



To: Human Resources and Governance (HR&G) Committee
From: Bill Magness, ERCOT Vice President, General Counsel and Corporate Secretary
Date: December 1, 2014
Re: Item 9 – Proposed Bylaws Amendment regarding Segment Alternates for the Industrial and Large Commercial Consumer Subsegments

Section 4.1 of the Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc., approved on September 5, 2014 (Bylaws), provides for Segment Alternates for all of the Market Segment seats on the Board of Directors, except for the Consumer Subsegments.

As noted in Section 3.1 (Membership), the Consumer Segment is divided into three Subsegments:

- (1) Residential, represented by Public Counsel, an *ex officio* Director;
- (2) Commercial which is further divided into Large and Small Commercial Consumer, represented by the Large Commercial Consumer Director who is either elected by this Subsegment or appointed by the Large Commercial Consumer Subsegment Director if there are no Members in this Subsegment and by Public Counsel, an *ex officio* Director, for the Small Commercial Consumer respectively; and
- (3) Industrial Consumer Subsegment, represented by a Director who is elected by this Subsegment.

Proposed Bylaws Amendment

Legal counsel for Texas Industrial Electric Consumers (TIEC) proposed Bylaws amendment language to ERCOT Legal to allow for a Segment Alternate for the Industrial Consumer Subsegment Director. At this time, ERCOT Legal has not identified any reason to object to the creation of such a Segment Alternate position. Furthermore, if such a position is created for the Industrial Consumer Subsegment, ERCOT Legal suggests the creation of a similar alternate position for the Large Commercial Consumer Subsegment. ERCOT Legal consulted with the current Board member for the Large Commercial Consumer Subsegment, Mr. Nick Fehrenbach, who expressed no objection to this proposal moving forward.¹

Proposed Language for Consideration

TIEC submitted proposed language for Sections 4.2 (The Board) and 4.3 (Selection, Tenure, and Requirements of Directors and Segment Alternates) of the Bylaws for the Industrial Consumer Subsegment. ERCOT Legal then conferred with TIEC and the Director for the Large Commercial Consumer Subsegment regarding the creation of Segment Alternates for the Industrial and Large

¹ The Residential and Small Commercial Consumers are represented by Public Counsel, who is appointed by the Governor, as an *ex officio* Director (that is, a director position held by virtue of such office) as provided by Bylaws Section 4.2(b) (The Board). Furthermore, pursuant to Bylaws Section 4.3(e) (Alternates and Proxies), Public Counsel may designate an alternate representative from the Office of Public Utility Counsel (OPUC) or a proxy to attend meetings in the Public Counsel's absence. Given the availability of an alternate representative from OPUC, no Bylaws amendment is being proposed to create a Subsegment Alternate for the Public Counsel's Director position.



Commercial Consumer Subsegments. Based on these discussions, ERCOT Legal proposes initial draft language as follows:

Section 4.2 The Board. The Board shall be composed of a total of sixteen (16) Directors 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;
 - 3. One (1) Independent Power Marketer and one (1) Segment Alternate;
 - 4. One (1) Independent REP and one (1) Segment Alternate;
 - 5. One (1) Municipal and one (1) Segment Alternate;
 - 6. One (1) Cooperative and one (1) Segment Alternate;
- (e) One (1) voting Director representing Industrial Consumers and one (1) Segment Alternate;
- (f) One (1) voting Director representing Large Commercial Consumers and one (1) Segment Alternate; and
- (g) Five (5) voting Directors selected as Unaffiliated Directors.

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

- (a) Selection of Market Segment Directors and Segment Alternates.
 - (1) For Consumer Directors, the following shall apply: The Director and Segment Alternate from the Commercial Consumer subsegment shall be ~~s~~selected by the Large Commercial Consumer Corporate Members. If there are no Large Commercial Consumer Corporate Members eligible or willing to serve, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director and Segment Alternate. The Industrial Consumer Director and Segment Alternate shall be elected by the Industrial Consumer Corporate Members.



- (2) Within each Market 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 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) 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.



If the Committee would like ERCOT Legal to proceed with seeking stakeholder input to 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 proposed Bylaws amendment at its February 2015 meeting.

Proposed Timeline

In order to implement a Bylaws amendment prior to the 2016 Market Segment Director elections, the HR&G Committee should consider making a recommendation no later than the June 2015 HR&G Committee meeting, but preferably by the April 2015 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 2015, which allows for the election of Market Segment Directors shortly thereafter.

I look forward to answering any questions regarding this matter at the December 8, 2014 HR&G Committee meeting.