

**The Human Resources and Governance (HR&G) Committee is expected to consider HR&G Committee Agenda Item 5:**

***Recommendation regarding Proposed Changes to Ethics Agreements Forms for ERCOT Employees, Directors and Segment Alternates***

**at its meeting on August 7, 2017.**

**The Board of Directors is expected to hear this matter as part of the HR&G Committee Report at the Board meeting on August 8, 2017.**

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



## MEMORANDUM

To: Human Resources and Governance (HR&G) Committee  
From: Chad V. Seely, Vice President, General Counsel and Corporate Secretary  
Date: July 31, 2017  
Re: Item 5 – Recommendation regarding Proposed Changes to Ethics Agreements for ERCOT Employees, Directors, and Segment Alternates

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The HR&G Committee Charter requires annual Committee review of the forms for the ERCOT Employee Ethics Agreement (Employee Agreement) and ERCOT Director and Segment Alternate Ethics Agreement (Director Agreement). The HR&G Committee is responsible for recommending any modifications to the forms for the Employee and Director/Segment Alternate Ethics Agreements to the Board for approval.

The Director Agreement, which is attached as *Attachment A*, was last modified on March 14, 2011, and ERCOT Legal does not recommend any modifications at this time.

The Employee Agreement was last modified on September 17, 2013. ERCOT Legal recommends that the Committee recommend to the Board that the modifications reflected in *Attachment B* become effective upon Board approval.

I look forward to discussing this matter with you at the August 7, 2017 meeting.



### **Ethics Agreement for Directors and Segment Alternates**

Electric Reliability Council of Texas, Inc. (“ERCOT”) is a Texas non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act. ERCOT has been formed for the limited purpose of: promoting the reliable and efficient operations of electric power systems, ensuring open access for all users of the ERCOT transmission and distribution systems on a non-discriminatory basis, coordinating activities within the region of the Electric Reliability Council of Texas and as liaison to the North American Electric Reliability Corporation, performing the functions of an Independent Organization, and engaging in any lawful act and activity consistent with the foregoing for which corporations may be formed under the Texas Non-Profit Corporation Act. ERCOT is certified as the Independent Organization for the ERCOT Region by the Public Utility Commission of Texas (“PUC”).

The management of ERCOT is vested in a Board of Directors (“Board”) and such committees of the Board that the Board may, from time to time, establish. It is the duty of the Board to initiate any specific action required, in their opinion, to fulfill the purposes of ERCOT as stated above, within the limitations of the Articles of Incorporation, applicable laws and the Bylaws, as may be amended from time to time.

#### **Potential Conflicts of Interest**

Each Director and Segment Alternate of ERCOT shall have an affirmative duty to disclose to the Board, any actual or potential conflicts of interest of the Director, Segment Alternate, or his employer where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board as required by the Bylaws. A Director or Segment Alternate with a direct interest in a matter, personally or via his employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in the Market Segment of a Director or Segment Alternate or a general interest of some or all Market Participant Directors or Segment Alternates in a matter does not constitute direct interest. Any disclosure of a direct interest by a Director or Segment Alternate shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, if the Director or Segment Alternate recuses himself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

Each Director and Segment Alternate must disclose all personal relationships (including household member or family member (spouse, parent, child, or sibling, including step and adoptive relatives) relationships) with ERCOT vendors to the Board. Such relationships include: current ties (within the last two years) as a director, officer, or employee of an ERCOT vendor; direct business relationships, other than retail customer relationships, with an ERCOT vendor;



and directly or indirectly owning or holding at least five percent (5%) of voting securities of an ERCOT vendor.

ERCOT may not make any loan to a Director or Segment Alternate of ERCOT. A Director or Segment Alternate may lend money to and otherwise transact business with, ERCOT except as otherwise provided by the Bylaws, the Articles of Incorporation, and applicable law. Such a person transacting business with ERCOT has the same rights and obligations relating to those matters as other persons transacting business with ERCOT. If a Director, a Segment Alternate, or member of his immediate family is an officer or director, is employed by, or owns or has a beneficial interest in more than ten percent of the stock in a bank or other financial institution that would otherwise be a Qualified Institution (as defined in ERCOT's Investment Corporate Standard), such Director or Segment Alternate shall provide full disclosure of such stock holdings or relationship in documented form to be filed with the permanent records of ERCOT. ERCOT may not borrow money from, or otherwise transact business with, a Director or a Segment Alternate unless the transaction is described fully in a legally binding instrument and is in ERCOT's best interests. ERCOT may not borrow money from, or otherwise transact business with, a Director or a Segment Alternate without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

