or Segment Alternate is removed from the Board in accordance with the provisions of Section 4.5(b).~~

(b) ~~<sup>[A58]</sup>A Director or Segment Alternate may be removed: (1) -with or without cause at any time -by whomever had the right to appoint such respective Director or Segment Alternate, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director or Segment Alternate; or (2) withfor cause. -In addition, theby the Board may remove a Director for cause, upon <sup>[A59]</sup>at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. Removal shall occur if: (1) a Director, other than an Unaffiliated Director, a Segment Alternate, or the organization that a Director, other than an Unaffiliated Director, or Segment Alternate represents no longer meets the criteria of their representative Segment; or (2) an Unaffiliated Director, a Director, a Segment Alternate, or the organization that a Director or Segment Alternate represents is: (A) found by the Board to have committed a prohibited act as identified in Section 9.3 of these Bylaws pursuant to and after completion of a hearing process as described in Section 9.3 of these Bylaws,; and (B) the Board recommends removal of an Unaffiliated Director, a Director or a Segment Alternate from the Board. Any Board action to remove a Director or a Segment Alternate from the Board shall be subject to review by the PUCT.<sup>[A60]</sup> An Unaffiliated Director may be removed by the PUCT in accordance with applicable law.<sup>[A61]</sup><sup>[A62]</sup>~~

(a) ~~The right to elect Directors or Segment Alternates may not be assigned, sold, pledged or transferred in any manner.<sup>[A63]</sup>~~

(c) \_\_\_\_\_

~~A vacancy may be filled only by the persons authorized to elect or appoint such Director or Segment Alternate.<sup>[A64]</sup>~~

(d) \_\_\_\_\_

(b) ~~The Chair of the Nominating Committee shall notify the PUCT Commissioners when a vacancy of an Unaffiliated Director position occurs and shall provide information to the PUCT Commissioners as required by the PUCT.<sup>[A65]</sup>~~

(e) \_\_\_\_\_

(e) \_\_\_\_\_



~~(d) Any Director or Segment Alternate so chosen shall hold office until his successor is duly elected or appointed and qualified or until his earlier resignation, ineligibility or removal serve in his respective Director or Segment Alternate position until the earlier of the expiration of his term, resignation, ineligibility, inability to serve or removal.~~ [A66]

~~(f)~~

#### Section 4.6 Meetings.

- (a) The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members. Additional meetings of the Board shall be held at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, date and hour of any meeting of the Board or any Board subcommittee where at least one Board Director is present shall be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 4.7(e). The Board must ratify any action taken on notice of less than one week or by teleconference at its next regularly scheduled meeting.
- (d) The Board shall promulgate procedures allowing public access to meetings of the Board and Board subcommittees and allowing for members of the public to provide comment on the matters under discussion at public portions of meetings of the Board and subcommittees.
- (e) Meetings of the Board or Board subcommittees shall be open to the public provided that the Board or Board subcommittee on which at least one Board Director sits may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting held in Executive Session, including for purposes of voting. An Executive Session shall be held at the discretion of the Board or Board subcommittee for sensitive matters including, but not limited to, confidential personnel information, contracts, lawsuits, deliberation of purchase of real property, competitively sensitive information, deployment or implementation of security devices or other information related to the security of ERCOT's regional electrical network and discussion of any matters on which the Board receives legal advice from its attorney(s) in which the Texas Disciplinary Rules of Professional Conduct impose on the attorney(s) a duty to preserve

confidentiality, including but not limited to anticipated or pending litigation, administrative agency contested cases, and other regulatory matters.

- (f) The Secretary or his designee [A67] shall keep minutes of every Board meeting.

Section 4.7 Quorum; Action by Directors; Abstentions; Proxies; Seated Directors; Actions Without a Meeting; and Meetings by Telephone.

- (a) Except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the Seated Directors shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum.
- (b) The act of: (i) at least two-thirds of the affirmative votes of the Eligible Voting Directors; and (ii) at least 50% of the total Seated Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Articles of Incorporation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.
- (c) For purposes of voting on the Board, Directors who 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.
- (d) Written proxies may be used for meetings of the Board or any subcommittees of the Board in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of the Board or any subcommittee of the Board, a Segment Alternate or designated alternate representative, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Directors (for urgent matters in accordance with Section 4.6) may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of the Technical Advisory Committee (TAC) and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. The designation of subcommittees and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or him by law.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Corporation (“NERC”), the Board shall elect, from among its members, persons to serve on the

NERC Member Representatives Committee or its successor. The selection of the representatives shall require an act of the Board as set forth in Section 4.7. If more than one representative is requested, such representatives shall be from different Segments.

Section 4.10 Duties. It shall be the duty of the Board to initiate any specific action required, in their opinion, to fulfill the exempt purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the Articles of Incorporation, applicable law, and these Bylaws. Such action may be taken by the Board, by such subcommittee(s) as may be formed by the Board, the CEO as directed by the Board or by individuals appointed by the Board provided that the following actions of the Board may not be delegated: (a) approval of the Budget (as defined in Section 10.3); (b) approval of the employment and terms for the CEO, as well as termination of CEO's employment; (c) ratification of other officers of ERCOT; (d) annual selection of a qualified independent public accounting firm ("Auditor") to audit the financial statements of ERCOT; (e) approval of the initiation of any non-routine filing to a regulatory agency that requests regulatory action; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

## ARTICLE 5 TECHNICAL ADVISORY COMMITTEE

### Section 5.1 TAC Representatives.

(a) For the purposes of this section, membership in the TAC shall be divided in accordance with the definitions of the Segments described in Section 3.1. TAC shall be comprised of the following ("Representatives"):

(1) Representatives of four Members elected from each of the six Segments ~~(other than as described for the Consumer Segment)~~<sup>A68</sup> listed in Section 3.1.

(2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment shall appoint such Representatives. For the Residential, Commercial and Industrial subsegments, the TAC Representative seats are as follows:

(i) Two Representatives of Industrial Consumers;

(ii) One Representative of Small Commercial Consumers;

(iii) One Representative of Large Commercial Consumers;

(iv) One Representative of Residential Consumers; ~~and~~<sup>A69</sup>

- (v) The Public Counsel’s designee as an *ex officio* voting member.
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (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 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 if: (i) they are not present and have not designated a proxy, or (ii) they abstain from voting. [A70]
- (d) Written proxies may be used for meetings of TAC or any subcommittees of TAC in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of TAC or any subcommittee of TAC, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- ~~(eh)~~ ~~[sic]~~ [A71] Unless otherwise provided by law, any action required or permitted to be taken at any meeting of TAC Representatives or any subcommittee of TAC may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the TAC Representatives and subcommittee members were present and voted. TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken by TAC without a meeting, notice of the proposed action shall be provided to the TAC Representatives in accordance with Section 5.3.
- ~~(e)~~ ~~[sic]~~ [A72]
- (f) Each Segment may choose to participate in “Participatory Voting” as described herein. If a Segment chooses to engage in Participatory Voting, each TAC Representative elected by that Segment shall be required to present the decision of the Corporate Members of that Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 3.5 to vote on its behalf for purposes of Participatory Voting. If a Corporate Member of a Segment using Participatory Voting is unable or does not wish to attend a TAC meeting that Member may deliver a written proxy, at any time prior to the start of the meeting at which it will be voted, to a Participatory Voting delegate of any Member of the same Segment. A Corporate Member

delegate in attendance at a TAC meeting may give a written proxy to a Participatory Voting delegate of any Member of the same Segment during such meeting.

- (g) All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one year. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. A vacancy shall be filled by the same means used to elect or appoint the previous TAC Representative. No Entity shall participate in more than one Segment of TAC. The Representatives of TAC shall elect from amongst themselves a Chair and Vice Chair subject to confirmation by the Board. The Chair and Vice Chair shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws during the confirmation process, and any person speaking on behalf of TAC before the Board shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws before speaking on behalf of TAC.
- (h) ~~[sic]~~ <sup>[A73]</sup> Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a Corporate or Associate <sup>[A74]</sup> Member. Unless otherwise provided in these Bylaws, if an employee or agent of a Member is elected or appointed to serve on TAC or any subcommittee thereof, such person is only eligible to serve in such capacity so long as he or she is an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (i) In the event that a Small Commercial Consumer Representative cannot be identified to serve on TAC, that seat may be filled by any other Commercial Consumer representative appointed by the Consumer Director of the Small Commercial subsegment provided that such representative represents at least one consumer in the ERCOT Region. Any Representative of the Consumer Segment appointed to TAC by a Consumer Director, if not otherwise a Member of ERCOT, shall be allowed to vote on TAC without the payment of the Annual Member Service Fees. An appointed Commercial Consumer TAC Representative is eligible to serve in such capacity so long as he or she is an employee or representative of the same company as he or she was at the time of such appointment.

**Section 5.2 Functions of TAC.** TAC shall have the authority to create subcommittees, task forces and study groups (“subcommittees”). TAC shall determine the eligibility requirements, quorum requirements and voting structure for each subcommittee. TAC shall (a) through its subcommittees make such studies and plans as it deems appropriate to accomplish the purposes of ERCOT, the duties of its subcommittees and the policies of the Board, (b) report the results of such studies and plans to the Board as required by the Board, (c) review and coordinate the activities and reports of its subcommittees, (d) make such recommendations to the Board as it deems appropriate or as required by the Board, (e) perform such other duties as directed by the Board and (f) make recommendations regarding ERCOT expenditures and projects. In accordance with ERCOT procedures and applicable law and regulations, certain guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that such actions are reported to the Board for review and nothing herein shall affect the ability of the Board to independently consider such guidelines, criteria and actions, and to

take such action with respect thereto as the Board deems appropriate, including revocation and remand with instructions.

