



**Date:** February 28, 2022  
**To:** Board of Directors  
**From:** Chad V. Seely, Vice President, General Counsel and Corporate Secretary  
**Subject:** Proposed Modifications to Form Ethics Agreement for Directors

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Directors Meeting Date:** March 7-8, 2022

**Item No.:** 19

**Issue:**

Whether the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) should approve modifications to the ERCOT Ethics Agreement for Directors and Segment Alternates (Agreement) proposed by ERCOT Legal in order to conform with amendments made to the ERCOT Bylaws on October 12, 2021.

**Background/History:**

The Board is responsible for approving modifications to the form Agreement, which was last modified on June 12, 2018. Aside from a provision related to direct ties to, business relationships with and stock ownership of ERCOT vendors and a notice related disclosure of trade secret information, every provision of the Agreement is based on language of the Bylaws.

On October 12, 2021, the Bylaws were amended to conform as a matter of law with Texas Senate Bill 2 (SB 2). As a result, several provisions of the Agreement are no longer in alignment with the corresponding provisions of the Bylaws and are inconsistent with SB 2. The proposed modifications to the Agreement would align the Agreement with the Bylaws as amended on October 12, 2021. Additional modifications are proposed to replace references to the “Articles of Incorporation” with “Certificate of Formation” to reflect a title change to that document that was included in a January 31, 2019 amendment thereto, add one additional item to the Prohibited Acts listed in the Agreement, consistent with Bylaws § 9.3(j), and make a small number of minor, non-substantive revisions. The proposed modifications to the Agreement are set forth in **Attachment A**.

**Key Factors Influencing Issue:**

- A vote of the Board is required to approve the revised version of the Agreement.
- The Bylaws were amended on October 12, 2021, and certain provisions of the Agreement are no longer consistent with the Bylaws.

**Conclusion/Recommendation:**

ERCOT Legal recommends that the Board approve the proposed modifications to the Agreement (**Attachment A**) to become effective upon Board approval.



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

WHEREAS, staff of Electric Reliability Council of Texas, Inc. (ERCOT) has recommended modifications to the ERCOT Ethics Agreement for Directors and Segment Alternates (Agreement) in the form attached hereto for the consideration of the ERCOT Board of Directors (Board); and

WHEREAS, after due consideration of the alternatives, the Board deems it desirable and in the best interest of ERCOT to approve such modifications to the Agreement;

THEREFORE, BE IT RESOLVED, that the Board hereby approves the modifications to the Agreement consistent with the form attached to this resolution, effective upon Board approval.

**CORPORATE SECRETARY'S CERTIFICATE**

I, Jonathan M. Levine, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its March 7-8, 2022 meeting, the Board passed a motion approving the above Resolution by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of March 2022.

\_\_\_\_\_  
Jonathan M. Levine  
Assistant Corporate Secretary

## Ethics Agreement for Directors and Segment Alternates

Electric Reliability Council of Texas, Inc. (“ERCOT”) is a Texas non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act. ERCOT has been formed for the limited purpose of: promoting the reliable and efficient operations of electric power systems, ensuring open access for all users of the ERCOT transmission and distribution systems on a non-discriminatory basis, coordinating activities within the region of the Electric Reliability Council of Texas (“ERCOT Region”) and as liaison to the North American Electric Reliability Corporation, performing the functions of an Independent Organization, and engaging in any lawful act and activity consistent with the foregoing for which corporations may be formed under the Texas Non-Profit Corporation Act. ERCOT is certified as the Independent Organization for the ERCOT Region by the Public Utility Commission of Texas (“PUCT”).

The management of ERCOT is vested in a Board of Directors (“Board”) and such committees of the Board that the Board may, from time to time, establish. It is the duty of the Board to initiate any specific action required, in their opinion, to fulfill the purposes of ERCOT as stated above, within the limitations of the ~~Articles of Incorporation~~ Certificate of Formation, applicable laws and the Bylaws, as may be amended from time to time.

### Potential Conflicts of Interest

Each Director ~~and Segment Alternate~~ of ERCOT shall have an affirmative duty to disclose to the Board, any actual or potential conflicts of interest of the Director, ~~Segment Alternate~~, or ~~his~~their employer where, and to the extent that, such conflicts or potential conflicts directly or indirectly affect any matter that comes before the Board as required by the Bylaws. A Director ~~or Segment Alternate~~ with a direct interest in a matter, personally or via ~~his~~their employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse ~~himself~~themselves from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, ~~provided that an interest that is common to entities in the Market Segment of a Director or Segment Alternate or a general interest of some or all Market Participant Directors or Segment Alternates in a matter does not constitute direct interest~~. Any disclosure of a direct interest by a Director ~~or Segment Alternate~~ shall be noted in the minutes of the Board meeting at which the direct interest is disclosed. Mere attendance at the meeting, if the Director ~~or Segment Alternate~~ recuses ~~himself~~themselves from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

Each Director ~~and Segment Alternate~~ must disclose all personal relationships (including household member or family member (spouse, parent, child, or sibling, including step and adoptive relatives) relationships) with ERCOT vendors to the Board. Such relationships include: current ties (within the last two years) as a director, officer, or

employee of an ERCOT vendor; direct business relationships, other than retail customer relationships, with an ERCOT vendor; and directly or indirectly owning or holding at least five percent (5%) of voting securities of an ERCOT vendor.

