



Item 7: Proposed Amendments to ERCOT Governing Documents

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Human Resources and Governance (HR&G)
Committee Meeting

ERCOT Public

July 30, 2018

ERCOT Governing Documents Amendments

ERCOT Legal recommends that, at their respective August 6-7, 2018 meetings, the Human Resources and Governance Committee (HR&G) and Board of Directors vote to approve amendments to ERCOT's governing documents, that is:

- ERCOT Articles of Incorporation
- ERCOT Bylaws



Proposed Amendments to ERCOT Articles of Incorporation

ERCOT Articles of Incorporation Amendments

- Current Articles of Incorporation have been in effect since December 19, 2000
- Legally sufficient, but stale information and language could benefit from updating
- For efficiency, amendments to Articles will be submitted simultaneously with the amendments to the Bylaws

Proposed Articles Amendments

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

- To conform with current corporate and tax-exempt organization legal requirements
- To maintain ERCOT's tax-exempt status
- To update factual references
- To include references to applicable provisions of PURA and PUC Substantive Rules

Proposed Articles Amendments – *cont'd*

Highlights of a couple of key substantive changes

- Removes Membership approval step for statutory changes to take effect in relation to limitation of liability of directors – now change is automatic
- Identifies PUCT Substantive Rule which governs distribution of assets and winding up provisions if and upon decertification of ERCOT as independent organization
- Identifies PURA as the source for the mandatory composition of the ERCOT Board of Directors

Proposed Articles Amendments – *cont'd*

- At the July 26, 2018 TAC meeting, TAC voted to endorse ERCOT's Legal proposed amendments to the Articles unanimously without abstentions
- Clean and red-lined versions of the proposed Amendments to the Articles of Incorporation are attached to the Board decision template in the meeting materials



Proposed Amendments to ERCOT Bylaws

ERCOT Bylaws Amendments

ERCOT Legal proposes amendments to the Bylaws in the following general categories

- Affiliate definition
- Officer definition
- Updates to legal code references
- Corrections to scrivener's errors

Proposed Bylaws Amendments – *cont'd*

- TAC Workshop on the proposed Affiliate definition was held on June 19, 2018
- ERCOT Legal proposed a revised Affiliate definition based on stakeholder feedback
 - Includes stakeholder revisions suggested at workshop
 - Includes detail added by ERCOT Legal for the Board determination procedure as requested at the workshop

Proposed Bylaws Amendments – *cont'd*

- At the July 26, 2018 TAC meeting, TAC voted to endorse ERCOT's Legal proposed amendments to the Bylaws unanimously without abstentions
- Clean and red-lined versions of the proposed Amendments to the Bylaws are attached to the Board decision template in the meeting materials

Proposed Schedule

Required Steps to Amend the ERCOT Articles of Incorporation and Bylaws



Expected Schedule

Date	Meeting	Purpose
July 26, 2018	TAC	Discussed Articles of Incorporation (Articles) and Bylaws amendments proposed by ERCOT Legal and stakeholders; TAC voted to endorse amendments unanimously without abstentions
August 6-7, 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
Mid-August 2018	Notice of Special Meeting of Corporate Members	Request approval by Corporate Members subject to PUCT approval
Mid-September 2018	Special Meeting of Corporate Members	
Mid-September 2018	--	If successful Membership vote, ERCOT Legal will file petition for approval of amendments with the PUCT. Absent PUCT approval, amendments cannot be effective. Approval would be requested prior to year end for 2019 Membership year (which begins on January 1, 2019).



Approval Process

- ERCOT Legal requests the HR&G Committee recommend and the Board approve amendments to the Articles and Bylaws at its August 6-7, 2018 meetings
- ERCOT Legal will also request that the Board call a Special Meeting of Corporate Members (as soon as reasonably possible after Board approval) for approval of the amendments subject to PUCT approval

Approval Process – cont'd

ERCOT Legal recommends against waiting until the Annual Membership Meeting on December 11, 2018 for Corporate Member approval of these proposed amendments

- Would delay ERCOT Legal's filing of the amendments to be approved by the PUCT until mid-December 2018
- Would delay PUCT approval until late Q1 or early Q2 2019 (well into the 2019 Membership year)



Special Meeting of Corporate Members

- Bylaws allow vote by ballot with a Special Meeting of Corporate Members
- If any failure to reach a quorum by ballot, then in-person meeting of Corporate Members will be required

Request for the HR&G Committee to vote to approve ERCOT Legal's proposed amendments to the:

- **Articles of Incorporation**
- **Bylaws**



Appendix

Amending Articles of Incorporation: Statutes

Article 7 of the ERCOT Articles of Incorporation provides in part: “[T]he corporation has all the powers provided by the Texas Non-Profit Corporation Act.” The Texas Non-Profit Corporation Act has been superseded by Chapter 22 of the Texas Business Organizations Code (TBOC).

