

<b>PETITION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR APPROVAL OF AMENDMENTS TO ARTICLES OF INCORPORATION AND AMENDED AND RESTATED BYLAWS</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION      OF TEXAS</b>
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DOCKET NO. 48677

PETITION OF ELECTRIC	§	PUBLIC UTILITY COMMISSION
RELIABILITY COUNCIL OF TEXAS,	§	
INC. FOR APPROVAL OF	§	OF TEXAS
AMENDMENTS TO ARTICLES OF	§	
INCORPORATION AND AMENDED	§	
AND RESTATED BYLAWS	§	

**PETITION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.  
FOR APPROVAL OF AMENDMENTS TO ARTICLES OF  
INCORPORATION AND BYLAWS**

Electric Reliability Council of Texas, Inc. (ERCOT), pursuant to 16 Tex. Admin. Code (TAC) § 25.362, respectfully requests Commission approval of amendments to the *ERCOT Articles of Incorporation* (Articles) and amendments to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws).<sup>1</sup> The proposed Articles and Bylaws amendments were approved by ERCOT's Board of Directors (Board) on August 7, 2018, and by ballot vote of ERCOT's Corporate Members on September 7, 2018. The proposed Articles amendments are appended to this Petition as *Attachment A-1* (clean version) and *Attachment A-2* (redlined version), and Bylaws Amendments are appended as *Attachment B-1* (clean version) and *Attachment B-2* (redlined version).

Accordingly, ERCOT respectfully requests that the Commission assign a docket number to this matter and approve the amendments to the Articles and Bylaws as approved by ERCOT's Board and Corporate Members.

**I. BACKGROUND**

**A. Articles and Bylaws Review and Revision Process**

ERCOT currently operates pursuant to the Articles and Bylaws. ERCOT filed the Articles in the Office of the Secretary of State of Texas on January 4, 2001. The Bylaws were approved by the Commission on August 17, 2015. The process for approval of Articles amendments is set forth in Section 22.105 of the Texas Business Organizations Code (TBOC),

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<sup>1</sup> *Amended and Restated Articles of Incorporation of Electricity Reliability Council of Texas, Inc.*, were filed in the Office of the Secretary of State of Texas on January 4, 2001. In Docket No. 44741, *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.*, the Bylaws were approved by the Commission on August 17, 2015.

16 TAC § 25.362(c), Section 13.2 of the Bylaws, and the Charter of the Human Resources and Governance (HR&G) Committee of ERCOT. The process for approval of Bylaws amendments is set forth in PURA § 39.151(g),<sup>2</sup> 16 TAC § 25.362(c), Section 13.1 of the Bylaws, and the HR&G Committee Charter.

B. History of Approval of the Proposed Articles and Bylaws Amendments

In September 2017, ERCOT Legal proposed a number of amendments to the Bylaws. The proposed amendments to the Bylaws were intended to update the definition of “Affiliate” and clarify the process for determining Affiliate status, clarify the definition of “Officer,” update legal code references, and correct scrivener’s errors. Subsequently, in March 2018, ERCOT Legal also proposed a number of amendments to the Articles. The proposed amendments to the Articles were intended to conform the Articles to current corporate and tax-exempt organization legal requirements, maintain ERCOT’s tax-exempt status, update factual references, and include references to the applicable provisions of PURA and Commission Substantive Rules.

1. TAC and HR&G Committee Review and Recommendation of Articles and Bylaws Amendments

ERCOT Legal provided its proposals to amend the Articles and Bylaws to the Technical Advisory Committee (TAC) and the Board’s HR&G Committee. After several discussions, at its July 26, 2018 meeting, TAC considered and unanimously voted to endorse ERCOT Legal’s proposed Articles and Bylaws amendments with no abstentions. At its August 6, 2018 meeting, the HR&G Committee unanimously voted to recommend that the Board recommend approval of the proposed Articles and Bylaws amendments to the Corporate Members.

2. Board Acceptance of HR&G Committee Recommendation of Articles and Bylaws Amendments to Corporate Members

After consideration and recommendation by the HR&G Committee, at the August 7, 2018 Board meeting, the Board unanimously recommended approval of the proposed Articles amendments as identified in *Attachment A-1* and Bylaws amendments as identified in *Attachment B-1* to the Corporate Members without abstentions. At the same meeting, the Board called a Special Meeting of the Corporate Members for a vote to approve the proposed amendments.

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<sup>2</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2016 and Supp. 2017) (PURA).

### 3. Corporate Member Approval of Articles and Bylaws Amendments

On August 15, 2018 pursuant to the direction of the Board, ERCOT issued its notice of Special Meeting of Corporate Members to be held on September 12, 2018 (“Special Meeting”) for a vote to approve the proposed Articles and Bylaws amendments. A copy of the Special Meeting notice is provided for reference as *Attachment C*. Corporate Membership voting for the Articles amendments was conducted pursuant to the ERCOT Bylaws and TBOC procedures requiring approval by at least two-thirds of Corporate Members.<sup>3</sup> Corporate Membership voting for the Bylaws amendments was conducted pursuant to the ERCOT Bylaws procedures requiring approval by a majority of Market Segments (*i.e.*, at least four out of seven Market Segments according to voting threshold requirements provided in the Bylaws).<sup>4</sup> Both the Articles and Bylaws amendments received the requisite number of Corporate Member votes by ballot upon the conclusion of voting on September 7, 2018, in lieu of the in-person Special Meeting, for Corporate Member approval.

## **II. STATEMENT OF JURISDICTION AND AUTHORITY**

The Commission has jurisdiction over this matter pursuant to PURA § 39.151 and 16 TAC § 25.362(c)(5).

## **III. IDENTIFICATION OF APPLICANT**

The name and address of the Applicant is Electric Reliability Council of Texas, Inc., 7620 Metro Center Drive, Austin, Texas 78744.

The name, address, telephone, and facsimile numbers of Applicant’s authorized representatives are as follows:

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<sup>3</sup> See Bylaws § 13.2; TBOC § 22.105.

<sup>4</sup> See Bylaws § 13.1(d).

Chad V. Seely  
General Counsel, Vice President and  
Corporate Secretary  
ERCOT  
7620 Metro Center Drive  
Austin, Texas 78744  
(512) 225-7035 (Telephone)  
(512) 225-7079 (Facsimile)  
[chad.seely@ercot.com](mailto:chad.seely@ercot.com)

Vickie G. Leady  
Assistant General Counsel and  
Assistant Corporate Secretary  
ERCOT  
7620 Metro Center Drive  
Austin, Texas 78744  
(512) 275-7436 (Telephone)  
(512) 225-7079 (Facsimile)  
[vickie.leadyc@ercot.com](mailto:vickie.leadyc@ercot.com)

#### **IV. SUMMARY OF THE AMENDMENTS**

##### **A. Summary of the Articles Amendments**

Nearly each article of the Articles has been edited and amended in some way. The majority of these changes are not substantive and are primarily intended to update factual and legal references and correct scrivener's errors. None of the changes will modify ERCOT's tax-exempt status. Among the substantive changes, the membership approval step for statutory changes to take effect in relation to the limitation of liability for directors has been removed from current Article 11. Whereas the Articles previously required a membership vote, the amendment makes the changes automatic. Additionally, Article 8 now explicitly identifies the Commission Rules that govern the distribution of assets and the winding up of business if ERCOT is decertified as an independent organization. Finally, Article 6 explicitly identifies PURA § 39.151 as the source for the composition of the ERCOT Board of Directors. To conform to current legal terminology, if the amendments are approved by the Commission, the Articles will be known as ERCOT's Certificate of Formation.

##### **B. Summary of the Bylaws Amendments**

As noted in Part I.B. above, the proposed amendments to the Bylaws would update the definition of "Affiliate" and clarify the process for determining Affiliate status, clarify the definition of "Officer," update legal code references, and correct scrivener's errors. The updated definition of "Affiliate" clarifies when an Affiliate relationship arises in situations where investments in more than one Member are held by a single person. Additional language has been added to the Affiliate definition and Section 3.3 to clarify the process for determining Affiliate status and Member disclosure obligations.

The proposed amendments also add a new definition for the term “Officer.” This is intended to make clear that references to Officer(s) in the Bylaws include individuals elected as an officer by an entity’s governing authority or under its governing documents, as opposed to other individuals who hold positions that include the term “officer,” such as account officers at a bank.

The remaining edits are contained in various sections to update legal code references and correct scrivener’s errors.

## **V. NOTICE PROVIDED BY ERCOT**

ERCOT will post its Petition for Approval of Amendments to Articles of Incorporation and Bylaws to its website at [http://www.ercot.com/about/governance/legal\\_notices](http://www.ercot.com/about/governance/legal_notices); provide notice to Market Participants of ERCOT Petition filing with the Commission by issuing a Market Notice to the NOTICE\_LEGAL\_NOTIFICATIONS Listserv; and provide Notice of its Petition via electronic mail to ERCOT’s email exploder lists of committees as follows:

- ERCOT Board of Directors and Others;
- Technical Advisory Committee and Others (TAC);
- Retail Market Subcommittee (RMS);
- Wholesale Market Subcommittee (WMS);
- Reliability and Operations Subcommittee (ROS); and
- Protocol Revisions Subcommittee (PRS).

ERCOT will file an affidavit attesting to the completion of its proposed notice.

## **VI. REQUEST FOR PROCEDURAL SCHEDULE**

ERCOT proposes the following procedural schedule, which aims toward approval of the amendments by year end, that is, preferably no later than the December 20, 2018 Commission Open Meeting:

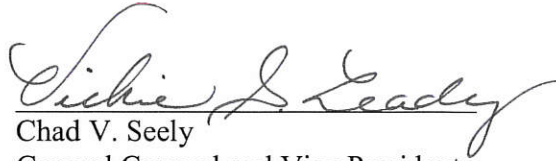
ERCOT posts Petition to its website and provides notice (as described in Section V. herein)	September 13, 2018
<i>Texas Register</i> publication of the Commission’s Notice of Petition for Approval of Articles of Incorporation and Bylaws Amendments	September 28, 2018, or as soon thereafter as possible

Deadline to Intervene (within 45 days from the date the Petition is filed with the Commission)	October 29, 2018
Deadline for Intervenors to request a hearing; Deadline for Intervenor comments on the merits if no hearing requested	November 5, 2018
Deadline for Commission Staff to request a hearing; Deadline for Commission Staff's recommendation if no hearing requested	November 12, 2018
Deadline for ERCOT to request a hearing; Deadline for ERCOT's response to Intervenor comments and Commission Staff's recommendation if no hearing requested; Deadline for Parties' proposed order, if no disputed issues	November 26, 2018
Proposed Order filed by Presiding Officer for approval, pursuant to P.U.C. PROC. R. 22.35(b)(2)	November 28, 2018
Consideration of Proposed Order at Commission Open Meeting	No later than December 20, 2018, or as soon as possible if no Intervenor files in this docket

## VII. CONCLUSION

ERCOT respectfully requests that the Commission approve both the Articles and Bylaws amendments approved by the Corporate Members, as described in this Petition and in substantially the same form as identified in *Attachment A-1* and *Attachment B-1*, respectively, save and except any scrivener's errors, adopt the procedural schedule requested by ERCOT in this Petition, and grant ERCOT all other relief to which it is entitled.

Respectfully submitted,



Chad V. Seely

General Counsel and Vice President

Texas Bar No. 24037466

(512) 225-7035 (Phone)

(512) 225-7079 (Fax)

[chad.seely@ercot.com](mailto:chad.seely@ercot.com)

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ERCOT

7620 Metro Center Drive

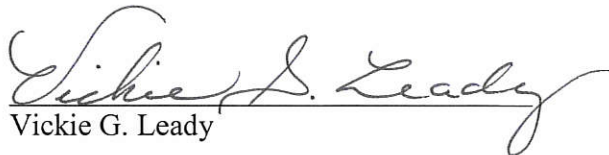
Austin, Texas 78744

ATTORNEYS FOR ELECTRIC

RELIABILITY COUNCIL OF TEXAS, INC.

### **CERTIFICATE OF SERVICE**

I, Vickie G. Leady, attorney for ERCOT, certify that a copy of this document was served in this proceeding on September 11, 2018 in the following manner: by facsimile, email, or first-class U.S. mail.



Vickie G. Leady



Attachment A-1

Proposed Amendments to ERCOT 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

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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:

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

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

## 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.

Attachment A-2

Proposed Amendments to ERCOT Articles of Incorporation  
(Redlined Version)





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

| 4811-5395-6956v.6 47733-3


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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, 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  
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, 13<sup>th</sup> 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  
Dynergy, Inc.  
1000 Louisiana, Suite 5800  
Houston, TX 77001

Brian Tierney  
American Electric Power Service Corporation  
1 Riverside Plaza, 14<sup>th</sup> 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:

<b><u>Consumer – Residential and Small Commercial Subsegment– Public Counsel Ex Officio Director</u></b>  <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>	<b><u>Consumer – Large Commercial Subsegment Director</u></b>  <u>Nick Fehrenbach</u> <u>c/o City of Dallas</u> <u>1500 Marilla, Room 4F North</u> <u>Dallas, Texas 75201</u>
<b><u>Consumer – Industrial Subsegment Director</u></b>  <u>Sam Harper</u> <u>c/o Gerdau</u> <u>300 Ward Road</u> <u>Midlothian, Texas 76065</u>	<b><u>Cooperative Segment Director</u></b>  <u>Clifton Karnei</u> <u>c/o Brazos Electric Power Cooperative</u> <u>7616 Bagby Avenue</u> <u>Waco, Texas 76702-2585</u>
<b><u>ERCOT Chief Executive Officer - Ex Officio Director</u></b>  <u>Bill Magness</u> <u>c/o ERCOT</u> <u>7620 Metro Center Drive</u> <u>Austin, Texas 78744</u>	<b><u>Independent Generator Segment</u></b>  <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>
<b><u>Independent Power Marketer Segment Director</u></b>  <u>Keith Emery</u> <u>c/o Tenaska Power Services</u> <u>1701 East Lamar Boulevard, Ste. 100</u> <u>Arlington, Texas 76006</u>	<b><u>Independent Retail Electric Provider Segment Director</u></b>  <u>Rick Bluntzer</u> <u>c/o Just Energy Texas, LP</u> <u>5251 Westheimer Road, Suite 1000</u> <u>Houston, Texas 77056</u>
<b><u>Investor-Owned Utility Segment Director</u></b>  <u>Kenny Mercado</u>	<b><u>Municipal Segment Director</u></b>  <u>Carolyn Shellman</u>

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

## 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 organizations are 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~~

Document comparison by Workshare 9.5 on Friday, May 04, 2018 1:14:44 PM

Input:	
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Description	Proposed ERCOT Amended and Restated Articles of Incorporation AL Comm
Document 2 ID	netdocuments://4811-5395-6956/6
Description	Proposed ERCOT Amended and Restated Articles of Incorporation AL Comm
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	176
Deletions	161
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	347

Attachment B-1

Proposed Amendments to ERCOT Bylaws  
(Clean Version)



**AMENDED AND RESTATED BYLAWS  
OF  
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.  
(A Texas Non-Stock, Non-Profit Corporation)  
Approved on {Month Day, Year – Date of PUCT Approval}**

## ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc., a Texas non-stock, non-profit corporation ("ERCOT"), shall be located at such place in Texas as the ERCOT Board of Directors (the "Board") may determine. Additional offices may be established and maintained at such place or places as the Board may from time to time designate.

Section 1.2 Registered Office and Registered Agent. ERCOT will maintain a registered office and a registered agent in Texas. The Board may change the registered office and the registered agent as permitted by the Texas Business Organizations Code, including Chapter 22 thereof (Nonprofit Corporations).

## ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

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 Subsection (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 Subsection (C) below. Membership in ERCOT shall not create an affiliation with ERCOT.

(A) Construction

As used in this definition:

(x) "party" shall mean any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, or other entity;

(y) "person" shall mean any party, 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

(z) "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 Subsection (B)(2)(a) through (c) above shall create a presumption of control that may be challenged pursuant to Subsection (D) below.

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 Subsection (B) above, may nonetheless be determined by the Board, pursuant to Subsection (D) below, to be an Affiliate of another person, if allegations brought before the Board are substantiated 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 as set forth in Subsection (D).

(D) *Procedure for Board Determinations Regarding Affiliation*

1. Any party may challenge the presumption of control pursuant to Subsection (B) above, or allege substantial influence pursuant to Subsection (C) above, to the Board pursuant to the procedure set forth in this Subsection (D).
2. The challenging party shall submit written notice of the challenge to ERCOT's General Counsel. Such written notice shall identify any persons that are the subject of the challenge and shall include a detailed summary of the facts supporting the challenge. ERCOT's General Counsel will provide a recommendation to the Board on the challenge.
3. The Board will hear such matter at the next regularly-scheduled Board meeting that is at least ten (10) Business Days after the date the written notice of challenge is received by ERCOT's General Counsel. Notice of the Board's consideration of the challenge shall be given pursuant to Section 4.6(b) of these Bylaws.
4. The Board shall have discretion to determine whether the persons who are the subject of the challenge are Affiliates of one another for purposes of these Bylaws by reference to the factors set forth in this definition and other persuasive evidence. The challenging party shall bear the burden of proof.