ERCOT may not make any loan to a Director ~~or Segment Alternate~~ of ERCOT. A Director ~~or Segment Alternate~~ may lend money to and otherwise transact business with, ERCOT except as otherwise provided by the Bylaws, the ~~Articles of Incorporation~~ Certificate of Formation, and applicable law. Such a person transacting business with ERCOT has the same rights and obligations relating to those matters as other persons transacting business with ERCOT. If a Director, ~~a Segment Alternate~~, or member of ~~his~~ their immediate family is an officer or director, is employed by, or owns or has a beneficial interest in more than ten percent of the stock in a bank or other financial institution that would otherwise be a Qualified Institution (as defined in ERCOT's Investment Corporate Standard), such Director or Segment Alternate shall provide full disclosure of such stock holdings or relationship in documented form to be filed with the permanent records of ERCOT. ERCOT may not borrow money from, or otherwise transact business with, a Director ~~or a Segment Alternate~~ unless the transaction is described fully in a legally binding instrument and is in ERCOT's best interests. ERCOT may not borrow money from, or otherwise transact business with, a Director ~~or a Segment Alternate~~ without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction.

### ~~Independence of Unaffiliated Directors~~

~~Unaffiliated Directors of ERCOT are required to maintain independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:~~

- ~~• An Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have the following:~~
  - ~~• Current or recent ties (within the last two years) as a director or officer of a Market Participant or its Affiliates;~~
  - ~~• Current or recent ties (within the last two years) as an employee of an ERCOT Member or North American Electric Reliability Corporation Registered Entity operating in the ERCOT Region;~~
  - ~~• Direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates; and~~
  - ~~• To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.~~

- ~~• An Unaffiliated Director shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT Board member, including the Delegated Authority pursuant to the Bylaws.~~

### Prohibited Acts

As long as ERCOT exists, no Director ~~or Segment Alternate~~ may:

- Do any act in violation of the ~~Articles of Incorporation~~ Certificate of Formation or the Bylaws.
- Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval.
- Do any act with the intention of harming ERCOT or any of its operations.
- Receive an improper personal benefit from the operation of ERCOT.
- Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes.
- Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will.
- Use ERCOT's name (or any substantially similar name) or any trademark or trade name adopted by ERCOT, except on behalf of ERCOT in the ordinary course of its business or as a reference to the ERCOT Region.
- Disclose any of ERCOT's ~~or, ERCOT Member's'~~ or ERCOT Market Participants' business practices, trade secrets, or any other confidential or proprietary information not generally known to the business community to any person not authorized to receive it.
- Take any action, without written notice to Members and reasonable time for Members to respond, that would cause another ERCOT Member that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Energy Regulatory Commission ("FERC") rules or become subject to any plenary jurisdiction of FERC.
- Do any act in violation of an ERCOT rule [as that term is defined in PUCT Substantive Rule Section 25.361(a)], PUCT rule, or applicable statute.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing as described in Article 3 of the Bylaws.

### Disclosure of Trade Secret Information

Under the Defend Trade Secrets Act of 2016 (the "Act"), an individual may not be held criminally or civilly liable under any federal or state trade secret law for disclosure of a trade secret as defined in the Act: (i) made in confidence to a government official or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; and/or (ii) in a lawsuit filing made under seal. In addition, an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to his or her attorney and use the trade secret information in the



court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

The Ethics Agreement is not intended to alter in any way the duties, obligations and rights of Directors ~~or Segment Alternates~~ as set forth in the ~~Articles of Incorporation~~Certificate of Formation, Bylaws and applicable law, as they may be amended from time to time, nor does it create any third party rights, claims or causes of action. To the extent, if any, that the Ethics Agreement is inconsistent with the ~~Articles of Incorporation~~Certificate of Formation, Bylaws or applicable law, the ~~Articles of Incorporation~~Certificate of Formation, Bylaws and applicable laws, as they may be amended from time to time, shall control. Directors ~~and Segment Alternates~~ will be required to reaffirm the Ethics Agreement on an annual basis.

By my signature I, \_\_\_\_\_,  
acknowledge that I have read and understand the above Ethics Agreement and agree to be bound by its terms.

Director/~~Segment Alternate~~ Signature: \_\_\_\_\_

Date: \_\_\_\_\_