Section 5.3 Meetings. TAC and its subcommittees shall meet as often as necessary to perform their duties and functions. All meetings of TAC and its subcommittees shall be called by their respective chairmen and all such meeting notices shall be sent in writing to each member at least one week prior to the meeting, unless an emergency condition should suggest otherwise (such emergency to be by mutual consent of a majority of the Seated Representatives of TAC or subcommittee). Any Member may request notification of any such meetings and may have an employee or a TAC-approved representative for that Member attend as an observer. Each Representative of TAC may designate in writing an alternate representative who may attend meetings in the absence of the Representative and vote on the Representative's behalf.

Section 5.4 Other Appointments. TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups whose members are appointed by the NERC Regions. The selection of TAC representatives to NERC shall require an act of TAC as set forth in Section 5.1(c). If more than one representative is requested, TAC should consider selecting representatives from different Segments.

## ARTICLE 6

Intentionally Omitted.

## ARTICLE 7 CHIEF EXECUTIVE OFFICER

Section 7.1 CEO Hiring and Duties. The Board shall hire a Chief Executive Officer ("CEO") who, under the Board's supervision and direction shall carry on the general affairs of ERCOT. The CEO shall be a member of the staff of ERCOT and shall be an ex officio [A75] voting Director. It shall be his or her [A76] duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of ERCOT. The CEO shall serve as President of ERCOT. He or she shall comply with all orders of the Board. All agents and employees of ERCOT shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 Notice of CEO Vacancy. ~~Intentionally Omitted. The Board Chair or the Board Chair's designee shall notify the PUCT Commissioners when a vacancy occurs for the CEO.~~

Section 7.3 CEO Selection. ~~The Board Chair or the Board Chair's designee shall provide information to the PUCT Commissioners regarding selection of the CEO requested by any of the PUCT Commissioners as required by the PUCT.~~

[A77]

Section 7.4 CEO Compensation. ~~The compensation of the CEO shall be approved by the Board subject to review and approval by the PUCT~~ [A78]; [A79]

## **ARTICLE 8 OFFICERS**

Section 8.1 General. The officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, and such officers and assistant officers as the Board may create. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 8.2 Tenure. The CEO of ERCOT shall be elected and the other officers of ERCOT shall be ratified by the Board at such time and in such manner and for such a term not exceeding one (1) one year, as shall be determined from time to time by the Board. Any officer may be re-elected or re-ratified for consecutive terms, without limitation. All officers of ERCOT shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of ERCOT will be served thereby.

## **ARTICLE 9 TRANSACTIONS OF CORPORATION**

Section 9.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositories that the Board approves.

Section 9.2 Potential Conflicts of Interest. Each Director, Segment Alternate, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest of the Director, Segment Alternate, TAC Representative or subcommittee member 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, TAC or subcommittee, as the case may be. 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 Segment [A80] 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, Segment Alternate, TAC Representative or subcommittee member recuses himself or herself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

ERCOT may not make any loan to a Director, Segment Alternate or officer of ERCOT. A Member, Director, Segment Alternate, TAC Representative, officer, or subcommittee member of ERCOT may lend money to and otherwise transact business with ERCOT except as otherwise provided by these 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. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, TAC Representative, officer, or subcommittee member of ERCOT 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 Member, Director, Segment Alternate, officer, TAC Representative or subcommittee member of ERCOT 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.

Section 9.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, Segment Alternate, [A81] officer, or subcommittee member of ERCOT may:

- (a) Do any act in violation of the Articles of Incorporation or these Bylaws<sub>:-</sub>
- (b) Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval<sub>:-</sub>
- (c) Do any act with the intention of harming ERCOT or any of its operations<sub>:-</sub>
- (d) Receive an improper personal benefit from the operation of ERCOT<sub>:-</sub>
- (e) Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes<sub>:-</sub>
- (f) Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will<sub>:-</sub>
- (g) 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<sub>:-</sub>
- (h) Disclose any of ERCOT's or Members' 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<sub>:-</sub>
- (i) 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<sub>:-</sub>



(j) ~~With regard to the Directors and Segment Alternates, do any act in violation of an ERCOT rule [as that term is defined in PUCT Substantive Rule Section 25.361(a)], PUCT rule, or applicable statute.~~<sup>[A82]</sup>

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a ~~hearing conducted using the same procedure~~<sup>[A83]</sup> as described in Article 3 of these Bylaws.

## ARTICLE 10 EXPENSES, BOOKS AND RECORDS

### Section 10.1 Member Representatives' Expenses and Compensation of Certain Directors and TAC Representatives.

- (a) Except as described below, ERCOT shall not bear the personal and travel expenses of each person who serves as a representative of a Member or as a Director, ~~Segment Alternate~~<sup>[A84]</sup>, TAC Representative or subcommittee member. Except as provided below, no such person shall receive any salary or other compensation from ERCOT.
- (b) ~~The Board shall have the authority to fix the compensation of its Unaffiliated Directors who may be paid a fixed sum plus reimbursement of travel expenses for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing, subject to PUCT review and approval~~<sup>[A85]</sup>. Unaffiliated Directors, who are members of standing or special committees, may be allowed like compensation and reimbursement of travel expenses for attending committee meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities and Unaffiliated Directors shall be reimbursed for travel lodging and related expenses for attending each meeting of the Board. The reimbursement of travel expenses by ERCOT shall be in accordance with ERCOT policies on the reimbursement of appropriate and reasonable, documented travel expenses ~~and shall be subject to PUCT review and approval~~<sup>[A86]</sup>.<sup>[A87]</sup>
- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, or any standing or special committee of such on an annual basis. Any Residential Consumer TAC Representative shall not be an agent of ERCOT for any purpose and shall not be considered to be serving at ERCOT's request, even though compensated by ERCOT.

Section 10.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

~~The expenses of the TRE shall be accounted for separately.~~<sup>[A88]</sup>

### Section 10.3 Budget.

- (a) A budget (the “Budget”) for ERCOT for the ensuing ~~one or more~~ fiscal years shall be adopted by the Board. ~~In connection with the Board’s approval, the~~ Budget, including cost of liability insurance, for ERCOT ~~for each fiscal year~~ <sup>[A89]</sup> shall be compiled by the CEO and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

#### Section 10.4 Loans and Guarantees.

- (a) Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Articles of Incorporation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of ERCOT or a guarantee by any Member of any obligation of ERCOT.

Section 10.5 Access to Books and Records. All Members of ERCOT will have access to the books and records of the organization, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of ERCOT. If necessary to protect the confidential information of ERCOT, a Member requesting examination of ERCOT’s books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. ~~In addition, the separate financial statements of the TRE will be reviewed or audited annually.~~ <sup>[A90]</sup> The Auditor’s opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Section 10.7 Fiscal Year. The fiscal year of ERCOT shall be from January 1 through the following December 31, or as otherwise fixed by resolution of the Board.

## **ARTICLE 11 INDEMNIFICATION**

Section 11.1 Indemnification. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST, EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY ARTICLE 1396-2.22A OF THE TEXAS NON-PROFIT CORPORATION ACT OR ANY SUCCESSOR

STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, AS SO AMENDED, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT.

## ARTICLE 12 NOTICES

Section 12.1 Form. Unless otherwise provided in these Bylaws, any notice required by these Bylaws to be given to a Member, Director, Segment Alternate, [A91] committee or subcommittee member, TAC Representative, member of a subcommittee of TAC, or officer of ERCOT must be given by at least two of the following methods: mail, facsimile, email, or website posting. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his ~~or her~~ address as it appears on the corporate records, with postage prepaid. A person may change his ~~or her~~ [A92] address in the corporate records by giving written notice of the change to the CEO.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Articles of Incorporation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice that was to be given.

Section 12.3 Waiver of Notice by Attendance at a Meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 12.4 Objection. If any person, who is a voting member of a group holding a meeting, reasonably objects to the transaction of business regarding a specific issue, or issues, at a meeting on the grounds that the meeting is not properly called or convened or that the issue, or issues, was improperly noticed, the issue or issues in question may not be addressed at that meeting. The Chair of such meeting shall determine if such objection is reasonable.

## ARTICLE 13 AMENDMENTS

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership and subject to approval by the PUCT [A93], these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.
- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) If the proposal is approved by an act of the Board as set forth in Section 4.7, 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 to vote on the proposal or determines to seek Membership approval without a meeting as provided in Section 14.8.
- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
  - (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.
  - (2) Except for the Consumer Segment, an affirmative vote of at least two-thirds of the Corporate Members of a Segment present constitutes an affirmative vote by that Segment.
  - (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following Consumer subgroups:
    - (i) Residential Consumers;
    - (ii) Commercial Consumers; and
    - (iii) Industrial Consumers.

An affirmative vote of the majority of the Corporate Members within a Consumer subgroup shall constitute an affirmative vote of that subgroup. An affirmative vote of at least two of the three Consumer subgroups shall constitute an affirmative vote of the Consumer Segment.
  - (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws.