Procedure for non-profit corporations with members having voting rights to amend Articles of Incorporation pursuant to Chapter 22:

- § 22.105(a): To amend the Articles, “the board of directors ... must adopt a resolution specifying the proposed amendment and directing that the amendment be submitted to a vote at an annual or special meeting of the members having voting rights.”
- § 22.105(b): “Written notice containing the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each member entitled to vote at the meeting ...”
- §§ 22.105(c) & 22.164(b)(1): The proposed amendment “shall be adopted” if it receives “at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote.”

Amending Articles of Incorporation: Bylaws Provisions

The Bylaws contain provisions consistent with TBOC Ch. 22.

- Only Corporate Members are permitted to vote to amend the Articles.
 - Section 3.2, Membership Types and Voting Rights, paragraph (a):
“Corporate Members – shall have the rights and obligations...including the right to vote on all matters submitted to the general membership (such as ... amendments to the Articles of Incorporation...)” As set forth in paragraphs (b) and (c), Associate and Adjunct Members do not have the right to vote on such matters.
- In order for an amendment to be approved, there must be an affirmative vote of at least two-thirds of all Corporate Members.
 - Section 13.2, Amendments to the Articles of Incorporation: “In accordance with the procedures set forth in Article 1396-4.02 of the Texas Non-Profit Corporation Act, an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Articles of Incorporation.”

Amending the ERCOT Bylaws: Statutes

Texas Business Organizations Code.

- Section 22.102, Bylaws, paragraph (c) provides:

“The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless:

 - (1) this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members;
 - (2) the management of the corporation is vested in the corporation's members; or
 - (3) in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw.”

– The ERCOT Bylaws provide that the Corporate Members are entitled to vote on amendments to the Bylaws.

Amending the ERCOT Bylaws: Bylaws Provisions

Bylaws Section 13.1, Amendments to These Bylaws, provides that “subject to approval by the PUCT,” the Bylaws may be “amended, altered, or repealed by the voting Segments through the following procedure”:

- 13.1(b): ERCOT CEO must place the proposed amendment on the agenda for a Board Meeting.
- 13.1(c): The Board must vote to approve the amendment. If approved, the Board must place the proposed amendment on the agenda for a Special Meeting or the next Annual Meeting of Corporate Members.
- 13.1(d): Corporate Members must vote to enact the Board-approved amendment.

Amending the ERCOT Bylaws: Bylaws Provisions (cont.)

- Section 13.1(d): Voting Procedure
 - Corporate Members must vote to enact the Board-approved amendment.
 - Each Segment is given one vote.
 - An affirmative vote of two-thirds (2/3) the Segment [except the Consumer Segment] constitutes an affirmative vote by that Segment.
 - The Consumer Segment is subdivided into three Consumer Subgroups: (i) Residential Consumers; (ii) Commercial Consumers; and (iii) Industrial Consumers.
 - An affirmative vote of the majority of the Corporate Members within a Consumer Subgroup constitutes an affirmative vote of that Subgroup.
 - At least two of the three Subgroups must vote in favor of the amendment in order for the Consumer Segment to vote affirmatively.
 - Only Corporate Members are permitted to vote.
- An affirmative vote by at least four of the seven Segments constitutes an affirmative vote of the Corporate Members.

Amending the ERCOT Articles of Incorporation and Bylaws: PUCT

PUCT Substantive Rule 25.362(c)(4) provides: “The commission may review a provision of ERCOT’s articles of incorporation or by-laws ... on the application of an interested person, including commission staff and the Office of Public Utility Counsel.” Per paragraph (c)(5), requests for review are processed in accordance with PUCT Procedural Rule 22.251.

If approved by the Board and Corporate Members, ERCOT intends to file a petition for approval of both the amended Articles of Incorporation and Bylaws with the PUCT.

ERCOT Market Segments and Corporate Members

(as of July 2018)

SEGMENT	CORPORATE MEMBERS
Consumer <ul style="list-style-type: none">• Residential• Commercial• Industrial	171 <ul style="list-style-type: none">• 2• 152• 17
Cooperative	38
Independent Generator	17
Independent Power Marketer	14
Independent Retail Electric Provider	15
Investor-Owned Utility	8
Municipal	20
<u>TOTAL</u>	<u>283</u>

