



MEMORANDUM

To: ERCOT Board of Directors (Board)
From: Chad V. Seely, ERCOT Vice President, General Counsel and
Corporate Secretary
Date: April 25, 2021
Re: Item 2 – Election of Presiding Director for Meeting

On March 10, 2021, ERCOT filed the [Notice of Electric Reliability Council of Texas, Inc. regarding Corporate Governance Status and Expected Vacancy of Chief Executive Officer Position](#) (Notice), filed in Public Utility Commission of Texas (PUCT) Project No. 51878.¹ In this Notice, ERCOT provided the status of the Board, including the resignations of all Unaffiliated Directors on the Board.

Legal Authority

[Public Utility Regulatory Act](#) (PURA) § 39.151(g)(7) requires that the governing body (that is, the Board) of ERCOT, which is the independent organization certified by the PUCT, be composed in part of “five members *unaffiliated with any market segment* and selected by the other members of the governing body to serve three-year terms.” (Emphasis added.) These five members are referenced in the [ERCOT Bylaws](#) as the Unaffiliated Directors of the Board.

PURA § 39.151(g-1) further requires that the “presiding officer” of the governing body (that is, the Board Chair) of ERCOT be one of the members described in Subsection (g)(7) (that is, an Unaffiliated Director). ERCOT Bylaws § 4.4 require that the elected Board Chair and Board Vice Chair both be Unaffiliated Directors so that the Vice Chair could assume the Chair duties immediately (and without a separate election) if the Chair was no longer able to serve for any reason.

Election of Presiding Director for Meeting

Without any Unaffiliated Directors serving on the Board at present, the Board may not elect a Board Chair to serve on a continuous basis without risking noncompliance with PURA § 39.151(g-1); however, ERCOT Legal believes that, on a meeting-by-meeting basis, the Board may elect a Director serving on the Board to preside over a particular meeting in an effort simply to facilitate the meeting logistics among the Board members of the various Market Segments (as the Corporate Secretary has done since the resignations of the Unaffiliated Directors).

¹ On April 21, 2021, ERCOT filed the [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](#), filed in PUCT Project No. 51878, which also provides ongoing notice that the Unaffiliated Director positions on the Board remain vacant.



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Accordingly, ERCOT Legal believes that the election of PUCT Chairman Peter Lake, who serves as an *Ex Officio*, non-voting Director on the Board, as a presiding Director for the April 27, 2021 Urgent Board Meeting, would most closely align with the intention of PURA § 39.151(g-1). Specifically, the PUCT Chairman is not affiliated with any Market Segment in his PUCT oversight role and, furthermore, has been appointed by the Governor and confirmed by the Senate. In addition, all meetings of the ERCOT Board and its Committees are, and historically have been, publicly posted on the Secretary of State website as PUCT Open Meetings, due to the PUCT Chairman's position on the ERCOT Board.