

The Human Resources and Governance (HR&G) Committee is expected to consider HR&G Committee Agenda Item 7.1:

Recommendation regarding Proposed Amendments to the ERCOT Articles of Incorporation

at its meeting on August 6, 2018.

The Board of Directors is expected to hear this matter as part of the HR&G Committee Report at the Board meeting on August 7, 2018.

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



Date: July 31, 2018
To: Board of Directors
From: Chad V. Seely, ERCOT Vice President, General Counsel and Corporate Secretary
Subject: Proposed Amendments to the ERCOT Articles of Incorporation

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: August 7, 2018

Item No.: 11.1

Issue:

Whether the ERCOT Board of Directors (Board) should approve amendments to the ERCOT Articles of Incorporation, as recommended by the Human Resources and Governance (HR&G) Committee and subject to approval by the ERCOT Corporate Members and by the Public Utility Commission of Texas (PUCT or Commission).

Background/History:

Articles Review and Revision Process

ERCOT currently operates pursuant to the *Amended and Restated Articles of Incorporation of Electric Reliability Council of Texas* (Articles), which became effective on December 19, 2000.

Section 13.2 of the Bylaws, Section 22.164 of the Texas Business Organizations Code, PUCT Substantive Rule Section 25.362(c), and the HR&G Committee Charter provide the requirements and process for approval of any Articles amendments. In brief, the Articles may be amended as follows:

1. **Placement of Proposal on Board Agenda After HR&G Committee Review and Recommendation:** Given the delegation of duties from the Board to the HR&G Committee for review of ERCOT's governing documents, the HR&G Committee would first review and make a recommendation to the Board on such proposal prior to placing the proposal on the Board agenda.
2. **Board Recommendation to Corporate Members for Approval:** If the Board votes to approve the proposal, the Board requests a vote by the Corporate Members, whether at a Special Meeting of the Corporate Members or the Annual Membership Meeting.
3. **Vote by Corporate Members:** As required by the procedures in Section 22.164 of the Texas Business Organizations Code, an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Articles.
4. **Filing of Petition for Approval of Articles of Incorporation Amendment with the Commission:** If the Corporate Members vote to approve the proposal, then ERCOT Legal will seek the approval of the Commission by filing a petition for approval of amendments to the Articles. ERCOT will not file any amendments to the Articles with the Texas Secretary of State to become effective without prior Commission approval.



Status of Review Process

ERCOT Legal has been presenting at Technical Advisory Committee (TAC) and HR&G Committee meetings on proposed amendments to the Articles and ERCOT Bylaws and on the related proposed schedule for stakeholder feedback and overall approval process since September 2017. At the July 26, 2018 TAC meeting, TAC voted to endorse ERCOT Legal's proposed changes to the Articles unanimously without abstentions.

ERCOT Legal suggested any amendments approved by the Board would be presented for vote to the Corporate Members at a Special Meeting of the Corporate Members, which will be called as soon as practicable after the Board's approval (rather than seeking approval at the scheduled Annual Membership Meeting on December 11, 2018). The HR&G Committee is expected to consider the proposed Articles changes at its August 6, 2018 meeting and present its recommendations on proposed Articles amendments to the Board at the August 7, 2018 Board meeting.

Proposed Articles Amendments

Although the current Articles are legally sufficient, ERCOT Legal recommends amending the Articles simultaneously while amending the ERCOT Bylaws.

In consultation with ERCOT's outside corporate counsel, ERCOT Legal proposes updates to the Articles:

- To conform with current corporate and tax-exempt organization legal requirements;
- To maintain ERCOT's tax-exempt organization status;
- To update factual references; and
- To include references to applicable provisions of the Public Utility Regulatory Act (PURA) and PUCT Substantive Rules.

As discussed with TAC and the HR&G Committee, ERCOT Legal proposes substantive changes, including the following key amendments:

- Removal of Membership approval step for statutory changes to take effect in relation to limitation of liability of directors so that such statutory changes are automatic;
- Identification of PUCT Substantive Rule which governs distribution of assets and winding up provisions if and upon decertification of ERCOT as an independent organization as defined by PUCT Substantive Rules; and
- Identification of PURA as the source for the mandatory composition of the ERCOT Board.
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If all amendments are approved, the Articles will now be referred to as the "*Amended and Restated Certificate of Formation of Electric Reliability Council of Texas, Inc.*"



At its July 26, 2018 meeting, TAC considered ERCOT Legal's proposed Articles amendments. TAC voted to endorse the proposed amendments unanimously with no abstentions.

The HR&G Committee is expected to recommend proposed Articles amendments to the Board at its August 6, 2018 meeting. A sample resolution illustrating the incorporation of ERCOT Legal's recommended amendments to the Articles is attached to this decision template as clean and redlined versions in Attachments A and B, respectively.

