



**The Human Resources & Governance (HR&G) Committee is expected to consider HR&G Committee Agenda Item 4: *Recommendation regarding Bylaws Amendment regarding Board Member Eligibility Requirements* at its meeting on April 7, 2014.**

**The Board of Directors is expected to hear the HR&G Committee's recommendation on this matter as part of the HR&G Committee Report at the Board meeting on April 8, 2014.**

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



**To:** Human Resources and Governance Committee  
**From:** Bill Magness, ERCOT Vice President, General Counsel and Corporate Secretary  
**Date:** March 31, 2014  
**Re:** Item 4 – Recommendation Regarding Bylaws Amendment regarding Board Member Eligibility Requirements

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At its April 7, 2014 meeting, the ERCOT Human Resources and Governance (HR&G) Committee is expected to vote on whether to recommend a proposed Bylaws amendment regarding Board member eligibility requirements to the ERCOT Board of Directors (Board).

Feedback on the proposed Bylaws amendment was solicited at the March 27, 2014 Technical Advisory Committee (TAC) meeting for the HR&G Committee's consideration.

#### 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 and February 10, 2014 HR&G Committee meetings, ERCOT Legal proposes language for subsection (a)(4) of Section 4.3 (Selection, Tenure, and Requirements of Directors and Segment Alternates) of the Bylaws as follows:

With regard to eligibility of Consumer Directors (other than the *ex officio* Consumer Director representing Residential and Small Commercial Consumers), Market Segment Directors and Segment Alternates, the following shall apply:

- (i) 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 Market Segments must be an employee of:
  - a. a Corporate or Associate Member; or
  - b. an Affiliate of a Corporate or Associate Member of the respective Market Segment or subsegment which provides services through the Affiliate's employees to such Corporate or Associate Member.
- (ii) Each Director and Segment Alternate respectively elected by the Large Commercial Consumer subsegment [as described in Section 4.3(a)(1)] or by the Cooperative or Municipal Market Segments must be an employee of a Corporate or Associate Member.



- (iii) 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 or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable), as he or she was at the time of such election or appointment. If the Member or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable) is subject to a corporate restructure for tax or operational purposes which is not the result of a merger or acquisition, then such restructure shall not affect the eligibility of the Director or Segment Alternate.

ERCOT Legal attempted to address Committee members' requests about limiting the expansion of eligibility to employees of service organizations affiliated with a Member and about maintaining eligibility in certain circumstances of corporate restructuring.

#### Existing Bylaws Language

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.

#### TAC Endorsement

At its March 27, 2014 meeting, TAC considered the proposed Bylaws amendments. The TAC voted to endorse the proposed amendments with two abstentions, one each coming from the Independent Retail Electric Provider Segment and the Independent Power Marketer Segment.

#### Proposed Timeline

In order to implement a Bylaws amendment prior to the 2015 Market Segment Director elections, the HR&G Committee would need to make a recommendation at the April 7, 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.



**Reference Addendum**

<b>Market Segment</b>	<b>Bylaws Definition</b>
<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.



**Date:** April 1, 2014  
**To:** Board of Directors  
**From:** Bill Magness, ERCOT Vice-President, General Counsel and Corporate Secretary  
**Subject:** Bylaws Amendment regarding Board Member Eligibility

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Directors Meeting Date:** April 8, 2014

**Item No.:** 11.1

**Issue:**

Whether the ERCOT Board of Directors (Board) should approve a Bylaws amendment regarding Board Member Eligibility as recommended by the Human Resources and Governance (HR&G) Committee and subject to approval by the ERCOT Corporate Members and by the Public Utility Commission of Texas (PUCT or Commission).

**Background/History:**

**Bylaws Review and Revision Process**

ERCOT currently operates pursuant to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), which were approved by the Commission on October 7, 2013.

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

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



5. Filing of Petition for Approval of Bylaws Amendment with the Commission: If the Corporate Members vote to approve the proposal, then ERCOT Legal will seek the approval of the Commission by filing a petition for approval of amendments to the Bylaws. Any amendments to the Bylaws shall only be effective upon formal Commission approval.

#### Status of Review Process

At the November 18, 2013 and February 10, 2014 meetings of the HR&G Committee, members of the Committee directed ERCOT Legal to refine a proposed Bylaws amendment for votes by the Committee and the Board of Directors at the April 2014 meetings, with the expectation that any amendments approved by the Board would be presented for vote to the Corporate Members at a Special Meeting of the Corporate Members, which will be called as soon as practicable after the Board's approval (rather than seeking approval at the scheduled Annual Membership Meeting in December 2014). The HR&G Committee is expected to consider the proposed Bylaws change at its April 7, 2014 meeting and present its recommendations on proposed Bylaws amendments to the Board at the April 8, 2014 Board meeting.

