



## **HR&G Agenda Item 7.2.3.1**

### ***Proposed Amendments to Articles of Incorporation***

### **Clean Version**

**AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.  
(A Texas Nonprofit Corporation)**

Pursuant to the provisions of the Texas Business Organizations Code (the “**TBOC**”), Electric Reliability Council of Texas, Inc., a Texas nonprofit corporation (the “**Corporation**”), hereby adopts this Amended and Restated Certificate of Formation (the “**Restated Certificate**”), which accurately states the text of the Amended and Restated Articles of Incorporation (as amended, the “**Restated Articles**”) being restated and each amendment to the Restated Articles being restated that is in effect, and as further amended by the attached Restated Certificate of Formation. The attached Restated Certificate of Formation does not contain any other change in the Restated Articles being restated except for the information permitted to be omitted by the provisions of the TBOC applicable to the Corporation.

1. The name of the Corporation is Electric Reliability Council of Texas, Inc.
2. The type of entity of the Corporation is a nonprofit corporation. The file number issued to the Corporation by the Secretary of State is 116906401. The date of formation of the Corporation is October 10, 1990.
3. Each new amendment has been made in accordance with the provisions of the TBOC. The amendments to the Restated Articles and the Restated Certificate have been approved in the manner required by the TBOC and by the governing documents of the Corporation.
4. This document becomes effective when the document is filed by the Secretary of State.

The undersigned affirms that the person designated as registered agent in the Restated Certificate has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
William L. “Bill” Magness, President and CEO

**EXHIBIT A**  
**RESTATED CERTIFICATE OF FORMATION  
OF  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

**ARTICLE ONE  
NAME**

The name of the Corporation is Electric Reliability Council of Texas, Inc.

**ARTICLE TWO  
NONPROFIT CORPORATION**

The Corporation is a nonprofit corporation.

**ARTICLE THREE  
DURATION**

The period of its duration is perpetual.

**ARTICLE FOUR  
PURPOSE**

The Corporation is not organized for profit and shall be operated exclusively for the promotion of social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the “**Code**”). The purposes of the Corporation are to:

(a) Promote 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, and performing the functions of an Independent Organization as certified by the Public Utility Commission of Texas; and

(b) Engage in any lawful act or activity consistent with the foregoing for which nonprofit corporations may be formed under the TBOC.

**ARTICLE FIVE  
REGISTERED OFFICE AND AGENT**

The street address of the Corporation’s registered office is 7620 Metro Center Drive, Austin, Texas 78744, and the name of the Corporation’s registered agent at such address is William L. “Bill” Magness.

**ARTICLE SIX  
BOARD OF DIRECTORS**

The management of the Corporation is vested in the Board of Directors and such committees of the Board that the Board may, from time to time, establish. The composition of the

Board of Directors is legislatively mandated through Section 39.151 of the Public Utility Regulatory Act and requires sixteen (16) directors to serve on the Board. The Bylaws provide the qualifications, manner of selection, duties, terms and other matters relating to the Board of Directors. The names and addresses of the persons currently serving as directors of the Corporation, as identified by their respective segments and roles, are:

<p><b>Consumer – Residential and Small Commercial Subsegment– Public Counsel Ex Officio Director</b></p> <p>Tonya Baer c/o Office of Public Utility Counsel 1701 North Congress Avenue, Suite 9-180 Austin, Texas 78701</p>	<p><b>Consumer – Large Commercial Subsegment Director</b></p> <p>Nick Fehrenbach c/o City of Dallas 1500 Marilla, Room 4F North Dallas, Texas 75201</p>
<p><b>Consumer – Industrial Subsegment Director</b></p> <p>Sam Harper c/o Gerdau 300 Ward Road Midlothian, Texas 76065</p>	<p><b>Cooperative Segment Director</b></p> <p>Clifton Karnei c/o Brazos Electric Power Cooperative 7616 Bagby Avenue Waco, Texas 76702-2585</p>
<p><b>ERCOT Chief Executive Officer - Ex Officio Director</b></p> <p>William L. “Bill” Magness c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>	<p><b>Independent Generator Segment</b></p> <p>Kevin Gresham c/o E.ON North America LLC 701 Brazos Street, Suite 1400 Austin, Texas 78701</p>
<p><b>Independent Power Marketer Segment Director</b></p> <p>Keith Emery c/o Tenaska Power Services 1701 East Lamar Boulevard, Ste. 100 Arlington, Texas 76006</p>	<p><b>Independent Retail Electric Provider Segment Director</b></p> <p>Rick Bluntzer c/o Just Energy Texas, LP 5251 Westheimer Road, Suite 1000 Houston, Texas 77056</p>
<p><b>Investor-Owned Utility Segment Director</b></p> <p>Kenny Mercado c/o CenterPoint Energy P.O. Box 4467 Houston, Texas 77510</p>	<p><b>Municipal Segment Director</b></p> <p>Carolyn Shellman c/o CPS Energy 145 Navarro St., MD #101011 San Antonio, Texas 78205</p>