(E) *Changes in Affiliates*

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

2. **Consumers.** Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.
3. **Commercial Consumers.** A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater than 1000 kilowatts. An entity applying for ERCOT membership as either a Small Commercial Consumer or a Large Commercial Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the



interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators and the interest is of such an extent or nature that its decisions might be affected or determined by it. The three Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

4. **Cooperative.** An entity operating in the ERCOT Region that is:
  - a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
  - b. a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas;
  - c. a cooperative association organized under Chapter 251 of the Texas Business Organizations Code or a predecessor to that statute and operating under that statute; or
  - d. a River Authority as defined in Tex. Water Code §30.003.
5. **Director.** A member of the Board of ERCOT.
6. **Eligible Voting Director.** A Seated Director of the Board of ERCOT other than the *ex officio* Director who is the Chairman of the Public Utility Commission of Texas ("PUCT"), pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
7. **Eligible Voting Representative.** A Seated Representative, pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
8. **Entity.** An Entity includes an organization and all of its Affiliates.
9. **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas, as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.
10. **ERCOT Region.** The geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric

utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

11. **Independent Generator.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.
12. **Independent Power Marketer.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.
13. **Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (“REP”) under PURA §39.352 and that is not an Affiliate of a T&D Entity. For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.
14. **Industrial Consumers.** An industrial consumer is a consumer with at least one meter with average monthly demand greater than 1 megawatt consumed within the ERCOT Region engaged in an industrial process.
15. **Investor-Owned Utility (“IOU”).**
  - a. An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an entity described in (a), (b) or (c); or
  - b. A public utility holding company of any such electric utility.
16. **Market Participant.** For purposes of these Bylaws, a Market Participant is (i) any entity that engages in any activity that is in whole or in part the subject of the ERCOT Protocols and has, or should have, a contract regarding such activities with ERCOT or (ii) any entity that qualifies for ERCOT membership.
17. **Market Segment.** For purposes of these Bylaws, any of the segments (all of which are defined within this Article 2 of these Bylaws) as follows:
  - a. Cooperative;
  - b. Independent Generator;

- c. Independent Power Marketer;
  - d. Independent REP;
  - e. IOU;
  - f. Municipal; or
  - g. Consumer (including: (1) Commercial Consumer comprised of Small Commercial Consumer and Large Commercial Consumer, (2) Industrial Consumer, or (3) Residential Consumer).
18. **Market Segment Director.** A Director who has been elected by one of the Market Segments.
19. **Member.** A member of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of these Bylaws, or the member's appointed representative, as the context so requires.
20. **Municipal.** An entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either:
- a. a municipal owned utility as defined in PURA §11.003 or
  - b. a River Authority as defined in Tex. Water Code §30.003.
21. **Officer.** An individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.
22. **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.
23. **Residential Consumers.** The appointed Board Director representing residential consumer interests, an organization or agency representing the interests of residential consumers in the ERCOT Region, or the Residential Consumer Technical Advisory Committee ("TAC") Representative. An entity applying for ERCOT membership as a Residential Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as a end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators. The three Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

24. **Seated Director.** A Director, or the Director's designated Segment Alternate when serving in the Director's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Director".
25. **Seated Representative.** A TAC Representative (as defined in Section 5.1 of these Bylaws) or a member of a subcommittee of TAC, or the TAC Representative's designated alternate representatives when serving in the TAC Representative's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Representative".
26. **Segment.** For purposes of these Bylaws, a "Segment" refers to a Market Segment as defined in this Article 2 of these Bylaws.
27. **Segment Alternate.** A designated alternate Board representative, duly elected by his respective Market Segment, who can attend and vote at meetings in the absence of the respective Market Segment Director (including while such Director is unable to attend a Board meeting or while such Director's seat is vacant). Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.
28. **Transmission and Distribution ("T&D") Entity.** Any entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a "retail electric utility," as defined in PURA §37.001, operating in the ERCOT Region.
29. **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant and who meets the requirements identified in Section 4.3(b).

## **ARTICLE 3 MEMBERS**

### Section 3.1 Membership.

- (a) Members must qualify in one of the following segments as defined in Article 2:
  - (1) Cooperative;
  - (2) Independent Generator;
  - (3) Independent Power Marketer;

- (4) Independent REP;
  - (5) Investor-Owned Utility;
  - (6) Municipal; or,
  - (7) Consumer in one of three subsegments: (i) Commercial (which is further divided into Large and Small Commercial Consumer); (ii) Industrial; and (iii) Residential.
- (b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.
- (c) The Board may adopt and amend Member application procedures.

Section 3.2 Membership Types and Voting Rights. ERCOT Members may be Corporate Members, Associate Members, or Adjunct Members as hereinafter described:

- (a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Certificate of Formation and these Bylaws).
- (b) Associate Members – shall have the rights and obligations as described in these Bylaws excluding the right to vote on any matter submitted to the general Membership (such as election of Directors, election of TAC Representatives and amendments to the Certificate of Formation and these Bylaws).
- (c) Adjunct Members – may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Corporate or Associate Member. Adjunct Members shall have no right to vote on any matter submitted to the general Membership nor any right to be elected or appointed to the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

Section 3.3 Obligations of All Members.

- (a) Each Member must comply with any applicable planning and operating criteria, procedures and guides adopted by or under the direction of the Board to maintain electric system reliability, coordinate planning, promote comparable access to the transmission system by all users and to further the exempt purposes of ERCOT.

- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's request as necessary for the furtherance of the exempt purposes or activities of ERCOT and consistent with PUCT rules relating to confidentiality.
- (c) Each Member shall fully disclose any Affiliates in its annual Membership application submitted pursuant to procedures adopted under Section 3.1(c). If a Member's Affiliates change prior to submission of the next year's Membership application, the Member shall notify ERCOT of any change in writing by letter to the General Counsel or by the online link found on ERCOT's website on the Membership page. When there is a change to Affiliates previously submitted to ERCOT, the notice must be submitted upon the earliest of: (i) promptly after the Member's designated representative has obtained actual knowledge; (ii) promptly after any Member's representative who serves on an ERCOT governing body or committee with Membership representation (such as, the Board of Directors, Technical Advisory Committee or TAC subcommittee) has obtained actual knowledge; or (iii) within 90 days of a change to the Member's Affiliates. A Member's designated and voting representatives are responsible for taking steps to remain informed about the Member's Affiliates and for conducting a reasonable inquiry if they have reason to believe that there may have been a change in Affiliates.

Section 3.4 Annual Member Dues. Each Member annually shall pay dues to ERCOT (the "Annual Member Dues"). Each Member shall pay its Annual Member Dues within thirty (30) days after receipt of ERCOT's annual statement of such dues. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Dues for Corporate Members shall be \$2,000. Annual Member Dues for Associate Members shall be \$500. Annual Member Dues for Adjunct Members shall be \$500. The Annual Member Dues for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership. Office of Public Utility Counsel ("OPUC") and the appointed Residential Consumer TAC Representative(s) shall be eligible to be Corporate Members without the payment of Annual Member Dues. Any Member may request that the Member's Annual Member Dues be waived by the Board of Directors for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his designee in writing (signed by a duly authorized representative of the Member) the name of the person thus appointed. For Corporate Members, such appointed representative shall also act on behalf of the Corporate Member at all meetings of the Corporate Members.

Section 3.6 Participation.

- (a) No Entity shall simultaneously hold more than one Corporate Membership. Any Entity may also simultaneously have a maximum of one seat on each of the following: the Board and TAC.
- (b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member Dues for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has applied to be and has been approved by ERCOT to meet the minimum qualifications as a Corporate Member of a Segment, the Entity must continue to vote in that Segment for a minimum of one (1) year. If, at any point during the membership year, an Entity no longer meets the qualifications for the Segment for which it was originally approved by ERCOT, the Entity may not vote in that Segment; however, that Entity may then immediately elect to become a Corporate Member in any Segment for which it does qualify. Except as otherwise provided in these Bylaws, an Associate Member may be selected by the Corporate Members of a Segment in which the Associate Member participates to serve as a voting member of the Board, TAC or any subcommittee of the Board or TAC.
- (c) Subject to any specific provisions in these Bylaws or the Certificate of Formation, each Corporate Member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate Members. A Corporate Member in good standing is one that is not in arrears for payment of its Annual Member Dues for a Corporate Membership or payment of any other fees owed to ERCOT unless in good faith disputed, is not in breach of any contract with ERCOT, and is not suspended or expelled as a Corporate Member as of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters unless and until they have regained good standing.

### Section 3.7 Meetings of the Corporate Members.

- (a) Corporate Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other business as may be properly brought before them.
- (b) Special meetings of the Corporate Members may be called by the Board.
- (c) Written or printed notice of any meeting of the Corporate Members shall be delivered to each Member at least three weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail, facsimile, or email. Notice

shall include an agenda explaining the purpose of the meeting and any business upon which the Corporate Members will be requested to vote.

- (d) The record date for determining Corporate Members entitled to notice shall be on the Friday which is at least thirty days but not more than thirty-six days prior to the meeting date.
- (e) Representation at any meeting of ERCOT of at least fifty-one percent (51%) of the Corporate Members, in person or by proxy, shall constitute a quorum for the transaction of business at such meeting; and abstentions do not affect calculation of a quorum. Except as otherwise provided in these Bylaws, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members. For purposes of voting of the Corporate Members, Corporate Members who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.
- (f) Written proxies may be used for meetings of the Corporate Members in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of the Corporate Members, proxies shall count towards a quorum.
- (g) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members 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 Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted. Corporate Members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken without a meeting, notice of the proposed action shall be provided to Corporate Members in accordance with Section 3.7(c).

Section 3.8 Sanction, Suspension, Expulsion, or Termination of Members. No Member, either a Member organization or a Member representative, may be sanctioned, expelled or suspended, and no Membership or Memberships in ERCOT may be terminated or suspended except pursuant to the following procedure, which is intended to be fair and reasonable and carried out in good faith, absent a Board resolution providing an alternative procedure:



- (a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in ERCOT's records.
- (b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to participate in the hearing at his or its own expense, and to present and cross-examine any witnesses. The hearing shall be conducted at the next meeting of the Board for which there is time to give proper notice.
- (c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.
- (d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, sanction or termination. Any such proceeding before the Board will be subject to the hearing requirements described in (b) of this section.

Section 3.9 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of ERCOT at any time upon written notice to the CEO, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or TAC and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of Annual Member Dues for a fiscal year, the Member shall be obligated to pay its Annual Member Dues for the full fiscal year within which such termination is effective.

Section 3.10 Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board may choose to reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 3.11 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and ERCOT Protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member, or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable,

with respect to the management, extension, construction maintenance and operation of its own facilities, present and future. A Member has no interest in specific property of ERCOT and waives the right to require a partition of any ERCOT property.

## **ARTICLE 4 BOARD OF DIRECTORS**

Section 4.1 Powers. The affairs of ERCOT shall be managed by the Board (“Board”).

Section 4.2 The Board. The Board shall be composed of a total of sixteen (16) Directors as follows:

- (a) The Chair of the PUCT as an *ex officio* non-voting Director;
- (b) The Public Counsel of OPUC as an *ex officio* voting Director representing Residential Consumers and Small Commercial Consumers;
- (c) The CEO as an *ex officio* voting Director;
- (d) Six (6) voting Directors elected by their respective Segments as follows:
  - 1. One (1) Independent Generator and one (1) Segment Alternate;
  - 2. One (1) IOU and one (1) Segment Alternate;
  - 3. One (1) Independent Power Marketer and one (1) Segment Alternate;
  - 4. One (1) Independent REP and one (1) Segment Alternate;
  - 5. One (1) Municipal and one (1) Segment Alternate;
  - 6. One (1) Cooperative and one (1) Segment Alternate;
- (e) One (1) voting Director representing Industrial Consumers and one (1) Segment Alternate;
- (f) One (1) voting Director representing Large Commercial Consumers and one (1) Segment Alternate; and
- (g) Five (5) voting Directors selected as Unaffiliated Directors.

Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

- (a) Selection of Market Segment Directors and Segment Alternates.

- (1) For Consumer Directors, the following shall apply: The Director and Segment Alternate from the Commercial Consumer subsegment shall be elected by the Large Commercial Consumer Corporate Members. If there are no Large Commercial Consumer Corporate Members eligible or willing to serve, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director and Segment Alternate. The Industrial Consumer Director and Segment Alternate shall be elected by the Industrial Consumer Corporate Members.
- (2) Within each Market Segment represented on the Board (except for the Consumer Segment which follows the process described in Section 4.3(a)(1)), only Corporate Members of the respective Membership Segment for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat.
- (3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at least two-thirds of members of that Segment and may conduct elections as needed to fill any Director or Segment Alternate vacancies.
- (4) With regard to eligibility of Consumer Directors (other than the *ex officio* Consumer Director representing Residential and Small Commercial Consumers), Market Segment Directors and Segment Alternates, the following shall apply:
  - (i) Each Director and Segment Alternate respectively elected by the Industrial Consumer subsegment or the Independent Generator, Independent Power Marketer, Independent Retail Electric Provider, or Investor Owned Utility Market Segments must be an employee of:
    - a. a Corporate or Associate Member; or
    - b. an Affiliate of a Corporate or Associate Member of the respective Market Segment or subsegment which provides services through the Affiliate's employees to such Corporate or Associate Member.
  - (ii) Each Director and Segment Alternate respectively elected by the Large Commercial Consumer subsegment as described in Section 4.3(a)(1) or by the Cooperative or Municipal Market Segments must be an employee of a Corporate or Associate Member.

- (iii) Unless otherwise provided in these Bylaws, if a Director or Segment Alternate is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member or Affiliate as described in Section 4.3(a)(4)(i) (as applicable), as he or she was at the time of such election or appointment. If the Member or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable) is subject to a corporate restructure for tax or operational purposes which is not the result of a merger or acquisition, then such restructure shall not affect the eligibility of the Director or Segment Alternate.

(b) Selection of Unaffiliated Directors.

- (1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO. The Chair and Vice-Chair of the Nominating Committee shall be the Chair and Vice-Chair of the Board, respectively, absent a request for an election of these positions by a member of the Nominating Committee.
- (2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:
  - (i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.
  - (ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:
    - a. An Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:
      - 1. Current or recent ties (within the last two years) as a director, or Officer of a Market Participant or its Affiliates;

2. Current or recent ties (within the last two years) as an employee of an ERCOT Member or NERC-Registered Entity operating in the ERCOT Region;
  3. Direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and
  4. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
- b. An Unaffiliated Director shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority pursuant to these Bylaws.
- (iii) Residence in the State of Texas preferred.
  - (iv) Other criteria as approved by the Board.
- (3) The Nominating Committee or its subcommittee shall interview the qualified candidates; and the Nominating Committee shall select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.
  - (4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) as needed to fill Unaffiliated Director positions. A proposed Unaffiliated Director(s) that is approved by at least four out of seven Segments shall be elected as an Unaffiliated Director(s). Upon election by the Membership, ERCOT staff shall file a petition for approval of the Unaffiliated Director(s) with the PUCT.
  - (5) The Membership-elected Unaffiliated Director(s) shall be seated only upon approval by the PUCT. If elected by the Membership, an Unaffiliated Director shall not begin service for his initial term and be seated on the Board until the PUCT approves such election. An Unaffiliated Director who has been elected by the Membership for any renewal term shall cease service on the Board upon expiration of the Unaffiliated Director's current

term and shall not be re-seated on the Board for a renewal term until the PUCT approves such election of the Unaffiliated Director for a renewal term. If the PUCT does not approve of the Unaffiliated Director for any of the initial or renewal terms, then the Nominating Committee shall recommend another Unaffiliated Director candidate to the Membership for election and, if elected by the Membership, for approval by the PUCT as soon as reasonably possible.

- (c) Terms. The term for all Market Segment Directors shall be for one year. Any Market Segment Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be three year terms, which shall be staggered to the extent possible, unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. In order to serve on the Board during their terms, all Directors and Segment Alternates shall continuously remain in good standing and meet their respective minimum requirements and qualifications of their Director and Segment Alternate positions, respectively.
- (d) Director Voting Weights. All voting Directors shall have a single vote each.
- (e) Alternates and Proxies. Market Segment Directors with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director, preferably an Unaffiliated Director whenever possible, as a proxy if unable to attend a Board meeting. Consumer Directors and *ex officio* Directors may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Director.
- (f) Prohibitions on Certain Stakeholder Memberships and Representation. With the exception of the Public Counsel and representatives of OPUC, no Director or Segment Alternate shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. For a period of one year from the last date of service as an Unaffiliated Director, the former Unaffiliated Director shall not represent a Market Participant before the Board, TAC, any of TAC's subcommittees, task forces or working groups.