### **Independence of Unaffiliated Directors**

Unaffiliated Directors of ERCOT are required to maintain independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:

- An Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:
  - Current or recent ties (within the last two years) as a director or officer of a Market Participant or its Affiliates;
  - Current or recent ties (within the last two years) as an employee of an ERCOT Member or North American Electric Reliability Corporation-Registered Entity operating in the ERCOT Region;
  - Direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and
  - To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
- An Unaffiliated Director shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT Board member, including the Delegated Authority pursuant to the Bylaws.



**Prohibited Acts**

As long as ERCOT exists, no Director or Segment Alternate may:

- Do any act in violation of the Articles of Incorporation or the Bylaws.
- Do any act in violation of a binding obligation of ERCOT except with the Board’s prior approval.
- Do any act with the intention of harming ERCOT or any of its operations.
- Receive an improper personal benefit from the operation of ERCOT.
- Use ERCOT’s assets, directly or indirectly, for any purpose other than in furtherance of ERCOT’s exempt purposes.
- Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will.
- Use ERCOT’s name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT Region.
- Disclose any of ERCOT’s or ERCOT Member’s business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.
- Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Energy Regulatory Commission (“FERC”) rules or become subject to any plenary jurisdiction of FERC.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing as described in Article 3 of the Bylaws.

The Ethics Agreement is not intended to alter in any way the duties, obligations and rights of Directors or Segment Alternates as set forth in the Articles of Incorporation, Bylaws and applicable law, as they may be amended from time to time, nor does it create any third party rights, claims or causes of action. To the extent, if any, that the Ethics Agreement is inconsistent with the Articles of Incorporation, Bylaws or applicable law, the Articles of Incorporation, Bylaws and applicable laws, as they may be amended from time to time, shall control. Directors and Segment Alternates will be required to reaffirm the Ethics Agreement on an annual basis.

By my signature I, \_\_\_\_\_, acknowledge that I have read and understand the above Ethics Agreement and agree to be bound by its terms.

Director/Segment Alternate Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## EMPLOYEE ETHICS AND CONFIDENTIALITY AGREEMENT

Employees of Electric Reliability Council of Texas, Inc. (“ERCOT”) must conduct ERCOT’s business with integrity and objectivity toward ERCOT, and all ERCOT Members and Market Participants. That is why ERCOT requires employees to annually affirm their commitment to the ethical standards that are essential to working at ERCOT. Before completing this Employee Ethics Agreement, you should review the ERCOT Code of Conduct and ERCOT Corporate Standard (CS) 7.6, Information Protection Corporate Standard, and participate in any associated ethics training.

If you have questions or concerns about the requirements or prohibitions in the ERCOT Code of Conduct, please contact ERCOT Legal, or file an anonymous report through EthicsPoint ([www.ethicspoint.com](http://www.ethicspoint.com) or 1-866-384-4277). For questions about the requirements in CS7.6, please contact ERCOT Legal.

### Use and Return of Proprietary Information

I acknowledge that I may have access to ERCOT Confidential information (as defined in CS7.6, Information Protection Corporate Standard) in order to perform my job. To protect ERCOT Confidential information, I agree as follows:

- A. I shall hold ERCOT Confidential information in strict confidence and shall exercise reasonable care to prevent unauthorized disclosure to others.
- B. I shall not directly or indirectly disclose ERCOT Confidential information to others, except ERCOT directors, officers and other ERCOT employees who require access to such information in order to perform job functions, unless first authorized to do so in writing by ERCOT.
- C. I shall not reproduce ERCOT Confidential information or use it commercially or for any purpose other than the performance of my duties for ERCOT.
- D. I shall notify ERCOT immediately upon discovery of any unauthorized use or disclosure of ERCOT Confidential information and cooperate in any reasonable way to help ERCOT regain possession of the ERCOT Confidential information and prevent further unauthorized use or disclosure.
- E. Upon ERCOT’s request or upon termination of my employment at ERCOT, I shall deliver to ERCOT all drawings, notes, documents, equipment and materials received from ERCOT or originating from ERCOT operations, and shall permanently delete all electronic copies of such information from my personal computers, storage devices, external file transfer sites, personal e-mail and document sharing/storage accounts.

