



To: Human Resources and Governance (HR&G) Committee
From: Bill Magness, Vice-President, General Counsel & Corporate Secretary
Date: September 9, 2013
Re: Item 5 – Board Policies & Procedures Revisions

The HR&G Committee Charter provides that the HR&G Committee shall perform an annual review of “proposed modifications to the ERCOT (i) Articles of Incorporation, (ii) Bylaws, or (iii) the Board Policies and Procedures.”¹ The Board of Directors (Board) last approved modifications to the Board Policies & Procedures (BPP) that became effective July 1, 2012.

In consultation with Board members and ERCOT leadership, ERCOT Legal has identified several modifications that could clarify, update, and otherwise improve the current BPP. Those modifications are summarized in this memorandum, and we look forward to discussing them at the Committee’s meeting on September 16, 2013.

If the Committee decides to move forward with changes to the BPP, ERCOT Legal will develop specific language (in redline format against the current BPP) for presentation and consideration at the November 18, 2013 meeting of the Committee, or a later meeting if directed by the Committee.

1. Background: Current Board Policies & Procedures

The BPP includes specific policy statements on how the Board will handle certain recurring issues that come before it. For example, the BPP includes standards for the types of decisions that the Board has chosen to delegate to the ERCOT Chief Executive Officer, and the details of how ERCOT manages compensation for Unaffiliated Directors. The BPP also provides detailed procedures for Board consideration of certain issues, such as appeals of actions taken by the Technical Advisory Committee (TAC).

Unlike the ERCOT Bylaws, the BPP is entirely controlled by the Board. Once the Board agrees to changes in the BPP, those changes may go into effect immediately. ERCOT maintains a copy of the BPP on its public website, at:

[http://www.ercot.com/content/about/governance/legal/4.0%20Board%20Policies%20%20Procedures%20\(eff%207.1.12\).pdf](http://www.ercot.com/content/about/governance/legal/4.0%20Board%20Policies%20%20Procedures%20(eff%207.1.12).pdf)

2. Nature of Proposed Revisions to the Board Policies & Procedures

The possible changes to the BPP that ERCOT Legal plans to discuss with the Committee fall into several categories. Some of the issues aim at having the BPP “catch up” with discussions the Board has already had on certain issues (e.g., the policy on when to propose user fees); others reflect ideas that have been brought to our attention by Board members or ERCOT management. The issues are summarized as follows:

¹ See *HR&G Committee Charter*, Attachment A, Item No. 2(b)(1).



a. Approvals for the Purchase of Goods or Services

Section 2.4.4 of the BPP provides that the Board expressly reserve approval of any purchase of goods or services between \$1.0-3.0 million if the purchase:

- i. Is not clearly associated with a specific line item in the “approved Budget”;
- ii. Would cause a Budget category or the overall Budget to be overrun; or
- iii. Is not obtained in accordance with ERCOT’s procurement corporate standard, operating procedures and internal controls.

ERCOT Legal would recommend that Section 2.4 which outlines matters reserved for Board approval be modified to:

- i. Exclude approval for those purchases of goods or services which are required or directed by the Public Utility Commission of Texas (PUCT) (for example, Reliability Monitor services, Independent Market Monitor services and special audit services); and
- ii. Address approvals of routine and non-routine purchases which are contracted for and paid on multi-year terms (that is, beyond the term of the “approved Budget”).

b. User Fees

At the March 18, 2013 Finance and Audit (F&A) Committee meeting, ERCOT staff presented new User Fee policy recommendations for the Committee’s consideration. The recommendations were intended as policy guidance for determining which fees to bring to the F&A Committee and Board of Directors (Board) for approval. At the time of the meeting, Trip Doggett and F&A Committee Vice Chairman Karnei suggested that the User Fee policies be reduced to writing in the BPP. A new section to the BPP could be added to accommodate such User Fee language.

c. TAC Appeal Process

The TAC will be considering ideas to clarify the process of an appeal of the TAC action to the Board in light of the appeals of Nodal Protocol Revision Requests (NPRRs) 444 and 508. Currently the Appeals Procedures are provided in Section VIII of the BPP.

d. Board Chair and Vice Chair Terms

Section 4.4 (Chair and Vice Chair) of the Bylaws requires that an Unaffiliated Director serve as Board Chair. The Bylaws Amendments which are pending Commission approval would explicitly require that an Unaffiliated Director serve as Board Vice Chair. Section 4.3(c) (Terms) of the Bylaws provides that Unaffiliated Directors shall serve three year terms. ERCOT Legal would recommend that a new section be added to the BPP which would allow that the Board Chair and Board Vice Chair be elected at the first regularly-scheduled Board meeting of the year and continue to serve until their respective successors are elected. The Unaffiliated Directors’ three-year terms would provide flexibility for continued service into the next year (unlike Market Segment Directors who are limited to one-year terms pursuant to the Bylaws). This proposed modification would eliminate any gap in service by the Board Chair and Vice Chair



between the end of the Board year and the first regularly-scheduled meeting of the Board on the following year.

e. Revisions related to Pending Bylaws Amendments

Depending on the timing of the Bylaws approval docket pending at the Public Utility Commission, the Bylaws Amendments could be approved as early as October 3, 2013. If so, ERCOT Legal would provide suggested modifications to the BPP at the November 18, 2013 HR&G Committee meeting to provide consistency between the BPP and the Bylaws.

I look forward to discussing all of these matters with you at the September 16, 2013 Committee meeting.