Section 4.4 Chair and Vice Chair. Annually and as needed, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. The Chair shall be one of the Unaffiliated Directors. The Vice Chair shall be an Unaffiliated Director who may serve as needed in the Chair's absence (including a vacancy of the Chair position). The CEO shall not be qualified to act as the Vice Chair.

#### Section 4.5 Vacancies and Removal.

- (a) A vacancy of a Director or Segment Alternate position will occur if: (1) the respective Director, other than an Unaffiliated Director, or Segment Alternate elected or appointed is no longer employed by the Entity for which the Director or Segment Alternate was employed at the time of his election or appointment; (2) the respective Director or Segment Alternate resigns his Director or Segment Alternate position from the Board; or (3) the Director or Segment Alternate is removed from the Board in accordance with the provisions of Section 4.5(b).
- (b) A Director or Segment Alternate may be removed: (1) with or without cause at any time by whomever had the right to appoint such respective Director or Segment Alternate, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director or Segment Alternate; or (2) with cause by the Board upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. Removal shall occur if: (1) a Director, other than an Unaffiliated Director, a Segment Alternate, or the organization that a Director, other than an Unaffiliated Director, or Segment Alternate represents no longer meets the criteria of their representative Segment; or (2) an Unaffiliated Director, a Director, a Segment Alternate, or the organization that a Director or Segment Alternate represents is: (A) found by the Board to have committed a prohibited act as identified in Section 9.3 of these Bylaws pursuant to and after completion of a hearing process as described in Section 9.3 of these Bylaws, and (B) the Board recommends removal of an Unaffiliated Director, a Director or a Segment Alternate from the Board. Any Board action to remove a Director or a Segment Alternate from the Board shall be subject to review by the PUCT. An Unaffiliated Director may be removed by the PUCT in accordance with applicable law.
- (c) The right to elect Directors or Segment Alternates may not be assigned, sold, pledged or transferred in any manner.
- (d) A vacancy may be filled only by the persons authorized to elect or appoint such Director or Segment Alternate.
- (e) The Chair of the Nominating Committee shall notify the PUCT Commissioners when a vacancy of an Unaffiliated Director position occurs and shall provide information to the PUCT Commissioners as required by the PUCT.
- (f) Any Director or Segment Alternate so chosen shall serve in his respective Director or Segment Alternate position until the earlier of the expiration of his term, resignation, ineligibility, inability to serve or removal.

#### Section 4.6 Meetings.

- (a) The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members. Additional meetings of the Board shall be held at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, date and hour of any meeting of the Board or any Board subcommittee where at least one Board Director is present shall be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 4.7(e). The Board must ratify any action taken on notice of less than one week or by teleconference at its next regularly scheduled meeting.
- (d) The Board shall promulgate procedures allowing public access to meetings of the Board and Board subcommittees and allowing for members of the public to provide comment on the matters under discussion at public portions of meetings of the Board and subcommittees.
- (e) Meetings of the Board or Board subcommittees shall be open to the public provided that the Board or Board subcommittee on which at least one Board Director sits may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting held in Executive Session, including for purposes of voting. An Executive Session shall be held at the discretion of the Board or Board subcommittee for sensitive matters including, but not limited to, confidential personnel information, contracts, lawsuits, deliberation of purchase of real property, competitively sensitive information, deployment or implementation of security devices or other information related to the security of ERCOT's regional electrical network and discussion of any matters on which the Board receives legal advice from its attorney(s) in which the Texas Disciplinary Rules of Professional Conduct impose on the attorney(s) a duty to preserve confidentiality, including but not limited to anticipated or pending litigation, administrative agency contested cases, and other regulatory matters.
- (f) The Secretary or his designee shall keep minutes of every Board meeting.



Section 4.7 Quorum; Action by Directors; Abstentions; Proxies; Seated Directors; Actions Without a Meeting; and Meetings by Telephone.

- (a) Except as may be otherwise specifically provided by law, the Certificate of Formation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the Seated Directors shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum.
- (b) The act of: (i) at least two-thirds of the affirmative votes of the Eligible Voting Directors; and (ii) at least 50% of the total Seated Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Certificate of Formation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.
- (c) For purposes of voting on the Board, Directors who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.
- (d) Written proxies may be used for meetings of the Board or any subcommittees of the Board in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of the Board or any subcommittee of the Board, a Segment Alternate or designated alternate representative, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Directors (for urgent matters in accordance with Section 4.6) may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of the Technical Advisory Committee (TAC) and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. The designation of subcommittees and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or him by law.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Corporation ("NERC"), the Board shall elect, from among its members, persons to serve on the NERC Member Representatives Committee or its successor. The selection of the

representatives shall require an act of the Board as set forth in Section 4.7. If more than one representative is requested, such representatives shall be from different Segments.

Section 4.10 Duties. It shall be the duty of the Board to initiate any specific action required, in its opinion, to fulfill the exempt purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the Certificate of Formation, applicable law, and these Bylaws. Such action may be taken by the Board, by such subcommittee(s) as may be formed by the Board, the CEO as directed by the Board or by individuals appointed by the Board provided that the following actions of the Board may not be delegated: (a) approval of the Budget (as defined in Section 10.3); (b) approval of the employment and terms for the CEO, as well as termination of CEO's employment; (c) ratification of other Officers of ERCOT; (d) annual selection of a qualified independent public accounting firm ("Auditor") to audit the financial statements of ERCOT; (e) approval of the initiation of any non-routine filing to a regulatory agency that requests regulatory action; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

## **ARTICLE 5**

### **TECHNICAL ADVISORY COMMITTEE**

#### Section 5.1 TAC Representatives.

- (a) For the purposes of this section, membership in the TAC shall be divided in accordance with the definitions of the Segments described in Section 3.1. TAC shall be comprised of the following ("Representatives"):
  - (1) Representatives of four Members elected from each of the six Segments (other than as described for the Consumer Segment) listed in Section 3.1.
  - (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment shall appoint such Representatives. For the Residential, Commercial and Industrial subsegments, the TAC Representative seats are as follows:
    - (i) Two Representatives of Industrial Consumers;
    - (ii) One Representative of Small Commercial Consumers;
    - (iii) One Representative of Large Commercial Consumers;
    - (iv) One Representative of Residential Consumers; and

- (v) The Public Counsel's designee as an *ex officio* voting member.
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (c) Fifty-one percent (51%) of the eligible, Seated Representatives of TAC shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum. Affirmative votes of: (i) two-thirds of the Eligible Voting Representatives of TAC; and (ii) at least 50% of the total Seated Representatives shall be the act of TAC. For purposes of voting on TAC, TAC Representatives shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action if: (i) they are not present and have not designated a proxy, or (ii) they abstain from voting.
- (d) Written proxies may be used for meetings of TAC or any subcommittees of TAC in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of TAC or any subcommittee of TAC, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of TAC Representatives or any subcommittee of TAC 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 TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the TAC Representatives and subcommittee members were present and voted. TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken by TAC without a meeting, notice of the proposed action shall be provided to the TAC Representatives in accordance with Section 5.3.
- (f) Each Segment may choose to participate in "Participatory Voting" as described herein. If a Segment chooses to engage in Participatory Voting, each TAC Representative elected by that Segment shall be required to present the decision of the Corporate Members of that Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 3.5 to vote on its behalf for purposes of Participatory Voting. If a Corporate Member of a Segment using Participatory Voting is unable or does not wish to attend a TAC meeting that Member may deliver a written proxy, at any time prior

to the start of the meeting at which it will be voted, to a Participatory Voting delegate of any Member of the same Segment. A Corporate Member delegate in attendance at a TAC meeting may give a written proxy to a Participatory Voting delegate of any Member of the same Segment during such meeting.

- (g) All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one year. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. A vacancy shall be filled by the same means used to elect or appoint the previous TAC Representative. No Entity shall participate in more than one Segment of TAC. The Representatives of TAC shall elect from amongst themselves a Chair and Vice Chair subject to confirmation by the Board. The Chair and Vice Chair shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws during the confirmation process, and any person speaking on behalf of TAC before the Board shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws before speaking on behalf of TAC.
- (h) Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if an employee or agent of a Member is elected or appointed to serve on TAC or any subcommittee thereof, such person is only eligible to serve in such capacity so long as he or she is an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (i) In the event that a Small Commercial Consumer Representative cannot be identified to serve on TAC, that seat may be filled by any other Commercial Consumer representative appointed by the Consumer Director of the Small Commercial subsegment provided that such representative represents at least one consumer in the ERCOT Region. Any Representative of the Consumer Segment appointed to TAC by a Consumer Director, if not otherwise a Member of ERCOT, shall be allowed to vote on TAC without the payment of the Annual Member Service Fees. An appointed Commercial Consumer TAC Representative is eligible to serve in such capacity so long as he or she is an employee or representative of the same company as he or she was at the time of such appointment.

Section 5.2 Functions of TAC. TAC shall have the authority to create subcommittees, task forces and study groups ("subcommittees"). TAC shall determine the eligibility requirements, quorum requirements and voting structure for each subcommittee. TAC shall (a) through its subcommittees make such studies and plans as it deems appropriate to accomplish the purposes of ERCOT, the duties of its subcommittees and the policies of the Board, (b) report the results of such studies and plans to the Board as required by the Board, (c) review and coordinate the activities and reports of its

subcommittees, (d) make such recommendations to the Board as it deems appropriate or as required by the Board, (e) perform such other duties as directed by the Board and (f) make recommendations regarding ERCOT expenditures and projects. In accordance with ERCOT procedures and applicable law and regulations, certain guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that such actions are reported to the Board for review and nothing herein shall affect the ability of the Board to independently consider such guidelines, criteria and actions, and to take such action with respect thereto as the Board deems appropriate, including revocation and remand with instructions.

Section 5.3 Meetings. TAC and its subcommittees shall meet as often as necessary to perform their duties and functions. All meetings of TAC and its subcommittees shall be called by their respective chairmen and all such meeting notices shall be sent in writing to each member at least one week prior to the meeting, unless an emergency condition should suggest otherwise (such emergency to be by mutual consent of a majority of the Seated Representatives of TAC or subcommittee). Any Member may request notification of any such meetings and may have an employee or a TAC-approved representative for that Member attend as an observer. Each Representative of TAC may designate in writing an alternate representative who may attend meetings in the absence of the Representative and vote on the Representative's behalf.

Section 5.4 Other Appointments. TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups whose members are appointed by the NERC Regions. The selection of TAC representatives to NERC shall require an act of TAC as set forth in Section 5.1(c). If more than one representative is requested, TAC should consider selecting representatives from different Segments.

## **ARTICLE 6**

Intentionally Omitted.

## **ARTICLE 7 CHIEF EXECUTIVE OFFICER**

Section 7.1 CEO Hiring and Duties. The Board shall hire a Chief Executive Officer ("CEO") who, under the Board's supervision and direction shall carry on the general affairs of ERCOT. The CEO shall be a member of the staff of ERCOT and shall be an *ex officio* voting Director. It shall be his duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of ERCOT. The CEO shall serve as President of ERCOT. He or she shall comply with all orders of the Board. All agents and employees of ERCOT shall report,

and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 Notice of CEO Vacancy. The Board Chair or the Board Chair's designee shall notify the PUCT Commissioners when a vacancy occurs for the CEO.

Section 7.3 CEO Selection. The Board Chair or the Board Chair's designee shall provide information to the PUCT Commissioners regarding selection of the CEO requested by any of the PUCT Commissioners as required by the PUCT.

Section 7.4 CEO Compensation. The compensation of the CEO shall be approved by the Board.

## **ARTICLE 8 OFFICERS**

Section 8.1 General. The Officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, and such Officers and assistant Officers as the Board may create. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 8.2 Tenure. The CEO of ERCOT shall be elected and the other Officers of ERCOT shall be ratified by the Board at such time and in such manner and for such a term not exceeding one (1) one year, as shall be determined from time to time by the Board. Any Officer may be re-elected or re-ratified for consecutive terms, without limitation. All Officers of ERCOT shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any Officer elected or appointed may be removed by the persons authorized to elect or appoint such Officer whenever in their judgment the best interests of ERCOT will be served thereby.

## **ARTICLE 9 TRANSACTIONS OF CORPORATION**

Section 9.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositories that the Board approves.

Section 9.2 Potential Conflicts of Interest. Each Director, Segment Alternate, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest of the Director, Segment Alternate, TAC Representative or subcommittee member or his employer where, and to the extent that, such conflicts or potential

conflicts directly or indirectly affect any matter that comes before the Board, TAC or subcommittee, as the case may be. A Director or Segment Alternate with a direct interest in a matter, personally or via his employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in the Market Segment of a Director or Segment Alternate or a general interest of some or all Market Segment Directors or Segment Alternates in a matter does not constitute direct interest. Any disclosure of a direct interest by a Director or Segment Alternate shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, if the Director, Segment Alternate, TAC Representative or subcommittee member recuses himself or herself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

ERCOT may not make any loan to a Director, Segment Alternate or Officer of ERCOT. A Member, Director, Segment Alternate, TAC Representative, Officer, or subcommittee member of ERCOT may lend money to and otherwise transact business with ERCOT except as otherwise provided by these Bylaws, the Certificate of Formation, and applicable law. Such a person transacting business with ERCOT has the same rights and obligations relating to those matters as other persons transacting business with ERCOT. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, TAC Representative, Officer, or subcommittee member of ERCOT unless the transaction is described fully in a legally binding instrument and is in ERCOT's best interests. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, Officer, TAC Representative or subcommittee member of ERCOT without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

Section 9.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, Segment Alternate, Officer, or subcommittee member of ERCOT may:

- (a) Do any act in violation of the Certificate of Formation or these Bylaws;
- (b) Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval;
- (c) Do any act with the intention of harming ERCOT or any of its operations;
- (d) Receive an improper personal benefit from the operation of ERCOT;
- (e) Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes;

- (f) Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will;
- (g) Use ERCOT's name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT region;
- (h) Disclose any of ERCOT's or Members' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it;
- (i) Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Energy Regulatory Commission ("FERC") rules or become subject to any plenary jurisdiction of FERC;
- (j) With regard to the Directors and Segment Alternates, do any act in violation of an ERCOT rule [as that term is defined in PUCT Substantive Rule Section 25.361(a)], PUCT rule, or applicable statute.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing conducted using the same procedure as described in Article 3 of these Bylaws.

## **ARTICLE 10 EXPENSES, BOOKS AND RECORDS**

### Section 10.1 Member Representatives' Expenses and Compensation of Certain Directors and TAC Representatives.

- (a) Except as described below, ERCOT shall not bear the personal and travel expenses of each person who serves as a representative of a Member or as a Director, Segment Alternate, TAC Representative or subcommittee member. Except as provided below, no such person shall receive any salary or other compensation from ERCOT.
- (b) The Board shall have the authority to fix the compensation of its Unaffiliated Directors who may be paid a fixed sum plus reimbursement of travel expenses for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing. Unaffiliated Directors, who are members of standing or special committees, may be allowed like compensation and reimbursement of travel expenses for attending committee



meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities and Unaffiliated Directors shall be reimbursed for travel lodging and related expenses for attending each meeting of the Board. The reimbursement of travel expenses by ERCOT shall be in accordance with ERCOT policies on the reimbursement of appropriate and reasonable, documented travel expenses.

- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, or any standing or special committee of such on an annual basis. Any Residential Consumer TAC Representative shall not be an agent of ERCOT for any purpose and shall not be considered to be serving at ERCOT's request, even though compensated by ERCOT.

Section 10.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

Section 10.3 Budget. A budget (the "Budget") for ERCOT for the ensuing one or more fiscal years shall be adopted by the Board. In connection with the Board's approval, the Budget, including cost of liability insurance, for ERCOT shall be compiled by the CEO and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

Section 10.4 Loans and Guarantees. Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Certificate of Formation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of ERCOT or a guarantee by any Member of any obligation of ERCOT.

Section 10.5 Access to Books and Records. All Members of ERCOT will have access to the books and records of the organization, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of ERCOT. If necessary to protect the confidential information of ERCOT, a Member requesting examination of ERCOT's books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Section 10.7 Fiscal Year. The fiscal year of ERCOT shall be from January 1 through the following December 31, or as otherwise fixed by resolution of the Board.

## **ARTICLE 11 INDEMNIFICATION**

Section 11.1 Indemnification. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST, EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY CHAPTER 8 OF THE TEXAS BUSINESS ORGANIZATIONS CODE OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, AS SO AMENDED, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT.

## **ARTICLE 12 NOTICES**

Section 12.1 Form. Unless otherwise provided in these Bylaws, any notice required by these Bylaws to be given to a Member, Director, Segment Alternate, committee or subcommittee member, TAC Representative, member of a subcommittee of TAC, or Officer of ERCOT must be given by at least two of the following methods: mail, facsimile, email, or website posting. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his address as it appears on the corporate records, with postage prepaid. A person may change his address in the corporate records by giving written notice of the change to the CEO.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Certificate of Formation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice that was to be given.

