



Date: June 2, 2020
To: Board of Directors
From: Karl Pfirrmann, Human Resources and Governance (HR&G)
Committee Chairman
Chad V. Seely, ERCOT Vice President, General Counsel and
Corporate Secretary
Subject: Proposed Bylaws Amendments

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: June 9, 2020

Item No.: 4

Issue:

Whether the ERCOT Board of Directors (Board) should approve Bylaws amendments, including expanding the description of “urgent matters,” updating the requirements for teleconference meetings and related clarifications, and correcting scrivener’s errors, as recommended by ERCOT Legal and subject to approval by the ERCOT Corporate Members and by the Public Utility Commission of Texas (PUCT or Commission).

Background/History:

Bylaws Review and Revision Process

ERCOT currently operates pursuant to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), which were approved by the Commission on January 17, 2019.

Section 13.1 of the Bylaws, Public Utility Regulatory Act (PURA) Section 39.151(g) and PUCT Substantive Rule Section 25.362(c) provide the requirements and process for approval of any Bylaws amendments. In brief, the Bylaws amendment process may be summarized as follows:

1. **Submission of Proposal:** Any Corporate Member must submit a proposal of its proposed amendment with supporting documentation to the ERCOT Chief Executive Officer (CEO).
2. **Placement of Proposal on Board Agenda:** The CEO will place such proposal on the Board’s agenda in the time and manner prescribed by the Board. Typically, given the delegation of duties from the Board to the HR&G Committee for review of ERCOT’s governing documents, the HR&G Committee would first review and make a recommendation to the Board on such proposal prior to placing the proposal on the Board agenda. However, given the time-sensitive nature of these proposed amendments and the on account of the cancellation of the June 8, 2020 HR&G Committee meeting, the Board is expected to consider this matter without a prior recommendation from the HR&G Committee.
3. **Board Recommendation to Corporate Members for Approval and Filing of Petition for Approval of Bylaws Amendment with the Commission:** If the Board votes to approve the proposal, 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. Typically, ERCOT Legal would wait until approval by the Corporate Members before seeking approval of the Commission by filing a petition for approval of amendments to the Bylaws. However, given the time-sensitive nature of these proposed amendments and the need for final approval as soon as possible, ERCOT Legal will seek the approval of the Commission immediately upon Board approval and before the conclusion of the Corporate Members' vote, with such petition for Commission approval conditioned upon approval of the amendments by the Corporate Members.

4. Vote by Corporate Members: Corporate Members must vote using the procedure more particularly described in Section 13.1(d) of the Bylaws. 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. Additionally, at least four of the seven Market Segments must affirmatively vote to amend the Bylaws. If the Corporate Members fail to approve the proposal, then ERCOT Legal will withdraw its petition with the Commission. If the Corporate Members vote to approve the proposal, then ERCOT Legal will notify the Commission.
5. Commission Approval: Any amendments to the Bylaws shall only be effective upon formal Commission approval.

Status of Review Process

On May 27, 2020, ERCOT Legal reviewed its proposed amendments to the Bylaws with the Technical Advisory Committee (TAC). Following the review and discussion, TAC voted via email vote concluding May 29, 2020 to endorse ERCOT Legal's proposed changes to the Bylaws unanimously without abstentions.

After consideration of Members' comments and the pressing need for the Bylaws amendments, ERCOT Legal suggests any amendments approved by the Board be presented for vote to the Corporate Members at a Special Meeting of the Corporate Members, which will be called as soon as practicable after the Board's approval (rather than seeking approval at the scheduled Annual Membership Meeting on December 8, 2020).

Proposed Bylaws Amendments

ERCOT Legal proposes to amend the Bylaws to clarify the urgent matters upon which the Board and its subcommittees that include a member of the Board may act upon at meetings via means of teleconference technology. 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. Accordingly, ERCOT Legal proposes amending the definition of "urgent matters" in Section 4.6(b) to 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 (including but not limited to those activities and functions affecting the ERCOT market or system), 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 that may be required to attend or have a reasonable interest in attending the meeting at which such business will be acted upon.

In addition, the proposed amendments also clarify that the Annual Meeting of Corporate Members need not take place in person; more closely align the definition of urgent matters with the Texas Open Meetings Act (Tex. Gov't Code §§ 551.001–.146); clarify who may call special meetings of Board subcommittees; change 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; update the title for Section 4.7 to eliminate reference to a paragraph deleted previously; and better align the description of the allowable teleconference technology (for meetings of the Board or its subcommittees, Corporate Members, or TAC or its subcommittees) with the relevant portions of the Texas Business Organizations Code (Tex. Bus. Org. Code §§ 6.002 & 22.002).

A sample resolution illustrating the incorporation of ERCOT Legal's recommended amendments to the Bylaws is attached to this decision template as redlined and clean versions in **Attachments A** and **B**, respectively.

Key Factors Influencing Issue:

Section 13.1 of these Bylaws, PURA Section 39.151(g) and PUCT Substantive Rule Section 25.362(c) provide the requirements and process for approval of any Bylaws amendments.

ERCOT Legal proposes that the Bylaws be considered at a Special Meeting of Corporate Members (well in advance of the Annual Membership Meeting in December 2020) to allow the amendments to become effective upon Corporate Members and Commission approval as soon as possible, preferably prior to the August 11, 2020 Board meeting.

A call for Special Meeting of Corporate Members has been placed on the June 9, 2020 Board agenda to allow for approval before the Annual Membership Meeting on December 8, 2020.

Conclusion/Recommendation:

ERCOT Legal recommends that the Board vote to approve the proposed Bylaws amendments for recommendation and presentation to the Corporate Members as soon as reasonably possible, subject to final approval by the Commission.



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

WHEREAS, after due consideration of the alternatives and upon consideration of the recommendations of Electric Reliability Council of Texas, Inc. (ERCOT) Legal, the ERCOT Board of Directors (Board) deems it desirable and in the best interest of ERCOT to approve certain amendments to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), with language substantially similar to that attached hereto as **Attachment A**, for recommendation and presentation to the Corporate Members as soon as reasonably possible, subject to approval by the Public Utility Commission of Texas (Commission) and filing with the Commission for final approval;

THEREFORE, BE IT RESOLVED, that the Board hereby:

- (1) Approves the amendment to the Bylaws, in substantially similar form as attached hereto as **Attachment A**, for recommendation and presentation to the Corporate Members as soon as reasonably possible; and
- (2) Authorizes ERCOT Legal to:
 - a. Present such approved amendments, in substantially similar form as attached hereto as **Attachment A**, for recommendation to the Corporate Members as soon as reasonably possible;
 - b. File a petition with the Commission for approval of such approved amendments, conditioned upon approval by the Corporate Members and to be effective upon Commission approval; and
 - c. Judiciously correct any scrivener's errors (such as, clerical, typographical, spelling, formatting, numbering or drafting errors) in the amendments or Bylaws as needed to reflect intended meaning accurately.

CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its June 9, 2020 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of June, 2020.

Vickie G. Leady
Assistant Corporate Secretary