



## **HR&G Agenda Item 7.2.3.2**

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

### **Redlined Version**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**OF CERTIFICATE OF FORMATION**  
**OF**  
**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**  
**(A Texas Non-Profit Nonprofit Corporation)**

Pursuant to the provisions of the Texas Business Organizations Code (the "TBOC"), Electric Reliability Council of Texas, Inc., (sometimes also referred to as "ERCOT" or "ERCOT ISO") a Texas non-profit nonprofit corporation, pursuant to the provisions of Article 1396 4.06 of the Texas Non-Profit (the "Corporation Act"), hereby adopts the following this Amended and Restated Articles of Incorporation Certificate of Formation (the "Restated Certificate"), which accurately copy the states the text of the Amended and Restated Articles of Incorporation as amended by all amendments thereto that are in effect to date (as amended, the "Restated Articles") being restated and each amendment to the Restated Articles being restated that is in effect, and as further amendments including revisions to Articles Four through Eleven and the addition of an Articles Twelve and Thirteen by these Amended and Restated Articles of Incorporation. Such Amended and Restated Articles of Incorporation contain no other change in any provision thereof. Amendments through these Amended and Restated Articles of Incorporation were approved by at least a two-thirds vote at a meeting of a quorum of ERCOT Members held on August 16, 2000. 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.

~~*The effective date of these Amended and Restated Articles of Incorporation is December 19, 2000.*~~

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

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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~~ Corporation is “Electric Reliability Council of Texas,  
Inc.”

**~~ARTICLE TWO NON-PROFIT~~**  
**NONPROFIT CORPORATION**

The ~~corporation~~ Corporation is a ~~non-profit~~ nonprofit corporation.

**ARTICLE THREE**  
**DURATION**

The period of its duration is perpetual.

**ARTICLE FOUR**  
**PURPOSE**

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~~\_\_\_\_\_~~ The corporation is formed for the limited purpose of:  
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:

~~Promoting~~(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 Council ~~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~~Corporation's registered office is ~~7200 N. MoPac Expressway, Suite 250, 7620 Metro Center Drive, Austin, Texas 78731, 78744,~~ and the name of the ~~corporation~~Corporation's registered agent at such address is ~~Thomas E. Noel~~William L. "Bill" Magness.

**ARTICLE SIX**  
**BOARD OF DIRECTORS**

**CURRENT BOARD MEMBERS**

Joseph J. Beal, PE  
Lower Colorado River Authority  
P.O. Box 220  
Austin, TX 78767

Mike Greene  
TXU Electric & Gas  
1601 Bryan Street, 42<sup>nd</sup> Floor  
Dallas, TX 75201-3411

David L. Grubbs  
South Texas Electric Cooperative  
P.O. Box 119  
Nursery, TX 77976-0119

Jill Hall  
2900 Stratford Drive  
Austin, TX 78746-4629

Jim Harder

Trudy Harper

~~Garland Power & Light  
504 W. State Street  
Garland, TX 75040~~

~~Jack Hawks  
PG&E Generating Company  
7500 Old Georgetown Rd, 13<sup>th</sup> Floor  
Bethesda, MD 20814 6161~~

~~Clifton B. Karnei  
Brazos Electric Power Coop, Inc.  
P.O. Box 2585  
Waco, TX 76702 2585~~

~~Ron Lancelos  
Oxy Permian LTD  
P.O. Box 4294  
Houston, TX 77079~~

~~Bob Manning  
HEB Grocery Company  
P.O. Box 839999  
San Antonio, TX 78283~~

~~David M. McClanahan  
Reliant Energy  
1111 Louisiana  
Houston, TX 77002~~

~~Robert Merett  
Magic Valley Electric Cooperative  
P.O. Box 267  
Mercedes, TX 78570~~

~~John Stauffacher  
Dynege, Inc.  
1000 Louisiana, Suite 5800  
Houston, TX 77001~~

~~Chairman Pat Wood, III  
Public Utility Commission  
P.O. Box 13326  
Austin, TX 78711 3326~~

