



TAC Workshop: Amendments to ERCOT Bylaws

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ERCOT Governing Documents Amendments

ERCOT Legal expects to propose for vote and approval amendments to the ERCOT Articles of Incorporation and Bylaws at the August 6-7, 2018 Human Resources and Governance Committee (HR&G) and Board of Directors meetings.

ERCOT Legal expect to seek TAC endorsement on such proposed amendments at the July 26, 2018 Technical Advisory Committee (TAC) meeting.

Expected Schedule

Date	Meeting	Purpose
06.28.2018	TAC	ERCOT Legal reports on the June 19, 2018 TAC Workshop on Amendments to ERCOT Bylaws
07.26.2018	TAC	Discuss Articles of Incorporation (Articles) and Bylaws amendments proposed by ERCOT Legal and stakeholders; TAC can vote to endorse amendments if desired, but not required
08.06-07.2018	HR&G Committee/ Board of Directors	Request recommendation by HR&G Committee and Board approval for amendments to Articles and Bylaws and for Board approval to call Special Meeting of Corporate Members
09.2018	Special Meeting of Corporate Members	Request approval by Corporate Members subject to PUCT approval
09.2018	--	ERCOT Legal will file petition for approval of amendments with the PUCT. Absent PUCT approval, amendments cannot be effective

ERCOT Bylaws Amendments

ERCOT Legal proposes amendments to the Bylaws on the following:

1. Affiliate definition, which is the primary topic of the workshop
2. Officer definition, updates to legal code references and corrections to scrivener's errors

ERCOT Legal's Proposed Affiliate Definition

ERCOT Legal is proposing a revised Affiliate definition after a drafting session on Luminant's May 23, 2018 comments with Luminant and Oncor.

ERCOT Legal will discuss this version and receive any additional stakeholder comments during the workshop.

1. **Affiliate.** Affiliate shall mean, with respect to any person, any other person who, directly or indirectly, through one or more intermediaries: (i) controls, is controlled by, or is under common control with such person, as set forth in item (B) below; or (ii) exercises substantial influence over such person, is substantially influenced by such person, or is under common substantial influence with such person, as set forth in item (C) below. Membership in ERCOT shall not create an affiliation with ERCOT.

(A) Construction

As used in this definition:

(x) “person” shall mean any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, or other entity, but shall exclude electric cooperatives and all of the entities listed in Section 11.0042(a)(1)-(4) of the Public Utility Regulatory Act (“PURA”), as well as the entities listed in PURA § 11.0042(a)(5) if the conditions in PURA §11.0042(a)(5)(A) and (B) are satisfied; and

(y) “controls”, “controlled by”, or “under common control with” shall mean the possession by a person, directly or indirectly, through one or more intermediaries, of the power to direct or cause the direction of the management and/or policies and procedures of another person, whether through voting securities, contract or otherwise.

(B) Affiliation Through Control

Ownership by a person of equity securities (whether publicly traded or not) of another person shall result in a presumption of no control for purposes of this definition if:

1. the holder owns (in its name or via intermediaries) less than 20 percent of the outstanding securities of the person; or
2. the holder owns (in its name or via intermediaries) 20 percent or more of the outstanding securities of the person, and:
 - a. the securities are held as an investment;
 - b. the holder does not have representation on the person’s board of directors (or equivalent governing body) or vice versa; and
 - c. the holder does not in fact exercise influence over day to day management decisions.

An ownership interest of 20 percent or more without all of the conditions set forth in item (2)(a) through (c) above shall create a rebuttable presumption of control.

For purposes of determining whether two otherwise unrelated persons are affiliated based on a holder's ownership of equity securities of both persons, the holder's ownership interest shall not result in common control for purposes of this definition if such holder's ownership meets the foregoing conditions for either person.

(C) *Affiliation Through Substantial Influence*

A person who is not controlling, controlled by or under common control with another person as described in item (B) above, may nonetheless be determined to be an Affiliate of another person, if ERCOT staff or another Member alleges that such person, directly or indirectly, through one or more intermediaries, exercises substantial influence over such person, is substantially influenced by such person, or is under common substantial influence with such person. Such a determination may be made by the Board only after notice and an opportunity for hearing at an ERCOT Board meeting. The burden of proof to show substantial influence is on ERCOT staff or the Member alleging such influence.

(D) *Procedure for Board Determinations Regarding Affiliation*

Any person wishing to rebut a presumption of control pursuant to item (B) above, or ERCOT staff or any Member wishing to allege a circumstance of substantial influence pursuant to item (C) above, may submit to the Board a request to be heard, and the Board shall have discretion to determine whether or not the persons are Affiliates of one another for the purpose of determining Member Segment and voting rights by reference to the factors set forth in this definition and other persuasive evidence.

(E) *Changes in Affiliates*

Members shall notify ERCOT of any change in Affiliates in accordance with Section 3.3(c) of these Bylaws.