



HR&G Agenda Item 7.1.2

ERCOT Legal Memorandum Regarding Southern Cross Membership

Dated February 15, 2018

Presented by ERCOT Legal to the
Technical Advisory Committee on
February 22, 2018



MEMORANDUM

To: Technical Advisory Committee (TAC)

From: Chad V. Seely, Vice President, General Counsel and Corporate Secretary
Vickie Leady, Assistant General Counsel and Assistant Corporate Secretary
Jonathan Levine, Senior Corporate Counsel

Date: February 15, 2018

Re: Proposed Amendments for ERCOT Bylaws: Proposed Amendments to
Segment Definitions for Southern Cross Transmission LLC (SCT)

Issue

In its Revised Order dated May 23, 2017 in PUC Project No. 46304, Oversight Proceeding Regarding ERCOT Matters Arising out of Docket No. 45624 (Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345-Kv Transmission Line in Rusk and Panola Counties), the Public Utility Commission of Texas (PUCT) directed ERCOT, among other things, “to determine the appropriate market segment for Southern Cross Transmission and any other entity.” (Directive #1) The purpose of this memorandum is to review the ERCOT Market Segments (Segments) and their definitions in the ERCOT Bylaws (Bylaws) to consider which Segment(s) would be appropriate for SCT, and what revisions, if any, to the Bylaws would be required to accommodate SCT’s participation in such Segment(s).

Brief Answer

Based on its anticipated activities in the ERCOT Region, SCT does not fit within any of the existing Segments as they are currently defined. One of the existing Segment definitions within the Bylaws would need to be amended to accommodate an Entity whose ERCOT-based activities are limited to owning or operating a Direct Current Tie (DC Tie) interconnected to the ERCOT Transmission Grid like SCT’s activities are expected to be. The two Segments whose Members’ activities most closely align with those of SCT are the Investor-Owned Utility (IOU) Segment and the Independent Power Marketer Segment.

Southern Cross Project Background

On September 6, 2011, SCT and Pattern Power Marketing LLC (Pattern Power) submitted an application to the Federal Energy Regulatory Commission (FERC) pursuant to sections 210, 211 and 212 of the Federal Power Act (FPA) (16 U.S.C. §§ 824i, j, k (2012)), which requested that FERC issue an order requiring the physical interconnection of new transmission facilities (the Southern Cross Project) with transmission facilities owned by the City of Garland, Texas (Garland) at a point near the Texas/Louisiana border and to direct Oncor Electric Delivery Company LLC (Oncor) and CenterPoint Energy Houston Electric, LLC (CenterPoint) to provide the transmission service necessary for Pattern Power and other eligible customers to deliver energy over the interconnection into and out of ERCOT.



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The Southern Cross Project involves the creation of transmission facilities that will connect, via DC Ties, the ERCOT System and the Eastern Interconnection. SCT and Pattern Power's application represents that SCT will develop, construct, own and operate a new, 400-mile high voltage direct current (HVDC) transmission line to provide incremental bi-directional transmission capacity of up to 3,000 MW of electric power into and out of the ERCOT System.¹ Pattern Power or other eligible customers are expected to utilize the transmission capacity made available by the Southern Cross Project to transact with load serving entities within the SERC Reliability Corporation (SERC) region. On May 15, 2014, the FERC issued a Final Order² directing the interconnection and provision of transmission service as requested in the application.

On February 25, 2016, Garland submitted an application to the PUCT for a certificate of convenience and necessity (CCN) for new transmission facilities necessary to interconnect the Southern Cross Project with its existing transmission facilities, as required by FERC's May 15, 2014 Final Order. On September 8, 2016, the PUCT issued its first Order approving the application.³ After granting SCT's Motions for Rehearing, the PUCT issued its final Order approving the application on May 23, 2017. Also on September 8, 2016, the PUCT issued an additional Order in a separate but related docket, which was subsequently revised on May 23, 2017 (Revised Order), to create a new project to address certain issues that must be resolved before Garland is permitted to energize the new transmission line.⁴ The Revised Order includes several directives to ERCOT, including Directive #1, which, in pertinent part, requires ERCOT to "determine the appropriate market segment for [SCT] and any other entity."