Section 13.2 Amendments to the Articles of Incorporation. In accordance with the procedures set forth in Article 1396-4.02 of the Texas Non-Profit Corporation Act, an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Articles of Incorporation.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 14.1 Legal Authorities Governing Construction of Bylaws. These Bylaws shall be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 14.2 Legal Construction. Any question as to the application or interpretation of any provision of these Bylaws shall be resolved by the Board. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any Bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

Section 14.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 14.4 Number and Gender. All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

Section 14.5 Parties Bound. These Bylaws will bind and inure to the benefit of the Members, Directors, ~~Segment Alternates,~~ <sup>[A94]</sup> TAC Representatives, officers, subcommittee members, employees, and agents of ERCOT and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

~~Section 14.6 Intentionally Omitted.~~ <sup>[A95]</sup>

~~Section 14.7 Intentionally Omitted.~~ <sup>[A96]</sup>

~~Section 14.8 Intentionally Omitted.~~ <sup>[A97]</sup>

Section 14.96 Effective Date. <sup>[A98]</sup> The effective date of these ~~Third~~ Amended and Restated Bylaws is ~~April 16, 2010~~ \_\_\_\_\_, 201\_\_\_\_, provided that the Board may implement transition procedures before the effective date in order to ensure a smooth transition to the structure described in these Bylaws.



July 18, 2013

ERCOT Corporate Member:

On July 16, 2013, the ERCOT Board of Directors (Board) unanimously voted to approve four proposed amendments to the ERCOT Amended and Restated Bylaws (Bylaws). (The proposed amendments can be found in *Exhibits 1-4*.)

According to Section 3.7(b) of the Bylaws, the Board can call a Special Meeting of the Corporate Members (Meeting) to seek approval without a meeting. As provided in Section 3.7(g): “Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted.”

On July 16, 2013, the Board called a Meeting as soon as practicable. Thus, on August 8, 2013, at 10:00 a.m. in Room 209 at 7620 Metro Center Drive, Austin, Texas 78749, a Meeting will be held for the purpose of voting on the proposed amendments to the Bylaws.

Thus, we are seeking Corporate Membership approval to have the vote on each of the four proposed amendments to the Bylaws, in writing, in lieu of a Meeting. Please review the enclosed Official Consent and Ballot form. If you agree to take action on the proposed amendments to the Bylaws without a Meeting, please indicate your voting preference, and sign the Consent and Ballot form and return it to ERCOT by 5:00 p.m. on August 2, 2013. After 5:00 p.m. on August 2, 2013, we will count Consent and Ballot forms received to determine if we have sufficient number to allow a vote on the proposed amendments to the Bylaws in lieu of the Meeting. We will post a notice of either a successful vote or of the need to have the August 8, 2013 Meeting on the website at <http://www.ercot.com/calendar/2013/08/20130808-SPECIAL>, no later than August 7, 2013 at 12:00 p.m.

**Please note an amendment to the Bylaws requires approval by the Corporate Members and the Public Utility Commission of Texas (Commission) prior to becoming effective. So that the Bylaws may be approved as soon as possible by the Corporate Members and the Commission (preferably to allow amendments to the Bylaws to become effective for the 2014 ERCOT Membership application process which ends on November 8, 2013), please review the proposed amendments, sign the ballot, and make every effort to return it to ERCOT as noted in the Ballot no later than 5:00 p.m., August 2, 2013.**

Sincerely,

*Tisa Wilkins*

Tisa Wilkins  
External Relations Specialist  
ERCOT



**ERCOT Legal's Proposed Administrative and Clerical Revisions**

Amend ERCOT Bylaws in various sections of Articles 1-5, 7, 9, 10 and 12-14.

The text of the amendments, and explanations for each proposed revision, are provided in the redlined version of the current ERCOT Bylaws, attached as *Exhibit A*.

**Statement of the Issue and Purpose of the Proposed Amendment**

The amendments proposed by ERCOT Legal are not intended to make substantive changes to the Bylaws. Rather, the amendments are intended to:

- 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.).

The administrative and clerical revisions were presented to the HR&G Committee at its March 2013 meeting. ERCOT Legal has received no comments or requests for changes since it presented the proposed revisions to the HR&G Committee.



**EXHIBIT A**

**THIRD AMENDED AND RESTATED BYLAWS**

**OF**

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

**(A Texas Non-Stock, Non-Profit Corporation)**

**Approved on April 16, 2010 \_\_\_\_\_, 201**

**Comment [A1]:** For consistency with prior Bylaws amendments, will use the "Approved on [date]" to identify various versions of the Bylaws. Suggested by ERCOT Legal on July 8, 2013.

ERCOT Public



## ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc., a ~~Texas non-stock, non-profit corporation~~ (“ERCOT”), shall be located at such place in Texas as the ERCOT Board of Directors (the “Board”) may determine. Additional offices may be established and maintained at such place or places as the Board may from time to time designate.

**Comment [A2]:** Administrative change only for clarity. Suggested by ERCOT Legal on 03.12.2013.

Section 1.2 Registered Office and Registered Agent. ERCOT will maintain a registered office and a registered agent in Texas. The Board may change the registered office and the registered agent as permitted in the Texas Non-Profit Corporation Act.

~~Section 1.3. Intentionally Omitted.~~

**Comment [A3]:** Administrative change only. No other numbering affected within provisions of the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

## ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

1. **Affiliate.** This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.
2. **Consumers.** Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.
3. **Commercial Consumers.** A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater than 1000 kilowatts. An entity applying for ERCOT membership as either a Small Commercial Consumer or a Large Commercial Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators,

power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators and the interest is of such an extent or nature that its decisions might be affected or determined by it. The ~~three Board~~ Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

**Comment [A4]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

4. **Cooperative.** An entity operating in the ERCOT Region that is:

- a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
- b. a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas;
- c. a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or
- d. a River Authority as defined in Tex. Water Code §30.003.

~~5.~~ ~~Intentionally Omitted.~~

**Comment [A5]:** Administrative change only. No other numbering affected within non-definitional provisions of the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

~~6.~~5. **Director.** A member of the Board of ERCOT.

~~7.~~6. **Eligible Voting Director.** A Seated Director of the Board of ERCOT other than the *ex officio* Director who is the Chairman of the Public Utility Commission of Texas (“PUCT”), pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.

~~8.~~7. **Eligible Voting Representative.** A Seated Representative, pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.

~~9.~~8. **Entity.** An Entity includes an organization and all of its Affiliates.

~~10.~~9. **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas, as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.

~~11.~~10. **ERCOT Region.** The geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

~~12.~~ ~~Intentionally Omitted.~~

**Comment [A6]:** Administrative change only. No other numbering affected within non-definitional provisions of the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

~~13. **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant as qualified under Section 4.3(b).~~

**Comment [A7]:** Moved alphabetically within Article 2. Suggested by ERCOT Legal on 03.12.2013.

~~14.~~**11. Independent Generator.** Any entity that is not a Transmission and Distribution (“T&D”) Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.

~~15.~~**12. Independent Power Marketer.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.

~~16.~~**13. Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (“REP”) under Public Utility Regulatory Act (“PURA”) §39.352 and that is not an Affiliate of a T&D Entity. For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.

**Comment [A8]:** This sentence was moved from Section 3.1(a)(4) without any modifications for purposes of combining definitional information. Suggested by ERCOT Legal on 03.12.2013.

~~17.~~**14. Industrial Consumers.** An industrial consumer is a consumer with at least one meter with average monthly demand greater than 1 megawatt consumed within the ERCOT Region engaged in an industrial process.

~~18.~~**15. Investor-Owned Utility (“IOU”).**

- a. An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an entity described in (a), (b) or (c);
- b. A public utility holding company of any such electric utility.

~~16.~~**16. Market Participant.** For purposes of these Bylaws, a Market Participant is (i) any entity that engages in any activity that is in whole or in part the subject of the ERCOT Protocols and has, or should have, a contract regarding such activities with ERCOT or (ii) any entity that qualifies for ERCOT membership.

~~17.~~**17. Market Segment.** For purposes of these Bylaws, any of the segments (all of which are defined within this Article 2 of these Bylaws) as follows:

- a. Cooperative;
- b. Independent Generator;
- c. Independent Power Marketer;

- d. Independent REP;
- e. IOU;
- f. Municipal; or
- g. Consumer (including: (1) Commercial Consumer comprised of Small Commercial Consumer and Large Commercial Consumer, (2) Industrial Consumer or (3) Residential Consumer).

18. Market Segment Director. A Director who has been elected by one of the Market Segments.

**Comment [A9]:** Modification for clarity and to support the Protocols which reference the "Market Segment" definition in the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

19. **Member.** The A corporate Mmember of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of these Bylaws—or the Mmember's appointed representative as the context so requires.

**Comment [A10]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A11]:** Modification for clarity. Suggested by Andrew Dalton, Director for Industrial Consumer Segment, on 07.16.2013. Supported by ERCOT Legal.

**Comment [A12]:** Administrative change only for clarity. Suggested by ERCOT Legal on 03.12.2013.

20. **Municipal.** An entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either:

- a. a municipal owned utility as defined in PURA §11.003 or
- b. a River Authority as defined in Tex. Water Code §30.003.

~~21.~~ Intentionally Omitted.

**Comment [A13]:** Administrative change only. No other numbering affected within non-definitional provisions of the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

~~22.~~ **21. PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.

~~23.~~ Intentionally Omitted.

**Comment [A14]:** Administrative change only. No other numbering affected within non-definitional provisions of the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

~~24.~~ **22. Residential Consumers.** The appointed Board Director representing residential consumer interests, an organization or agency representing the interests of residential consumers in the ERCOT Region, or the Residential Consumer Technical Advisory Committee ("TAC") Representative. An entity applying for ERCOT membership as a Residential Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators. The ~~three Board~~ Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

**Comment [A15]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

~~25.~~ **23. Seated Director.** A Director, or their designated Segment Alternate when serving in their stead (if applicable), who is currently serving, having been selected in accordance with

these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a “Seated Director”.

