



**The Human Resources & Governance (HR&G)
Committee is expected to consider
HR&G Committee Agenda Item 10:
*Recommendation regarding Proposed Bylaws
Amendment*
at its meeting on February 9, 2015.**

**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 February 9-10, 2015.**

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



Date: February 2, 2015
To: Board of Directors
From: Bill Magness, ERCOT General Counsel, Senior Vice President – Governance,
Risk and Compliance, & Corporate Secretary
Subject: Proposed Bylaws Amendment

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: February 9-10, 2015

Item No.: 15.3

Issue:

Whether the ERCOT Board of Directors (Board) should approve a Bylaws amendment regarding Segment Alternates for the Industrial and Large Commercial Consumer Subsegments 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 September 5, 2014.

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 generally 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 December 8, 2014 meeting 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 February 2015 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. The Committee members preferred this option rather than seeking approval at the scheduled Annual Membership Meeting in December 2015 since it occurs after Board elections for the 2016 year (that is, during mid-November 2015). The HR&G Committee is expected to consider the proposed Bylaws change at its February 9, 2015 meeting and present its recommendations on proposed Bylaws amendments to the Board at the February 9-10, 2015 Board meeting.

Proposed Bylaws Amendment

Section 4.1 of the 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.

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

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)

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 Commercial Consumer Subsegments. Based on these discussions, ERCOT Legal proposed initial draft language to the HR&G Committee, which reviewed the language at its December 8, 2014 meeting.

Based on Committee feedback, ERCOT Legal proposes the following revised language for the Committee's consideration:

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;

(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.

- (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 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.

At its January 29, 2015 meeting, the Technical Advisory Committee (TAC) considered and unanimously voted to endorse the proposed Bylaws amendments.

The HR&G Committee is expected to recommend proposed Bylaws language regarding Segment Alternates for the Industrial and Large Commercial Consumer Subsegments to the Board at its February 9, 2015 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.

In order to implement a Bylaws amendment prior to the 2016 Market Segment Director elections, the Board should consider making a recommendation to the ERCOT Corporate Members no later than the June 2015 Board meeting, but preferably by the April 2015 Board meeting. This approach would allow ample time for 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.



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 Section 4.2 (The Board) and 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 February 9-10, 2015 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of February, 2015.

Vickie G. Leady
Assistant Corporate Secretary



Attachment A

Amended and Restated Section 4.2

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.

Amended and Restated Section 4.3

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 elected 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) (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.