

PROJECT NO. 51878

REPORTS OF THE ELECTRIC	§	PUBLIC UTILITY COMMISSION
RELIABILITY COUNCIL OF TEXAS	§	
FOR CALENDAR YEAR 2021	§	OF TEXAS

**NOTICE OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
REGARDING CORPORATE GOVERNANCE STATUS IN RELATION TO
2020 AUDITED FINANCIAL STATEMENTS REPORT AND
2022-2023 BIENNIAL BUDGET REQUEST**

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT), and provides notice of the status of ERCOT corporate governance in relation to its 2020 Audited Financial Statements Report and its 2022-2023 Biennial Budget Request, as reported to the Finance and Audit (F&A) Committee of the ERCOT Board of Directors (Board), at the April 12, 2021 Urgent F&A Committee Meeting by teleconference. Given the recent resignations of the Unaffiliated Directors of the Board and continuing vacancies,¹ ERCOT is not able to fulfill certain statutory, regulatory and governing document requirements, some for an immediate time and some possibly for an indefinite time in light of the current Board composition.

**I. COMPOSITION AND LEADERSHIP OF THE FINANCE AND
AUDIT (F&A) COMMITTEE OF THE BOARD**

A. ERCOT Board Committees

ERCOT Bylaws § 4.3(b)(1)² establishes the sole standing committee of the Board – the Nominating Committee. ERCOT Bylaws § 4.8 allows the Board to create other committees of the Board at its discretion. Almost two decades ago, the Board created two discretionary committees, that is, the F&A Committee and the Human Resources and Governance (HR&G) Committee, which have been continuously in existence. The Board has delegated certain specific responsibilities to the F&A and HR&G Committees through their respective Committee Charters, both of which are approved at least annually by the Board. The F&A and HR&G Committee

¹ For additional details, please see *Notice of Electric Reliability Council of Texas, Inc. regarding Corporate Governance Status and Expected Vacancy of Chief Executive Officer Position*, filed in Public Utility Commission of Texas Project No. 51878, on March 10, 2021.

² The Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc., approved by the Public Utility Commission of Texas on July 31, 2020, may be found on the ERCOT website at: http://www.ercot.com/content/wcm/key_documents_lists/88679/Amended_and_Restated_Bylaws_eff_07.31.2020_.pdf

Charters set forth the Committees' purposes and responsibilities, which are discrete and predominantly exclusive to each Committee, as well as rules concerning membership and qualification.

B. ERCOT F&A Committee Charter Requirements

Pursuant to the F&A Committee Charter,³ the F&A Committee is tasked, among other stated purposes, to “[o]versee the development of and adherence to a Company budget,” and “[e]nsure that... [ERCOT’s] financial statements are timely audited by qualified accountants who are independent.”

Regarding Committee composition, the F&A Committee Charter states that “[t]he Committee shall be comprised of at least five Board members, at least three of which are from Market Segments and two or more of which must be Unaffiliated Board members.”

Regarding Committee Member qualifications, the F&A Committee Charter requires that each Committee Member be able to read and understand fundamental financial statements, including the balance sheet, income statement and cash flow statement. The Committee also must have at least one designated “Financial Expert,” and the F&A Committee Charter states:

At a minimum, the Financial Expert must have past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background which ensures the individual’s financial sophistication, including a past or current position as a Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”) or other senior officer with financial oversight responsibilities.

The F&A Committee Chair is also required by the Committee Charter to have “accounting or related financial management expertise.”

The F&A Committee Charter also requires in pertinent part, with respect to the independent auditors engaged to audit ERCOT’s financial statements, that “[t]he Committee shall fulfill the

³ The Finance and Audit Committee Charter may be found on the ERCOT website at: http://www.ercot.com/content/wcm/key_documents_lists/27313/FA_Committee_Charter_Effective_February_9_2021_.pdf.

oversight responsibility of the Board with respect to the independent auditors' audit of the books and accounts of... [ERCOT] and for the fiscal year for which it is appointed.”