Key Factors Influencing Issue:

Section 13.1 of the ERCOT Bylaws, Section 22.164 of the Texas Business Organizations Code, PUCT Substantive Rule Section 25.362(c), and the HR&G Committee Charter provide the requirements and process for approval of any Articles amendments.

ERCOT Legal proposes that the Articles be amended at the same time as the Bylaws with both being considered at a Special Meeting of Corporate Members (well in advance of the Annual Membership Meeting in December 2018) to allow the amendments to become effective upon Commission approval, as soon as possible, preferably prior to the Membership elections in mid-November 2019, but no later than the start of the 2019 Membership Year (that is, on January 1, 2019).

A call for Special Meeting of Corporate Members has been placed on the August 7, 2018 Board agenda to allow for approval before the Annual Membership Meeting on December 11, 2018.

Conclusion/Recommendation:

ERCOT Legal recommends that the Board vote to accept the recommendations of the HR&G Committee and approve the proposed Articles amendments for recommendation and presentation to the Corporate Members as soon as reasonably possible, subject to final approval by the Commission.



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

WHEREAS, after due consideration of the alternatives and upon consideration of the recommendations of its Human Resources and Governance (HR&G) Committee, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to approve certain amendments to the *Amended and Restated Articles of Incorporation of Electric Reliability Council of Texas* (Articles), with language substantially similar to that attached hereto as Attachment A, for recommendation and presentation to the Corporate Members as soon as reasonably possible, subject to approval by the Public Utility Commission of Texas (Commission), and filing with the Commission for final approval;

THEREFORE, BE IT RESOLVED, that the Board hereby:

- (1) Approves the amendment to the Articles, in substantially similar form as attached hereto as Attachment A, for recommendation and presentation to the Corporate Members as soon as reasonably possible; and
- (2) Authorizes ERCOT Legal to:
 - a. Present such approved amendments, in substantially similar form as attached hereto as Attachment A, for recommendation to the Corporate Members as soon as reasonably possible;
 - b. File a petition with the Commission for approval of any Articles amendment approved by the Corporate Members, to be effective upon Commission approval and filing with the Texas Secretary of State; and
 - c. Judiciously correct any scrivener's errors (such as, clerical, typographical, spelling, formatting, numbering or drafting errors) in the amendments or Articles as needed to reflect intended meaning accurately.



CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its August 7, 2018 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, 2018.

Vickie G. Leady
Assistant Corporate Secretary

**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

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 purposes of the Corporation are to:

(a) Ensure open access to the transmission and distribution systems within the Electric Reliability Council of Texas, Inc. (“**ERCOT**”) region for all buyers and sellers of electricity on non-discriminatory basis terms, ensure the reliability and adequacy of the regional electrical network, ensure that information relating to a customer’s choice of retail electric provider is conveyed in a timely manner to the persons who need that information, and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers within the ERCOT region;

(b) Coordinate activities within the region of ERCOT to fulfill these purposes;

(c) Perform the functions of an Independent Organization as certified by the Public Utility Commission of Texas (“**Commission**”) and provided by the Public Utility Regulatory Act and Commission Rules; and

(d) 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 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>Consumer – Residential and Small Commercial Subsegment– Public Counsel Ex Officio Director</p> <p>Tonya Baer c/o Office of Public Utility Counsel 1701 North Congress Avenue, Suite 9-180 Austin, Texas 78701</p>	<p>Consumer – Large Commercial Subsegment Director</p> <p>Nick Fehrenbach c/o City of Dallas 1500 Marilla, Room 4F North Dallas, Texas 75201</p>
<p>Consumer – Industrial Subsegment Director</p> <p>Sam Harper c/o Gerdau 300 Ward Road Midlothian, Texas 76065</p>	<p>Cooperative Segment Director</p> <p>Clifton Karnei c/o Brazos Electric Power Cooperative 7616 Bagby Avenue Waco, Texas 76702-2585</p>
<p>ERCOT Chief Executive Officer - Ex Officio Director</p> <p>Bill Magness c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>	<p>Independent Generator Segment</p> <p>Kevin Gresham c/o E.ON North America LLC 701 Brazos Street, Suite 1400 Austin, Texas 78701</p>
<p>Independent Power Marketer Segment Director</p> <p>Keith Emery c/o Tenaska Power Services 1701 East Lamar Boulevard, Ste. 100 Arlington, Texas 76006</p>	<p>Independent Retail Electric Provider Segment Director</p> <p>Rick Bluntzer c/o Just Energy Texas, LP 5251 Westheimer Road, Suite 1000 Houston, Texas 77056</p>

