



Item 4: Changes to Governing Documents

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Human Resources and Governance Committee
Chair

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Human Resources and Governance Committee
Meeting

ERCOT Public
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Changes to Governing Documents - Objective

- The ERCOT Board of Directors (Board) believes it should control ERCOT's governing documents—that is, ERCOT's Bylaws and Certificate of Formation
- The Public Utility Regulatory Act (PURA) requires that the Bylaws “must reflect the input of the [Public Utility Commission of Texas (PUCT)]”
- The Board would like to engage Corporate Members to discuss a process for amending the Bylaws so that future amendments to ERCOT's governing documents do not require Corporate Member approval
- The new amendment process would still provide Corporate Members the opportunity to propose amendments or comment on proposed amendments under consideration

Bylaws Amendment Process:

Current Rules

Texas Business
Org. Code §
22.102(c)(1)

“The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless: ... this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members.”

PURA §
39.151(g-1)

“The independent organization’s bylaws ... must be approved by the commission and must reflect the input of the commission.” [See also PUC Subst. R. 22.362(c)(5).]

Cert. of
Formation Art. 9

“The Bylaws may be altered, amended or repealed or new Bylaws adopted, by the Members, if allowed, through a procedure set forth in the Bylaws or any other manner set forth in the Bylaws.”

Bylaws § 13.1

“These Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure: ... Any Corporate Member suggesting amendments to these Bylaws must submit a proposal ... to the CEO [who] shall place the proposal on the agenda for a Board meeting. ... If the proposal [to amend] is approved by an act of the Board ..., Corporate Members must vote to enact the Board-approved amendment by the ... voting procedure [set forth herein].”

Certificate of Formation Amendment Process:

Current Rules

Texas Business Org. Code § 22.105

“Except as provided by Section 22.107(b) [allowing the Board to approve a limited range of amendments], to amend the certificate of formation of a corporation with members having voting rights, the board ... must adopt a resolution specifying the proposed amendment and directing that the amendment be submitted to a vote at an annual or special meeting of the members having voting rights. ... The proposed amendment shall be adopted on receiving the vote required by Section 22.164.”

Texas Business Org. Code § 22.164

“Except as otherwise provided by Subsection (c) or (d) or the certificate of formation in accordance with Section 22.162, the vote required for approval of a fundamental action is ... at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote, if the corporation has members with voting rights.”

PUC Subst. R. 25.362(c) & (d)

“The commission may review a provision of ERCOT’s articles of incorporation ... on the application of an interested person, including commission staff and the Office of Public Utility Counsel. ... The commission shall process requests for review of a provision of ERCOT’s articles of incorporation or by-laws ... in accordance with §22.251 of this title.”

Bylaws § 13.2

“In accordance with the procedures set forth in the Texas Business Organizations Code, including Section 22.164(b)(1), an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Certificate of Formation.”
