



**To:** Human Resources and Governance (HR&G) Committee  
**From:** Bill Magness, ERCOT Vice President, General Counsel and Corporate Secretary  
**Date:** February 3, 2014  
**Re:** Item 11.1 – Bylaws Revisions - Board Member Eligibility Requirements

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As Committee members will recall, one of the proposals to amend the ERCOT Bylaws advanced by a Corporate Member was not recommended to the Board and Corporate membership as part of the Bylaws amendment process completed in 2013. The proposal to revise eligibility requirements for Board members representing certain Market Segments was held for further review in 2014, due to concerns with the potential ramifications of the proposal placed before the Committee in 2013. Rather than prevent the consideration of others changes in the 2013 review cycle, the Committee requested that ERCOT Legal bring a revised proposal before the Committee for further consideration in 2014.

#### Proposed Language for Consideration

In light of prior HR&G Committee and Board discussions on the topic of Board member eligibility requirements, ERCOT Legal recommends that the proposed revision focus solely on Board member eligibility in Section 4.3(a)(4) of the Bylaws, rather than attempt an expansion of certain Market Segment definitions in Article 2 of the Bylaws. Changes to the Market Segment definitions should be avoided, if possible, because they could have broader, unintended implications beyond Board member eligibility.

After receiving Committee feedback on this topic since the November 18, 2013 HR&G Committee meeting, ERCOT Legal proposes, for the Committee's consideration, the following language for subsection (a)(4) of Section 4.3 (Selection, Tenure, and Requirements of Directors and Segment Alternates) of the Bylaws as follows:

Each Director and Segment Alternate respectively elected by the Industrial Consumer Subsegment or the Independent Generator, Independent Power Marketer, Independent Retail Electric Provider, or Investor Owned Utility Segments must be an employee of either a Corporate or Associate Member or of an Entity that owns or controls a Member of the respective Market Segments or Subsegment. Each Director and Segment Alternate elected by the Cooperative or Municipal Segments must be an employee of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if a Director or Segment Alternate is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member, controlling Entity (as applicable), or organization as he or she was at the time of such election or appointment.

For reference, the existing Bylaws language for subsection (a)(4) of Section 4.3 reads as follows:

Each Market Segment Director and each Segment Alternate, except as with regard to the Residential Consumer 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.

If the Committee would like ERCOT Legal to proceed with this revision language (or a modified version of the same concept), we will circulate the language to Technical Advisory Committee (TAC) members, and solicit TAC's feedback before the Committee continues its consideration of the Bylaws revision at its April 2014 meeting.

#### Proposed Timeline

As discussed at the November 18, 2013 HR&G Committee meeting, in order to implement a Bylaws amendment prior to the 2015 Market Segment Director elections, the HR&G Committee should consider making a recommendation no later than the April 2014 HR&G Committee meeting. This approach would allow ample time for a recommendation by the Board of Directors to the ERCOT Corporate Members, approval of the ERCOT Corporate Members by vote at a Special Meeting (preferably by ballot in lieu of an in-person meeting), and final approval by Order of the Public Utility Commission of Texas. The ERCOT Membership Application process will be completed by early November 2014, which allows for the election of Market Segment Directors shortly thereafter.

#### Reference Addendum

A Reference Addendum has been attached for your convenience.

I look forward to answering any questions regarding this matter at the February 10, 2014 HR&G Committee meeting.



## Reference Addendum

Market Segment	Bylaws Definition
<b>Consumers – Commercial</b>	<p>A commercial consumer in the ERCOT Region:</p> <p>(a) <b>Small Commercial Consumer</b> – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers);</p> <p>(b) <b>Large Commercial Consumer</b> – A commercial consumer having a peak demand of greater than 1000 kilowatts.</p> <p>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 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.</p>
<b>Consumers – Industrial</b>	<p>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.</p>
<b>Consumers – Residential</b>	<p>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 a 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 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.</p>
<b>Cooperative</b>	<p>An entity operating in the ERCOT Region that is:</p> <ol style="list-style-type: none"> <li>a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;</li> <li>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;</li> <li>a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or a River Authority as defined in Tex. Water Code §30.003.</li> </ol>
<b>Independent Generator</b>	<p>Any entity that is not a Transmission and Distribution (“T&amp;D”) Entity or Affiliate of a T&amp;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.</p>
<b>Independent Power Marketer</b>	<p>Any entity that is not a T&amp;D Entity or Affiliate of a T&amp;D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.</p>
<b>Independent REP</b>	<p>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&amp;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.</p>
<b>Investor-Owned Utility (“IOU”)</b>	<ol style="list-style-type: none"> <li>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);</li> <li>A public utility holding company of any such electric utility.</li> </ol>



<b>Municipal</b>	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.
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### **CROSS-REFERENCED DEFINITIONS**

The Bylaws contain the following definitions:

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