On September 7, 2017, ERCOT conducted a workshop regarding SCT's registration with ERCOT, which included discussion of the most appropriate Segment for SCT. At the workshop, representatives for SCT proposed that SCT be assigned to the IOU Segment and provided additional language for the Bylaws to expand the definition of the IOU Segment.⁵ Following the workshop, ERCOT solicited additional comments regarding this issue. The only other Entity to submit feedback regarding the appropriate Segment for SCT was Oncor Electric Delivery Company (Oncor), a Member of the IOU Segment, which recommended that SCT be assigned to the Independent Power Marketer Segment, and provided additional language for the Bylaws to expand the definition of the Independent Power Marketer

¹ SCT has since committed to the PUCT that it will limit the flow on the tie to 2,100 MW export and 2,000 MW import.

² Final Order Directing Interconnection and Transmission Service, Docket No. TX11-1-001, 147 FERC ¶ 61,113 (May 15, 2014).

³ Docket No. 45624, Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345-Kv Transmission Line in Rusk and Panola Counties.

⁴ Project No. 46304, Oversight Proceeding Regarding ERCOT Matters Arising out of Docket No. 45624 (Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345-Kv Transmission Line in Rusk and Panola Counties).

⁵ See ERCOT Workshop: A Discussion on Registration of Southern Cross Transmission LLC - Owner/Operator of a Merchant DC Tie, September 7, 2017, Market Segment Designation, Southern Cross Transmission LLC, available at <http://www.ercot.com/calendar/2017/9/7/131885>.



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Segment accordingly.⁶ This issue was also briefly discussed at the September 28, 2017 TAC meeting. No further written comments were submitted regarding SCT's Segment designation.

ERCOT Membership and Segments

ERCOT is a Texas 501(c)(4) non-profit corporation. Section 1.002(53)(B) of the Texas Business Organizations Code defines a "member" of a non-profit corporation as "a person who has membership rights in the nonprofit corporation under its governing documents."⁷ ERCOT's membership is defined through the Bylaws. Article 2, Section 19 defines "Member" as "A member of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of [the] Bylaws, or the member's appointed representative, as the context so requires." According to Section 3.1,⁸ Members must qualify in one of the following Segments as defined in Article 2:

- (1) Cooperative;
- (2) Independent Generator;
- (3) Independent Power Marketer;
- (4) Independent REP;
- (5) Investor-Owned Utility;
- (6) Municipal; or,
- (7) Consumer in one of three subsegments:
 - (i) Commercial (which is further divided into Large and Small Commercial Consumer);
 - (ii) Industrial; and
 - (iii) Residential.

Section 3.2 of the Bylaws provides for three types of Members with different rights and dues: Corporate, Associate and Adjunct. Corporate Members have the right to vote on all matters submitted to the general Membership, such as the election of Directors, the election of TAC Representatives, and amendments to the Bylaws or ERCOT Articles of Incorporation. Associate and Adjunct Members do not have such voting rights. Corporate and Associate Members may be elected or appointed to the ERCOT Board of Directors (Board), TAC, or any subcommittee of the Board or TAC, but Adjunct Members may not. Given their voting rights, Corporate Members of ERCOT play a critical role in the corporate governance of ERCOT.

⁶ See *id.*, Market Participant Feedback and Input Provided September 22, 2017 (Oncor Comments).

⁷ Members of a nonprofit corporation can be analogized to shareholders of a for-profit corporation, but without ownership rights or stock.

⁸ Section 3.1 further provides:

- (b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.
- (c) The Board may adopt and amend Member application procedures.



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Being a Member of ERCOT is distinct from status as an ERCOT Market Participant. Section 2.1 of the ERCOT Protocols defines “Market Participant” as:

An Entity, other than ERCOT, that engages in any activity that is in whole or in part the subject of these Protocols, regardless of whether that Entity has signed an Agreement with ERCOT. Examples of such an Entity include but are not limited to the following: [Load Serving Entity (LSE), Qualified Scheduling Entity (QSE), Congestion Revenue Right (CRR) Account Holder, Resource Entity, Independent Market Information System Registered Entity (IMRE) and Renewable Energy Credit (REC) Account Holder].

