



## MEMORANDUM

To: Technical Advisory Committee (TAC)  
From: Chad V. Seely, Vice President and General Counsel  
Vickie Leady, Assistant General Counsel  
Jonathan Levine, Senior Corporate Counsel  
Date: May 20, 2020  
Re: Item 4, Endorsement of Proposed Amendments to ERCOT Bylaws

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ERCOT Legal is proposing to amend the ERCOT Bylaws to clarify the urgent matters upon which the ERCOT Board of Directors (Board) and its subcommittees that include a member of the Board may act upon at meetings via means of teleconference technology.

While meetings of the ERCOT Board are typically conducted in person, in accordance with Public Utility Regulatory Act (PURA)<sup>1</sup> Section 39.1511(b), Sections 4.6(c) and 4.7(e) of the ERCOT Bylaws permit the Board and its subcommittees having at least one Director<sup>2</sup> to meet by teleconference to take action on urgent matters. Section 4.6(b) of the existing Bylaws defines “urgent matters” as “emergency conditions threatening public health or safety, or a reasonably unforeseen situation.” While the Board or its subcommittees may meet via teleconference to discuss non-urgent matters, the only matters it may take action on (specifically, vote) are such urgent matters.

Because the existing Bylaws do not make clear that, at teleconference meetings, the Board may take action on matters that themselves are not emergency conditions or reasonably unforeseen situations, even if delay could be harmful to ERCOT’s business operations, we propose amending the definition of “urgent matters” in Section 4.6(b). The amended definition would make clear that if it would be difficult or impossible for a quorum of Directors or subcommittee members to physically convene in one location—such as in the current situation caused by the Coronavirus 2019 (COVID-19) pandemic—the Board or its subcommittees may meet via teleconference and take action on matters that, if action was otherwise delayed, may result in operational, regulatory, legal, organizational or governance risk. This will allow the Board or its subcommittees to continue to carry on business that should not be delayed without unreasonably risking the health and safety of Board or subcommittee members or other parties

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<sup>1</sup> Tex. Util. Code §§ 11.001-66.016.

<sup>2</sup> For simplicity, further references to the Board’s subcommittees mean only those subcommittees that have at least one Director.

that may be required to attend or have a reasonable interest in attending the meeting at which such business will be acted upon. The proposed amendment also more closely aligns the definition of urgent matters with the Texas Open Meetings Act,<sup>3</sup> clarifies who may call special meetings of Board subcommittees, changes the minimum required advance notice for action on urgent matters from two to one hours to reflect a similar change recently made to the Texas Open Meetings Act, and updates the title for Section 4.7 to eliminate reference to a paragraph deleted previously. The amendment also better aligns the description of the allowable teleconference technology (for meetings of the Board or its subcommittees, Corporate Members, or TAC or its subcommittees) with the Texas Business Organizations Code.<sup>4</sup> A copy of the proposed Bylaws amendment is attached hereto as **Attachment A**.

To ensure that the Board and its subcommittees, by the time of the August 2020 meetings, will be able to act upon matters that, if action was otherwise delayed, would be reasonably likely to result in operational, regulatory, legal, organizational or governance risk, ERCOT is seeking approval of the proposed Bylaws amendment on an expedited timeline. The proposed timeline will still include all steps required by law, including Board, Corporate Membership and Public Utility Commission of Texas (PUCT) approval; however, if the Board approves the proposed Bylaws amendment, ERCOT intends to file a petition for approval with the PUCT prior to Corporate Membership vote. Such petition would be conditioned upon subsequent approval of the Bylaws amendment by Corporate Membership, and ERCOT would withdraw the petition if the Corporate Members fail to approve the amendment. ERCOT also intends to request that the PUCT expedite its consideration of the Bylaws amendment to the extent feasible. An estimated timeline is attached hereto as **Attachment B**.

We look forward to discussing this matter at the May 27, 2020 TAC information session.

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<sup>3</sup> Tex. Gov't Code §§ 551.001–.146.

<sup>4</sup> See Tex. Bus. Org. Code §§ 6.002 & 22.002, which apply to meetings of the Corporate Members, Board, and committees designated by the Board.