



**To:** Board of Directors  
**From:** Bill Magness, ERCOT Vice President, General Counsel and Corporate Secretary  
**Date:** November 19, 2013  
**Re:** Agenda Item 9.1: Modifications to Board Policies and Procedures

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At its November 18, 2013 meeting, the Human Resources and Governance Committee recommended all of ERCOT Legal's proposed modifications to the Board Policies and Procedures, attached hereto in red-lined format as Exhibit A.

## Exhibit A

Board Policies and Procedures  
Amended Effective ~~July 1, 2012~~, 201  
By the ERCOT Board of Directors

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## Preamble: Definitions

- 0.1 The Definitions included in the Amended and Restated Bylaws of Electric Reliability Council of Texas (the “Bylaws”) are incorporated by reference.

## I. Meeting Procedures

~~1.1~~ ~~1.1~~ Meeting Schedule. Board meetings are normally held on the third Tuesday of the month when the Board is scheduled to meet, but may be moved or held by agreement of the Board, provided that the Board shall meet at least quarterly consistent with the Bylaws.

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~~1.2~~ Meeting Notice. Notice of each full Board meeting with the Board agenda shall be given consistent with the Bylaws.

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~~1.3~~ Board Agenda Items. A Director is entitled to place matters the Director reasonably considers important on the Board agenda if notification of such matters and background materials are received by the Secretary of the Corporation no later than 5 p.m. eleven days before the date of the Board meeting (*i.e.*, normally on the Friday before the second Tuesday of the month during which the Board is scheduled to meet). ERCOT Members and Market Participants, with permission of the Chair, may request that matters be placed on the Board agenda if notification of such matters and background materials are received by the Secretary of the Corporation no later than 5 p.m. eleven days before the date of the Board meeting (*i.e.*, normally on the Friday before the second Tuesday of the month during which the Board is scheduled to meet).

~~1.4~~ Board Packet. When a Board agenda contemplates the Board taking specific actions, ERCOT staff will provide Directors a “Board Packet” with all appropriate information at least seven (7) days prior to the meeting to allow study of and reflection on the issue raised. If such information is not available seven (7) days in advance of the meeting, ERCOT staff shall send information to the Directors as soon as such information is reasonably available. Information that ERCOT staff provides to the Directors which is not “sensitive” (as described in Section 4.6(e) of the Bylaws) must also be made available electronically to the public on the Internet, along with the agenda of the meeting. A Director may request that the Board defer action if he or she requires additional information or additional time to review appropriate information.

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~~1.35~~ Minutes. Minutes shall be kept for all meetings of the full Board, Board Committees, TAC and TAC subcommittees. Such minutes, except those which are held in Executive Session, shall be posted on ERCOT’s website for at least one year following the date of the meeting. ERCOT shall maintain a permanent record of the minutes of full Board meetings. ERCOT shall maintain records of meetings of TAC and TAC subcommittees for five years.

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~~1.46~~ Executive Session. The Board may meet in Executive Session for purposes consistent with governing law and with the Bylaws. The notice for Executive Session discussion items may

be worded such that the sensitive nature of the item is not compromised or disclosed. Except for acting to approve the minutes of prior Executive Sessions, the Board shall emerge from Executive Session before voting or taking any action on any Executive Session noticed items or based on Executive Session discussions.

## **II. Responsibilities, Qualifications, and Compensation of the Board of Directors**

2.1 Annual Goals and Objectives. In keeping with its fiduciary duties to ERCOT, the Board shall establish the overall direction and affirm the annual goals and objectives developed by ERCOT staff. The Board shall review such goals and objectives on an ongoing basis, and may issue policies and resolutions setting forth direction of ERCOT management actions to attain such goals and objectives. The Board's primary responsibility is to ensure that ERCOT maintains reliability and operates in a fair, efficient and non-discriminatory manner. The Board is also responsible for overseeing ERCOT's administration of the ERCOT Protocols.

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2.2 Duties. The Board shall faithfully discharge its duties by conducting its affairs in a highly ethical and sound business manner. The Board, collectively and severally, will not direct the policies and actions of ERCOT from perspectives of private gain or personal advantage.