~~24.~~ **Seated Representative.** A TAC Representative (as defined in Section 5.1 of these Bylaws) or a member of a subcommittee of TAC, or their designated alternate representatives when serving in their stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a “Seated Representative”.

~~26-25.~~ **Segment.** For purposes of these Bylaws, a “Segment” refers to a Market Segment as defined in this Article 2 of these Bylaws.

**Comment [A16]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

~~27.~~ **Segment Alternate.** An ~~elected~~ designated alternate Board representative, duly elected by his respective Market Segment, who can attend and vote at meetings in the absence of ~~the respective~~ a Market Segment Director ~~and vote on the absent Director’s behalf in the event that such Director cannot attend a Board meeting (including while such Director is unable to attend a Board meeting or while such Director’s seat is vacant).~~ Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.

**Comment [A17]:** Modification to clarify the Segment Alternate’s role, particularly in light of a mid-term Director vacancy. Suggested by ERCOT Legal on 03.12.2013.

~~28.~~ **Intentionally Omitted.**

~~26.~~ **Transmission and Distribution Entity.** Any entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a “retail electric utility,” as defined in PURA §37.001, operating in the ERCOT Region.

**Comment [A18]:** Administrative change only. No other numbering affected within non-definitional provisions of the Bylaws. Suggested by ERCOT Legal on 03.12.2013.

~~27.~~ **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant and who meets the requirements identified in Section 4.3(b).

**Comment [A19]:** Moved within Article 2. Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

### ARTICLE 3 MEMBERS

#### Section 3.1 Membership.

- (a) Members must qualify in one of the following segments as defined in Article 2:
- (1) Cooperative;
  - (2) Independent Generator;
  - (3) Independent Power Marketer;

(4) Independent REP ~~(For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP);~~

**Comment [A20]:** Exact language moved to "Independent REP" Definition in Article 2 to combine definitional information. Suggested by ERCOT Legal on 03.12.2013.

(5) Investor-Owned Utility;

(6) Municipal; or,

(7) ~~Consumer in one of —three subsegments: (i) Commercial (which is further divided into Large and Small Commercial Consumer); (ii) Industrial; and (iii) Residential. The Commercial Consumer subsegment is further divided into Large and Small Commercial Consumers;~~

**Comment [A21]:** Administrative change only. Suggested by ERCOT Legal on 03.12.2013.

(b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.

(c) The Board may adopt and amend Member application procedures.

Section 3.2 Membership Types and Voting Rights. ERCOT Members may be Corporate Members, Associate Members, or Adjunct Members as hereinafter described:

(a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation and these Bylaws).

(b) Associate Members – shall have the rights and obligations as described in these Bylaws excluding the right to vote on any matter submitted to the general Membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation and these Bylaws).

(c) Adjunct Members – may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Corporate or Associate Member. Adjunct Members shall have no right to vote on any matter submitted to the general Membership nor any right to be elected or appointed to the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

Section 3.3 Obligations of All Members.

(a) Each Member must comply with any applicable planning and operating criteria, procedures and guides adopted by or under the direction of the Board to maintain electric system reliability, coordinate planning, promote comparable access to the transmission system by all users and to further the exempt purposes of ERCOT.

- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's request as necessary for the furtherance of the exempt purposes or activities of ERCOT and consistent with PUCT rules relating to confidentiality.

Section 3.4 Annual Member Dues. Each Member annually shall pay dues to ERCOT (the "Annual Member Dues"). Each Member shall pay its Annual Member Dues within thirty (30) days after receipt of ERCOT's annual statement of such dues. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Dues for Corporate Members shall be \$2,000. Annual Member Service Fees Dues for Associate Members shall be \$500. Annual Member Dues for Adjunct Members shall be \$500. The Annual Member Dues for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership. Office of Public Utility Counsel ("OPUC") and the appointed Residential Consumer TAC Representative(s) shall be eligible to be Corporate Members without the payment of Annual Member Dues. Any Member may request that the Member's Annual Member Dues be waived by the Board of Directors for good cause shown.

**Comment [A22]:** Administrative change only from "Fees" to "Dues" for consistency. Suggested by ERCOT Legal on 03.12.2013.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his designee in writing (signed by a duly authorized representative of the Member) the name of the person thus appointed. For Corporate Members, such appointed representative shall also act on behalf of the Corporate Member at all meetings of the Corporate Members.

Section 3.6 Participation.

- (a) No Entity shall simultaneously hold more than one Corporate Membership. Any Entity may also simultaneously have a maximum of one seat on each of the following: the Board, and TAC, ~~and the Regional Standards Committee.~~
- (b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member Dues for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has ~~elected-applied~~ and has been approved by ERCOT to meet the minimum qualifications as a Corporate Member of a Segment, the Entity must continue to vote in that Segment for a minimum of one (1) year. If, at any point during the membership year, an Entity no longer meets the qualifications for the Segment for which it was originally approved by ERCOT-so-elected, the Entity may not vote in that Segment; however, that Entity may then immediately elect to become a Corporate Member in any Segment for which it does qualify. Except as otherwise provided in these Bylaws, an Associate Member may be selected by the Corporate Members of a Segment in which the Associate Member participates to serve as a voting member of the Board, TAC or any subcommittee of the Board or TAC.

**Comment [A23]:** Administrative change only to omit outdated reference to former Texas Regional Entity Committee. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A24]:** Modification to reflect historical and current Membership process. Suggested by ERCOT Legal on 03.12.2013.

- (c) Subject to any specific provisions in these Bylaws or the Articles of Incorporation, each Corporate Member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate Members. A Corporate Member in good standing is one that is not in arrears for payment of its Annual Member Dues for a Corporate Membership or payment of any other fees owed to ERCOT unless in good faith disputed, is not in breach of any contract with ERCOT, and is not suspended or expelled **as a Corporate Member** as of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters **unless and** until they have regained good standing.

**Comment [A25]:** Administrative change only.  
Suggested by ERCOT Legal on 03.12.2013.

### Section 3.7 Meetings of the Corporate Members.

- (a) Corporate Members shall meet at least annually on a date and at a place to be established by the Board (“Annual Meeting”). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other business as may be properly brought before them.
- (b) Special meetings of the Corporate Members may be called by the Board.
- (c) Written or printed notice of any meeting of the Corporate Members shall be delivered to each Member at least three weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail, facsimile, or email. Notice shall include an agenda explaining the purpose of the meeting and any business upon which the Corporate Members will be requested to vote.
- (d) The record date for determining Corporate Members entitled to notice shall be on the Friday which is at least thirty days but not more than thirty-six days prior to the meeting date.
- (e) Representation at any meeting of ERCOT of at least fifty-one percent (51%) of the Corporate Members, in person or by proxy, shall constitute a quorum for the transaction of business at such meeting; and abstentions do not affect calculation of a quorum. Except as otherwise provided in these Bylaws, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members. For purposes of voting of the Corporate Members, Corporate Members who 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.
- (f) Written proxies may be used for meetings of the Corporate Members in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of the Corporate Members, proxies shall count towards a quorum.
- (g) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted. Corporate Members may participate in and



hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken without a meeting, notice of the proposed action shall be provided to Corporate Members in accordance with Section 3.7(c).

Section 3.8 Sanction, Suspension, Expulsion, or Termination of Members. No Member, either a Member organization or a Member representative, may be sanctioned, expelled or suspended, and no Membership or Memberships in ERCOT may be terminated or suspended except pursuant to ~~the following~~ a procedure, ~~absent a Board resolution providing an alternative procedure, that is which is intended to be~~ fair and reasonable and ~~is~~ carried out in good faith, ~~absent a Board resolution providing an alternative procedure. The Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member. In the event that the Board does not adopt procedures, the following procedures shall apply:~~

**Comment [A26]:** Modification for clarity of procedure. Suggested by ERCOT Legal on 03.12.2013.

- (a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in ERCOT's records.
- (b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to participate in the hearing at his, ~~her~~ or its own expense, and to present and cross-examine any witnesses. The hearing shall be conducted at the next meeting of the Board for which there is time to give proper notice.
- (c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.
- (d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, sanction or termination. Any such proceeding before the Board will be subject to the hearing requirements described in (b) of this section.

**Comment [A27]:** Modification for consistency. Bylaws contain provision for gender neutral language. Suggested by ERCOT Legal on 03.12.2013.

Section 3.9 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of ERCOT at any time upon written notice to the CEO, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or TAC and shall have no further obligations as a Member; provided, however, that if such notice is given

more than thirty (30) days after such Member's receipt of its statement of Annual Member Dues for a fiscal year, the Member shall be obligated to pay its Annual Member Dues for the full fiscal year within which such termination is effective.

Section 3.10 Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board may choose to reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 3.11 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and ERCOT Protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member, or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction maintenance and operation of its own facilities, present and future. A Member has no interest in specific property of ERCOT and waives the right to require a partition of any ERCOT property.

#### ARTICLE 4 BOARD OF DIRECTORS

Section 4.1 Powers. The affairs of ERCOT shall be managed by the Board ("Board").