Section 12.3 Waiver of Notice by Attendance at a Meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 12.4 Objection. If any person, who is a voting member of a group holding a meeting, reasonably objects to the transaction of business regarding a specific issue, or issues, at a meeting on the grounds that the meeting is not properly called or convened or that the issue, or issues, was improperly noticed, the issue or issues in question may not be addressed at that meeting. The Chair of such meeting shall determine if such objection is reasonable.

## **ARTICLE 13 AMENDMENTS**

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership and subject to approval by the PUCT, these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.
- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) If the proposal is approved by an act of the Board as set forth in Section 4.7, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members unless the Board in its discretion calls a Special Meeting of the Corporate Members to vote on the proposal or determines to seek Membership approval without a meeting as provided in Section 3.7(g).
- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
  - (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.
  - (2) Except for the Consumer Segment, an affirmative vote of at least two-thirds of the Corporate Members of a Segment present constitutes an affirmative vote by that Segment.

- (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following 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 shall constitute an affirmative vote of that subgroup. An affirmative vote of at least two of the three Consumer subgroups shall constitute an affirmative vote of the Consumer Segment.

- (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws.

Section 13.2 Amendments to the Certificate of Formation. In accordance with the procedures set forth in the Texas Business Organizations Code, including Section 22.164(b)(1), an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Certificate of Formation.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

Section 14.1 Legal Authorities Governing Construction of Bylaws. These Bylaws shall be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 14.2 Legal Construction. Any question as to the application or interpretation of any provision of these Bylaws shall be resolved by the Board. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any Bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

Section 14.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 14.4 Number and Gender. All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other

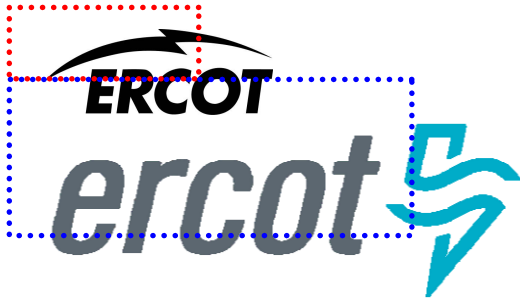
gender.

Section 14.5 Parties Bound. These Bylaws will bind and inure to the benefit of the Members, Directors, Segment Alternates, TAC Representatives, Officers, subcommittee members, employees, and agents of ERCOT and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

Section 14.6 Effective Date. The effective date of these Amended and Restated Bylaws is {Month Day, Year – Date of PUCT Approval}, provided that the Board may implement transition procedures before the effective date in order to ensure a smooth transition to the structure described in these Bylaws.

Attachment B-2

Proposed Amendments to ERCOT Bylaws  
(Redlined Version)



**AMENDED AND RESTATED BYLAWS**

**OF**

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

**(A Texas Non-Stock, Non-Profit Corporation)**

**Approved on ~~August 17, 2015~~ (Month Day, Year – Date of PUCT Approval)**

## ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc., a Texas non-stock, non-profit corporation ("ERCOT"), shall be located at such place in Texas as the ERCOT Board of Directors (the "Board") may determine. Additional offices may be established and maintained at such place or places as the Board may from time to time designate.

Section 1.2 Registered Office and Registered Agent. ERCOT will maintain a registered office and a registered agent in Texas. The Board may change the registered office and the registered agent as permitted ~~in the Texas Non-Profit Corporation Act~~ by the Texas Business Organizations Code, including Chapter 22 thereof (Nonprofit Corporations).

## ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

- Affiliate.** ~~This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In the case of (i) or (ii) above, where one entity owns or holds at least five percent, but less than 20 percent, of the voting securities of another entity, and the relationships in (iii) and (iv) do not exist, the Board shall have the discretion to determine whether or not the entities are Affiliates of one another for the purpose of determining Member Segment and voting rights. Similarly, in cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.~~ 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 Subsection (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 Subsection (C) below. **Membership in ERCOT shall not create an affiliation with ERCOT.**

(A) **Construction**

As used in this definition:

(x) “party” shall mean any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, or other entity;

(y) “person” shall mean any party, 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

(z) “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 Subsection (B)(2)(a) through (c) above shall create a presumption of control that may be challenged pursuant to Subsection (D) below.

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 Subsection (B) above, may nonetheless be determined by the Board, pursuant to Subsection (D) below, to be an Affiliate of another person, if allegations brought before the Board are substantiated 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 as set forth in Subsection (D).

(D) *Procedure for Board Determinations Regarding Affiliation*

1. Any party may challenge the presumption of control pursuant to Subsection (B) above, or allege substantial influence pursuant to Subsection (C) above, to the Board pursuant to the procedure set forth in this Subsection (D).
2. The challenging party shall submit written notice of the challenge to ERCOT's General Counsel. Such written notice shall identify any persons that are the subject of the challenge and shall include a detailed summary of the facts supporting the challenge. ERCOT's General Counsel will provide a recommendation to the Board on the challenge.
3. The Board will hear such matter at the next regularly-scheduled Board meeting that is at least ten (10) Business Days after the date the written notice of challenge is received by ERCOT's General Counsel. Notice of the Board's consideration of the challenge shall be given pursuant to Section 4.6(b) of these Bylaws.

4. The Board shall have discretion to determine whether the persons who are the subject of the challenge are Affiliates of one another for purposes of these Bylaws by reference to the factors set forth in this definition and other persuasive evidence. The challenging party shall bear the burden of proof.

(E) Changes in Affiliates

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

2. **Consumers.** Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.
3. **Commercial Consumers.** A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater than 1000 kilowatts. An entity applying for ERCOT membership as either a Small Commercial Consumer or a Large Commercial Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators and the interest is of such an extent or nature that its decisions might be affected or determined by it. The three Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.
4. **Cooperative.** An entity operating in the ERCOT Region that is:
  - a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
  - b. a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas;
  - c. a cooperative association organized under ~~Tex. Rev. Civ. Stat. 1396-50.01~~Chapter 251 of the Texas Business Organizations Code or a predecessor to that statute and operating under that statute; or

- d. a River Authority as defined in Tex. Water Code §30.003.
5. **Director.** A member of the Board of ERCOT.
6. **Eligible Voting Director.** A Seated Director of the Board of ERCOT other than the *ex officio* Director who is the Chairman of the Public Utility Commission of Texas (“PUCT”), pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
7. **Eligible Voting Representative.** A Seated Representative, pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
8. **Entity.** An Entity includes an organization and all of its Affiliates.
9. **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas, as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.
10. **ERCOT Region.** The geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the Public Utility Commission of Texas.
11. **Independent Generator.** Any entity that is not a ~~Transmission and Distribution (“T&D”)~~T&D Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.
12. **Independent Power Marketer.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.
13. **Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (“REP”) under ~~Public Utility Regulatory Act (“PURA”)~~ §39.352 and that is not an Affiliate of a T&D Entity. For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.

14. **Industrial Consumers.** An industrial consumer is a consumer with at least one meter with average monthly demand greater than 1 megawatt consumed within the ERCOT Region engaged in an industrial process.
15. **Investor-Owned Utility (“IOU”).**
- a. An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an entity described in (a), (b) or (c); [or](#)
  - b. A public utility holding company of any such electric utility.
16. **Market Participant.** For purposes of these Bylaws, a Market Participant is (i) any entity that engages in any activity that is in whole or in part the subject of the ERCOT Protocols and has, or should have, a contract regarding such activities with ERCOT or (ii) any entity that qualifies for ERCOT membership.
17. **Market Segment.** For purposes of these Bylaws, any of the segments (all of which are defined within this Article 2 of these Bylaws) as follows:
- a. Cooperative;
  - b. Independent Generator;
  - c. Independent Power Marketer;
  - d. Independent REP;
  - e. IOU;
  - f. Municipal; or
  - g. Consumer (including: (1) Commercial Consumer comprised of Small Commercial Consumer and Large Commercial Consumer, (2) Industrial Consumer, or (3) Residential Consumer).
18. **Market Segment Director.** A Director who has been elected by one of the Market Segments.
19. **Member.** A member of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of these Bylaws, or the member’s appointed representative, as the context so requires.
20. **Municipal.** An entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either:

- a. a municipal owned utility as defined in PURA §11.003 or
- b. a River Authority as defined in Tex. Water Code §30.003.

21. ~~Officer.~~ An individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.

22. ~~21.~~ **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.

23. ~~22.~~ **Residential Consumers.** The appointed Board Director representing residential consumer interests, an organization or agency representing the interests of residential consumers in the ERCOT Region, or the Residential Consumer Technical Advisory Committee ("TAC") Representative. An entity applying for ERCOT membership as a Residential Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as a end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators. The three Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

24. ~~23.~~ **Seated Director.** A Director, or ~~their~~the Director's designated Segment Alternate when serving in ~~their~~the Director's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Director".

25. ~~24.~~ **Seated Representative.** A TAC Representative (as defined in Section 5.1 of these Bylaws) or a member of a subcommittee of TAC, or ~~their~~the TAC Representative's designated alternate representatives when serving in ~~their~~the TAC Representative's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Representative".

26. ~~25.~~ **Segment.** For purposes of these Bylaws, a "Segment" refers to a Market Segment as defined in this Article 2 of these Bylaws.

~~26-27.~~ **Segment Alternate.** A designated alternate Board representative, duly elected by his respective Market Segment, who can attend and vote at meetings in the absence of the respective Market Segment Director (including while such

Director is unable to attend a Board meeting or while such Director's seat is vacant). Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.

**~~27-28.~~ Transmission and Distribution (“T&D”) Entity.** Any entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a “retail electric utility,” as defined in PURA §37.001, operating in the ERCOT Region.

**~~28-29.~~ Unaffiliated Director.** A Director who is unaffiliated with a Market Participant and who meets the requirements identified in Section 4.3(b).

## **ARTICLE 3 MEMBERS**

### Section 3.1 Membership.

- (a) Members must qualify in one of the following segments as defined in Article 2:
  - (1) Cooperative;
  - (2) Independent Generator;
  - (3) Independent Power Marketer;
  - (4) Independent REP;
  - (5) Investor-Owned Utility;
  - (6) Municipal; or,
  - (7) Consumer in one of three subsegments: (i) Commercial (which is further divided into Large and Small Commercial Consumer); (ii) Industrial; and (iii) Residential.
- (b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.
- (c) The Board may adopt and amend Member application procedures.

Section 3.2 Membership Types and Voting Rights. ERCOT Members may be Corporate Members, Associate Members, or Adjunct Members as hereinafter described:

- (a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the ~~Articles~~Certificate of ~~Incorporation~~Formation and these Bylaws).
- (b) Associate Members – shall have the rights and obligations as described in these Bylaws excluding the right to vote on any matter submitted to the general Membership (such as election of Directors, election of TAC Representatives and amendments to the ~~Articles~~Certificate of ~~Incorporation~~Formation and these Bylaws).
- (c) Adjunct Members – may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Corporate or Associate Member. Adjunct Members shall have no right to vote on any matter submitted to the general Membership nor any right to be elected or appointed to the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

Section 3.3 Obligations of All Members.

- (a) Each Member must comply with any applicable planning and operating criteria, procedures and guides adopted by or under the direction of the Board to maintain electric system reliability, coordinate planning, promote comparable access to the transmission system by all users and to further the exempt purposes of ERCOT.
- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's request as necessary for the furtherance of the exempt purposes or activities of ERCOT and consistent with PUCT rules relating to confidentiality.
- (c) Each Member shall fully disclose any Affiliates in its annual Membership application submitted pursuant to procedures adopted under Section 3.1(c). If a Member's Affiliates change prior to submission of the next year's Membership application, the Member shall notify ERCOT of any change in writing by letter to the General Counsel or by the online link found on ERCOT's website on the Membership page. When there is a change to Affiliates previously submitted to ERCOT, the notice must be submitted upon the earliest of: (i) promptly after the Member's designated representative has obtained actual knowledge; (ii)



promptly after any Member's representative who serves on an ERCOT governing body or committee with Membership representation (such as, the Board of Directors, Technical Advisory Committee or TAC subcommittee) has obtained actual knowledge; or (iii) within 90 days of a change to the Member's Affiliates. A Member's designated and voting representatives are responsible for taking steps to remain informed about the Member's Affiliates and for conducting a reasonable inquiry if they have reason to believe that there may have been a change in Affiliates.

Section 3.4 Annual Member Dues. Each Member annually shall pay dues to ERCOT (the "Annual Member Dues"). Each Member shall pay its Annual Member Dues within thirty (30) days after receipt of ERCOT's annual statement of such dues. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Dues for Corporate Members shall be \$2,000. Annual Member Dues for Associate Members shall be \$500. Annual Member Dues for Adjunct Members shall be \$500. The Annual Member Dues for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership. Office of Public Utility Counsel ("OPUC") and the appointed Residential Consumer TAC Representative(s) shall be eligible to be Corporate Members without the payment of Annual Member Dues. Any Member may request that the Member's Annual Member Dues be waived by the Board of Directors for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his designee in writing (signed by a duly authorized representative of the Member) the name of the person thus appointed. For Corporate Members, such appointed representative shall also act on behalf of the Corporate Member at all meetings of the Corporate Members.

Section 3.6 Participation.

- (a) No Entity shall simultaneously hold more than one Corporate Membership. Any Entity may also simultaneously have a maximum of one seat on each of the following: the Board and TAC.
- (b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member Dues for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has applied to be and has been approved by ERCOT to meet the minimum qualifications as a Corporate Member of a Segment, the Entity must continue to vote in that

Segment for a minimum of one (1) year. If, at any point during the membership year, an Entity no longer meets the qualifications for the Segment for which it was originally approved by ERCOT, the Entity may not vote in that Segment; however, that Entity may then immediately elect to become a Corporate Member in any Segment for which it does qualify. Except as otherwise provided in these Bylaws, an Associate Member may be selected by the Corporate Members of a Segment in which the Associate Member participates to serve as a voting member of the Board, TAC or any subcommittee of the Board or TAC.

- (c) Subject to any specific provisions in these Bylaws or the ~~Articles~~[Certificate of Incorporation](#)[Formation](#), each Corporate Member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate Members. A Corporate Member in good standing is one that is not in arrears for payment of its Annual Member Dues for a Corporate Membership or payment of any other fees owed to ERCOT unless in good faith disputed, is not in breach of any contract with ERCOT, and is not suspended or expelled as a Corporate Member as of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters unless and until they have regained good standing.

#### Section 3.7 Meetings of the Corporate Members.

- (a) Corporate Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other business as may be properly brought before them.
- (b) Special meetings of the Corporate Members may be called by the Board.
- (c) Written or printed notice of any meeting of the Corporate Members shall be delivered to each Member at least three weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail, facsimile, or email. Notice shall include an agenda explaining the purpose of the meeting and any business upon which the Corporate Members will be requested to vote.
- (d) The record date for determining Corporate Members entitled to notice shall be on the Friday which is at least thirty days but not more than thirty-six days prior to the meeting date.
- (e) Representation at any meeting of ERCOT of at least fifty-one percent (51%) of the Corporate Members, in person or by proxy, shall constitute a quorum for the transaction of business at such meeting; and abstentions do not affect calculation of a quorum. Except as otherwise provided in these Bylaws, an act of

fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members. For purposes of voting of the Corporate Members, Corporate Members who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.

- (f) Written proxies may be used for meetings of the Corporate Members in accordance with any relevant provisions in these Bylaws and the Texas ~~Non-Profit Corporation Act~~Business Organizations Code, including Chapter 22 thereof. For any meeting of the Corporate Members, proxies shall count towards a quorum.
- (g) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members 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 Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted. Corporate Members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken without a meeting, notice of the proposed action shall be provided to Corporate Members in accordance with Section 3.7(c).

Section 3.8 Sanction, Suspension, Expulsion, or Termination of Members. No Member, either a Member organization or a Member representative, may be sanctioned, expelled or suspended, and no Membership or Memberships in ERCOT may be terminated or suspended except pursuant to the following procedure, which is intended to be fair and reasonable and carried out in good faith, absent a Board resolution providing an alternative procedure:

- (a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in ERCOT's records.
- (b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to

participate in the hearing at his or its own expense, and to present and cross-examine any witnesses. The hearing shall be conducted at the next meeting of the Board for which there is time to give proper notice.

- (c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.
- (d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, sanction or termination. Any such proceeding before the Board will be subject to the hearing requirements described in (b) of this section.

Section 3.9 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of ERCOT at any time upon written notice to the CEO, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or TAC and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of Annual Member Dues for a fiscal year, the Member shall be obligated to pay its Annual Member Dues for the full fiscal year within which such termination is effective.

Section 3.10 Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board may choose to reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 3.11 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and ERCOT Protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member, or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction maintenance and operation of its own facilities, present and future. A Member has no interest in specific property of ERCOT and waives the right to require a partition of any ERCOT property.

## **ARTICLE 4 BOARD OF DIRECTORS**

Section 4.1 Powers. The affairs of ERCOT shall be managed by the Board ("Board").