2.3 Chief Executive Officer and Management. Subject to applicable approval by the PUCT, the Board shall retain a Chief Executive Officer ("CEO") with the capabilities to execute Board policies. The Board delegates to the CEO all general powers and duties necessary to accomplish ERCOT's purpose, goals, and objectives as established by the Board, except for those specifically reserved to the Board by the Bylaws or herein. The CEO and management are required to supply Directors with sufficient information to keep Directors properly informed about the business and affairs of ERCOT.

2.4 Matters Reserved for Board Approval. Except for and subject to those matters which require PUCT approval or are mandated by the PUCT without Board approval, the Board expressly reserves the following matters for Board approval:

2.4.1 Those matters reserved by the Bylaws.

2.4.2 Approval of the initiation of any non-routine filing that seeks regulatory action by a regulatory agency; provided that emergency situations may require immediate regulatory filings to protect the interests of ERCOT and may be filed by the General Counsel in its reasonable discretion without prior approval of the Board if there is concurrence of the CEO, General Counsel, the Chair and Vice Chair of the Board for such filing, and provided that the Board is notified as soon as practicable.

2.4.3 Initiation of any lawsuit; provided that emergency situations may require immediate legal action including the initiation of a lawsuit to protect the interests

of ERCOT. Such a lawsuit may be initiated by the General Counsel without prior approval of the Board if there is concurrence of the CEO, General Counsel, the Chair and Vice Chair of the Board for such filing, and provided that the Board is notified as soon as practicable and the Board subsequently ratifies the filing.

- 2.4.4 Approval of the purchase of goods or services for ERCOT's use, or of a contract for such purchase, with a value of over one million dollars (\$1,000,000.00) if such purchase or contract ~~either: (a) is not clearly associated with a specific line item contemplated in the ERCOT's Board-approved Budget. With regard to this section, approval is not required if ERCOT is directed, required or ordered to purchase goods or services by contract or otherwise by the PUCT; or (b) would cause the budget category or overall budget to be overrun; or (c) is not obtained in accordance with ERCOT's Procurement Standard, operating procedures, and internal controls.~~

~~2.4.5 Approval of the purchase of goods or services for ERCOT's use, or of a contract for such purchase, with a value of over three million dollars (\$3,000,000.00).~~

- 2.4.65 Approval of the sale or pledge of any ERCOT assets valued in excess of one million dollars (\$1,000,000.00).

- 2.4.67 Establishment of any line of credit, loans, or other forms of indebtedness in the name of ERCOT exceeding one million dollars (\$1,000,000.00).

2.5 CEO Delegations. The Board shall exercise reasonable diligence to ensure that the delegations to the CEO provided in this policy statement are properly implemented. The Board will articulate clear and coherent goals and statements of its expectations through its policies and the adoption of the Budget. The CEO is responsible for fulfilling these commitments and managing the organization.

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2.6 Individual Director Duties. Each Director shall, individually, have the following duties:

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- 2.6.1 Attend all regular and special meetings of the Board when notified, unless circumstances prevent the Director from attending. If attendance is not possible, Bylaws procedures for Segment Alternates, ~~and~~ Proxies and Alternate Representatives shall be followed.

- 2.6.2 Participate in the selection of the members of all committees and subcommittees of the Board represented by his or her particular ~~M~~market ~~S~~segment.

- 2.6.3 Not disclose the confidential information of ERCOT to unauthorized people.

- 2.6.4 Handle any actual or potential conflict of interest in accordance with Bylaws Section 9.2.

- 2.6.5 Consistent with the fiduciary duty of care in overseeing, monitoring, and supervising the affairs of ERCOT, prepare for and participate to the best of his or her ability in determination of policy and other matters coming before the Board.
- 2.6.6 Set policy and make decisions in the best interest of the ERCOT organization and the ERCOT market.
- 2.6.7 Upon joining the Board and annually thereafter, sign the ERCOT Director Ethics Agreement.