Section 4.2 The Board. The Board shall ~~be composed of include~~ a total of sixteen (16) Directors ~~apportioned among the Segments~~ as follows:

- (a) The Chair of the PUCT as an *ex officio* non-voting Director;
- (b) The Public Counsel of OPUC as an *ex officio* voting Director representing Residential Consumers and Small Commercial Consumers;
- (c) The CEO as an *ex officio* voting Director;
- (d) Six (6) voting Directors elected by their respective Segments as follows:
  - 1. One (1) Independent Generator and one (1) Segment Alternate;
  - 2. One (1) IOU and one (1) Segment Alternate;
  - ~~1.~~ ~~One (1) Independent Power Marketer and one (1) Segment Alternate;~~
  - ~~2.~~ ~~3.~~
  - ~~3.~~ 4. One (1) Independent REP and one (1) Segment Alternate;

~~4.5.~~ One (1) Municipal and one (1) Segment Alternate;

~~5.6.~~ One (1) Cooperative and one (1) Segment Alternate;

~~(e) Three (3) Consumers: the Public Counsel, representing Residential Consumers and Small Commercial Consumers, as an *ex officio* voting member, one (1) voting Director representing Industrial Consumers;~~

~~(f) One (1) voting Director representing Large Commercial Consumers; and one (1) Industrial; and~~

~~(g) Five (5) voting Directors selected as Unaffiliated Directors;~~

~~The CEO as an *ex officio* voting member; and~~

~~The Chair of the PUCT as an *ex officio* non-voting member.~~

Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

(a) Selection of ~~Market Participant~~ Segment Directors and Segment Alternates;

(1) For Consumer Directors, the following shall apply: The Director from the Commercial Consumer subsegment shall be selected by the Large Commercial Consumer Corporate Members ~~and must be an employee of a Large Commercial Consumer which is a Large Commercial Consumer Member of ERCOT. If there are no Large Commercial Consumer Corporate Members, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director. The Industrial Consumer Director shall be elected by the~~ Industrial Consumer Corporate Members ~~of that subsegment.~~

(2) ~~Within each Market Participant-elected Segment represented on the Board (except for the Consumer Segment which follows the process described in Section 4.3(a)(1)), only Corporate Members of the respective Membership Segment described for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat.~~

(3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at least two-thirds of members of that Segment ~~and may conduct elections as needed to fill any Director or Segment Alternate vacancies.~~

(4) Each ~~Market Participant~~ Segment Director and each Segment Alternate, except as ~~provided above for the~~ with regard to the Residential Commercial Consumer

**Comment [A28]:** Administrative change only for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A29]:** Clarifying change. Employee status is addressed in Section 4.3(a)(4) below. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A30]:** Clarifying change. Employee status is addressed in Section 4.3(a)(4) below. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A31]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A32]:** Modification to clarify and address any mid-term vacancies of Directors and Segment Alternates. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A33]:** Administrative change for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A34]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

Director, must be an employee of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if an employee of a 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 or organization as he or she was at the time of such election or appointment.

**Comment [A35]:** Clarifying change to reflect actual practice. Suggested by ERCOT Legal on 03.12.2013.

(b) Selection of Unaffiliated Directors:

(1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO. The Chair and Vice-Chair of the Nominating Committee shall be the Chair and Vice-Chair of the Board, respectively, absent a request for an election of these positions by a member of the Nominating Committee.

**Comment [A36]:** Modification to reflect recent past practices and to facilitate rapid response to Unaffiliated Director vacancies – particularly unexpected ones when the Nominating Committee has not been convened during the calendar year. The clear delineation of Chair and Vice Chair duties would assist with efficient setting of Nominating Committee meeting agendas and expediting communications with the PUCT Commissioners. Suggested by ERCOT Legal 03.12.2013.

(2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:

(i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.

(ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:

a. An Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:

1. Current or recent ties (within the last two years) as a director, or officer of a Market Participant or its Affiliates;

~~2. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have e~~Current or recent ties (within the last two years) as an employee of an ERCOT Member or NERC-Registered Entity operating in the ERCOT Region;

~~2.~~

~~3. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have d~~Direct business relationships, other than retail

customer relationships, with a Market Participant or its Affiliates; and

b. —

4. 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.

e.b. An Unaffiliated Directors 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 these Bylaws.

(iii) Residence in the State of Texas preferred.

(iv) Other criteria as approved by the Board.

(3) The Nominating Committee or its subcommittee shall interview the qualified candidates; and the Nominating Committee shall select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.

(4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) as needed to fill Unaffiliated Director positions. A proposed Unaffiliated Director(s) that is approved by at least four out of seven Segments shall become be elected as an Unaffiliated Director(s). Upon approval of election by the Membership, the proposed ERCOT staff shall file a petition for approval of the Unaffiliated Director(s) shall be filed with the PUCT for approval.

(5) Pending PUCT approval, the Membership approved elected Unaffiliated Director(s) shall be seated at the Annual Meeting only upon approval by the PUCT. Should the PUCT not approve the Unaffiliated Director(s), the Seated Director(s) shall remain seated until a new Unaffiliated Director(s) is elected and approved in accordance with the process set forth above. If elected by the Membership, an Unaffiliated Director shall not begin service for his initial term and be seated on the Board until the PUCT approves such election. An Unaffiliated Director who has been elected by the Membership for any renewal term shall cease service on the Board upon expiration of the Unaffiliated Director's current term and shall not be re-seated on the Board for a renewal term

**Comment [A37]:** Administrative changes only to reorganize the existing language and to provide additional clarity. No substantive changes have been made. Suggested by ERCOT Legal 03.12.2013.

**Comment [A38]:** Modification to provide clarity as to the reference to Delegated Authority. Suggested by ERCOT Legal 03.12.2013.

**Comment [A39]:** Modification to reflect historic and current practice for Unaffiliated Director candidate interview process. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A40]:** Administrative change only for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A41]:** Modification to address Unaffiliated Director vacancies which need to be filled in mid-term. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A42]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A43]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

until the PUCT approves such election of the Unaffiliated Director for a renewal term. If the PUCT does not approve of the Unaffiliated Director for any of the initial or renewal terms, then the Nominating Committee shall recommend another Unaffiliated Director candidate to the Membership for election and, if elected by the Membership, for approval by the PUCT as soon as reasonably possible.

(c) Terms. The term for all ~~Market Participant Segment~~ Directors shall be for one year. Any ~~Market Participant Segment~~ Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be ~~staggered three year terms, which shall be staggered to the extent possible,~~ unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. In order to serve on the Board during their terms, all Directors and Segment Alternates shall continuously remain in good standing and meet their respective minimum requirements and qualifications of their Director and Segment Alternate positions, respectively.

(d) Director Voting Weights. All voting Directors shall have a single vote each.

(e) Alternates and Proxies. ~~Market Segment Directors serving in Segments~~ with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director, preferably an Unaffiliated Director whenever possible, as a proxy if unable to attend a Board meeting. Consumer ~~Directors~~ and *ex officio* Directors may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Director.

(f) Prohibitions on Certain Stakeholder Memberships and Representations. With the exception of the Public Counsel and representatives of OPUC, No Director or Segment Alternate shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. For a period of one year from the last date of service as an Unaffiliated Director, the former Unaffiliated Director shall not represent a Market Participant before the Board, TAC, any of TAC's subcommittees, task forces or working groups.

Section 4.4 Chair and Vice Chair. Annually and as needed, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. The Chair shall be one of the Unaffiliated Directors. The Vice Chair shall be an Unaffiliated Director who may serve as needed in the Chair's absence (including a vacancy of the Chair position). The CEO shall not be qualified to act as the Vice Chair.

Section 4.5 Vacancies and Removal.

(a) A vacancy of a Director or Segment Alternate position will occur if: (1) if the respective Director, other than an Unaffiliated Director, or Segment Alternate elected or appointed is no longer employed by the Entity for which the Director or Segment Alternate was

**Comment [A44]:** Modifications to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(5) [Electric Reliability Council of Texas (ERCOT) Governance] related to Unaffiliated Directors. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A45]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A46]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A47]:** Modification to address potential issues with not consistently staggered terms. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A48]:** Modifications to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(2) and (3) [Electric Reliability Council of Texas (ERCOT) Governance] related to standards for removal from the ERCOT Board. Suggested by ERCOT Legal

**Comment [A49]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A50]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A51]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A52]:** Modification for clarity and to reflect historic and current practice. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A53]:** Modifications to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(6) [Electric Reliability Council of Texas (ERCOT) Governance] related to participation in ERCOT activities by former Unaffiliated Directors. This Rule does not specifically require a prohibition on TAC "task forces", but ERCOT Legal included this specific prohibition for consistency with the preceding sentence in this Section. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A54]:** Modification to address potential mid-term vacancies. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A55]:** Modification to address potential mid-term vacancies. Suggested by ERCOT Legal on 03.12.2013.

employed at the time of his ~~her~~ election or appointment; ~~(2) the respective Director or Segment Alternate resigns his Director or Segment Alternate position from the Board. A vacancy will also occur through any other resignation of a Director from the Board; or (3) the Director or Segment Alternate is removed from the Board in accordance with the provisions of Section 4.5(b).~~

**Comment [A56]:** Modification for consistency. Bylaws contain provisions regarding gender neutral language. Suggested by ERCOT Legal on 03.12.2013.