C. ERCOT Nodal Protocols Requirements

In addition to the duties delegated to the F&A Committee by the Board as set forth in the F&A Committee Charter, the ERCOT Nodal Protocols require that the F&A Committee approve the ERCOT Internal Audit Department's annual audit plan,⁴ approve the inclusion of material issues in audits required to be performed under ERCOT Nodal Protocol Section 1.4.3.1, Audits to be Performed, upon request by an ERCOT Member or Market Participant and prior approval of the Technical Advisory Committee (TAC),⁵ and make recommendations to the Board regarding the Market Adjustment Factor set forth in ERCOT Nodal Protocol § 16.11.4.1, Determination of Total Potential Exposure for a Counter-Party;⁶ and require that audit results be reported to the F&A Committee, which is required to review any findings and recommended actions identified as a result of an audit.⁷

II. ISSUES REGARDING COMPLIANCE WITH GOVERNANCE REQUIREMENTS

On account of the recent and frequent Board member changes, including primarily the departure of all Unaffiliated Directors on February 24, 2021 and the resulting vacancies (as well as the extraordinarily high turnover of Market Segment Directors since February 23, 2021), as illustrated in Attachment A, there are certain governance requirements that ERCOT cannot presently satisfy or is at reasonable risk of not being able to satisfy in the near future. Presently, the Board has neither a Chair nor Vice Chair, and no current Board members meet the requirements of PURA and the Bylaws to be appointed Chair or Vice Chair as no Unaffiliated Directors are seated on the Board. Because PURA requires that the presiding officer of the Board be an Unaffiliated Director, and the Bylaws also require that the Board Chair and Vice Chair both be Unaffiliated Directors, the Board cannot appoint either a Chair or Vice Chair without any Unaffiliated Directors seated on the Board. In addition, the Texas Legislature is considering bills which may affect Board composition and/or the selection process during the current 87th

⁴ ERCOT Nodal Protocols, Section 1, Overview (Jan. 1, 2021).

⁵ *Id.*

⁶ ERCOT Nodal Protocols, Section 16, Registration and Qualification of Market Participants (Mar. 1, 2021).

⁷ ERCOT Nodal Protocols, Section 1, Overview (Jan. 1, 2021).

Legislative Regular Session (scheduled to end May 31, 2021) in response to the Texas Governor's declaration of the reform of ERCOT as an emergency item after Winter Storm Uri in mid-February 2021. For this reason, the Nominating Committee of the Board is not expected to proceed with the search process established by the ERCOT Bylaws for any new Unaffiliated Directors prior to May 31, 2021.

In regard to the Board's F&A Committee, ERCOT's independent financial auditor has historically reported to the Board primarily through the F&A Committee and communicated with F&A Committee leadership regarding key issues, including requests by the auditor to address the full Committee. Although the Board still is not able to fill the Board Chair and Vice Chair positions due to the absence of Unaffiliated Directors, the F&A Committee recently held an election for a Chair and Vice Chair at its April 12, 2021 Urgent F&A Committee Meeting. Prior to April 12, 2021, however, without F&A Committee and Board leadership, ERCOT's auditors did not have a clear line of necessary communication in order to complete their work. Acceptance of ERCOT's financial statement audit reports was expected to be considered for vote at the April 13, 2021 Urgent Board Meeting; however, without F&A Committee leadership until April 12, 2021, and with the current lack of Board leadership among other factors such as the ultimate impact of any potential regulatory changes to ERCOT's structure and governance which may occur as a result of the 87th Texas Legislative Regular Session,⁸ the timing of the preparation and completion of such critical audit reports was indeed affected, which in turn affects other aspects of ERCOT operations. On April 6, 2021, ERCOT and Baker Tilly US, LLP (Baker Tilly), ERCOT's independent financial statements auditor, agreed to delay audit work and the issuance of a report on ERCOT's financial statements as of, and for the year ended, December 31, 2020, as shown in Attachment B. This matter was discussed with the F&A Committee as Item 4 – *Status of the 2020 Financial Statements Audit* – at the April 12, 2021 Urgent F&A Committee Meeting.⁹

⁸ Due to the power outages which occurred in the ERCOT Region during the recent event of Winter Storm Uri in mid-February 2021, the Texas Governor declared the reform of ERCOT as an emergency item for the 87th Texas Legislative Regular Session which concludes on May 31, 2021. Several legislative bills have been introduced which can affect ERCOT's structure or governance.

⁹ The presentation for this agenda item may be found on ERCOT's website at: http://www.ercot.com/content/wcm/key_documents_lists/214238/4_Status_of_the_2020_Financial_Statements_Audit.pdf. The archive of the webcast for the General Session of this April 12, 2021 Urgent F&A Committee Meeting is publicly available at: http://www.ercot.com/committee/finance_audit.