~~ERCOT reserves the right to take disciplinary action, up to and including termination, for any violations of this agreement.~~

Notwithstanding the forgoing, my disclosure of ERCOT Confidential information in response to a subpoena, court order, law enforcement investigation, or civil investigative demand shall not be deemed a violation of this agreement. I shall promptly inform ERCOT Legal prior to and prior to any such disclosure, unless impracticable to do so.

~~ERCOT reserves the right to take disciplinary action, up to and including termination, for any violations of this agreement.~~

### **Employee Agreement**

~~By checking the box below, I confirm that I have read and understand the ERCOT Code of Conduct and have participated in any associated ethics training required by ERCOT. I agree to conduct myself in accordance with the principles and standards discussed in the ERCOT Code of Conduct, and I have made any required disclosures below.~~

~~I agree to the foregoing terms.~~

~~(Please complete the Disclosure section below even if you have no potential conflicts to disclose.)~~

### **Disclosure of Potential Conflicts of Interest**

ERCOT company policy requires all employees to disclose any employment or independent contracting services for a Market Participant that involve an employee's child, spouse or domestic partner, parent, sibling, or any other individual who lives in the employee's household. A listing of ERCOT Market Participants is available at: <http://www.ercot.com/mktparticipants>.

ERCOT also encourages employees to disclose other potential conflicts that may call into question an employee's ability to conduct ERCOT's business without the appearance of Conflicts of Interest with Market Participants or Suppliers of services Vendors to ERCOT. Examples of potential conflicts are discussed in CS5.18, ERCOT's Conflict of Interest Corporate Standard. Management evaluates employee disclosures to determine whether, based upon the employee's job responsibilities, any Conflict of Interest exists (and whether to take any steps to address it).

~~(Please complete the is Disclosure section below even if you have no potential conflicts to disclose.)~~

**Check this box if you have no Conflicts of Interest to report.**

#### **Potential Conflicts of Interest:**

Name of Person or Entity:                      Relationship to Employee:

Description of Potential Conflict:

#### **Potential Conflicts of Interest:**

Name of Person or Entity:                      Relationship to Employee:

Description of Potential Conflict:

### **Employee Agreement**

By checking the box below, I confirm that I have read and understand the ERCOT Code of Conduct and CS7.6, Information Protection Corporate Standard, and have participated in any associated ethics training required by ERCOT. I agree to conduct myself in accordance with the principles and standards discussed in the ERCOT Code of Conduct and CS7.6, Information Protection Corporate Standard, and I have made any required disclosures below.

I agree to the foregoing terms.

Signature

Date





**Date:** August 1, 2017  
**To:** Board of Directors  
**From:** Chad V. Seely, Vice President, General Counsel and Corporate Secretary  
**Subject:** Ethics Agreements Forms for ERCOT Employees, Directors and Segment Alternates

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Directors Meeting Date:** August 8, 2017

**Item No.:** 9.1

**Issue:**

Whether the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) should approve modifications to the ERCOT Employee Ethics Agreement (Employee Agreement) proposed by ERCOT Legal and to allow the existing ERCOT Director and Segment Alternate Ethics Agreement (Director Agreement) to be utilized without any modifications.

**Background/History:**

The HR&G Committee Charter requires annual Committee review of the forms for the Employee Agreement and Director Agreement. The HR&G Committee is responsible for recommending any modifications to the forms for the Employee Agreement and Director Agreement to the Board for approval.

The Director Agreement, which is attached as Attachment A, was last modified on March 14, 2011. ERCOT Legal does not recommend any modifications at this time.

The Employee Agreement, which is attached as Attachment B, was last modified on September 17, 2013. ERCOT Legal does recommend modifications to the Employee Agreement. The Employee Agreement revisions do not alter or diminish the ethical requirements and obligations of ERCOT employees included in prior versions of the Employee Agreements. Rather, the revisions clarify the responsibilities of employees with respect to ERCOT confidential information that they may access in order to perform their jobs.

ERCOT Legal plans to use the revised agreement as part of the annual ERCOT ethics training for 2017. The training program includes a requirement that each ERCOT employee review the Employee Agreement, affirm his or her ethical compliance, and provide any appropriate disclosures of potential conflicts of interest.