Section 4.2 The Board. The Board shall be composed of a total of sixteen (16) Directors as follows:

- (a) The Chair of the PUCT as an *ex officio* non-voting Director;
- (b) The Public Counsel of OPUC as an *ex officio* voting Director representing Residential Consumers and Small Commercial Consumers;
- (c) The CEO as an *ex officio* voting Director;
- (d) Six (6) voting Directors elected by their respective Segments as follows:
  - 1. One (1) Independent Generator and one (1) Segment Alternate;
  - 2. One (1) IOU and one (1) Segment Alternate;
  - 3. One (1) Independent Power Marketer and one (1) Segment Alternate;
  - 4. One (1) Independent REP and one (1) Segment Alternate;
  - 5. One (1) Municipal and one (1) Segment Alternate;
  - 6. One (1) Cooperative and one (1) Segment Alternate;
- (e) One (1) voting Director representing Industrial Consumers and one (1) Segment Alternate;
- (f) One (1) voting Director representing Large Commercial Consumers and one (1) Segment Alternate; and
- (g) Five (5) voting Directors selected as Unaffiliated Directors.

Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

- (a) Selection of Market Segment Directors and Segment Alternates.
  - (1) For Consumer Directors, the following shall apply: The Director and Segment Alternate from the Commercial Consumer subsegment shall be elected by the Large Commercial Consumer Corporate Members. If there are no Large Commercial Consumer Corporate Members eligible or willing to serve, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director and Segment Alternate.

The Industrial Consumer Director and Segment Alternate shall be elected by the Industrial Consumer Corporate Members.

- (2) Within each Market Segment represented on the Board (except for the Consumer Segment which follows the process described in Section 4.3(a)(1)), only Corporate Members of the respective Membership Segment for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat.
- (3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at least two-thirds of members of that Segment and may conduct elections as needed to fill any Director or Segment Alternate vacancies.
- (4) With regard to eligibility of Consumer Directors (other than the *ex officio* Consumer Director representing Residential and Small Commercial Consumers), Market Segment Directors and Segment Alternates, the following shall apply:
  - (i) Each Director and Segment Alternate respectively elected by the Industrial Consumer subsegment or the Independent Generator, Independent Power Marketer, Independent Retail Electric Provider, or Investor Owned Utility Market Segments must be an employee of:
    - a. a Corporate or Associate Member; or
    - b. an Affiliate of a Corporate or Associate Member of the respective Market Segment or subsegment which provides services through the Affiliate's employees to such Corporate or Associate Member.
  - (ii) Each Director and Segment Alternate respectively elected by the Large Commercial Consumer subsegment [as described in Section 4.3(a)(1)] or by the Cooperative or Municipal Market Segments must be an employee of a Corporate or Associate Member.
  - (iii) Unless otherwise provided in these Bylaws, if a Director or Segment Alternate is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member or Affiliate

as described in Section 4.3(a)(4)(i) (as applicable), as he or she was at the time of such election or appointment. If the Member or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable) is subject to a corporate restructure for tax or operational purposes which is not the result of a merger or acquisition, then such restructure shall not affect the eligibility of the Director or Segment Alternate.

(b) Selection of Unaffiliated Directors.

- (1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO. The Chair and Vice-Chair of the Nominating Committee shall be the Chair and Vice-Chair of the Board, respectively, absent a request for an election of these positions by a member of the Nominating Committee.
- (2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:
  - (i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.
  - (ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:
    - a. An Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:
      1. Current or recent ties (within the last two years) as a director, or ~~officer~~Officer of a Market Participant or its Affiliates;
      2. Current or recent ties (within the last two years) as an employee of an ERCOT Member or NERC-Registered Entity operating in the ERCOT Region;



3. Direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and
  4. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
- b. An Unaffiliated Director shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority pursuant to these Bylaws.
- (iii) Residence in the State of Texas preferred.
  - (iv) Other criteria as approved by the Board.
- (3) The Nominating Committee or its subcommittee shall interview the qualified candidates; and the Nominating Committee shall select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.
  - (4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) as needed to fill Unaffiliated Director positions. A proposed Unaffiliated Director(s) that is approved by at least four out of seven Segments shall be elected as an Unaffiliated Director(s). Upon election by the Membership, ERCOT staff shall file a petition for approval of the Unaffiliated Director(s) with the PUCT.
  - (5) The Membership-elected Unaffiliated Director(s) shall be seated only upon approval by the PUCT. If elected by the Membership, an Unaffiliated Director shall not begin service for his initial term and be seated on the Board until the PUCT approves such election. An Unaffiliated Director who has been elected by the Membership for any renewal term shall cease service on the Board upon expiration of the Unaffiliated Director's current term and shall not be re-seated on the Board for a renewal term until the PUCT approves such election of the Unaffiliated Director for a renewal term. If the PUCT does not approve of



the Unaffiliated Director for any of the initial or renewal terms, then the Nominating Committee shall recommend another Unaffiliated Director candidate to the Membership for election and, if elected by the Membership, for approval by the PUCT as soon as reasonably possible.

- (c) Terms. The term for all Market Segment Directors shall be for one year. Any Market Segment Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be three year terms, which shall be staggered to the extent possible, unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. In order to serve on the Board during their terms, all Directors and Segment Alternates shall continuously remain in good standing and meet their respective minimum requirements and qualifications of their Director and Segment Alternate positions, respectively.
- (d) Director Voting Weights. All voting Directors shall have a single vote each.
- (e) Alternates and Proxies. Market Segment Directors with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director, preferably an Unaffiliated Director whenever possible, as a proxy if unable to attend a Board meeting. Consumer Directors and *ex officio* Directors may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Director.
- (f) Prohibitions on Certain Stakeholder Memberships and Representation. With the exception of the Public Counsel and representatives of OPUC, no Director or Segment Alternate shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. For a period of one year from the last date of service as an Unaffiliated Director, the former Unaffiliated Director shall not represent a Market Participant before the Board, TAC, any of TAC's subcommittees, task forces or working groups.

Section 4.4 Chair and Vice Chair. Annually and as needed, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. The Chair shall be one of the Unaffiliated Directors. The Vice Chair shall be an Unaffiliated Director who may serve as needed in the Chair's absence (including a vacancy of the Chair position). The CEO shall not be qualified to act as the Vice Chair.

Section 4.5 Vacancies and Removal.

- (a) A vacancy of a Director or Segment Alternate position will occur if: (1) the respective Director, other than an Unaffiliated Director, or Segment Alternate elected or appointed is no longer employed by the Entity for which the Director or Segment Alternate was employed at the time of his election or appointment; (2) the respective Director or Segment Alternate resigns his Director or Segment Alternate position from the Board; or (3) the Director or Segment Alternate is removed from the Board in accordance with the provisions of Section 4.5(b).
- (b) A Director or Segment Alternate may be removed: (1) with or without cause at any time by whomever had the right to appoint such respective Director or Segment Alternate, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director or Segment Alternate; or (2) with cause by the Board upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. Removal shall occur if: (1) a Director, other than an Unaffiliated Director, a Segment Alternate, or the organization that a Director, other than an Unaffiliated Director, or Segment Alternate represents no longer meets the criteria of their representative Segment; or (2) an Unaffiliated Director, a Director, a Segment Alternate, or the organization that a Director or Segment Alternate represents is: (A) found by the Board to have committed a prohibited act as identified in Section 9.3 of these Bylaws pursuant to and after completion of a hearing process as described in Section 9.3 of these Bylaws, and (B) the Board recommends removal of an Unaffiliated Director, a Director or a Segment Alternate from the Board. Any Board action to remove a Director or a Segment Alternate from the Board shall be subject to review by the PUCT. An Unaffiliated Director may be removed by the PUCT in accordance with applicable law.
- (c) The right to elect Directors or Segment Alternates may not be assigned, sold, pledged or transferred in any manner.
- (d) A vacancy may be filled only by the persons authorized to elect or appoint such Director or Segment Alternate.
- (e) The Chair of the Nominating Committee shall notify the PUCT Commissioners when a vacancy of an Unaffiliated Director position occurs and shall provide information to the PUCT Commissioners as required by the PUCT.
- (f) Any Director or Segment Alternate so chosen shall serve in his respective Director or Segment Alternate position until the earlier of the expiration of his term, resignation, ineligibility, inability to serve or removal.

#### Section 4.6 Meetings.

- (a) The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members. Additional meetings of the Board shall be held at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, date and hour of any meeting of the Board or any Board subcommittee where at least one Board Director is present shall be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 4.7(e). The Board must ratify any action taken on notice of less than one week or by teleconference at its next regularly scheduled meeting.
- (d) The Board shall promulgate procedures allowing public access to meetings of the Board and Board subcommittees and allowing for members of the public to provide comment on the matters under discussion at public portions of meetings of the Board and subcommittees.
- (e) Meetings of the Board or Board subcommittees shall be open to the public provided that the Board or Board subcommittee on which at least one Board Director sits may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting held in Executive Session, including for purposes of voting. An Executive Session shall be held at the discretion of the Board or Board subcommittee for sensitive matters including, but not limited to, confidential personnel information, contracts, lawsuits, deliberation of purchase of real property, competitively sensitive information, deployment or implementation of security devices or other information related to the security of ERCOT's regional electrical network and discussion of any matters on which the Board receives legal advice from its attorney(s) in which the Texas Disciplinary Rules of Professional Conduct impose on the attorney(s) a duty to preserve confidentiality, including but not limited to anticipated or pending litigation, administrative agency contested cases, and other regulatory matters.
- (f) The Secretary or his designee shall keep minutes of every Board meeting.  
Section 4.7 Quorum; Action by Directors; Abstentions; Proxies; Seated Directors; Actions Without a Meeting; and Meetings by Telephone.

- (a) Except as may be otherwise specifically provided by law, the ~~Articles~~[Certificate of Incorporation](#) or these Bylaws, at all meetings of the Board, fifty percent (50%) of the Seated Directors shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum.
- (b) The act of: (i) at least two-thirds of the affirmative votes of the Eligible Voting Directors; and (ii) at least 50% of the total Seated Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the ~~Articles~~[Certificate of Incorporation](#), or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.
- (c) For purposes of voting on the Board, Directors who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.-
- (d) Written proxies may be used for meetings of the Board or any subcommittees of the Board in accordance with any relevant provisions in these Bylaws and the Texas ~~Non-Profit Corporation Act~~[Business Organizations Code, including Chapter 22 thereof](#). For any meeting of the Board or any subcommittee of the Board, a Segment Alternate or designated alternate representative, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Directors (for urgent matters in accordance with Section 4.6) may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of the Technical Advisory Committee (TAC) and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. The designation of subcommittees and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or him by law.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Corporation ("NERC"), the Board shall elect, from among its members, persons to serve on the NERC Member Representatives Committee or its successor. The selection of the representatives shall require an act of the Board as set forth in Section 4.7. If more

than one representative is requested, such representatives shall be from different Segments.

Section 4.10 Duties. It shall be the duty of the Board to initiate any specific action required, in ~~their~~its opinion, to fulfill the exempt purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the ~~Articles of Incorporation~~Certificate of Formation, applicable law, and these Bylaws. Such action may be taken by the Board, by such subcommittee(s) as may be formed by the Board, the CEO as directed by the Board or by individuals appointed by the Board provided that the following actions of the Board may not be delegated: (a) approval of the Budget (as defined in Section 10.3); (b) approval of the employment and terms for the CEO, as well as termination of CEO's employment; (c) ratification of other ~~officers~~Officers of ERCOT; (d) annual selection of a qualified independent public accounting firm ("Auditor") to audit the financial statements of ERCOT; (e) approval of the initiation of any non-routine filing to a regulatory agency that requests regulatory action; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

## **ARTICLE 5 TECHNICAL ADVISORY COMMITTEE**

### Section 5.1 TAC Representatives.

- (a) For the purposes of this section, membership in the TAC shall be divided in accordance with the definitions of the Segments described in Section 3.1. TAC shall be comprised of the following ("Representatives"):
  - (1) Representatives of four Members elected from each of the six Segments (other than as described for the Consumer Segment) listed in Section 3.1.
  - (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment shall appoint such Representatives. For the Residential, Commercial and Industrial subsegments, the TAC Representative seats are as follows:
    - (i) Two Representatives of Industrial Consumers;
    - (ii) One Representative of Small Commercial Consumers;
    - (iii) One Representative of Large Commercial Consumers;

- (iv) One Representative of Residential Consumers; and
  - (v) The Public Counsel's designee as an *ex officio* voting member.
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (c) Fifty-one percent (51%) of the eligible, Seated Representatives of TAC shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum. Affirmative votes of: (i) two-thirds of the Eligible Voting Representatives of TAC; and (ii) at least 50% of the total Seated Representatives shall be the act of TAC. For purposes of voting on TAC, TAC Representatives shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action if: (i) they are not present and have not designated a proxy, or (ii) they abstain from voting.
- (d) Written proxies may be used for meetings of TAC or any subcommittees of TAC in accordance with any relevant provisions in these Bylaws and the Texas ~~Non-Profit Corporation Act~~Business Organizations Code, including Chapter 22 thereof. For any meeting of TAC or any subcommittee of TAC, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of TAC Representatives or any subcommittee of TAC 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 TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the TAC Representatives and subcommittee members were present and voted. TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken by TAC without a meeting, notice of the proposed action shall be provided to the TAC Representatives in accordance with Section 5.3.
- (f) Each Segment may choose to participate in "Participatory Voting" as described herein. If a Segment chooses to engage in Participatory Voting, each TAC Representative elected by that Segment shall be required to present the decision



of the Corporate Members of that Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 3.5 to vote on its behalf for purposes of Participatory Voting. If a Corporate Member of a Segment using Participatory Voting is unable or does not wish to attend a TAC meeting that Member may deliver a written proxy, at any time prior to the start of the meeting at which it will be voted, to a Participatory Voting delegate of any Member of the same Segment. A Corporate Member delegate in attendance at a TAC meeting may give a written proxy to a Participatory Voting delegate of any Member of the same Segment during such meeting.

- (g) All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one year. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. A vacancy shall be filled by the same means used to elect or appoint the previous TAC Representative. No Entity shall participate in more than one Segment of TAC. The Representatives of TAC shall elect from amongst themselves a Chair and Vice Chair subject to confirmation by the Board. The Chair and Vice Chair shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws during the confirmation process, and any person speaking on behalf of TAC before the Board shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws before speaking on behalf of TAC.
- (h) Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if an employee or agent of a Member is elected or appointed to serve on TAC or any subcommittee thereof, such person is only eligible to serve in such capacity so long as he or she is an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (i) In the event that a Small Commercial Consumer Representative cannot be identified to serve on TAC, that seat may be filled by any other Commercial Consumer representative appointed by the Consumer Director of the Small Commercial subsegment provided that such representative represents at least one consumer in the ERCOT Region. Any Representative of the Consumer Segment appointed to TAC by a Consumer Director, if not otherwise a Member of ERCOT, shall be allowed to vote on TAC without the payment of the Annual Member Service Fees. An appointed Commercial Consumer TAC Representative is eligible to serve in such capacity so long as he or she is an employee or representative of the same company as he or she was at the time of such appointment.

Section 5.2 Functions of TAC. TAC shall have the authority to create subcommittees, task forces and study groups (“subcommittees”). TAC shall determine the eligibility requirements, quorum requirements and voting structure for each subcommittee. TAC shall (a) through its subcommittees make such studies and plans as it deems appropriate to accomplish the purposes of ERCOT, the duties of its subcommittees and the policies of the Board, (b) report the results of such studies and plans to the Board as required by the Board, (c) review and coordinate the activities and reports of its subcommittees, (d) make such recommendations to the Board as it deems appropriate or as required by the Board, (e) perform such other duties as directed by the Board and (f) make recommendations regarding ERCOT expenditures and projects. In accordance with ERCOT procedures and applicable law and regulations, certain guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that such actions are reported to the Board for review and nothing herein shall affect the ability of the Board to independently consider such guidelines, criteria and actions, and to take such action with respect thereto as the Board deems appropriate, including revocation and remand with instructions.

Section 5.3 Meetings. TAC and its subcommittees shall meet as often as necessary to perform their duties and functions. All meetings of TAC and its subcommittees shall be called by their respective chairmen and all such meeting notices shall be sent in writing to each member at least one week prior to the meeting, unless an emergency condition should suggest otherwise (such emergency to be by mutual consent of a majority of the Seated Representatives of TAC or subcommittee). Any Member may request notification of any such meetings and may have an employee or a TAC-approved representative for that Member attend as an observer. Each Representative of TAC may designate in writing an alternate representative who may attend meetings in the absence of the Representative and vote on the Representative’s behalf.

Section 5.4 Other Appointments. TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups whose members are appointed by the NERC Regions. The selection of TAC representatives to NERC shall require an act of TAC as set forth in Section 5.1(c). If more than one representative is requested, TAC should consider selecting representatives from different Segments.

## **ARTICLE 6**

Intentionally Omitted.

## **ARTICLE 7 CHIEF EXECUTIVE OFFICER**



Section 7.1 CEO Hiring and Duties. The Board shall hire a Chief Executive Officer (“CEO”) who, under the Board’s supervision and direction shall carry on the general affairs of ERCOT. The CEO shall be a member of the staff of ERCOT and shall be an *ex officio* voting Director. It shall be his duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of ERCOT. The CEO shall serve as President of ERCOT. He or she shall comply with all orders of the Board. All agents and employees of ERCOT shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 Notice of CEO Vacancy. The Board Chair or the Board Chair’s designee shall notify the PUCT Commissioners when a vacancy occurs for the CEO.