<p>Investor-Owned Utility Segment Director</p> <p>Kenny Mercado c/o CenterPoint Energy P.O. Box 4467 Houston, Texas 77510</p>	<p>Municipal Segment Director</p> <p>Carolyn Shellman c/o CPS Energy 145 Navarro St., MD #101011 San Antonio, Texas 78205</p>
<p>Public Utility Commission of Texas Chairman – <i>Ex Officio</i> Director (nonvoting)</p> <p>Chairman DeAnn Walker c/o Public Utility Commission of Texas 1701 N. Congress Ave. P.O. Box 13326 Austin, Texas 78711</p>	<p>Unaffiliated Director</p> <p>Craven Crowell c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>
<p>Unaffiliated Director</p> <p>Peter Cramton c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>	<p>Unaffiliated Director</p> <p>Karl Pfirrmann c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>
<p>Unaffiliated Director</p> <p>Judy Walsh c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</p>	<p>Unaffiliated Director</p> <p>Terry Bulger c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744</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 Internal Revenue Code of 1986, as amended (the “**Code**”), as an organization described in Section 501(c)(4) of the Code.

Subject to Public Utility Commission of Texas 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.



AMENDED AND RESTATED ARTICLES OF INCORPORATION
ERCOT
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

Bill Magness, President and CEO

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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**

~~The corporation is formed for the limited purpose of:-~~
The purposes of the Corporation are to:

~~Promoting the reliable and efficient operations of electric power systems,~~
~~ensuring~~(a) Ensure open access ~~for all users of~~to the ~~ERCOT~~ transmission and distribution systems ~~on a non-discriminatory basis, coordinating within the Electric Reliability Council of Texas, Inc. ("ERCOT") region for all buyers and sellers of electricity on non-discriminatory basis~~ terms, ensure the reliability and adequacy of the regional electrical network, ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information, and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers within the ERCOT region;

(b) Coordinate activities within the region of ~~the Electric Reliability Council of Texas and as liaison to the North American Electric Reliability Council, and performing~~ERCOT to fulfill these purposes;

(c) Perform the functions of an Independent Organization: ~~as certified by the Public Utility Commission of Texas ("Commission") and provided by the Public Utility Regulatory Act and Commission Rules;~~ and

(d) 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~~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, 42nd 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
 Garland Power & Light
 504 W. State Street
 Garland, TX 75040

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

Jack Hawks
 PG&E Generating Company
 7500 Old Georgetown Rd, 13th Floor
 Bethesda, MD 20814-6161

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

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

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

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

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

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

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

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

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

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

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

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

Brian Tierney
 American Electric Power Service Corporation
 1 Riverside Plaza, 14th Floor
 Columbus, OH 43215-2372

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

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><u>Consumer – Residential and Small Commercial Subsegment– Public Counsel Ex Officio Director</u></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><u>Consumer – Large Commercial Subsegment Director</u></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><u>Consumer – Industrial Subsegment Director</u></p> <p><u>Sam Harper</u> <u>c/o Gerdau</u> <u>300 Ward Road</u> <u>Midlothian, Texas 76065</u></p>	<p><u>Cooperative Segment Director</u></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><u>ERCOT Chief Executive Officer - Ex Officio Director</u></p> <p><u>Bill Magness</u> <u>c/o ERCOT</u> <u>7620 Metro Center Drive</u> <u>Austin, Texas 78744</u></p>	<p><u>Independent Generator Segment</u></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><u>Independent Power Marketer Segment Director</u></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><u>Independent Retail Electric Provider Segment Director</u></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><u>Investor-Owned Utility Segment Director</u></p> <p><u>Kenny Mercado</u></p>	<p><u>Municipal Segment Director</u></p> <p><u>Carolyn Shellman</u></p>

c/o CenterPoint Energy P.O. Box 4467 Houston, Texas 77510	c/o CPS Energy 145 Navarro St., MD #101011 San Antonio, Texas 78205
Public Utility Commission of Texas Chairman – Ex Officio Director (nonvoting) Chairman DeAnn Walker c/o Public Utility Commission of Texas 1701 N. Congress Ave. P.O. Box 13326 Austin, Texas 78711	Unaffiliated Director Craven Crowell c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744
Unaffiliated Director Peter Cramton c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744	Unaffiliated Director Karl Pfirrmann c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744
Unaffiliated Director Judy Walsh c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744	Unaffiliated Director Terry Bulger c/o ERCOT 7620 Metro Center Drive Austin, Texas 78744

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 of 1986, as amended (the "Code"), as an organization described in Section 501(c)(4) of the Code.~~

Subject to Public Utility Commission of Texas 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 ~~organizations~~ 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.~~

~~Electric Reliability Council of Texas, Inc.~~

~~Margaret Uhlig Pemberton, Secretary~~

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Rendering set	Standard

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