(b) ~~A Director or Segment Alternate may be removed: (1) with or without cause at any time by whomever had the right to appoint such respective Director or Segment Alternate, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director or Segment Alternate; or (2) without cause. In addition, they the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. Removal shall occur if: (1) a Director, other than an Unaffiliated Director, a Segment Alternate, or the organization that a Director, other than an Unaffiliated Director, or Segment Alternate represents no longer meets the criteria of their representative Segment; or (2) an Unaffiliated Director, a Director, a Segment Alternate, or the organization that a Director or Segment Alternate represents is: (A) found by the Board to have committed a prohibited act as identified in Section 9.3 of these Bylaws pursuant to and after completion of a hearing process as described in Section 9.3 of these Bylaws; and (B) the Board recommends removal of an Unaffiliated Director, a Director or a Segment Alternate from the Board. Any Board action to remove a Director or a Segment Alternate from the Board shall be subject to review by the PUCT. An Unaffiliated Director may be removed by the PUCT in accordance with applicable law.~~

**Comment [A57]:** Modifications to further clarify language for Director and Segment Alternate vacancies in light of potential mid-term vacancies. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A58]:** Modifications for clarity. Suggested by ERCOT Legal on 03.12.2013. Modified reference to original submission to change a semicolon to a comma and to conform the numbering (i.e., changing (2) to (B)). Suggested by ERCOT Legal on 07.08.2013.

**Comment [A59]:** Addition of language to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(2) and (3) [Electric Reliability Council of Texas (ERCOT) Governance] related to standards for removal from ERCOT Board. Addition of Segment Alternate language for clarity. Suggested by ERCOT Legal on 03.12.2013.

(a) ~~The right to elect Directors or Segment Alternates may not be assigned, sold, pledged or transferred in any manner.~~

**Comment [A60]:** Modifications to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(5) [Electric Reliability Council of Texas (ERCOT) Governance] related to Unaffiliated Directors. Addition of Segment Alternate language for clarity. Suggested by ERCOT Legal on 03.12.2013.

(c)

~~A vacancy may be filled only by the persons authorized to elect or appoint such Director or Segment Alternate.~~

**Comment [A61]:** Modifications to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(5) [Electric Reliability Council of Texas (ERCOT) Governance] related to Unaffiliated Directors. Addition of Segment Alternate language for clarity. Suggested by ERCOT Legal on 03.12.2013.

(d)

**Comment [A62]:** Addition of Segment Alternate language for clarity. Suggested by ERCOT Legal on 03.12.2013.

(b) ~~The Chair of the Nominating Committee shall notify the PUCT Commissioners when a vacancy of an Unaffiliated Director position occurs and shall provide information to the PUCT Commissioners as required by the PUCT.~~

**Comment [A63]:** Addition of Segment Alternate language for clarity. Suggested by ERCOT Legal on 03.12.2013.

(e)

(e)

**Comment [A64]:** Insertion of this subsection to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(5) [Electric Reliability Council of Texas (ERCOT) Governance] related to Unaffiliated Directors. Suggested by ERCOT Legal on 03.12.2013.

(d) ~~Any Director or Segment Alternate so chosen shall hold office until his successor is duly elected or appointed and qualified or until his earlier resignation, ineligibility or removal serve in his respective Director or Segment Alternate position until the earlier of the expiration of his term, resignation, ineligibility, inability to serve or removal.~~

**Comment [A65]:** Modification to clarify Board service and to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(5) [Electric Reliability Council of Texas (ERCOT) Governance] related to Unaffiliated Directors. Suggested by ERCOT Legal on 03.12.2013.

(f)

Section 4.6 Meetings.

- (a) The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members. Additional meetings of the Board shall be held at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, date and hour of any meeting of the Board or any Board subcommittee where at least one Board Director is present shall be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 4.7(e). The Board must ratify any action taken on notice of less than one week or by teleconference at its next regularly scheduled meeting.
- (d) The Board shall promulgate procedures allowing public access to meetings of the Board and Board subcommittees and allowing for members of the public to provide comment on the matters under discussion at public portions of meetings of the Board and subcommittees.
- (e) Meetings of the Board or Board subcommittees shall be open to the public provided that the Board or Board subcommittee on which at least one Board Director sits may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting held in Executive Session, including for purposes of voting. An Executive Session shall be held at the discretion of the Board or Board subcommittee for sensitive matters including, but not limited to, confidential personnel information, contracts, lawsuits, deliberation of purchase of real property, competitively sensitive information, deployment or implementation of security devices or other information related to the security of ERCOT's regional electrical network and discussion of any matters on which the Board receives legal advice from its attorney(s) in which the Texas Disciplinary Rules of Professional Conduct impose on the attorney(s) a duty to preserve confidentiality, including but not limited to anticipated or pending litigation, administrative agency contested cases, and other regulatory matters.
- (f) The Secretary or his designee shall keep minutes of every Board meeting.

**Comment [A66]:** Modification for clarity.  
Suggested by ERCOT Legal on 03.12.2013.

Section 4.7 Quorum; Action by Directors; Abstentions; Proxies; Seated Directors; Actions Without a Meeting; and Meetings by Telephone.

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- (a) Except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the Seated Directors shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum.
- (b) The act of: (i) at least two-thirds of the affirmative votes of the Eligible Voting Directors; and (ii) at least 50% of the total Seated Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Articles of Incorporation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.
- (c) For purposes of voting on the Board, Directors who 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.
- (d) Written proxies may be used for meetings of the Board or any subcommittees of the Board in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of the Board or any subcommittee of the Board, a Segment Alternate or designated alternate representative, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Directors (for urgent matters in accordance with Section 4.6) may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of the Technical Advisory Committee (TAC) and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. The designation of subcommittees and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or him by law.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Corporation (“NERC”), the Board shall elect, from among its members, persons to serve on the NERC Member Representatives Committee or its successor. The selection of the representatives shall require an act of the Board as set forth in Section 4.7. If more than one representative is requested, such representatives shall be from different Segments.

Section 4.10 Duties. It shall be the duty of the Board to initiate any specific action required, in their opinion, to fulfill the exempt purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the Articles of Incorporation, applicable law, and these Bylaws. Such

action may be taken by the Board, by such subcommittee(s) as may be formed by the Board, the CEO as directed by the Board or by individuals appointed by the Board provided that the following actions of the Board may not be delegated: (a) approval of the Budget (as defined in Section 10.3); (b) approval of the employment and terms for the CEO, as well as termination of CEO's employment; (c) ratification of other officers of ERCOT; (d) annual selection of a qualified independent public accounting firm ("Auditor") to audit the financial statements of ERCOT; (e) approval of the initiation of any non-routine filing to a regulatory agency that requests regulatory action; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

## ARTICLE 5 TECHNICAL ADVISORY COMMITTEE

### Section 5.1 TAC Representatives.

- (a) For the purposes of this section, membership in the TAC shall be divided in accordance with the definitions of the Segments described in Section 3.1. TAC shall be comprised of the following ("Representatives"):
  - (1) Representatives of four Members elected from each of the six Segments ~~(other than as described for the Consumer Segment)~~ listed in Section 3.1.
  - (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment shall appoint such Representatives. For the Residential, Commercial and Industrial subsegments, the TAC Representative seats are as follows:
    - (i) Two Representatives of Industrial Consumers;
    - (ii) One Representative of Small Commercial Consumers;
    - (iii) One Representative of Large Commercial Consumers;
    - (iv) One Representative of Residential Consumers; ~~and~~
    - (v) The Public Counsel's designee as an *ex officio* voting member.
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (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

**Comment [A67]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A68]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

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 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.

- (d) Written proxies may be used for meetings of TAC or any subcommittees of TAC in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of TAC or any subcommittee of TAC, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.

- (eh) ~~(sf)~~ Unless otherwise provided by law, any action required or permitted to be taken at any meeting of TAC Representatives or any subcommittee of TAC may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the TAC Representatives and subcommittee members were present and voted. TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken by TAC without a meeting, notice of the proposed action shall be provided to the TAC Representatives in accordance with Section 5.3.

**Comment [A69]:** Administrative change only.  
Suggested by ERCOT Legal on 03.12.2013.

- (e) ~~(sf)~~

**Comment [A70]:** Administrative change only.  
Suggested by ERCOT Legal 03.12.2013.

- (f) Each Segment may choose to participate in “Participatory Voting” as described herein. If a Segment chooses to engage in Participatory Voting, each TAC Representative elected by that Segment shall be required to present the decision of the Corporate Members of that Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 3.5 to vote on its behalf for purposes of Participatory Voting. If a Corporate Member of a Segment using Participatory Voting is unable or does not wish to attend a TAC meeting that Member may deliver a written proxy, at any time prior to the start of the meeting at which it will be voted, to a Participatory Voting delegate of any Member of the same Segment. A Corporate Member delegate in attendance at a TAC meeting may give a written proxy to a Participatory Voting delegate of any Member of the same Segment during such meeting.
- (g) All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one year. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. A vacancy shall be filled by the same means used to elect or appoint the previous TAC Representative. No Entity shall participate in more than one Segment of TAC. The Representatives of TAC shall elect from amongst themselves a

Chair and Vice Chair subject to confirmation by the Board. The Chair and Vice Chair shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws during the confirmation process, and any person speaking on behalf of TAC before the Board shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws before speaking on behalf of TAC.

- (h) ~~is/ie~~ Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if an employee or agent of a Member is elected or appointed to serve on TAC or any subcommittee thereof, such person is only eligible to serve in such capacity so long as he or she is an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (i) In the event that a Small Commercial Consumer Representative cannot be identified to serve on TAC, that seat may be filled by any other Commercial Consumer representative appointed by the Consumer Director of the Small Commercial subsegment provided that such representative represents at least one consumer in the ERCOT Region. Any Representative of the Consumer Segment appointed to TAC by a Consumer Director, if not otherwise a Member of ERCOT, shall be allowed to vote on TAC without the payment of the Annual Member Service Fees. An appointed Commercial Consumer TAC Representative is eligible to serve in such capacity so long as he or she is an employee or representative of the same company as he or she was at the time of such appointment.