Many Entities are Market Participants but not Members. There are approximately 300 Members of ERCOT and approximately 1,700 Market Participants. Market Participants that are not Members do not have the rights afforded to Members as described above, such as the right to elect Directors or TAC Representatives. A Market Participant does not need to be a Member, and in fact some types of Market Participants would typically not satisfy any of the current Segment definitions and thus would be ineligible to be a Member, such as IMREs, or CRR Account Holders and REC Account Holders that do not perform additional functions in the ERCOT markets.

The existence of the Segments is established in the Bylaws. Neither the Public Utility Regulatory Act (PURA) nor the PUCT Substantive Rules specify the Segments that must exist, although PUCT Substantive Rule 25.362(g)(1)(A) states that ERCOT shall establish and implement criteria for an individual to serve on the Board, which shall include “[d]efinitions of the market sectors” However, PURA § 39.151(g) states that the Board “must be composed” of certain specific members, including “six market participants elected by their respective market segments to serve one-year terms,” with one representing each of independent generators, investor-owned utilities, power marketers, retail electric providers, municipally owned utilities and electric cooperatives, plus one member representing industrial consumers and one representing large commercial consumers.⁹ Accordingly, while ERCOT could create one or more additional Segments beyond those in existence today, any such Segment would not be entitled to be represented on the Board without an amendment to PURA.¹⁰

⁹ The Board must also include the chief executive of the Office of Public Utility Counsel as an *ex officio* voting member representing residential and small commercial consumer interests. See PURA § 39.151(g)(2).

¹⁰ If a new Segment or subsegment was created without an amendment to PURA to grant such new Segment or subsegment a seat on the Board, it may be nonetheless possible to amend the Bylaws to grant the new Segment or subsegment voting rights for TAC and its subcommittees.

Analysis

Based on the role it is expected to have in the ERCOT markets, SCT will be a Market Participant since it will engage in activities that are the subject of the Protocols.¹¹ However, as noted above, Market Participants do not need to be Members, and in fact many are not. To be a Member, an Entity must meet at least one of the Segment definitions. As described above, there are seven Segments defined in the Bylaws. As defined, none of the Segments include Entities that own or operate a DC Tie but do not own other facilities in the ERCOT Region. Accordingly, in order to accommodate SCT’s membership without creating a new Segment, one of the existing Segments would need to be modified.

Most of the Segments do not appear to be an appropriate fit for SCT. Although SCT does not meet all of the requirements for any existing Segment, the two Segments that most reasonably align with SCT’s structure and anticipated activities in the ERCOT markets are the IOU Segment and the Independent Power Marketer Segment.

1. Investor-Owned Utility Segment

Article 2, Section 15 of the Bylaws defines IOU as follows:

Investor-Owned Utility (“IOU”).

- a. 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);
- b. A public utility holding company of any such electric utility.

The term “electric utility” is defined in PURA § 31.002(6) as follows:

“Electric utility” means a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

¹¹ Nodal Protocol Revision Request (NPRR) 857, Creation of Direct Current Tie Operator Market Participant Role, is currently proceeding through the ERCOT stakeholder process for Protocol revisions. NPRR857 would create a new Market Participant role of “Direct Current Tie Operator.” It was submitted by ERCOT to address part of Directive #1 that requires ERCOT to “determine the appropriate market participation category for [SCT] and for any other entity associated with the Southern Cross DC Tie for which a new market-participant category may be appropriate (creating new ones if necessary)”

- (A) a municipal corporation;
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) this state or an agency of this state; or
- (J) a person not otherwise an electric utility who:
 - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
 - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
 - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.