#### Proposed Bylaws Amendment

The issue of expanding certain of the eligibility requirements for Board service was discussed, but not finally resolved, as part of the Board's review of the 2013 Bylaws amendments. Due to continued interest in the issue, the HR&G Committee instructed ERCOT Legal to prepare proposed language for further review by the Committee.

In light of prior HR&G Committee and Board discussions on the topic, ERCOT Legal recommends that the proposed revision focus solely on the description of Board member eligibility in Section 4.3(a)(4) of the Bylaws. This approach enables the change in eligibility to be made without affecting the Market Segment definitions in Article 2 of the Bylaws. Changes to the Market Segment definitions should be avoided, if possible, because they may have broader, unintended implications beyond Board member eligibility.

After receiving Committee feedback on this topic since the November 18, 2013 and February 10, 2014 HR&G Committee meetings, ERCOT Legal proposes language for subsection (a)(4) of Section 4.3 (Selection, Tenure, and Requirements of Directors and Segment Alternates) of the Bylaws as follows:

With regard to eligibility of Consumer Directors (other than the *ex officio* Consumer Director representing Residential and Small Commercial Consumers), Market Segment Directors and Segment Alternates, the following shall apply:

- (i) 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 Market Segments must be an employee of:
  - a. a Corporate or Associate Member; or



- b. an Affiliate of a Corporate or Associate Member of the respective Market Segment or subsegment which provides services through the Affiliate's employees to such Corporate or Associate Member.
- (ii) Each Director and Segment Alternate respectively elected by the Large Commercial Consumer subsegment [as described in Section 4.3(a)(1)] or by the Cooperative or Municipal Market Segments must be an employee of a Corporate or Associate Member.
- (iii) 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 or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable), as he or she was at the time of such election or appointment. If the Member or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable) is subject to a corporate restructure for tax or operational purposes which is not the result of a merger or acquisition, then such restructure shall not affect the eligibility of the Director or Segment Alternate.

At its March 27, 2014 meeting, the Technical Advisory Committee (TAC) considered ERCOT Legal's proposed Bylaws amendment. The TAC voted to endorse the proposed amendment with two abstentions (Independent Retail Electric Provider Segment and Independent Power Marketer Segment).

The HR&G Committee is expected to recommend proposed Bylaws language regarding Board member eligibility to the Board at its April 7, 2014 meeting. A sample resolution incorporating ERCOT Legal's recommended language is attached to this decision template.

**Key Factors Influencing Issue:**

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

Based on prior Committee discussions which began in 2013, the HR&G Committee requested that ERCOT Legal draft a proposed Bylaws amendment regarding Board member eligibility to be effective in time for nominations for 2014 Market Segment Board member elections in November 2014.

A call for Special Meeting of Corporate Members has been placed on the April 8, 2014 Board agenda to allow for approval in time for nominations for 2014 Market Segment Board member elections in November 2014. ERCOT Legal expects that the same Special Meeting would also consider the re-nomination of Unaffiliated Directors whose first terms on the Board expire at the end of 2014.



**Conclusion/Recommendation:**

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



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

WHEREAS, after due consideration of the alternatives and upon consideration of the recommendations of its Human Resources and Governance (HR&G) Committee, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to approve a certain amendment to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), by amending and restating subsection (a)(4) of Section 4.3 (Selection, Tenure, and Requirements of Directors and Segment Alternates) with language substantially similar to that attached hereto as Attachment A, for recommendation and presentation to the Corporate Members as soon as reasonably possible;

THEREFORE, BE IT RESOLVED, that the Board hereby:

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

**CORPORATE SECRETARY'S CERTIFICATE**

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its April 8, 2014 meeting, the ERCOT Board passed a motion approving the above Resolution by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_ day of April, 2014.

\_\_\_\_\_  
Vickie G. Leady  
Assistant Corporate Secretary



## Attachment A

### Amended and Restated Subsection (a)(4) of Section 4.3

With regard to eligibility of Consumer Directors (other than the *ex officio* Consumer Director representing Residential and Small Commercial Consumers), Market Segment Directors and Segment Alternates, the following shall apply:

- (iv) 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 Market Segments must be an employee of:
  - a. a Corporate or Associate Member; or
  - b. an Affiliate of a Corporate or Associate Member of the respective Market Segment or subsegment which provides services through the Affiliate's employees to such Corporate or Associate Member.
- (v) Each Director and Segment Alternate respectively elected by the Large Commercial Consumer subsegment [as described in Section 4.3(a)(1)] or by the Cooperative or Municipal Market Segments must be an employee of a Corporate or Associate Member.
- (vi) 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 or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable), as he or she was at the time of such election or appointment. If the Member or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable) is subject to a corporate restructure for tax or operational purposes which is not the result of a merger or acquisition, then such restructure shall not affect the eligibility of the Director or Segment Alternate.