Section 7.3 CEO Selection. The Board Chair or the Board Chair’s designee shall provide information to the PUCT Commissioners regarding selection of the CEO requested by any of the PUCT Commissioners as required by the PUCT.

Section 7.4 CEO Compensation. The compensation of the CEO shall be approved by the Board.

## **ARTICLE 8 OFFICERS**

Section 8.1 General. The ~~officers~~Officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, and such ~~officers~~Officers and assistant ~~officers~~Officers as the Board may create. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 8.2 Tenure. The CEO of ERCOT shall be elected and the other ~~officers~~Officers of ERCOT shall be ratified by the Board at such time and in such manner and for such a term not exceeding one (1) one year, as shall be determined from time to time by the Board. Any ~~officer~~Officer may be re-elected or re-ratified for consecutive terms, without limitation. All ~~officers~~Officers of ERCOT shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any ~~officer~~Officer elected or appointed may be removed by the persons authorized to elect or appoint such ~~officer~~Officer whenever in their judgment the best interests of ERCOT will be served thereby.

## ARTICLE 9 TRANSACTIONS OF CORPORATION

Section 9.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositories that the Board approves.

Section 9.2 Potential Conflicts of Interest. Each Director, Segment Alternate, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest of the Director, Segment Alternate, TAC Representative or subcommittee member or his employer where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board, TAC or subcommittee, as the case may be. A Director or Segment Alternate with a direct interest in a matter, personally or via his employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in the Market Segment of a Director or Segment Alternate or a general interest of some or all Market Segment Directors or Segment Alternates in a matter does not constitute direct interest. Any disclosure of a direct interest by a Director or Segment Alternate shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, if the Director, Segment Alternate, TAC Representative or subcommittee member recuses himself or herself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

ERCOT may not make any loan to a Director, Segment Alternate or ~~officer~~Officer of ERCOT. A Member, Director, Segment Alternate, TAC Representative, ~~officer~~Officer, or subcommittee member of ERCOT may lend money to and otherwise transact business with ERCOT except as otherwise provided by these Bylaws, the ~~Articles of Incorporation~~Certificate of Formation, and applicable law. Such a person transacting business with ERCOT has the same rights and obligations relating to those matters as other persons transacting business with ERCOT. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, TAC Representative, ~~officer~~Officer, or subcommittee member of ERCOT unless the transaction is described fully in a legally binding instrument and is in ERCOT's best interests. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, ~~officer~~Officer, TAC Representative or subcommittee member of ERCOT without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

Section 9.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, Segment Alternate, ~~officer~~Officer, or subcommittee member of ERCOT may:

- (a) Do any act in violation of the ~~Articles~~Certificate of ~~Incorporation~~Formation or these Bylaws;
- (b) Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval;
- (c) Do any act with the intention of harming ERCOT or any of its operations;
- (d) Receive an improper personal benefit from the operation of ERCOT;
- (e) Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes;
- (f) Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will;
- (g) Use ERCOT's name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT region;
- (h) Disclose any of ERCOT's or Members' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it;
- (i) Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Energy Regulatory Commission ("FERC") rules or become subject to any plenary jurisdiction of FERC;
- (j) With regard to the Directors and Segment Alternates, do any act in violation of an ERCOT rule [as that term is defined in PUCT Substantive Rule Section 25.361(a)], PUCT rule, or applicable statute.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing conducted using the same procedure as described in Article 3 of these Bylaws.

## **ARTICLE 10 EXPENSES, BOOKS AND RECORDS**

### Section 10.1 Member Representatives' Expenses and Compensation of Certain Directors and TAC Representatives.

- (a) Except as described below, ERCOT shall not bear the personal and travel expenses of each person who serves as a representative of a Member or as a Director, Segment Alternate, TAC Representative or subcommittee member. Except as provided below, no such person shall receive any salary or other compensation from ERCOT.
- (b) The Board shall have the authority to fix the compensation of its Unaffiliated Directors who may be paid a fixed sum plus reimbursement of travel expenses for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing. Unaffiliated Directors, who are members of standing or special committees, may be allowed like compensation and reimbursement of travel expenses for attending committee meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities and Unaffiliated Directors shall be reimbursed for travel lodging and related expenses for attending each meeting of the Board. The reimbursement of travel expenses by ERCOT shall be in accordance with ERCOT policies on the reimbursement of appropriate and reasonable, documented travel expenses.
- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, or any standing or special committee of such on an annual basis. Any Residential Consumer TAC Representative shall not be an agent of ERCOT for any purpose and shall not be considered to be serving at ERCOT's request, even though compensated by ERCOT.

Section 10.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

Section 10.3 Budget. A budget (the "Budget") for ERCOT for the ensuing one or more fiscal years shall be adopted by the Board. In connection with the Board's approval, the Budget, including cost of liability insurance, for ERCOT shall be compiled by the CEO and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

Section 10.4 Loans and Guarantees. Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the ~~Articles~~[Certificate](#) of ~~Incorporation~~[Formation](#)

shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of ERCOT or a guarantee by any Member of any obligation of ERCOT.

Section 10.5 Access to Books and Records. All Members of ERCOT will have access to the books and records of the organization, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of ERCOT. If necessary to protect the confidential information of ERCOT, a Member requesting examination of ERCOT's books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Section 10.7 Fiscal Year. The fiscal year of ERCOT shall be from January 1 through the following December 31, or as otherwise fixed by resolution of the Board.

## **ARTICLE 11 INDEMNIFICATION**

Section 11.1 Indemnification. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST, EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY ~~ARTICLE 1396-2.22A~~CHAPTER 8 OF THE TEXAS ~~NON-PROFIT CORPORATION ACT~~BUSINESS ORGANIZATIONS CODE OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, AS SO AMENDED, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT.

## ARTICLE 12 NOTICES

Section 12.1 Form. Unless otherwise provided in these Bylaws, any notice required by these Bylaws to be given to a Member, Director, Segment Alternate, committee or subcommittee member, TAC Representative, member of a subcommittee of TAC, or ~~officer~~Officer of ERCOT must be given by at least two of the following methods: mail, facsimile, email, or website posting. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his address as it appears on the corporate records, with postage prepaid. A person may change his address in the corporate records by giving written notice of the change to the CEO.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's ~~Articles~~Certificate of ~~Incorporation~~Formation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice that was to be given.

Section 12.3 Waiver of Notice by Attendance at a Meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 12.4 Objection. If any person, who is a voting member of a group holding a meeting, reasonably objects to the transaction of business regarding a specific issue, or issues, at a meeting on the grounds that the meeting is not properly called or convened or that the issue, or issues, was improperly noticed, the issue or issues in question may not be addressed at that meeting. The Chair of such meeting shall determine if such objection is reasonable.

## ARTICLE 13 AMENDMENTS

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership and subject to approval by the PUCT, these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.

- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) If the proposal is approved by an act of the Board as set forth in Section 4.7, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members unless the Board in its discretion calls a Special Meeting of the Corporate Members to vote on the proposal or determines to seek Membership approval without a meeting as provided in Section ~~14.8.3.7(g)~~.
- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
  - (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.
  - (2) Except for the Consumer Segment, an affirmative vote of at least two-thirds of the Corporate Members of a Segment present constitutes an affirmative vote by that Segment.
  - (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following 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 shall constitute an affirmative vote of that subgroup. An affirmative vote of at least two of the three Consumer subgroups shall constitute an affirmative vote of the Consumer Segment.
  - (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws.

Section 13.2 Amendments to the ~~Articles~~Certificate of ~~Incorporation~~Formation. In accordance with the procedures set forth in ~~Article 1396-4.02 of the Texas Non-Profit Corporation Act—~~Business Organizations Code, including Section 22.164(b)(1), an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the ~~Articles of Incorporation~~Certificate of Formation.



## ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 14.1 Legal Authorities Governing Construction of Bylaws. These Bylaws shall be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 14.2 Legal Construction. Any question as to the application or interpretation of any provision of these Bylaws shall be resolved by the Board. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any Bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

Section 14.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.Section 14.4 Number and Gender. All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.Section 14.5 Parties Bound. These Bylaws will bind and inure to the benefit of the Members, Directors, Segment Alternates, TAC Representatives, ~~officers~~Officers, subcommittee members, employees, and agents of ERCOT and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

Section 14.6 Effective Date. The effective date of these Amended and Restated Bylaws is ~~September 11, 2014,~~{Month Day, Year – Date of PUCT Approval}, provided that the Board may implement transition procedures before the effective date in order to ensure a smooth transition to the structure described in these Bylaws.



Document comparison by Workshare 9.5 on Friday, July 20, 2018 11:21:02 AM

Input:	
Document 1 ID	netdocuments://4829-3770-6847/1
Description	Proposed Bylaws Amendments ERCOT Legal 05.2018
Document 2 ID	netdocuments://4829-3770-6847/5
Description	Proposed Bylaws Amendments ERCOT Legal 05.2018
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	107
Deletions	72
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	187

## Attachment C

### Notice of Special Meeting of Corporate Membership



August 15, 2018

ERCOT Corporate Member:

Your participation in voting matters is hereby requested. Your participation is critical in this process.

### **Recommendations to the Corporate Members on Two Voting Items**

On August 7, 2018, the ERCOT Board of Directors (Board) unanimously voted to approve proposed amendments to the *Amended and Restated Articles of Incorporation of Electric Reliability Council of Texas*, effective December 19, 2000 (Articles) and *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.*, effective August 17, 2015 (Bylaws), and to recommend and present such proposed amendments to the ERCOT Corporate Members for their approval, subject to final approval by the Public Utility Commission of Texas (PUCT).

### **Proposed Amendments to the Articles and Bylaws for Corporate Member Approval**

The proposed amendments to the Articles would conform the Articles with current corporate and tax-exempt organization legal requirements, maintain ERCOT's tax-exempt organization status, update factual references, and include references to applicable provisions of the Public Utility Regulatory Act (PURA) and PUCT Substantive Rules. The language of the proposed Articles amendments is attached for your review and consideration as *Attachment 1*. If the amendments are approved, the Articles would be known as the "Amended and Restated Certificate of Formation of Electric Reliability Council of Texas, Inc."

The proposed amendments to the Bylaws would update the definition of "Affiliate" and clarify the process for determining Affiliate status, clarify the definition of "Officer," update legal code references, and correct scrivener's errors. The language of the proposed Bylaws amendments is attached for your review and consideration as *Attachment 2*.

Additional information on these amendments, including red-lined changes, may be found in the materials associated with Agenda Items 11.1 and 11.2 of the August 7, 2018 Board meeting, which are available at <http://www.ercot.com/calendar/2018/8/7/137984-BOARD>, under "Key Documents."

### **Special Meeting of Corporate Members Called by the Board**

According to Sections 3.7(b) and (g) of the Bylaws, the Board may call a Special Meeting of the Corporate Members (Special Meeting) to seek approval without an in-person meeting. As provided in Section 3.7(g): "Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members 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



Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted.”

On August 7, 2018, the Board called a Special Meeting as soon as reasonably possible to vote on the proposed amendments to the Articles and Bylaws. Thus, on Wednesday, September 12, 2018, at 10:00 a.m. in Room 210A at 7620 Metro Center Drive, Austin, Texas 78744, a Special Meeting will be held for the purpose of voting on the above-mentioned proposed amendments to the Articles and Bylaws.

### **Request for Corporate Members to Submit Consent and Ballot Form in Lieu of Meeting**

We are seeking Corporate Membership approval to have each vote in writing, in lieu of a Special Meeting. Please review the enclosed Official Consent and Ballot form (Ballot). If you agree to take action on the proposed amendments to the Articles and Bylaws without a Special Meeting, please indicate your voting preference, sign the Ballot and return it to ERCOT by **5:00 p.m. on Friday, September 7, 2018**. After 5:00 p.m. on Friday, September 7, 2018, we will count the Ballots received to determine if we have sufficient number to allow a vote on the amendments to the Articles and Bylaws in lieu of the Special Meeting. We will post a notice of either a successful vote or of the need to have the September 12, 2018 Special Meeting on the ERCOT website at <http://www.ercot.com/calendar/2018/9/12/161373>, no later than Monday, September 10, 2018, at 12:00 p.m.

**ACTION NEEDED: Submit Consent and Ballot Form by 5:00 p.m., Friday, September 7, 2018**

**Please note that the requested votes require approval by the Members and the PUCT prior to becoming effective. So that the votes may be approved as soon as possible by the Members and the PUCT, please indicate your vote in favor or against the voting matters, sign the Ballot, and make every effort to return it to ERCOT as noted on the Ballot no later than 5:00 p.m., Friday, September 7, 2018.**

Sincerely,

Amy L. Loera  
Regulatory Specialist  
ERCOT

**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:

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

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

## 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 BYLAWS**  
**OF**  
**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**  
**(A Texas Non-Stock, Non-Profit Corporation)**  
**Approved on {Month Day, Year – Date of PUCT Approval}**

## ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc., a Texas non-stock, non-profit corporation ("ERCOT"), shall be located at such place in Texas as the ERCOT Board of Directors (the "Board") may determine. Additional offices may be established and maintained at such place or places as the Board may from time to time designate.

Section 1.2 Registered Office and Registered Agent. ERCOT will maintain a registered office and a registered agent in Texas. The Board may change the registered office and the registered agent as permitted by the Texas Business Organizations Code, including Chapter 22 thereof (Nonprofit Corporations).

## ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

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 Subsection (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 Subsection (C) below. Membership in ERCOT shall not create an affiliation with ERCOT.

(A) Construction

As used in this definition:

(x) "party" shall mean any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, or other entity;

(y) "person" shall mean any party, 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

(z) "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 Subsection (B)(2)(a) through (c) above shall create a presumption of control that may be challenged pursuant to Subsection (D) below.

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 Subsection (B) above, may nonetheless be determined by the Board, pursuant to Subsection (D) below, to be an Affiliate of another person, if allegations brought before the Board are substantiated 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 as set forth in Subsection (D).

(D) *Procedure for Board Determinations Regarding Affiliation*

1. Any party may challenge the presumption of control pursuant to Subsection (B) above, or allege substantial influence pursuant to Subsection (C) above, to the Board pursuant to the procedure set forth in this Subsection (D).
2. The challenging party shall submit written notice of the challenge to ERCOT's General Counsel. Such written notice shall identify any persons that are the subject of the challenge and shall include a detailed summary of the facts supporting the challenge. ERCOT's General Counsel will provide a recommendation to the Board on the challenge.
3. The Board will hear such matter at the next regularly-scheduled Board meeting that is at least ten (10) Business Days after the date the written notice of challenge is received by ERCOT's General Counsel. Notice of the Board's consideration of the challenge shall be given pursuant to Section 4.6(b) of these Bylaws.
4. The Board shall have discretion to determine whether the persons who are the subject of the challenge are Affiliates of one another for purposes of these Bylaws by reference to the factors set forth in this definition and other persuasive evidence. The challenging party shall bear the burden of proof.

(E) *Changes in Affiliates*

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

2. **Consumers.** Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.
3. **Commercial Consumers.** A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater than 1000 kilowatts. An entity applying for ERCOT membership as either a Small Commercial Consumer or a Large Commercial Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the

interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators and the interest is of such an extent or nature that its decisions might be affected or determined by it. The three Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

4. **Cooperative.** An entity operating in the ERCOT Region that is:
  - a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
  - b. a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas;
  - c. a cooperative association organized under Chapter 251 of the Texas Business Organizations Code or a predecessor to that statute and operating under that statute; or
  - d. a River Authority as defined in Tex. Water Code §30.003.
5. **Director.** A member of the Board of ERCOT.
6. **Eligible Voting Director.** A Seated Director of the Board of ERCOT other than the *ex officio* Director who is the Chairman of the Public Utility Commission of Texas ("PUCT"), pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
7. **Eligible Voting Representative.** A Seated Representative, pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
8. **Entity.** An Entity includes an organization and all of its Affiliates.
9. **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas, as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.
10. **ERCOT Region.** The geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric

utilities operating outside the jurisdiction of the Public Utility Commission of Texas.