**Comment [A71]:** Administrative change only. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A72]:** Clarifying change to reflect actual practice. Suggested by ERCOT Legal on 03.12.2013.

Section 5.2 Functions of TAC. TAC shall have the authority to create subcommittees, task forces and study groups (“subcommittees”). TAC shall determine the eligibility requirements, quorum requirements and voting structure for each subcommittee. TAC shall (a) through its subcommittees make such studies and plans as it deems appropriate to accomplish the purposes of ERCOT, the duties of its subcommittees and the policies of the Board, (b) report the results of such studies and plans to the Board as required by the Board, (c) review and coordinate the activities and reports of its subcommittees, (d) make such recommendations to the Board as it deems appropriate or as required by the Board, (e) perform such other duties as directed by the Board and (f) make recommendations regarding ERCOT expenditures and projects. In accordance with ERCOT procedures and applicable law and regulations, certain guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that such actions are reported to the Board for review and nothing herein shall affect the ability of the Board to independently consider such guidelines, criteria and actions, and to take such action with respect thereto as the Board deems appropriate, including revocation and remand with instructions.

Section 5.3 Meetings. TAC and its subcommittees shall meet as often as necessary to perform their duties and functions. All meetings of TAC and its subcommittees shall be called by their respective chairmen and all such meeting notices shall be sent in writing to each member at least one week prior to the meeting, unless an emergency condition should suggest otherwise (such emergency to be by mutual consent of a majority of the Seated Representatives of TAC or subcommittee). Any Member may request notification of any such meetings and may have an employee or a TAC-approved representative for that Member attend as an observer. Each

Representative of TAC may designate in writing an alternate representative who may attend meetings in the absence of the Representative and vote on the Representative's behalf.

Section 5.4 Other Appointments. TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups whose members are appointed by the NERC Regions. The selection of TAC representatives to NERC shall require an act of TAC as set forth in Section 5.1(c). If more than one representative is requested, TAC should consider selecting representatives from different Segments.

## ARTICLE 6

Intentionally Omitted.

## ARTICLE 7 CHIEF EXECUTIVE OFFICER

Section 7.1 CEO Hiring and Duties. The Board shall hire a Chief Executive Officer ("CEO") who, under the Board's supervision and direction shall carry on the general affairs of ERCOT. The CEO shall be a member of the staff of ERCOT and shall be an ex officio voting Director. It shall be his or her duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of ERCOT. The CEO shall serve as President of ERCOT. He or she shall comply with all orders of the Board. All agents and employees of ERCOT shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

**Comment [A73]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A74]:** Modification for consistency. Provision in Bylaws addresses gender neutral language. Suggested by ERCOT Legal on 03.12.2013.

Section 7.2 Notice of CEO Vacancy. ~~Intentionally Omitted. The Board Chair or the Board Chair's designee shall notify the PUCT Commissioners when a vacancy occurs for the CEO.~~

Section 7.3 CEO Selection. ~~The Board Chair or the Board Chair's designee shall provide information to the PUCT Commissioners regarding selection of the CEO requested by any of the PUCT Commissioners as required by the PUCT.~~

Section 7.4 CEO Compensation. ~~The compensation of the CEO shall be approved by the Board subject to review and approval by the PUCT.~~

**Comment [A75]:** Addition of language to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(h) [Electric Reliability Council of Texas (ERCOT) Governance] related to the ERCOT Chief Executive Officer. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A76]:** Modification for consistency with PUCT Rules. Suggested by Mark Dreyfus, Director for Municipal Segment, on 07.16.2013. Supported by ERCOT Legal.

**Comment [A77]:** Addition of language to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(h) [Electric Reliability Council of Texas (ERCOT) Governance] related to the ERCOT Chief Executive Officer. Suggested by ERCOT Legal on 03.12.2013.

## ARTICLE 8 OFFICERS

Section 8.1 General. The officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, and such officers and assistant officers as the Board may create. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may

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perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 8.2 Tenure. The CEO of ERCOT shall be elected and the other officers of ERCOT shall be ratified by the Board at such time and in such manner and for such a term not exceeding one (1) one year, as shall be determined from time to time by the Board. Any officer may be re-elected or re-ratified for consecutive terms, without limitation. All officers of ERCOT shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of ERCOT will be served thereby.

## ARTICLE 9 TRANSACTIONS OF CORPORATION

Section 9.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositories that the Board approves.

Section 9.2 Potential Conflicts of Interest. Each Director, Segment Alternate, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest of the Director, Segment Alternate, TAC Representative or subcommittee member 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, TAC or subcommittee, as the case may be. 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~~ Segment 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, Segment Alternate, TAC Representative or subcommittee member recuses himself or herself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

**Comment [A78]:** Modification for clarity.  
Suggested by ERCOT Legal on 03.12.2013.

ERCOT may not make any loan to a Director, Segment Alternate or officer of ERCOT. A Member, Director, Segment Alternate, TAC Representative, officer, or subcommittee member of ERCOT may lend money to and otherwise transact business with ERCOT except as otherwise provided by these 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. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, TAC Representative, officer, or subcommittee member of ERCOT 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 Member, Director, Segment Alternate, officer, TAC Representative or subcommittee member of ERCOT 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.

Section 9.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, Segment Alternate, officer, or subcommittee member of ERCOT may:

**Comment [A79]:** Addition of Segment Alternate language for clarity. Suggested by ERCOT Legal on 03.12.2013.

- (a) Do any act in violation of the Articles of Incorporation or these Bylaws;
- (b) Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval;
- (c) Do any act with the intention of harming ERCOT or any of its operations;
- (d) Receive an improper personal benefit from the operation of ERCOT;
- (e) Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes;
- (f) Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will;
- (g) 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;
- (h) Disclose any of ERCOT's or Members' 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;
- (i) 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;

~~(j)~~ (j) With regard to the Directors and Segment Alternates, do any act in violation of an ERCOT rule [as that term is defined in PUCT Substantive Rule Section 25.361(a)], PUCT rule, or applicable statute.

**Comment [A80]:** Addition to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(2) and (3) [Electric Reliability Council of Texas (ERCOT) Governance] related to the standards for removal from the ERCOT Board. Suggested by ERCOT Legal on 03.12.2013.

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

**Comment [A81]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

## ARTICLE 10

## EXPENSES, BOOKS AND RECORDS

### Section 10.1 Member Representatives' Expenses and Compensation of Certain Directors and TAC Representatives.

- (a) Except as described below, ERCOT shall not bear the personal and travel expenses of each person who serves as a representative of a Member or as a Director, ~~Segment Alternate~~, TAC Representative or subcommittee member. Except as provided below, no such person shall receive any salary or other compensation from ERCOT.
- (b) The Board shall have the authority to fix the compensation of its Unaffiliated Directors who may be paid a fixed sum plus reimbursement of travel expenses for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing, ~~subject to PUCT review and approval~~. Unaffiliated Directors, who are members of standing or special committees, may be allowed like compensation and reimbursement of travel expenses for attending committee meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities and Unaffiliated Directors shall be reimbursed for travel lodging and related expenses for attending each meeting of the Board. The reimbursement of travel expenses by ERCOT shall be in accordance with ERCOT policies on the reimbursement of appropriate and reasonable, documented travel expenses ~~and shall be subject to PUCT review and approval~~.
- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, or any standing or special committee of such on an annual basis. Any Residential Consumer TAC Representative shall not be an agent of ERCOT for any purpose and shall not be considered to be serving at ERCOT's request, even though compensated by ERCOT.

**Comment [A82]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A83]:** Modification for consistency with PUCT Rules. Suggested by Mark Dreyfus, Director for Municipal Segment, on 07.16.2013. Supported by ERCOT Legal.

**Comment [A84]:** Modification for consistency with PUCT Rules. Suggested by Mark Dreyfus, Director for Municipal Segment, on 07.16.2013. Supported by ERCOT Legal.

**Comment [A85]:** Modifications to satisfy the requirements of P.U.C. SUBST. R. Section 25.362(g)(5) [Electric Reliability Council of Texas (ERCOT) Governance] related to Unaffiliated Directors. Suggested by ERCOT Legal on 03.12.2013.

### Section 10.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

~~The expenses of the TRE shall be accounted for separately.~~

**Comment [A86]:** Modification to reflect ERCOT's current corporate organization (that is, without the independent division of Texas Regional Entity). ERCOT has completed its 2010 financial statement audit – the last year in which ERCOT would have reported any Texas Regional Entity activities (since the divestiture of this division on July 1, 2010). Suggested by ERCOT Legal on 03.12.2013.

### Section 10.3 Budget.

- (a) A budget (the "Budget") for ERCOT for the ensuing fiscal year shall be adopted by the Board. The Budget, including cost of liability insurance, for ERCOT for each fiscal year shall be compiled by the CEO and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

### Section 10.4 Loans and Guarantees.

- (a) Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Articles of Incorporation shall be deemed to constitute a pledge or loan of the credit



of any Member for the benefit of ERCOT or a guarantee by any Member of any obligation of ERCOT.

Section 10.5 Access to Books and Records. All Members of ERCOT will have access to the books and records of the organization, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of ERCOT. If necessary to protect the confidential information of ERCOT, a Member requesting examination of ERCOT's books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. ~~In addition, the separate financial statements of the TRE will be reviewed or audited annually.~~ The Auditor's opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Section 10.7 Fiscal Year. The fiscal year of ERCOT shall be from January 1 through the following December 31, or as otherwise fixed by resolution of the Board.