2.7 Director Qualifications. Each Director shall meet the following qualifications:

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- 2.7.1 Have a willingness to serve the membership of ERCOT and to commit the time and resources necessary to carry out the duties of a Director.
- 2.7.2 Be willing to work cooperatively with ERCOT Members.
- 2.7.3 For Market ~~Participant-Segment~~ Directors, possess significant electric energy-related work experience in a senior or executive management level in the ~~m~~Market ~~s~~Segment he or she represents, and be an employee of a Member organization that is in good standing as required by the Bylaws.
- 2.7.4 Meet all qualifications defined by the Bylaws or required by the PUCT or Texas or other governing law.

2.8 Compensation and Expense Reimbursement for Unaffiliated Directors.

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2.8.1 Unaffiliated Director Compensation. Each Unaffiliated Director will receive the following:

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2.8.1.1 Annual Retainer. ~~\$87,000.~~ The Annual Retainer shall be \$87,000 and -shall cover a full calendar year (January to December) and shall be paid to each Unaffiliated Director in equal monthly installments of \$7,250. ~~2.8.1.1~~

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2.8.1.2 Board Committee Chair Compensation. Each Unaffiliated Director ~~that who~~ serves as the Chair of a subcommittee of the Board shall be paid \$5,600 in addition to the Annual Retainer.

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2.8.1.3 Board Vice Chair Compensation. Each Unaffiliated Director ~~that who~~ serves as the Vice Chair of the Board shall be paid \$7,500 in addition to the Annual Retainer.

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2.8.1.4 Board Chair Compensation. Each Unaffiliated Director who serves as the Chair of the Board shall be paid \$12,800 per year, in addition to the Annual Retainer.

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2.8.2 Expense Reimbursement.

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2.8.2.1 Affiliated Directors. Affiliated Directors are generally expected to be reimbursed by their employers. Unaffiliated Directors, and Affiliated Directors who may receive limited reimbursement from time to time, shall comply with the ERCOT Business Expense Reimbursement Corporate Standard.

2.8.2.2 Business Expense Reimbursement. General Counsel shall provide Directors with the Business Expense Reimbursement Corporate Standard and a summary thereof, upon new Directors joining the Board and also whenever modifications are made to the Standard.

2.9 Compensation for Residential Consumer TAC Representative.

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2.9.1 Retainer, Meeting Fees and Compensation Cap. Compensation for the Residential Consumer TAC Representative shall be as follows: (i) a retainer of \$1,500 per month; and (ii) \$500 per TAC or other standing or special TAC committee meeting actually attended. Total compensation for the Residential Consumer TAC Representative shall not exceed \$3,000 per month.

2.9.2 Business Expense Reimbursement. The Residential Consumer TAC Representative shall be eligible for reimbursement of reasonable business expenses associated with attending meetings of TAC or other standing or special TAC committee, but shall comply with the ERCOT Business Expense Reimbursement Corporate Standard.

### III. Delegation of Authority to the Chief Executive Officer

3.1 CEO Responsibility and Authority. Consistent with the goals, objectives, policies, and specific directions of the Board, and the Bylaws, the CEO is responsible for carrying out the business activities of ERCOT. The CEO shall have the authority to execute contracts and agreements, establish lines of credit, and take all other lawful actions, as he may deem expedient and proper in conducting the business of ERCOT, except as may be limited by the Board.

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3.2 CEO Delegation to Officers and Employees. The CEO may delegate his authority to other ERCOT officers or employees in his discretion, except as limited by the Board. The CEO shall issue appropriate management procedures setting forth the direction of staff management and other employee actions to fulfill the goals, objectives, policies and other directions of the Board.

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3.3 Budget. The CEO will present to the Board by October of each year when the Budget is to be approved, or at such other time as directed by the Board, ~~an annual~~ Budget to carry out the Board's directives for the following year or longer as directed by the Board. The Budget will include projections of ERCOT's overall financial performance and financing plans, and describe the services, projects, programs, and the associated revenues and

**Comment [Legal1]:** This Section modified to conform with recently approved Bylaws amendments and PUC Sunset Legislation.

expenditures for the next fiscal year. Adoption of the Budget by the Board and as approved by the PUCT authorizes the CEO to complete work plans and make associated expenditures as provided for in accordance with the Budget.

