



Date: April 6, 2021
To: Board of Directors
From: Chad V. Seely, ERCOT Vice President, General Counsel and Corporate Secretary
Subject: Election of ERCOT Interim President and Chief Executive Officer

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: April 13, 2021

Item No.: 8

Issue:

Election of an Interim President and Chief Executive Officer (CEO) of Electric Reliability Council of Texas, Inc. (ERCOT), with all of the rights, powers and duties of ERCOT's President and CEO, beginning upon the earlier of the effective date of Bill Magness' termination as ERCOT President and CEO or May 4, 2021, and continuing until the earlier of one year or ERCOT's employment of a successor President and CEO.

Background/History:

Sections 8.2 and 4.10(b) of ERCOT's Amended and Restated Bylaws, as approved on July 31, 2020 (Bylaws), requires that the ERCOT Board of Directors (Board) elect the CEO of ERCOT for a term not to exceed one year, and approve the employment of and terms for the ERCOT CEO. Section 8.2 further provides that the ERCOT CEO may be re-elected or re-ratified for consecutive terms without limitation and shall hold office until a successor is chosen and qualified or until their earlier resignation or removal.

Section 22.231(a) of the Texas Business Organizations Code requires that the officers of a Texas nonprofit corporation shall include a president and a secretary, which positions cannot be occupied by the same person. The statute allows other officer positions as discretionary, but the president and secretary positions are mandatory. Sections 7.1 and 8.1 of the Bylaws each provide, in pertinent part, that the "CEO shall serve as the President of ERCOT."

At the March 3, 2021 Urgent Board Meeting, the Board terminated the employment agreement with ERCOT President and CEO Bill Magness with 60 days' notice and directed ERCOT staff to issue a request for proposal (RFP) for an executive search firm to locate qualified CEO candidates as soon as reasonably possible. Unless he resigns his position earlier, the last day of Mr. Magness' employment is May 3, 2021, and the Board does not expect to elect a permanent CEO prior to Mr. Magness' last day of employment.



Key Factors Influencing Issue:

- The Texas Business Organizations Code requires that ERCOT's officers include a president; the Bylaws provide that CEO shall serve as the President of ERCOT.
- The Bylaws require the election of the ERCOT CEO.
- ERCOT must have a CEO to perform its statutory and corporate functions.

Conclusion/Recommendation:

To avoid a vacancy of the President and CEO position, ERCOT Legal recommends that the Board elect an Interim President and CEO, with all of the rights, powers and duties of ERCOT's President and CEO, beginning upon the earlier of the effective date of Mr. Magness' termination as ERCOT President and CEO or May 4, 2021, and continuing until the earlier of one year or ERCOT's employment of a successor President and CEO.



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

WHEREAS, pursuant to Sections 8.2 and 4.10(b) of the Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc. (ERCOT), the ERCOT Board of Directors (Board) shall elect the ERCOT Chief Executive Officer (CEO) for a term while employed not to exceed one year;

WHEREAS, Section 7.1 of the Bylaws provides in part that the ERCOT CEO shall serve as President of ERCOT;

WHEREAS, at the March 3, 2021 Urgent Board Meeting, the Board terminated the employment agreement with ERCOT President and CEO Bill Magness with 60 days' notice—that is, effective May 3, 2021; and

WHEREAS, the ERCOT Board deems it desirable and in the best interest of ERCOT to elect an Interim President and CEO, with all of the rights, powers and duties of ERCOT's President and CEO, beginning upon the earlier of the effective date of Mr. Magness' termination as ERCOT President and CEO or May 4, 2021, and continuing until the earlier of one year or ERCOT's employment of a permanent President and CEO;

THEREFORE, BE IT RESOLVED, the ERCOT Board hereby elects _____ to serve as Interim President and CEO, with all of the rights, powers and duties of ERCOT's President and CEO, beginning upon the earlier of the effective date of Mr. Magness' termination as ERCOT President and CEO or May 4, 2021, and continuing until the earlier of one year or ERCOT's employment of a permanent President and CEO.

CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its April 13, 2021 urgent meeting by teleconference, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of April, 2021.

Vickie G. Leady
Assistant Corporate Secretary