~~Tenaska Energy, Inc.  
2000 E. Lamar Blvd, Suite 450  
Arlington, TX 76006~~

~~David Itz  
Calpine  
700 Louisiana, Suite 2700  
Houston, TX 77002~~

~~Robin Kittel  
Enron Energy Services, Inc.  
701 Brazos, Suite 310  
Austin, TX 78701~~

~~Milton B. Lee  
City Public Service  
P.O. Box 1771  
San Antonio, TX 78296 1771~~

~~Chuck B. Manning  
Austin Energy  
721 Barton Springs Rd  
Austin, TX 78704 1194~~

~~Suzi McClellan  
Office of Public Utility Counsel  
P.O. Box 12397  
Austin, TX 78711 2397~~

~~Thomas E. Noel  
ERCOT  
7200 N. Mopac, Suite 250  
Austin, TX 78731~~

~~Brian Tierney  
American Electric Power Service Corporation  
1 Riverside Plaza, 14<sup>th</sup> Floor  
Columbus, OH 43215 2372~~

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

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

**ARTICLE SEVEN  
POWERS**

Except as ~~these Articles~~ this Restated Certificate of Formation otherwise ~~provide~~ provides, the ~~corporation~~ Corporation has all the powers provided by the ~~Texas Non-Profit Corporation Act~~ TBOC. Moreover, the ~~corporation~~ Corporation has all the implied powers necessary and proper to carry out its express powers.

**ARTICLE EIGHT  
RESTRICTIONS AND REQUIREMENTS**

The ~~corporation~~ 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~~ Corporation.

The ~~corporation~~ 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 ~~act~~ actions prohibited by the ~~Texas Non-Profit Corporation Act~~ TBOC.

No part of the net earnings of the ~~corporation~~ Corporation shall inure to the benefit of, or be distributable to ~~the Members participating in the corporation or to trustees, officers or other private persons, except that the corporation~~ 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 these ~~Articles, the corporation~~this Restated Certificate of Formation, the Corporation shall not carry on any activities not permitted to be carried on by a ~~corporation~~an organization exempt from federal income tax under ~~applicable provisions~~Section 501(a) of the Internal Revenue Code, as in effect from time to time. Upon dissolution of the corporation 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 paying the payment or making provision for the payment of all of the liabilities of the corporation, shall dispose of all of the assets of the corporation in accordance with applicable law in such manner or 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 applicable provisions of the Internal Revenue Code, 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~~Corporation may have Members as provided in the Bylaws. The Bylaws may be altered, amended or repealed or new Bylaws adopted, by the ~~Members of ERCOT~~, if allowed, through a procedure set forth in the Bylaws or any other manner set forth in the Bylaws.

## **ARTICLE TEN MANAGING BODY**

~~———— The management of the corporation is vested in Board of Directors and such committees of the Board that the Board may, from time to time, establish. The Bylaws provide the qualifications, manner of selection, duties, terms, and other matters relating to the Board of Directors. The number of voting directors of the corporation shall be fixed in the Bylaws, but shall not be less than six (6).~~————

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

A director shall not be liable to the ~~corporation~~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~~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 Texas Miscellaneous Corporation Laws Act or the Texas Non-Profit Corporation Act~~If the TBOC is amended to authorize action further eliminating or limiting the personal liability of directors, ~~then, after approval by the members of the corporation,~~ the liability of a director of the ~~corporation~~Corporation shall be eliminated or limited to the fullest extent permitted by such statutes, as so amended. Any repeal or modification of ~~the foregoing paragraph~~Article Eleven shall not adversely affect any right of protection of a director of the ~~corporation~~Corporation existing at the time of such repeal or modification.

**ARTICLE ~~THIRTEEN~~TWELVE**  
**CONSTRUCTION**

All references in ~~the Articles~~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.

~~IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 3rd day of January, 2001.~~

Margaret Uhlig Pemberton, Secretary  
~~Electric Reliability Council of Texas, Inc.~~



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