11. **Independent Generator.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.
12. **Independent Power Marketer.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.
13. **Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (“REP”) under PURA §39.352 and that is not an Affiliate of a T&D Entity. For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.
14. **Industrial Consumers.** An industrial consumer is a consumer with at least one meter with average monthly demand greater than 1 megawatt consumed within the ERCOT Region engaged in an industrial process.
15. **Investor-Owned Utility (“IOU”).**
  - a. An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an entity described in (a), (b) or (c); or
  - b. A public utility holding company of any such electric utility.
16. **Market Participant.** For purposes of these Bylaws, a Market Participant is (i) any entity that engages in any activity that is in whole or in part the subject of the ERCOT Protocols and has, or should have, a contract regarding such activities with ERCOT or (ii) any entity that qualifies for ERCOT membership.
17. **Market Segment.** For purposes of these Bylaws, any of the segments (all of which are defined within this Article 2 of these Bylaws) as follows:
  - a. Cooperative;
  - b. Independent Generator;



- c. Independent Power Marketer;
  - d. Independent REP;
  - e. IOU;
  - f. Municipal; or
  - g. Consumer (including: (1) Commercial Consumer comprised of Small Commercial Consumer and Large Commercial Consumer, (2) Industrial Consumer, or (3) Residential Consumer).
18. **Market Segment Director.** A Director who has been elected by one of the Market Segments.
19. **Member.** A member of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of these Bylaws, or the member's appointed representative, as the context so requires.
20. **Municipal.** An entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either:
- a. a municipal owned utility as defined in PURA §11.003 or
  - b. a River Authority as defined in Tex. Water Code §30.003.
21. **Officer.** An individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.
22. **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.
23. **Residential Consumers.** The appointed Board Director representing residential consumer interests, an organization or agency representing the interests of residential consumers in the ERCOT Region, or the Residential Consumer Technical Advisory Committee ("TAC") Representative. An entity applying for ERCOT membership as a Residential Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as a end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators. The three Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

24. **Seated Director.** A Director, or the Director's designated Segment Alternate when serving in the Director's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Director".
25. **Seated Representative.** A TAC Representative (as defined in Section 5.1 of these Bylaws) or a member of a subcommittee of TAC, or the TAC Representative's designated alternate representatives when serving in the TAC Representative's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Representative".
26. **Segment.** For purposes of these Bylaws, a "Segment" refers to a Market Segment as defined in this Article 2 of these Bylaws.
27. **Segment Alternate.** A designated alternate Board representative, duly elected by his respective Market Segment, who can attend and vote at meetings in the absence of the respective Market Segment Director (including while such Director is unable to attend a Board meeting or while such Director's seat is vacant). Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.
28. **Transmission and Distribution ("T&D") Entity.** Any entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a "retail electric utility," as defined in PURA §37.001, operating in the ERCOT Region.
29. **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant and who meets the requirements identified in Section 4.3(b).

## **ARTICLE 3 MEMBERS**

### Section 3.1 Membership.

- (a) Members must qualify in one of the following segments as defined in Article 2:
  - (1) Cooperative;
  - (2) Independent Generator;
  - (3) Independent Power Marketer;

- (4) Independent REP;
  - (5) Investor-Owned Utility;
  - (6) Municipal; or,
  - (7) Consumer in one of three subsegments: (i) Commercial (which is further divided into Large and Small Commercial Consumer); (ii) Industrial; and (iii) Residential.
- (b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.
- (c) The Board may adopt and amend Member application procedures.

Section 3.2 Membership Types and Voting Rights. ERCOT Members may be Corporate Members, Associate Members, or Adjunct Members as hereinafter described:

- (a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Certificate of Formation and these Bylaws).
- (b) Associate Members – shall have the rights and obligations as described in these Bylaws excluding the right to vote on any matter submitted to the general Membership (such as election of Directors, election of TAC Representatives and amendments to the Certificate of Formation and these Bylaws).
- (c) Adjunct Members – may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Corporate or Associate Member. Adjunct Members shall have no right to vote on any matter submitted to the general Membership nor any right to be elected or appointed to the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

Section 3.3 Obligations of All Members.

- (a) Each Member must comply with any applicable planning and operating criteria, procedures and guides adopted by or under the direction of the Board to maintain electric system reliability, coordinate planning, promote comparable access to the transmission system by all users and to further the exempt purposes of ERCOT.

- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's request as necessary for the furtherance of the exempt purposes or activities of ERCOT and consistent with PUCT rules relating to confidentiality.
- (c) Each Member shall fully disclose any Affiliates in its annual Membership application submitted pursuant to procedures adopted under Section 3.1(c). If a Member's Affiliates change prior to submission of the next year's Membership application, the Member shall notify ERCOT of any change in writing by letter to the General Counsel or by the online link found on ERCOT's website on the Membership page. When there is a change to Affiliates previously submitted to ERCOT, the notice must be submitted upon the earliest of: (i) promptly after the Member's designated representative has obtained actual knowledge; (ii) promptly after any Member's representative who serves on an ERCOT governing body or committee with Membership representation (such as, the Board of Directors, Technical Advisory Committee or TAC subcommittee) has obtained actual knowledge; or (iii) within 90 days of a change to the Member's Affiliates. A Member's designated and voting representatives are responsible for taking steps to remain informed about the Member's Affiliates and for conducting a reasonable inquiry if they have reason to believe that there may have been a change in Affiliates.

Section 3.4 Annual Member Dues. Each Member annually shall pay dues to ERCOT (the "Annual Member Dues"). Each Member shall pay its Annual Member Dues within thirty (30) days after receipt of ERCOT's annual statement of such dues. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Dues for Corporate Members shall be \$2,000. Annual Member Dues for Associate Members shall be \$500. Annual Member Dues for Adjunct Members shall be \$500. The Annual Member Dues for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership. Office of Public Utility Counsel ("OPUC") and the appointed Residential Consumer TAC Representative(s) shall be eligible to be Corporate Members without the payment of Annual Member Dues. Any Member may request that the Member's Annual Member Dues be waived by the Board of Directors for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his designee in writing (signed by a duly authorized representative of the Member) the name of the person thus appointed. For Corporate Members, such appointed representative shall also act on behalf of the Corporate Member at all meetings of the Corporate Members.

Section 3.6 Participation.

- (a) No Entity shall simultaneously hold more than one Corporate Membership. Any Entity may also simultaneously have a maximum of one seat on each of the following: the Board and TAC.
- (b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member Dues for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has applied to be and has been approved by ERCOT to meet the minimum qualifications as a Corporate Member of a Segment, the Entity must continue to vote in that Segment for a minimum of one (1) year. If, at any point during the membership year, an Entity no longer meets the qualifications for the Segment for which it was originally approved by ERCOT, the Entity may not vote in that Segment; however, that Entity may then immediately elect to become a Corporate Member in any Segment for which it does qualify. Except as otherwise provided in these Bylaws, an Associate Member may be selected by the Corporate Members of a Segment in which the Associate Member participates to serve as a voting member of the Board, TAC or any subcommittee of the Board or TAC.
- (c) Subject to any specific provisions in these Bylaws or the Certificate of Formation, each Corporate Member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate Members. A Corporate Member in good standing is one that is not in arrears for payment of its Annual Member Dues for a Corporate Membership or payment of any other fees owed to ERCOT unless in good faith disputed, is not in breach of any contract with ERCOT, and is not suspended or expelled as a Corporate Member as of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters unless and until they have regained good standing.

**Section 3.7 Meetings of the Corporate Members.**

- (a) Corporate Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other business as may be properly brought before them.
- (b) Special meetings of the Corporate Members may be called by the Board.
- (c) Written or printed notice of any meeting of the Corporate Members shall be delivered to each Member at least three weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail, facsimile, or email. Notice

shall include an agenda explaining the purpose of the meeting and any business upon which the Corporate Members will be requested to vote.

- (d) The record date for determining Corporate Members entitled to notice shall be on the Friday which is at least thirty days but not more than thirty-six days prior to the meeting date.
- (e) Representation at any meeting of ERCOT of at least fifty-one percent (51%) of the Corporate Members, in person or by proxy, shall constitute a quorum for the transaction of business at such meeting; and abstentions do not affect calculation of a quorum. Except as otherwise provided in these Bylaws, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members. For purposes of voting of the Corporate Members, Corporate Members who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.
- (f) Written proxies may be used for meetings of the Corporate Members in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of the Corporate Members, proxies shall count towards a quorum.
- (g) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members 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 Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted. Corporate Members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken without a meeting, notice of the proposed action shall be provided to Corporate Members in accordance with Section 3.7(c).

Section 3.8 Sanction, Suspension, Expulsion, or Termination of Members. No Member, either a Member organization or a Member representative, may be sanctioned, expelled or suspended, and no Membership or Memberships in ERCOT may be terminated or suspended except pursuant to the following procedure, which is intended to be fair and reasonable and carried out in good faith, absent a Board resolution providing an alternative procedure:



- (a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in ERCOT's records.
- (b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to participate in the hearing at his or its own expense, and to present and cross-examine any witnesses. The hearing shall be conducted at the next meeting of the Board for which there is time to give proper notice.
- (c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.
- (d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, sanction or termination. Any such proceeding before the Board will be subject to the hearing requirements described in (b) of this section.

Section 3.9 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of ERCOT at any time upon written notice to the CEO, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or TAC and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of Annual Member Dues for a fiscal year, the Member shall be obligated to pay its Annual Member Dues for the full fiscal year within which such termination is effective.

Section 3.10 Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board may choose to reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 3.11 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and ERCOT Protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member, or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable,

with respect to the management, extension, construction maintenance and operation of its own facilities, present and future. A Member has no interest in specific property of ERCOT and waives the right to require a partition of any ERCOT property.

## **ARTICLE 4 BOARD OF DIRECTORS**

Section 4.1 Powers. The affairs of ERCOT shall be managed by the Board ("Board").

Section 4.2 The Board. The Board shall be composed of a total of sixteen (16) Directors as follows:

- (a) The Chair of the PUCT as an *ex officio* non-voting Director;
- (b) The Public Counsel of OPUC as an *ex officio* voting Director representing Residential Consumers and Small Commercial Consumers;
- (c) The CEO as an *ex officio* voting Director;
- (d) Six (6) voting Directors elected by their respective Segments as follows:
  - 1. One (1) Independent Generator and one (1) Segment Alternate;
  - 2. One (1) IOU and one (1) Segment Alternate;
  - 3. One (1) Independent Power Marketer and one (1) Segment Alternate;
  - 4. One (1) Independent REP and one (1) Segment Alternate;
  - 5. One (1) Municipal and one (1) Segment Alternate;
  - 6. One (1) Cooperative and one (1) Segment Alternate;
- (e) One (1) voting Director representing Industrial Consumers and one (1) Segment Alternate;
- (f) One (1) voting Director representing Large Commercial Consumers and one (1) Segment Alternate; and
- (g) Five (5) voting Directors selected as Unaffiliated Directors.

Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

- (a) Selection of Market Segment Directors and Segment Alternates.



- (1) For Consumer Directors, the following shall apply: The Director and Segment Alternate from the Commercial Consumer subsegment shall be elected by the Large Commercial Consumer Corporate Members. If there are no Large Commercial Consumer Corporate Members eligible or willing to serve, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director and Segment Alternate. The Industrial Consumer Director and Segment Alternate shall be elected by the Industrial Consumer Corporate Members.
- (2) Within each Market Segment represented on the Board (except for the Consumer Segment which follows the process described in Section 4.3(a)(1)), only Corporate Members of the respective Membership Segment for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat.
- (3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at least two-thirds of members of that Segment and may conduct elections as needed to fill any Director or Segment Alternate vacancies.
- (4) With regard to eligibility of Consumer Directors (other than the *ex officio* Consumer Director representing Residential and Small Commercial Consumers), Market Segment Directors and Segment Alternates, the following shall apply:
  - (i) Each Director and Segment Alternate respectively elected by the Industrial Consumer subsegment or the Independent Generator, Independent Power Marketer, Independent Retail Electric Provider, or Investor Owned Utility Market Segments must be an employee of:
    - a. a Corporate or Associate Member; or
    - b. an Affiliate of a Corporate or Associate Member of the respective Market Segment or subsegment which provides services through the Affiliate's employees to such Corporate or Associate Member.
  - (ii) Each Director and Segment Alternate respectively elected by the Large Commercial Consumer subsegment as described in Section 4.3(a)(1) or by the Cooperative or Municipal Market Segments must be an employee of a Corporate or Associate Member.

- (iii) Unless otherwise provided in these Bylaws, if a Director or Segment Alternate is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member or Affiliate as described in Section 4.3(a)(4)(i) (as applicable), as he or she was at the time of such election or appointment. If the Member or Affiliate as described in Section 4.3(a)(4)(i)(b) (as applicable) is subject to a corporate restructure for tax or operational purposes which is not the result of a merger or acquisition, then such restructure shall not affect the eligibility of the Director or Segment Alternate.

(b) Selection of Unaffiliated Directors.

- (1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO. The Chair and Vice-Chair of the Nominating Committee shall be the Chair and Vice-Chair of the Board, respectively, absent a request for an election of these positions by a member of the Nominating Committee.
- (2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:
  - (i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.
  - (ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:
    - a. An Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:
      - 1. Current or recent ties (within the last two years) as a director, or Officer of a Market Participant or its Affiliates;

2. Current or recent ties (within the last two years) as an employee of an ERCOT Member or NERC-Registered Entity operating in the ERCOT Region;
  3. Direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and
  4. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
- b. An Unaffiliated Director shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority pursuant to these Bylaws.
- (iii) Residence in the State of Texas preferred.
- (iv) Other criteria as approved by the Board.
- (3) The Nominating Committee or its subcommittee shall interview the qualified candidates; and the Nominating Committee shall select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.
- (4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) as needed to fill Unaffiliated Director positions. A proposed Unaffiliated Director(s) that is approved by at least four out of seven Segments shall be elected as an Unaffiliated Director(s). Upon election by the Membership, ERCOT staff shall file a petition for approval of the Unaffiliated Director(s) with the PUCT.
- (5) The Membership-elected Unaffiliated Director(s) shall be seated only upon approval by the PUCT. If elected by the Membership, an Unaffiliated Director shall not begin service for his initial term and be seated on the Board until the PUCT approves such election. An Unaffiliated Director who has been elected by the Membership for any renewal term shall cease service on the Board upon expiration of the Unaffiliated Director's current

term and shall not be re-seated on the Board for a renewal term until the PUCT approves such election of the Unaffiliated Director for a renewal term. If the PUCT does not approve of the Unaffiliated Director for any of the initial or renewal terms, then the Nominating Committee shall recommend another Unaffiliated Director candidate to the Membership for election and, if elected by the Membership, for approval by the PUCT as soon as reasonably possible.

- (c) Terms. The term for all Market Segment Directors shall be for one year. Any Market Segment Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be three year terms, which shall be staggered to the extent possible, unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. In order to serve on the Board during their terms, all Directors and Segment Alternates shall continuously remain in good standing and meet their respective minimum requirements and qualifications of their Director and Segment Alternate positions, respectively.
- (d) Director Voting Weights. All voting Directors shall have a single vote each.
- (e) Alternates and Proxies. Market Segment Directors with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director, preferably an Unaffiliated Director whenever possible, as a proxy if unable to attend a Board meeting. Consumer Directors and *ex officio* Directors may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Director.
- (f) Prohibitions on Certain Stakeholder Memberships and Representation. With the exception of the Public Counsel and representatives of OPUC, no Director or Segment Alternate shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. For a period of one year from the last date of service as an Unaffiliated Director, the former Unaffiliated Director shall not represent a Market Participant before the Board, TAC, any of TAC's subcommittees, task forces or working groups.

Section 4.4 Chair and Vice Chair. Annually and as needed, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. The Chair shall be one of the Unaffiliated Directors. The Vice Chair shall be an Unaffiliated Director who may serve as needed in the Chair's absence (including a vacancy of the Chair position). The CEO shall not be qualified to act as the Vice Chair.

**Section 4.5 Vacancies and Removal.**

- (a) A vacancy of a Director or Segment Alternate position will occur if: (1) the respective Director, other than an Unaffiliated Director, or Segment Alternate elected or appointed is no longer employed by the Entity for which the Director or Segment Alternate was employed at the time of his election or appointment; (2) the respective Director or Segment Alternate resigns his Director or Segment Alternate position from the Board; or (3) the Director or Segment Alternate is removed from the Board in accordance with the provisions of Section 4.5(b).
- (b) A Director or Segment Alternate may be removed: (1) with or without cause at any time by whomever had the right to appoint such respective Director or Segment Alternate, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director or Segment Alternate; or (2) with cause by the Board upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. Removal shall occur if: (1) a Director, other than an Unaffiliated Director, a Segment Alternate, or the organization that a Director, other than an Unaffiliated Director, or Segment Alternate represents no longer meets the criteria of their representative Segment; or (2) an Unaffiliated Director, a Director, a Segment Alternate, or the organization that a Director or Segment Alternate represents is: (A) found by the Board to have committed a prohibited act as identified in Section 9.3 of these Bylaws pursuant to and after completion of a hearing process as described in Section 9.3 of these Bylaws, and (B) the Board recommends removal of an Unaffiliated Director, a Director or a Segment Alternate from the Board. Any Board action to remove a Director or a Segment Alternate from the Board shall be subject to review by the PUCT. An Unaffiliated Director may be removed by the PUCT in accordance with applicable law.
- (c) The right to elect Directors or Segment Alternates may not be assigned, sold, pledged or transferred in any manner.
- (d) A vacancy may be filled only by the persons authorized to elect or appoint such Director or Segment Alternate.
- (e) The Chair of the Nominating Committee shall notify the PUCT Commissioners when a vacancy of an Unaffiliated Director position occurs and shall provide information to the PUCT Commissioners as required by the PUCT.
- (f) Any Director or Segment Alternate so chosen shall serve in his respective Director or Segment Alternate position until the earlier of the expiration of his term, resignation, ineligibility, inability to serve or removal.