**Key Factors Influencing Issue:**

The HR&G Committee Charter requires that the HR&G Committee perform an annual review of all ethics agreements for ERCOT employees, Directors and Segment Alternates, and make recommendations to the Board for approval of any modifications to such ethics agreements. Unless the Committee or Board directs ERCOT staff to make changes to the Director Agreement, there is no need to vote to approve the existing agreement. Since ERCOT Legal has proposed changes to the Employee Agreement, a vote of the Board is required to approve the revised version of the Employee Agreement.

**Conclusion/Recommendation:**

ERCOT Legal will request that the HR&G Committee review the existing Director Agreement (*Attachment A*), as contemplated by the HR&G Committee Charter, at its August 7, 2017 meeting.

ERCOT Legal will request that the HR&G Committee review the revised Employee Agreement (*Attachment B*), at its August 7, 2017 meeting, and vote to recommend its approval by the Board at its August 8, 2017 meeting. ERCOT Legal recommends that the Board approve the proposed changes to the Employee Agreement to become effective upon Board approval.



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

WHEREAS, after its meeting on August 7, 2017, the Human Resources and Governance (HR&G) Committee of the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) has recommended modifications to the ERCOT Employee Ethics Agreement in the form attached hereto; and

WHEREAS, after due consideration of the alternatives, the Board deems it desirable and in the best interest of ERCOT to approve such modifications to the ERCOT Employee Ethics Agreement;

THEREFORE, BE IT RESOLVED, that the Board hereby approves the modifications to the ERCOT Employee Ethics Agreement consistent with the form attached to this resolution, effective upon Board approval.

**CORPORATE SECRETARY'S CERTIFICATE**

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its August 8, 2017 meeting, the ERCOT Board passed a motion approving the above Resolution by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of August 2017.

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



### **Ethics Agreement for Directors and Segment Alternates**

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- Do any act with the intention of harming ERCOT or any of its operations.
- Receive an improper personal benefit from the operation of ERCOT.
- Use ERCOT’s assets, directly or indirectly, for any purpose other than in furtherance of ERCOT’s exempt purposes.
- Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will.
- Use ERCOT’s name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT Region.
- Disclose any of ERCOT’s or ERCOT Member’s business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.
- Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Energy Regulatory Commission (“FERC”) rules or become subject to any plenary jurisdiction of FERC.

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By my signature I, \_\_\_\_\_, acknowledge that I have read and understand the above Ethics Agreement and agree to be bound by its terms.

Director/Segment Alternate Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## EMPLOYEE ETHICS AND CONFIDENTIALITY AGREEMENT

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- D. I shall notify ERCOT immediately upon discovery of any unauthorized use or disclosure of ERCOT Confidential information and cooperate in any reasonable way to help ERCOT regain possession of the ERCOT Confidential information and prevent further unauthorized use or disclosure.
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Notwithstanding the forgoing, my disclosure of ERCOT Confidential information in response to a subpoena, court order, law enforcement investigation, or civil investigative demand shall not be deemed a violation of this agreement. I shall promptly inform ERCOT Legal prior to and prior to any such disclosure, unless impracticable to do so.

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### **Employee Agreement**

~~By checking the box below, I confirm that I have read and understand the ERCOT Code of Conduct and have participated in any associated ethics training required by ERCOT. I agree to conduct myself in accordance with the principles and standards discussed in the ERCOT Code of Conduct, and I have made any required disclosures below.~~

~~I agree to the foregoing terms.~~

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~~(Please complete the is Disclosure section below even if you have no potential conflicts to disclose.)~~

**Check this box if you have no Conflicts of Interest to report.**

#### **Potential Conflicts of Interest:**

Name of Person or Entity:                      Relationship to Employee:

Description of Potential Conflict:

#### **Potential Conflicts of Interest:**

Name of Person or Entity:                      Relationship to Employee:

Description of Potential Conflict:

### **Employee Agreement**

By checking the box below, I confirm that I have read and understand the ERCOT Code of Conduct and CS7.6, Information Protection Corporate Standard, and have participated in any associated ethics training required by ERCOT. I agree to conduct myself in accordance with the principles and standards discussed in the ERCOT Code of Conduct and CS7.6, Information Protection Corporate Standard, and I have made any required disclosures below.

I agree to the foregoing terms.



---

Signature

Date