SCT is not an “electric utility” as defined above because it will not own facilities within the State of Texas. However, SCT does share several characteristics with current IOU Segment Members. SCT is investor-owned. While not an “electric utility” and therefore not a “public utility” under PURA, SCT is a “public utility” as defined in the FPA.¹² The primary function of SCT’s business in the ERCOT Region is the operation of high-voltage transmission facilities, albeit facilities that, as proposed, would not lie within the State of Texas. SCT will also be engaged in “transmission service” as that term is defined in the PUCT Substantive Rules.¹³

On the other hand, there are also key differences between SCT and current IOU Segment Members. Unlike other IOUs, SCT is not subject to the ratemaking jurisdiction of the PUCT. SCT will not have a Texas tariff or charge or collect transmission rates in the ERCOT Region. Another difference from other IOUs is that the facilities SCT will operate essentially constitute only a single point of injection and withdrawal on the ERCOT System over which power may be transferred to another system as part of a wholesale transaction, whereas other IOUs operate transmission networks in the ERCOT Region that ultimately serve retail consumer load in ERCOT. Further, unlike other IOUs, SCT is likely to engage in relatively limited information exchange and coordination with ERCOT and other Transmission Operators.

¹² 16 U.S.C. § 824(e).

¹³ PUCT Substantive Rule 25.191, Transmission Service Requirements, provides in pertinent part: “Transmission service under Division 1 of this subchapter includes the provision of transmission service to an entity that is scheduling the export or import of power from the ERCOT region across a DC tie.”



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In its presentation at the September 7, 2017 workshop, SCT proposed the following Bylaws revisions to accommodate SCT's membership within the IOU Segment:

(1) Insert a new Section 11 in Article 2, to read as follows:

Independent DC Tie Operator. Any entity which is not a Transmission and Distribution ("T&D") Entity or Affiliate of a T&D Entity and that (i) owns or operates a Direct Current Tie ("DC Tie") interconnected to the ERCOT Transmission Grid, or (ii) is preparing to own or operate a DC Tie to be interconnected to the ERCOT Transmission Grid.

(2) Amend Article 2, Section 15 to read as follows:

Investor-Owned Utility ("IOU").

a. 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);

b. A public holding company of any such electric utility; or

c. An Independent DC Tie Operator.

The language above would generally be sufficient to expand the definition of IOU to include Entities such as SCT. If this language were conceptually acceptable, ERCOT would recommend that references to the ERCOT Transmission Grid be replaced with "ERCOT System," consistent with the definition of "Direct Current Tie Operator (DCTO)" proposed in NPRR857.

Furthermore, allowing entities who are merely "*preparing to own or operate a DCT Tie*" to be ERCOT Members without demonstrating any further qualification would be inconsistent with the standards for membership in other Segments. Most of the Segment definitions require the participant to be actively engaged in the market activity that defines the segment. The definition of "Independent Generator," by contrast, includes a proviso that includes entities "preparing to operate" generation assets; however, it includes several important restrictions to ensure the definition includes only those entities that have taken steps demonstrating a significant likelihood that the entity will operate one or more generation assets. Specifically, any entity that "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" may become a Member of the Independent

Generator Segment. Similar requirements may be appropriate to allow entities preparing to operate as an “Independent DC Tie Operator” to qualify as such if the definition proposed by SCT is otherwise acceptable.

2. *Independent Power Marketer Segment*

Article 2, Section 11 of the Bylaws defines Independent Power Marketer as follows:

Independent Power Marketer. Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.

“Power marketer” is defined in the PUCT Substantive Rule 25.5(83) as follows:

Power marketer — A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

SCT does satisfy the second and third parts of the PUCT definition – i.e., SCT does not and will not own generation, transmission or distribution facilities in the State of Texas, and does not and will not have a certificated service area. In addition, as noted in the September 22, 2017 Oncor Comments, classifying DC Tie Operators as Independent Power Marketers would parallel the classification of aggregators as Independent Retail Electric Providers.¹⁴

However, SCT will not buy, sell or take title to electric energy in the State of Texas, so it does not fall within the PUCT definition of “power marketer” and therefore also does not meet the ERCOT definition of Independent Power Marketer.

The September 22, 2017 Oncor Comments proposed the following revisions to Article 2, Section 13 of the Bylaws to accommodate SCT’s membership within the Independent Power Marketer Segment:

Independent Power Marketer. Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region. For the purposes of Segment classification, a DC Tie Operator, if such Member does not fit in any other classification, shall participate as an Independent Power Marketer.

¹⁴ See Bylaws Article 2, Section 13 (“For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.”).