III. TYPICAL PROCESS FOR ERCOT FINANCIAL STATEMENTS AUDIT REPORT AND EXPECTED PROCESS IN LIGHT OF DELAY

Under routine circumstances, Baker Tilly (or any independent financial statements auditor of ERCOT) would finish most work for its audit of the prior year by March. ERCOT management and Baker Tilly would then present the audit results and draft report to the F&A Committee and the Board at their April meetings. After Board acceptance of the draft report at the April meeting, Baker Tilly would issue the final report to ERCOT in mid-April.

A. Delay Resulting from the February 2021 Extreme Winter Weather Event

As indicated previously in Section II, because the Texas Governor declared the reform of ERCOT as an emergency item for the current 87th Texas Legislative Regular Session, ERCOT is not able to determine the ultimate impact of any potential regulatory changes to its structure or governance. Therefore, Baker Tilly is unable to issue a report, at this time, on ERCOT's 2020 financial statements.

B. Resumption of Audit Work

At this time, ERCOT management anticipates resumption of the financial statements audit following the conclusion of the 87th Texas Legislative Regular Session, currently scheduled for May 31, 2021.

C. Annual Report Filed with the Public Utility Commission of Texas (Commission)

ERCOT is required to file its audited financial statements with the Commission by April 30, 2021; however, its filing will indeed be delayed until audited financial statements are available (which will be after May 31, 2021), for the reasons mentioned above in Sections II and III.

IV. IMPACT OF DELAYED AUDITED FINANCIAL STATEMENTS

As presented at the April 12, 2021 Urgent F&A Committee Meeting, the delayed audited financial statements are expected to impact ERCOT's debt agreement covenants, the annual report required to be filed with the Commission, ERCOT's Internal Revenue Service (IRS) Form 990 informational tax return for the 2020 tax year, and ERCOT's insurance renewals. ERCOT's debt agreements contain covenants that require ERCOT to provide audited financial statements to its

lenders by April 30, 2021. ERCOT is in the process of securing waivers from its lenders to extend the due dates to align with the anticipated issuance of the audit report. With regard to the requirement for ERCOT to file its audited financial statements with the Commission, ERCOT has communicated the reason for the delay with the Commission and will file the audited financial statements when they are available. The audited financial statements serve as the basis for ERCOT's IRS Form 990; and ERCOT will obtain a filing deadline extension to align schedules with the anticipated timing of the audit report. ERCOT's insurance renewal process depends in part on its audited financial statements. ERCOT is working with its insurance broker to address any concerns from the delay. To the extent reasonably possible, ERCOT will continue to work proactively to address the impacts of the delayed audited financial statements.

V. TYPICAL PROCESS FOR ERCOT BUDGET REQUEST

Texas Administrative Code (TAC) § 25.363(d)¹⁰ provides in pertinent part that "ERCOT shall submit its proposed budget for commission review as specified in the commission order approving its previous budget." ERCOT Bylaws §§ 4.10 and 10.3 require that the ERCOT Board approve ERCOT's budget. The F&A Committee Charter provides that the F&A Committee shall review ERCOT staff's proposed budget as well as the amount and types of needed financing (both revenue and debt financing) to support the proposed budget and meet ERCOT's liquidity needs. Typically, ERCOT management would present the draft request for a biennial budget to the F&A Committee for discussion at the April F&A Committee meeting on odd-numbered years. Then ERCOT management would present the proposed biennial budget request to the F&A Committee at the June F&A Committee meeting of the same year and, upon F&A Committee recommendation, to the Board at the June Board meeting for approval and presentation to the Commission in July of the same year.

¹⁰ 16 TAC § 25.363(d).

Furthermore, TAC § 25.363(e)¹¹ provides in pertinent part that “[a]fter approving ERCOT’s budget, the commission shall authorize ERCOT to charge a system administration fee...” and “[a]ny change to the fee approved by the commission or made during the course of an annual or biennial budget cycle will be noticed through standard market processes at least 45 days before implementation.”