**Comment [A87]:** Modification to reflect ERCOT's current corporate organization (that is, without the independent division of Texas Regional Entity). ERCOT has completed its 2010 financial statement audit – the last year in which ERCOT would have reported any Texas Regional Entity activities (since the divestiture of this division on July 1, 2010). Suggested by ERCOT Legal on 03.12.2013.

## ARTICLE 11 INDEMNIFICATION

Section 11.1 Indemnification. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST, EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY ARTICLE 1396-2.22A OF THE TEXAS NON-PROFIT CORPORATION ACT OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, AS SO AMENDED, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT.

## ARTICLE 12 NOTICES

Section 12.1 Form. Unless otherwise provided in these Bylaws, any notice required by these Bylaws to be given to a Member, Director, ~~Segment Alternate,~~ committee or subcommittee member, TAC Representative, member of a subcommittee of TAC, or officer of ERCOT must be given by at least two of the following methods: mail, facsimile, email, or website posting. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his ~~or her~~ address as it appears on the corporate records, with postage prepaid. A person may change his ~~or her~~ address in the corporate records by giving written notice of the change to the CEO.

**Comment [A88]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

**Comment [A89]:** Modification for consistency. Bylaws contain gender neutral provisions. Suggested by ERCOT Legal on 03.12.2013.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Articles of Incorporation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice that was to be given.

Section 12.3 Waiver of Notice by Attendance at a Meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 12.4 Objection. If any person, who is a voting member of a group holding a meeting, reasonably objects to the transaction of business regarding a specific issue, or issues, at a meeting on the grounds that the meeting is not properly called or convened or that the issue, or issues, was improperly noticed, the issue or issues in question may not be addressed at that meeting. The Chair of such meeting shall determine if such objection is reasonable.

## ARTICLE 13 AMENDMENTS

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from ~~Membership and subject to approval by the PUCT,~~ these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

**Comment [A90]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.
- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) If the proposal is approved by an act of the Board as set forth in Section 4.7, 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 to vote on the proposal or determines to seek Membership approval without a meeting as provided in Section 14.8.

- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
- (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.
  - (2) Except for the Consumer Segment, an affirmative vote of at least two-thirds of the Corporate Members of a Segment present constitutes an affirmative vote by that Segment.
  - (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following Consumer subgroups:
    - (i) Residential Consumers;
    - (ii) Commercial Consumers; and
    - (iii) Industrial Consumers.

An affirmative vote of the majority of the Corporate Members within a Consumer subgroup shall constitute an affirmative vote of that subgroup. An affirmative vote of at least two of the three Consumer subgroups shall constitute an affirmative vote of the Consumer Segment.
  - (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws.

Section 13.2 Amendments to the Articles of Incorporation. In accordance with the procedures set forth in Article 1396-4.02 of the Texas Non-Profit Corporation Act, an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Articles of Incorporation.

#### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

Section 14.1 Legal Authorities Governing Construction of Bylaws. These Bylaws shall be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 14.2 Legal Construction. Any question as to the application or interpretation of any provision of these Bylaws shall be resolved by the Board. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any Bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or

unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

Section 14.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 14.4 Number and Gender. All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

Section 14.5 Parties Bound. These Bylaws will bind and inure to the benefit of the Members, Directors, ~~Segment Alternates,~~ TAC Representatives, officers, subcommittee members, employees, and agents of ERCOT and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

**Comment [A91]:** Modification for clarity. Suggested by ERCOT Legal on 03.12.2013.

~~Section 14.6 Intentionally Omitted.~~

**Comment [A92]:** Administrative change only. Suggested by ERCOT Legal on 03.12.2013.

~~Section 14.7 Intentionally Omitted.~~

**Comment [A93]:** Administrative change only. Suggested by ERCOT Legal on 03.12.2013.

~~Section 14.8 Intentionally Omitted.~~

**Comment [A94]:** Administrative change only. Suggested by ERCOT Legal on 03.12.2013.

Section 14.96 Effective Date. The effective date of these ~~Third~~ Amended and Restated Bylaws is ~~April 16, 2010~~, 201\_\_, provided that the Board may implement transition procedures before the effective date in order to ensure a smooth transition to the structure described in these Bylaws.

**Comment [A95]:** Administrative change only. Effective date will be completed upon PUCT approval. Suggested by ERCOT Legal on 03.12.2013.



**ERCOT Legal Proposed Budget Provision Amendment**

Amend ERCOT Bylaws, Article 10 (Expenses Books and Records), Subsection 10.3(a).

- (a) A budget (the “Budget”) for ERCOT for the ensuing one or more fiscal years shall be adopted by the Board. In connection with the Board’s approval, ~~T~~the Budget, including cost of liability insurance, for ERCOT ~~for each fiscal year~~ shall be compiled by the CEO and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

*The amendment is proposed by ERCOT Legal, who provides the following explanation for the proposal:*

Subsection 39.151(d-1) of the Public Utility Regulatory Act has been modified as part of the 2013 Sunset Bill to provide the Public Utility Commission with the right to review ERCOT’s proposed budgets either annually or biennially. This Bylaws amendment proposal is intended to give the Board flexibility in the timing of its approval of the budget.

### Morgan Stanley Capital Group, Inc. Proposed Amendment

#### 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 if: (i) they are not present and have not designated a proxy, or (ii) they abstain from voting.

*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.

The language was revised in response to a concern raised at the June 2013 TAC meeting about the potential unintended consequence of the original proposed language on proxies. The revision makes clear that TAC representatives shall not have their votes included in the voting calculation if they are not present and have not designated a proxy or they abstain. Other language in the Bylaws states that members who have designated a proxy are not considered “not present” for voting purposes, but the clarification to this language makes that point explicit in the provision on voting calculations.

### Calpine Corporation Proposed Amendment

#### Amend ERCOT Bylaws, Article 2 (Definitions), Subsection 2.1.

**Affiliate.** This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. **In the case of (i) or (ii) above, where one entity owns or holds at least five percent, but less than 20 percent, of the voting securities of another entity, and the relationships in (iii) and (iv) do not exist, the Board shall have discretion to determine whether or not the entities are Affiliates of one another for the purpose of determining Member segment and voting rights.** Similarly, in cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.

*The amendment was proposed by Mr. William J. Taylor, III (Calpine Corporation), who provided the following explanation for the proposal:*

#### Statement of the Issue and Purpose of the Proposed Amendment

The purpose of the current Affiliate provision is to guard against affiliated entities becoming Members of more than one segment, which would increase their voting strength. However, the current provision may designate some entities as Affiliates, which clearly do not operate as affiliated companies, solely because one entity owns at least five percent of the other entity.<sup>1</sup> In the case of an Independent Generator or Independent Power Marketer, if it is affiliated with a Transmission and Distribution Entity, it cannot become a Corporate Member<sup>2</sup> in any segment regardless of the facts that create the affiliate status under the current Bylaws. While the entity can join as an Associate Member in the same segment as the affiliated entity, it will not enjoy full membership rights that it would ordinarily hold as a Corporate Member in the segment that it is qualified to join because of the Affiliate rule.<sup>3</sup>

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<sup>1</sup> Article 2.1(i)-(ii) (“(i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive”).

ownership of at least five percent of the voting securities of another entity

<sup>2</sup> Articles 2.14 (Independent Generator) and 2.15 (Independent Power Marketer).

<sup>3</sup> Article 3.2(a)(Corporate Members) (“[S]hall have the rights and obligations as described in these Bylaws including the right to vote any matter submitted to the general Membership ( such as election of Directors, election of TAC Representatives and amendment of the Articles of Incorporation and these Bylaws”).



The proposed amendment simply provides the Board with the discretionary authority to consider a request by an entity to find that the entity should not be deemed an Affiliate of another entity under the Bylaws. The effect of the proposal is similar to the affiliate provision in the Operating Agreement for PJM Interconnection, L.L.C., which provides that an entity is not an affiliate of another entity if the entity (i) owns the securities of another entity as an investment, (ii) holds less than 10% of the outstanding securities of another entity, (iii) lacks board representation on the other entity or vice-versa and, (iv) does not in fact exercise influence over day-to-day management decisions.<sup>4</sup> However, the PJM Agreement also provides that “unless the contrary is demonstrated to the satisfaction of the Members Committee,” control shall be presumed.<sup>5</sup>

The proposed amendment would provide a similar right to ERCOT entities to make a showing to the ERCOT Board that the entities are not affiliated. The amendment would extend the Board’s discretionary authority to determine who is an Affiliate, provided the entity owns at least five percent (5%) but not more than twenty percent (20%) of the shares of the voting securities of another entity.

The ERCOT Bylaws have a number of Articles that refer to “Affiliate” or otherwise implicate the proposed change. For the purposes of drafting the proposed amendment, in addition to the Affiliate provision, the following provisions were reviewed:

- 2.9 Entity
- 2.14 Independent Generator
- 2.16 Independent REP
- 2.18 Investor Owned Utility
- 2.30 Transmission and Distribution Entity
- 3.1 Membership
- 3.2 Membership Types and Voting Rights
- 3.6 Participation

However, the proposed amendment will not have any unintended consequences on these specific provisions and to best of our knowledge any remaining provisions in the Bylaws.

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<sup>4</sup> PJM Operating Agreement, 1.2 Affiliate.

<sup>5</sup> Assumes the entity is not an affiliate under any of the other four criteria to determine affiliate status.