- | 3.4 **Information for the Board.** The CEO is responsible for bringing policy matters to the attention of the Board when its current policies give inadequate direction for ERCOT operations or leave ERCOT at a disadvantage because of changing conditions. The CEO will provide thorough, well-organized information to the Board in a timely manner. Communications to the Board will be made forthrightly and with candor in the evaluation of the conduct of business and operations of ERCOT. In the discretion of the CEO, significant contracts, agreements, or other major decisions may be brought to the Board for specific approval. In coordination with the General Counsel, the CEO shall represent ERCOT in communicating the position and interests of ERCOT to legislative bodies.
- | 3.5 **Internal Controls.** Consistent with the Board's guidance and the ERCOT Internal Control Management Program, the CEO will approve and enforce appropriate policies, standards and procedures for ERCOT, to ensure adequate internal controls for ERCOT business and operations.

#### **IV. Procedure for the Sale of ERCOT Assets**

- | 4.1 **Sale of Assets.** Personal property that is no longer necessary, convenient or of beneficial use to the business of ERCOT, and that has a fair market value of one million dollars (\$1,000,000.00) or less may be sold, transferred, auctioned, or conveyed by the CEO for its fair market value. ERCOT shall use revenues from the sale of its property to offset ERCOT expenses.

#### **V. Procedure for Termination or Liquidation of ERCOT**

- | 5.1 **Termination or Liquidation.** Upon termination or liquidation of ERCOT, the Board shall, consistent with applicable federal and state regulatory requirements, liquidate ERCOT, and dispose of its property and assets in the manner required by Texas law applicable to non-profit corporations.

#### **VI. Procedure by Which a Member May Examine and Copy the Corporate Financial Books and Records of ERCOT**

- | 6.1 **Member Right of Inspection.** Every Member shall have the right at any reasonable time to inspect ERCOT's corporate financial books and records of account subject to the following Procedures:
  - | 6.1.1 The Member representative must be acting upon the authority of the Member, as evidenced in writing by the representative **designated and** listed in ERCOT's records for that Member.



- 6.1.2 The writing must state a legitimate business purpose for the inspection and identify the documents the Member desires to inspect.
- 6.1.3 The writing must state the date and time of the inspection, such date and time to be no less than 10 days after ERCOT receives the request and shall be during ERCOT's normal business hours.
- 6.1.4 If the information requested is determined to be Confidential Information of ERCOT, ERCOT shall require the Member to sign a Confidentiality and Non-Disclosure Agreement in a form acceptable to ERCOT. Non-public information relating to individual ERCOT employees, including compensation, shall not be subject to disclosure. ERCOT retains the right to withhold information that is confidential by law or by contract.
- 6.1.5 If the information requested is determined to be Confidential Information of an ERCOT Member, ERCOT shall not disclose such information except as provided in the ERCOT Protocols.
- 6.1.6 If Confidential Information is requested by the Member or a Market Participant who provided ERCOT the information, ERCOT shall provide copies of such information to the Member or Market Participant, or its designee upon written authorization by the Member or Market Participant.

6.2 Prohibition against Dissemination of Confidential Information. No Member shall use or disseminate any information obtained as a result of any such inspection in its capacity as a Member, for his or her own personal gain, to the detriment of ERCOT or its staff, or to the detriment of any competitors of any Entity with which the Member is affiliated, except in connection with the enforcement of a tariff, contract or applicable law and consistent with ERCOT's policy regarding Confidential Information.

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## VII. Procedures for the Selection of New Board Members, Board Chair and Vice Chair, and TAC MembersRepresentatives

7.1 Annual Meeting and Record Date. At least two months prior to the Annual Meeting of the Corporate Members, the ERCOT Board will set the date and location for the Annual Meeting. The Record Date for determining the Corporate Members entitled to notice of and representation at the Annual Meeting is set forth in the Bylaws.

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7.2 Elections of TAC Representatives, Market Segment Directors and Segment Alternates. For ~~election of TAC members Representatives and Market Segment Directors and Segment Alternates, as appropriate,~~ to be elected by their respective Market ~~Participants~~Segments, one of two procedures shall apply: (a) ERCOT will provide all Corporate Members of the Segment or Subsegment with advance notice that the Segment or Subsegment will be holding the election, and follow-up notice of election results; or (b) ERCOT will directly facilitate the election according to the following procedures:

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7.2.1 On the next business day after the Record Date, ERCOT will send a list of all the Members in each Segment or Subsegment, by membership level (i.e. Corporate, Associate or Adjunct) to ERCOT Members.