**Section 4.6 Meetings.**

- (a) The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members. Additional meetings of the Board shall be held at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, date and hour of any meeting of the Board or any Board subcommittee where at least one Board Director is present shall be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 4.7(e). The Board must ratify any action taken on notice of less than one week or by teleconference at its next regularly scheduled meeting.
- (d) The Board shall promulgate procedures allowing public access to meetings of the Board and Board subcommittees and allowing for members of the public to provide comment on the matters under discussion at public portions of meetings of the Board and subcommittees.
- (e) Meetings of the Board or Board subcommittees shall be open to the public provided that the Board or Board subcommittee on which at least one Board Director sits may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting held in Executive Session, including for purposes of voting. An Executive Session shall be held at the discretion of the Board or Board subcommittee for sensitive matters including, but not limited to, confidential personnel information, contracts, lawsuits, deliberation of purchase of real property, competitively sensitive information, deployment or implementation of security devices or other information related to the security of ERCOT's regional electrical network and discussion of any matters on which the Board receives legal advice from its attorney(s) in which the Texas Disciplinary Rules of Professional Conduct impose on the attorney(s) a duty to preserve confidentiality, including but not limited to anticipated or pending litigation, administrative agency contested cases, and other regulatory matters.
- (f) The Secretary or his designee shall keep minutes of every Board meeting.



Section 4.7 Quorum; Action by Directors; Abstentions; Proxies; Seated Directors; Actions Without a Meeting; and Meetings by Telephone.

- (a) Except as may be otherwise specifically provided by law, the Certificate of Formation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the Seated Directors shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum.
- (b) The act of: (i) at least two-thirds of the affirmative votes of the Eligible Voting Directors; and (ii) at least 50% of the total Seated Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Certificate of Formation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.
- (c) For purposes of voting on the Board, Directors who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.
- (d) Written proxies may be used for meetings of the Board or any subcommittees of the Board in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of the Board or any subcommittee of the Board, a Segment Alternate or designated alternate representative, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Directors (for urgent matters in accordance with Section 4.6) may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of the Technical Advisory Committee (TAC) and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. The designation of subcommittees and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or him by law.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Corporation ("NERC"), the Board shall elect, from among its members, persons to serve on the NERC Member Representatives Committee or its successor. The selection of the

representatives shall require an act of the Board as set forth in Section 4.7. If more than one representative is requested, such representatives shall be from different Segments.

Section 4.10 Duties. It shall be the duty of the Board to initiate any specific action required, in its opinion, to fulfill the exempt purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the Certificate of Formation, applicable law, and these Bylaws. Such action may be taken by the Board, by such subcommittee(s) as may be formed by the Board, the CEO as directed by the Board or by individuals appointed by the Board provided that the following actions of the Board may not be delegated: (a) approval of the Budget (as defined in Section 10.3); (b) approval of the employment and terms for the CEO, as well as termination of CEO's employment; (c) ratification of other Officers of ERCOT; (d) annual selection of a qualified independent public accounting firm ("Auditor") to audit the financial statements of ERCOT; (e) approval of the initiation of any non-routine filing to a regulatory agency that requests regulatory action; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

## **ARTICLE 5 TECHNICAL ADVISORY COMMITTEE**

### Section 5.1 TAC Representatives.

- (a) For the purposes of this section, membership in the TAC shall be divided in accordance with the definitions of the Segments described in Section 3.1. TAC shall be comprised of the following ("Representatives"):
  - (1) Representatives of four Members elected from each of the six Segments (other than as described for the Consumer Segment) listed in Section 3.1.
  - (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment shall appoint such Representatives. For the Residential, Commercial and Industrial subsegments, the TAC Representative seats are as follows:
    - (i) Two Representatives of Industrial Consumers;
    - (ii) One Representative of Small Commercial Consumers;
    - (iii) One Representative of Large Commercial Consumers;
    - (iv) One Representative of Residential Consumers; and



- (v) The Public Counsel's designee as an *ex officio* voting member.
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (c) Fifty-one percent (51%) of the eligible, Seated Representatives of TAC shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum. Affirmative votes of: (i) two-thirds of the Eligible Voting Representatives of TAC; and (ii) at least 50% of the total Seated Representatives shall be the act of TAC. For purposes of voting on TAC, TAC Representatives shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action if: (i) they are not present and have not designated a proxy, or (ii) they abstain from voting.
- (d) Written proxies may be used for meetings of TAC or any subcommittees of TAC in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of TAC or any subcommittee of TAC, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.
- (e) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of TAC Representatives or any subcommittee of TAC 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 TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the TAC Representatives and subcommittee members were present and voted. TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken by TAC without a meeting, notice of the proposed action shall be provided to the TAC Representatives in accordance with Section 5.3.
- (f) Each Segment may choose to participate in "Participatory Voting" as described herein. If a Segment chooses to engage in Participatory Voting, each TAC Representative elected by that Segment shall be required to present the decision of the Corporate Members of that Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 3.5 to vote on its behalf for purposes of Participatory Voting. If a Corporate Member of a Segment using Participatory Voting is unable or does not wish to attend a TAC meeting that Member may deliver a written proxy, at any time prior

to the start of the meeting at which it will be voted, to a Participatory Voting delegate of any Member of the same Segment. A Corporate Member delegate in attendance at a TAC meeting may give a written proxy to a Participatory Voting delegate of any Member of the same Segment during such meeting.

- (g) All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one year. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. A vacancy shall be filled by the same means used to elect or appoint the previous TAC Representative. No Entity shall participate in more than one Segment of TAC. The Representatives of TAC shall elect from amongst themselves a Chair and Vice Chair subject to confirmation by the Board. The Chair and Vice Chair shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws during the confirmation process, and any person speaking on behalf of TAC before the Board shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws before speaking on behalf of TAC.
- (h) Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if an employee or agent of a Member is elected or appointed to serve on TAC or any subcommittee thereof, such person is only eligible to serve in such capacity so long as he or she is an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (i) In the event that a Small Commercial Consumer Representative cannot be identified to serve on TAC, that seat may be filled by any other Commercial Consumer representative appointed by the Consumer Director of the Small Commercial subsegment provided that such representative represents at least one consumer in the ERCOT Region. Any Representative of the Consumer Segment appointed to TAC by a Consumer Director, if not otherwise a Member of ERCOT, shall be allowed to vote on TAC without the payment of the Annual Member Service Fees. An appointed Commercial Consumer TAC Representative is eligible to serve in such capacity so long as he or she is an employee or representative of the same company as he or she was at the time of such appointment.

Section 5.2 Functions of TAC. TAC shall have the authority to create subcommittees, task forces and study groups ("subcommittees"). TAC shall determine the eligibility requirements, quorum requirements and voting structure for each subcommittee. TAC shall (a) through its subcommittees make such studies and plans as it deems appropriate to accomplish the purposes of ERCOT, the duties of its subcommittees and the policies of the Board, (b) report the results of such studies and plans to the Board as required by the Board, (c) review and coordinate the activities and reports of its

subcommittees, (d) make such recommendations to the Board as it deems appropriate or as required by the Board, (e) perform such other duties as directed by the Board and (f) make recommendations regarding ERCOT expenditures and projects. In accordance with ERCOT procedures and applicable law and regulations, certain guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that such actions are reported to the Board for review and nothing herein shall affect the ability of the Board to independently consider such guidelines, criteria and actions, and to take such action with respect thereto as the Board deems appropriate, including revocation and remand with instructions.

Section 5.3 Meetings. TAC and its subcommittees shall meet as often as necessary to perform their duties and functions. All meetings of TAC and its subcommittees shall be called by their respective chairmen and all such meeting notices shall be sent in writing to each member at least one week prior to the meeting, unless an emergency condition should suggest otherwise (such emergency to be by mutual consent of a majority of the Seated Representatives of TAC or subcommittee). Any Member may request notification of any such meetings and may have an employee or a TAC-approved representative for that Member attend as an observer. Each Representative of TAC may designate in writing an alternate representative who may attend meetings in the absence of the Representative and vote on the Representative's behalf.

Section 5.4 Other Appointments. TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups whose members are appointed by the NERC Regions. The selection of TAC representatives to NERC shall require an act of TAC as set forth in Section 5.1(c). If more than one representative is requested, TAC should consider selecting representatives from different Segments.

## **ARTICLE 6**

Intentionally Omitted.

## **ARTICLE 7 CHIEF EXECUTIVE OFFICER**

Section 7.1 CEO Hiring and Duties. The Board shall hire a Chief Executive Officer ("CEO") who, under the Board's supervision and direction shall carry on the general affairs of ERCOT. The CEO shall be a member of the staff of ERCOT and shall be an *ex officio* voting Director. It shall be his duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of ERCOT. The CEO shall serve as President of ERCOT. He or she shall comply with all orders of the Board. All agents and employees of ERCOT shall report,

and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 Notice of CEO Vacancy. The Board Chair or the Board Chair's designee shall notify the PUCT Commissioners when a vacancy occurs for the CEO.

Section 7.3 CEO Selection. The Board Chair or the Board Chair's designee shall provide information to the PUCT Commissioners regarding selection of the CEO requested by any of the PUCT Commissioners as required by the PUCT.

Section 7.4 CEO Compensation. The compensation of the CEO shall be approved by the Board.

## **ARTICLE 8 OFFICERS**

Section 8.1 General. The Officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, and such Officers and assistant Officers as the Board may create. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 8.2 Tenure. The CEO of ERCOT shall be elected and the other Officers of ERCOT shall be ratified by the Board at such time and in such manner and for such a term not exceeding one (1) one year, as shall be determined from time to time by the Board. Any Officer may be re-elected or re-ratified for consecutive terms, without limitation. All Officers of ERCOT shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any Officer elected or appointed may be removed by the persons authorized to elect or appoint such Officer whenever in their judgment the best interests of ERCOT will be served thereby.

## **ARTICLE 9 TRANSACTIONS OF CORPORATION**

Section 9.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositories that the Board approves.

Section 9.2 Potential Conflicts of Interest. Each Director, Segment Alternate, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest of the Director, Segment Alternate, TAC Representative or subcommittee member or his employer where, and to the extent that, such conflicts or potential

conflicts directly or indirectly affect any matter that comes before the Board, TAC or subcommittee, as the case may be. A Director or Segment Alternate with a direct interest in a matter, personally or via his employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in the Market Segment of a Director or Segment Alternate or a general interest of some or all Market Segment Directors or Segment Alternates in a matter does not constitute direct interest. Any disclosure of a direct interest by a Director or Segment Alternate shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, if the Director, Segment Alternate, TAC Representative or subcommittee member recuses himself or herself from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

ERCOT may not make any loan to a Director, Segment Alternate or Officer of ERCOT. A Member, Director, Segment Alternate, TAC Representative, Officer, or subcommittee member of ERCOT may lend money to and otherwise transact business with ERCOT except as otherwise provided by these Bylaws, the Certificate of Formation, and applicable law. Such a person transacting business with ERCOT has the same rights and obligations relating to those matters as other persons transacting business with ERCOT. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, TAC Representative, Officer, or subcommittee member of ERCOT unless the transaction is described fully in a legally binding instrument and is in ERCOT's best interests. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, Segment Alternate, Officer, TAC Representative or subcommittee member of ERCOT without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

Section 9.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, Segment Alternate, Officer, or subcommittee member of ERCOT may:

- (a) Do any act in violation of the Certificate of Formation or these Bylaws;
- (b) Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval;
- (c) Do any act with the intention of harming ERCOT or any of its operations;
- (d) Receive an improper personal benefit from the operation of ERCOT;
- (e) Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes;

- (f) Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will;
- (g) Use ERCOT's name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT region;
- (h) Disclose any of ERCOT's or Members' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it;
- (i) Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Energy Regulatory Commission ("FERC") rules or become subject to any plenary jurisdiction of FERC;
- (j) With regard to the Directors and Segment Alternates, do any act in violation of an ERCOT rule [as that term is defined in PUCT Substantive Rule Section 25.361(a)], PUCT rule, or applicable statute.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing conducted using the same procedure as described in Article 3 of these Bylaws.

## **ARTICLE 10 EXPENSES, BOOKS AND RECORDS**

### Section 10.1 Member Representatives' Expenses and Compensation of Certain Directors and TAC Representatives.

- (a) Except as described below, ERCOT shall not bear the personal and travel expenses of each person who serves as a representative of a Member or as a Director, Segment Alternate, TAC Representative or subcommittee member. Except as provided below, no such person shall receive any salary or other compensation from ERCOT.
- (b) The Board shall have the authority to fix the compensation of its Unaffiliated Directors who may be paid a fixed sum plus reimbursement of travel expenses for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing. Unaffiliated Directors, who are members of standing or special committees, may be allowed like compensation and reimbursement of travel expenses for attending committee



meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities and Unaffiliated Directors shall be reimbursed for travel lodging and related expenses for attending each meeting of the Board. The reimbursement of travel expenses by ERCOT shall be in accordance with ERCOT policies on the reimbursement of appropriate and reasonable, documented travel expenses.

- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, or any standing or special committee of such on an annual basis. Any Residential Consumer TAC Representative shall not be an agent of ERCOT for any purpose and shall not be considered to be serving at ERCOT's request, even though compensated by ERCOT.

Section 10.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

Section 10.3 Budget. A budget (the "Budget") for ERCOT for the ensuing one or more fiscal years shall be adopted by the Board. In connection with the Board's approval, the Budget, including cost of liability insurance, for ERCOT shall be compiled by the CEO and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

Section 10.4 Loans and Guarantees. Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Certificate of Formation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of ERCOT or a guarantee by any Member of any obligation of ERCOT.

Section 10.5 Access to Books and Records. All Members of ERCOT will have access to the books and records of the organization, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of ERCOT. If necessary to protect the confidential information of ERCOT, a Member requesting examination of ERCOT's books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Section 10.7 Fiscal Year. The fiscal year of ERCOT shall be from January 1 through the following December 31, or as otherwise fixed by resolution of the Board.

## **ARTICLE 11 INDEMNIFICATION**

Section 11.1 Indemnification. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST, EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY CHAPTER 8 OF THE TEXAS BUSINESS ORGANIZATIONS CODE OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, AS SO AMENDED, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT.

## **ARTICLE 12 NOTICES**

Section 12.1 Form. Unless otherwise provided in these Bylaws, any notice required by these Bylaws to be given to a Member, Director, Segment Alternate, committee or subcommittee member, TAC Representative, member of a subcommittee of TAC, or Officer of ERCOT must be given by at least two of the following methods: mail, facsimile, email, or website posting. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his address as it appears on the corporate records, with postage prepaid. A person may change his address in the corporate records by giving written notice of the change to the CEO.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Certificate of Formation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice that was to be given.



Section 12.3 Waiver of Notice by Attendance at a Meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 12.4 Objection. If any person, who is a voting member of a group holding a meeting, reasonably objects to the transaction of business regarding a specific issue, or issues, at a meeting on the grounds that the meeting is not properly called or convened or that the issue, or issues, was improperly noticed, the issue or issues in question may not be addressed at that meeting. The Chair of such meeting shall determine if such objection is reasonable.

## **ARTICLE 13 AMENDMENTS**

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership and subject to approval by the PUCT, these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.
- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) If the proposal is approved by an act of the Board as set forth in Section 4.7, the Board shall place the proposal on the agenda of the next Annual Meeting of the Corporate Members unless the Board in its discretion calls a Special Meeting of the Corporate Members to vote on the proposal or determines to seek Membership approval without a meeting as provided in Section 3.7(g).
- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
  - (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.
  - (2) Except for the Consumer Segment, an affirmative vote of at least two-thirds of the Corporate Members of a Segment present constitutes an affirmative vote by that Segment.

- (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following 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 shall constitute an affirmative vote of that subgroup. An affirmative vote of at least two of the three Consumer subgroups shall constitute an affirmative vote of the Consumer Segment.

- (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws.

Section 13.2 Amendments to the Certificate of Formation. In accordance with the procedures set forth in the Texas Business Organizations Code, including Section 22.164(b)(1), an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Certificate of Formation.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

Section 14.1 Legal Authorities Governing Construction of Bylaws. These Bylaws shall be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 14.2 Legal Construction. Any question as to the application or interpretation of any provision of these Bylaws shall be resolved by the Board. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any Bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

Section 14.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 14.4 Number and Gender. All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other

gender.

Section 14.5 Parties Bound. These Bylaws will bind and inure to the benefit of the Members, Directors, Segment Alternates, TAC Representatives, Officers, subcommittee members, employees, and agents of ERCOT and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

Section 14.6 Effective Date. The effective date of these Amended and Restated Bylaws is {Month Day, Year – Date of PUCT Approval}, provided that the Board may implement transition procedures before the effective date in order to ensure a smooth transition to the structure described in these Bylaws.