VI. STATUS OF ERCOT 2022-2023 BIENNIAL BUDGET REQUEST

The Commission order approving ERCOT’s 2020-2021 Budget Request includes a deadline of September 1, 2021, for the filing of ERCOT’s 2022-2023 Budget Request and allows Commission staff designated by the Commission Executive Director to alter the deadline for good cause.¹² On April 5, 2021, the Commission’s Executive Director issued a letter to ERCOT, provided as Attachment C, which supported the delay in the filing of ERCOT’s 2022-2023 Biennial Budget Request due to several bills pending before the Texas Legislature during the 87th Texas Legislative Regular Session which concludes on May 31, 2021, and due to the potential impact of any laws enacted during the Regular Session which may not be known until after the expiration of the veto period on June 20, 2021. In this letter, the Commission’s Executive Director extended the deadline for ERCOT to submit its proposed 2022-2023 Biennial Budget Request to the Commission until November 1, 2021. In addition, ERCOT is not anticipating a change to the System Administration Fee as part of the 2022-2023 Biennial Budget Request. Accordingly, the delay is not anticipated to create an unmanageable timing constraint for ERCOT. This matter was discussed with the F&A Committee as Item 5 – *Status of the 2022-2023 Biennial Budget Request* – at its April 12, 2021 Urgent F&A Committee Meeting.¹³

¹¹ *Id.* at § 25.363(e).

¹² Docket No. 38533, *PUC Review of ERCOT Budget, Order Approving ERCOT’s 2020 to 2021 Biennial Budget and Authorizing the System Administration Fee* (Nov. 15, 2019).

¹³ The presentation for this agenda item may be found on ERCOT’s website at: http://www.ercot.com/content/wcm/key_documents_lists/214238/5_Status_of_the_2022-2023_Biennial_Budget_Request.pdf The archive of this webcast for the General Session of this April 12, 2021 Urgent F&A Committee Meeting is publicly available at: http://www.ercot.com/committee/finance_audit

VII. CONCLUSION

ERCOT publicly communicated the reason for the delays for the audited financial statements and the 2022-2023 Biennial Budget Request at the April 12, 2021 ERCOT Urgent F&A Committee Meeting, will file its audited financial statements when they are available, and will submit its 2022-2023 Biennial Budget Request as soon as feasible.

ERCOT will continue to monitor this extremely fluid and dynamic situation and provide the Commission updates on significant corporate governance matters.

DATED: April 21, 2021

Respectfully Submitted,

/s/ Chad V. Seely

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ATTORNEYS FOR ELECTRIC RELIABILITY
COUNCIL OF TEXAS, INC.

ERCOT Board of Directors
For the Time Period of January 1, 2021 – April 20, 2021

STATUTORILY-REQUIRED REPRESENTATIVES	DIRECTOR	MARKET SEGMENT ALTERNATE
Consumer – Residential <i>(ex officio)</i>	Lori Cobos – Office of Public Utility Counsel	N/A
Consumer – Commercial	Nick Fehrenbach – City of Dallas	Jennifer Richie – City of Waco
Consumer – Industrial	Sam Harper – Chaparral Steel Midlothian, LP dba Gerdau	Glen Lyons – ExxonMobil Power and Gas Services Inc.
Cooperative	Clifton Karnei – Brazos Electric Power Cooperative Inc. <i>(resigned 2/25)</i> Julie Parsley – Pedernales Electric Cooperative, Inc. <i>(elected 3/9)</i>	Mike Kezar – South Texas Electric Cooperative Inc.
ERCOT CEO <i>(ex officio)</i>	Bill Magness	N/A
Independent Generator	Kevin Gresham – RWE Renewables Americas LLC	Steven Schleimer – Calpine Corporation
Independent Power Marketer	Keith Emery – Tenaska Power Services Co.	Kevin Bunch – EDF Trading North America LLC
Independent Retail Electric Provider	Edward (Ned) Ross – Direct Energy <i>(resigned 1/11)</i> Vanessa Anesetti-Parra – Just Energy Texas LP <i>(elected 1/19, resigned 2/24)</i> Shannon K. McClendon – Demand Control 2 LLC <i>(elected 3/4)</i>	Vanessa Anesetti-Parra – Just Energy Texas LP <i>(1/1 until elected to fill Director vacancy 1/19)</i> Randal Miller – Southern Federal Power, LLC <i>(elected 1/22, resigned 2/23)</i> Rob Cantrell – Pulse Power <i>(elected 3/15, resigned 3/26)</i> Jim Brown – Just Energy <i>(elected 4/8)</i>
Investor-Owned Utility	Mark Carpenter – Oncor Electric Delivery Company LLC	Wade Smith – American Electric Power Service Corporation