7.2.2 ERCOT will request that Corporate Members of each Segment or Subsegment nominate ~~Board-Directors, Segment Alternates, as appropriate,~~ and TAC ~~R~~representatives and forward their nominations to ERCOT.

7.2.3 With the nominations provided, ERCOT will then create and provide ballots to Corporate Members for return to ERCOT.

7.2.4 ERCOT will facilitate a meeting of the Segment or Subsegment to assist in the nomination and election process if requested.

7.2.5 Only Corporate Members may participate in the election of ~~Board-Directors, Segment Alternates, as appropriate,~~ and TAC ~~members-Representatives~~ for the Segment or Subsegment in which they are members.

7.2.6 Each seat shall be filled by the person receiving the most votes (proxies allowed) of eligible Corporate Members.

7.3 Selection and Election of Unaffiliated Directors. For Unaffiliated Directors, subject to applicable law, statute or PUCT rule, the following procedures shall apply:

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7.3.1 All new Unaffiliated Directors shall be selected in accordance with the process established in the Bylaws.

7.3.2 Six months prior to the expiration of an Unaffiliated Director's term, such Director shall indicate whether he or she wishes to remain on the Board for another term (if applicable). If the Unaffiliated Director desires to remain on the Board, the Nominating Committee will vote on whether such Unaffiliated Director may be nominated again for the Board.

7.3.3 If an Unaffiliated Director elects to leave the Board or, due to the upcoming expiration of an Unaffiliated Director, the Nominating Committee otherwise elects to seek potentially a new Unaffiliated Director, the Nominating Committee shall retain an executive search firm to begin the candidate selection process, pursuant to the Bylaws.

7.3.4 Where feasible, elections for Unaffiliated Directors will be held within a timeframe that will allow such Directors to be seated at the same time as Directors newly elected by Members.

7.4 Appointment of Residential Consumer TAC Representatives. Notwithstanding Section 7.2, for the Residential Consumer Subsegment, the Public Utility Counsel shall appoint Residential Consumer TAC Representative(s). ERCOT will assist, if requested, in

providing potential candidates for such seats. The Public Utility Counsel shall identify their appointees to ERCOT at least one week prior to the Annual Meeting. ERCOT will notify new Consumer appointees of the information necessary to attend the Annual Meeting.

- 7.5 Facilitation of Election. If a Segment is unable to elect a Director, Segment Alternate, as appropriate, or TAC ~~member~~ Representative at least two weeks prior to the Annual Meeting, ERCOT will notice a meeting of the Segment to facilitate the election.

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- 7.6 Election Results and Confirmation. Prior to the Annual Meeting of Corporate Members, ERCOT will determine the results of the elections. At the Annual Meeting, the new ~~Board Directors, Segment Alternates~~ and TAC ~~members~~ Representatives will be announced and ~~confirmed.~~ The new Directors, Segment Alternates and TAC Representatives will be seated, and seated according to their elected terms.

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- 7.7 Election and Terms of Board Chair and Vice Chair. The Board shall elect the Board Chair and Vice Chair pursuant to the Bylaws. The Board Chair and Vice Chair, including the incumbent Chair and Vice-Chair serving on the effective date of this subsection, shall be elected to serve in their positions until their respective successors are elected to avoid any break in service of Board leadership.

Comment [Legal2]: This Section added to avoid any break in service of Board leadership.

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## VIII. Appeal Procedures

- 8.1 Any eEntity that can demonstrate that it is affected by a TAC action (including but not limited to those listed in Protocol Section 21.2, Submission of a Protocol Revision Request) may appeal that TAC action to the Board
- 8.2 It is the policy of the Board that important arguments and information relating to an appeal of a TAC action be available far enough in advance to enable informed decisions on appeals. The Board, and its members, may discount arguments and information that are provided out of time and/or that were not provided to TAC.
- 8.3 Any appeal must be submitted to ERCOT's General Counsel within ten (10) Business Days after the date of the TAC action. Appeals shall be heard at the next regular Board meeting that is at least ten (10) Business Days after the date of the appeal, and shall follow these deadlines:
- 8.3.1 The TAC Chair or Vice-Chair shall designate a TAC Advocate to defend the TAC action at least eight (8) Business Days before the Board meeting.
- 8.3.2 ERCOT shall post notice of the appeal and the TAC Advocate on its website, and notify TAC of the same, at least seven (7) Business Days before the Board meeting.