<p><b>Public Utility Commission of Texas Chairman – <i>Ex Officio</i> Director (nonvoting)</b></p> <p>Chairman DeAnn Walker c/o Public Utility of Commission of Texas 1701 N. Congress Ave. P.O. Box 13326 Austin, Texas 78711</p>	<p><b>Unaffiliated Director</b></p> <p>Craven Crowell c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>
<p><b>Unaffiliated Director</b></p> <p>Peter Cramton c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>	<p><b>Unaffiliated Director</b></p> <p>Karl Pfirrmann c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>
<p><b>Unaffiliated Director</b></p> <p>Judy Walsh c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>	<p><b>Unaffiliated Director</b></p> <p>Vacant</p>

**ARTICLE SEVEN  
POWERS**

Except as this Restated Certificate of Formation otherwise provides, the Corporation has all the powers provided by the TBOC. Moreover, the Corporation has all the implied powers necessary and proper to carry out its express powers.

**ARTICLE EIGHT  
RESTRICTIONS AND REQUIREMENTS**

The Corporation shall have no capital stock, and no Member shall be obligated or entitled to subscribe to or hold capital stock or other evidence of ownership in order to exercise its rights to participate in the Corporation.

The Corporation may not pay dividends or other corporate income to its Members, directors, or officers, or otherwise accrue distributable profits, or permit realization of private gain. The Corporation may not take any actions prohibited by the TBOC.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to any Member, any director or any officer of the Corporation or any other individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and reimbursement for expenses incurred, for the benefit of the Corporation, and to make payments and distributions in furtherance of the purposes set forth in Article Four hereof. Notwithstanding any other provision of this Restated Certificate of Formation, the Corporation shall not carry on any activities not permitted to be carried on by an organization

exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(4) of the Code.

Subject to Public Utility Commission Substantive Rule 16 Tex. Admin. Code § 25.364, upon the winding up and termination of the Corporation, the Board of Directors shall dispose of and distribute the assets remaining, after the payment or provision for all liabilities, exclusively for the purposes of the Corporation, to such organization or organizations, and in such proportions and amounts, and in such manner, as the Board of Directors may determine, provided that each such organization is organized and operated exclusively as an organization exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or to the federal government, or to a state or local government, for a public purpose.

## **ARTICLE NINE MEMBERS**

The Corporation may have Members as provided in the Bylaws. The Bylaws may be altered, amended or repealed or new Bylaws adopted, by the Members, if allowed, through a procedure set forth in the Bylaws or any other manner set forth in the Bylaws.

## **ARTICLE TEN ACTION WITHOUT A MEETING**

Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Members, Board of Directors or of any committee thereof may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Members, directors or committee members as would be necessary to take that action at a meeting at which all of the Members, directors or members of the committee were present and voted.

## **ARTICLE ELEVEN LIMITATION OF LIABILITY OF DIRECTORS**

A director shall not be liable to the Corporation or its Members for monetary damages for any act or omission in the director's capacity as a director, except that this provision does not eliminate or limit the liability of a director for:

- A. a breach of a director's duty of loyalty to the Corporation or its Members;
- B. an act or omission not in good faith that constitutes a breach of duty of the director to the Corporation or that involves intentional misconduct or a knowing violation of the law;
- C. a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- D. an act or omission for which the liability of a director is expressly provided by statute.

If the TBOC is amended to authorize action further eliminating or limiting the personal liability of directors, the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by such statutes, as so amended. Any repeal or modification of Article

Eleven shall not adversely affect any right of protection of a director of the Corporation existing at the time of such repeal or modification.

## **ARTICLE TWELVE CONSTRUCTION**

All references in this Restated Certificate of Formation to statutes, regulations, or other sources of legal authority refer to the authorities cited, or their successors, as they may be amended from time to time.