STATUTORILY-REQUIRED REPRESENTATIVES	DIRECTOR	MARKET SEGMENT ALTERNATE
Municipal	Jackie Sargent – Austin Energy <i>(resigned on 2/27)</i> Bob Kahn – Texas Municipal Power Agency <i>(elected 3/5, resigned 3/25)</i> Tom Hancock – Garland Power and Light <i>(elected 4/1)</i>	Ian Taylor – New Braunfels Utilities
PUCT Chair <i>(ex officio, non-voting)</i>	DeAnn Walker <i>(resigned 3/1)</i> Arthur D’Andrea <i>(appointed 3/3, resignation pending swearing in of new PUCT Chair Peter Lake)</i>	N/A
Unaffiliated	Terry Bulger <i>(resigned 2/24)</i> Peter Cramton <i>(resigned 2/24)</i> Raymond Hepper <i>(resigned 2/24)</i> Sally Talberg <i>(resigned 2/24)</i> Vacant <i>(all five Unaffiliated Directors’ positions are vacant)</i>	N/A



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April 6, 2021

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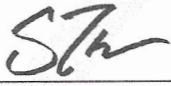
Re: Financial Statements Audit as of, and for the year ended, December 31, 2020, of Electric Reliability Council of Texas, Inc. (ERCOT) to be performed by Baker Tilly US, LLP

To the Audit Partner in Charge,


Due to the power outages which occurred in the ERCOT Region during the recent event of Winter Storm Uri in mid-February 2021, the Texas Governor declared the reform of ERCOT as an emergency item for the current 87th Texas Legislature Regular Session. For this reason, ERCOT is not able to determine the ultimate impact of any potential regulatory changes to its structure or governance. Therefore, Baker Tilly US, LLP, as ERCOT's independent financial statement auditor is unable to issue a report, at this time, on ERCOT's financial statements as of, and for the year ended, December 31, 2020.

At the conclusion of the regular legislative session, scheduled to end May 31, 2021, if not extended by special session, ERCOT will reassess its evaluation of the situation, but ERCOT anticipates having an ability to predict the ultimate outcome which will allow Baker Tilly US, LLP to resume audit work and issue a report on ERCOT's financial statements as of, and for the year ended, December 31, 2020.

Very truly yours,

By: 
Name: Sean Taylor
Title: Vice President and CFO

ACCEPTED AND AGREED TO
this 6th day of April, 2021

Baker Tilly US, LLP
By: 
Name: JEFFREY J. GENDREAU
Title: PARTNER

Arthur C. D'Andrea
Chairman

Thomas Gleeson
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

April 5, 2021

Mr. William Magness
President and Chief Executive Officer
Electric Reliability Council of Texas
7620 Metro Center Drive
Austin, Texas 78744

Dear Bill:

By order issued on November 15, 2019, the Commission approved the 2020/2021 biennial budget and system administration fee for the Electric Reliability Council of Texas (ERCOT).¹ In this order, the Commission directed ERCOT to file its proposed budget for fiscal years 2022 to 2023 by no later than September 1, 2021.² 16 TAC §25.363 outlines the requirements for ERCOT's budget submission to the Commission. As part of its application for approval of its proposed budget, ERCOT must include "all information necessary for the commission to evaluate the proposed budget."³ Additionally, before submitting its proposed budget to the Commission, the ERCOT board must review and approve the budget.⁴ Ordinarily, the ERCOT board would approve the proposed budget at its June board meeting and submit its proposed budget to the Commission on or before September 1.

As you know, there are several bills pending before the Texas Legislature which, if passed, would affect ERCOT's budget. The ERCOT board must consider and incorporate the impact of all relevant changes in Texas law enacted by the 87th Legislature into its proposed 2022-2023 budget. Because the full extent of laws enacted in the Regular Session of the 87th Legislature will not be known until after the expiration of the veto period on June 20, 2021, ERCOT's proposed budget cannot be finalized until sometime after June 20. This in turn, will almost certainly delay the submission of ERCOT's proposed budget to the Commission beyond the current September 1 deadline. Based on the foregoing, I am extending the deadline for ERCOT's submission of its proposed 2022-2023 budget to the Commission until November 1, 2021.

If you have any questions or if it becomes necessary to alter the revised budget submission deadline, please let me know.

Sincerely,

Thomas Gleeson
Executive Director

¹ Docket No. 38533, *PUC Review of ERCOT Budget, Order Approving ERCOT's 2020 to 2021 Biennial Budget and Authorizing the System Administration Fee* (Nov. 15, 2019).

² *Id.* at 5.

³ 16 TAC §25.363(d).

⁴ *Id.* at §25.363(e).