8.3.3 The appealing party and the TAC Advocate must, and any other interested Entity may, provide a position statement, with or without supporting data, to ERCOT's General Counsel at least six (6) Business Days before the Board meeting.

8.3.4 ERCOT will distribute all timely position statements to the Board in the Board Packet as described in Section 1.2 above.

The Board Chair or Vice-Chair may override any deadline in this Section 8.3 for good cause shown.

8.4 Notwithstanding Section 8.3, an expedited process shall be followed for appeals of: (a) TAC actions related to decisions on items designated as Urgent; or (b) any other TAC action that the Board Chair or Vice-Chair or a PUC Commissioner designates as urgent. Such appeals must be submitted to ERCOT's General Counsel within forty-eight (48) hours after the end of the relevant TAC meeting and shall be heard at the next Board meeting, and the TAC Chair and Vice-Chair shall work with ERCOT's General Counsel to preserve the intent of Sections 8.2 and 8.3 above as fully as possible, given that such appeals will be heard on less than ten Business Days' notice.

## **IX. Board Policy on Approval of User Fees**

9.1 User Fees Approval Process. The Board may authorize ERCOT to charge reasonable user fees for services provided by ERCOT to any Market Participant or other Entity. A new user fee must be approved by the Board pursuant to the Revision Request process set forth in Section 21 of the Protocols. User fees charged by ERCOT must be identified in the ERCOT Fee Schedule included in the Protocols.

9.2 New User Fee Criteria. The Board retains the full authority to adopt user fees for services provided by ERCOT, including fees currently included in the Protocols, but establishes the following policy guidelines for establishing user fees which are not currently included in the Protocols:

9.2.1 Material Impact. A new user fee should produce revenue in excess of \$1,000,000.00 annually, or materially improve ERCOT operations.

9.2.2 Incremental Revenues. The revenues recovered by a new user fee should be incremental to revenue recovered through the System Administration Fee.

9.2.3 Limited Beneficiaries. A new user fee should be for a service that benefits a relatively few discrete Market Segments or Market Participants rather than providing general benefit to most Market Segments or Market Participants.

**Comment [Legal3]:** This Section added to provide a policy on the establishment of new user fees.

**IX. Procedure for Determination of Affiliate Relationship for Membership**

**Comment [Legal4]:** This Section added to address the new process for Board determination of Affiliate relationship contemplated by the recently approved Bylaws amendments.

10.1 Membership Applicant Procedure. Any applicant for Membership (Membership Applicant) shall follow the procedure in this section to request Board determination of whether entities are Affiliates of one another for the purpose of determining Member Segment and voting rights pursuant to the definition of “Affiliate” in the Bylaws (Article 2, Paragraph 1).

10.2 Verified Letter or Affidavit. The Membership Applicant shall send to the Board Chair with a copy to the General Counsel either (1) a letter verified by an authorized representative of the Membership Applicant or (2) an affidavit executed by an authorized representative of the Membership Applicant, requesting Board determination of Affiliate relationship for purposes of the definition of “Affiliate”. The verified letter or affidavit must provide sufficient facts of relevant corporate relationships of the Membership Applicant to allow for the Board’s review of corporate relationships in consideration of the definition of “Affiliate”.

10.3 Deadline for Submission. The Membership Applicant must send the verified letter or affidavit to be received no later than the submission date for the Board Packet materials for the Board meeting preceding the Membership application deadline for the following Membership year.

**XI. Review and Reaffirmation**

119.1 Review and Reaffirmation. The Board may amend this document at any time by a vote that complies with Bylaws requirements, but at a minimum the Policies and Procedures shall be reviewed and reaffirmed annually, at or before the annual Strategic Planning Meeting.