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The language above would be sufficient to expand the definition of IOU to include Entities such as SCT, although the Bylaws would have to be further revised to include a new definition for “DC Tie Operator” such as that proposed in part 2 above.

3. Remaining Segments: Consumer, Cooperative, Independent Generator, Independent Retail Electric Provider, Municipal

There are no clear points in favor of assigning SCT to one of the five remaining Segments: Consumer, Cooperative, Independent Generator, Independent Retail Electric Provider and Municipal. No comments have been received suggesting that SCT be assigned to any of these five Segments.

Article 2, Section 2 of the Bylaws defines Consumers as “Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.” Residential Consumers, Commercial Consumers and Industrial Consumers are further defined as follows:

Commercial Consumers. A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater than 1000 kilowatts. 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.

Industrial Consumers. 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.

Residential Consumers. 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.

(Bylaws Article 2, Sections 3, 14 and 22.)

SCT will not consume energy in the ERCOT Region. SCT will, however, have interests in the electric industry in a capacity other than as an end-use consumer.

Article 2, Section 4 of the Bylaws defines Cooperative as follows:

Cooperative. An entity operating in the ERCOT Region that is:

- a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
- b. 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;
- c. a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or
- d. a River Authority as defined in Tex. Water Code §30.003.

SCT is not organized as a cooperative, nor is it a River Authority, under the laws referenced in the definition.

Article 2, Section 11 of the Bylaws defines Independent Generator as follows:

Independent Generator. Any entity that is not a Transmission and Distribution (“T&D”) Entity¹⁵ or Affiliate of a T&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

¹⁵ Bylaws Article 2, Section 27 defines T&D Entity as “[a]ny entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a ‘retail electric utility,’ as defined in PURA §37.001, operating in the ERCOT Region.”



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written authorization to proceed with construction and has provided security to the connecting transmission provider.

SCT will not own, operate or control any generation Facilities in the ERCOT Region.

Article 2, Section 12, of the Bylaws defines Independent Retail Electric Provider as follows:

Independent REP. 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&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.

PURA § 17.002(6) defines “retail electric provider” as “a person that sells electric energy to retail customers in this state after the legislature authorizes a customer to receive retail electric service from a person other than a certificated retail electric utility.”

SCT will not sell electric energy to retail customers in Texas or otherwise serve retail electric customers and is therefore not eligible for certification as a REP by the PUCT.

Article 2, Section 20 of the Bylaws defines Municipal as follows:

Municipal. 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.

SCT is not municipally owned, nor is it a River Authority, under the laws referenced in the definition.

Process for Bylaws Amendment

Amending one of the existing Segment definitions to accommodate SCT’s membership would require an amendment to the Bylaws. The process for amending the Bylaws involves several steps. First, a proposed amendment must be approved by the Board. Second, Corporate Members must vote to enact the Board-approved amendment. Finally, after Board and Membership approval, the PUCT must approve the amendment.

Failure to Reach Consensus on Modifying an Existing Segment to Accommodate SCT

As noted above, Directive #1 in the PUCT’s Revised Order requires ERCOT to “determine the appropriate market segment for [SCT]” This language in the Revised Order does



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not expressly account for the possibility that ERCOT Members could fail to obtain a sufficient vote (i.e., approval by at least four of the seven segments) to modify the Bylaws to accommodate SCT's membership in an existing Segment. If that were to happen, ERCOT would need to seek guidance from the PUCT regarding whether such a determination would satisfy Directive #1. ERCOT would also need to seek PUCT guidance if the Membership determines that establishing a new segment for SCT would be preferable, given language in the May 23, 2017 Order on Rehearing indicating that SCT should be placed in an "existing" segment.¹⁶

Conclusion

It is recommended that TAC consider the IOU and Independent Power Marketer Segments as appropriate Segments for SCT. The activities of typical Members in these two Segments more closely align with those of SCT than the activities of typical Members in the Consumer, Cooperative, Independent Generator, Independent Retail Electric Provider or Municipal Segments.

¹⁶ PUC Docket 45624, Order on Rehearing at 24, Finding of Fact 40.