



Item 12.1.2: Corporate Members Alternative Recommendation

Board of Directors Meeting

ERCOT Public

December 20, 2022



ERCOT Bylaws

*Overview of Proposed Alternative Amendments by Corporate Members**

December 20, 2022 ERCOT Board of Directors Meeting

*Corporate Members include: CPS Energy; Demand Control 2, LLC; Eolian, L.P.; Greenville Electric Utility System; Golden Spread Electric Cooperative, Inc.; Shell Energy North America (US) L.P.; and Sierra Club, Lone Star Chapter.

Comparison of Proposed Amendments

The alternative amendments proposed by Corporate Members* retain the majority of ERCOT's proposed changes, with key differences in Articles 3, 5, and 13 of the ERCOT Bylaws.

ERCOT Bylaws	ERCOT's Proposed Amendments	Corporate Members' Proposed Alternative Amendments
Article 1 (Offices)	<i>No change</i>	<i>No change</i>
Article 2 (Definitions)	ERCOT changes	ERCOT changes accepted
Article 3 (Members)	ERCOT changes	Modified §§ 3.2, 3.3, 3.5–3.7
Article 4 (Board of Directors)	ERCOT changes	ERCOT changes accepted
Article 5 (Technical Advisory Committee)	ERCOT changes	Deleted proposed § 5.1(k)
Article 6 (<i>reserved</i>)	<i>No change</i>	<i>No change</i>
Article 7 (Chief Executive Officer)	ERCOT changes	ERCOT changes accepted
Article 8 (Officers)	ERCOT changes	ERCOT changes accepted
Article 9 (Transactions of Corporation)	ERCOT changes	ERCOT changes accepted
Article 10 (Expenses, Books and Records)	ERCOT changes	ERCOT changes accepted
Article 11 (Indemnification)	ERCOT changes	ERCOT changes accepted
Article 12 (Notices)	ERCOT changes	ERCOT changes accepted
Article 13 (Amendments)	ERCOT changes	Modified §§ 13.1 & 13.2
Article 14 (Miscellaneous Provisions)	ERCOT changes	ERCOT changes accepted

*Corporate Members include: CPS Energy; Demand Control 2, LLC; Eolian, L.P., Greenville Electric Utility System (GEUS); Golden Spread Electric Cooperative, Inc.; Shell Energy North America (US) L.P.; and Sierra Club, Lone Star Chapter.

Proposed Alternative Amendments

Article 3, Members

Article 3.2, Membership and Voting Rights

- No change to membership classes
- Adds language to preserve rights of Corporate Members to be elected/appointed to TAC and subcommittees
- Retains voting rights of Corporate Members
 - ERCOT proposal:
 - Deletes Members' rights to "vote on any matter submitted to the general Membership"
 - Adds a provision that "ERCOT Members shall have no voting rights, including voting rights related to fundamental actions (as defined in Section 22.164 of the Texas Business Organizations Code) or voting rights related to any other governance matters of ERCOT. "

Article 3.3, Obligations of All Members

- Retains language referring to TAC Members as voting representatives

Article 3.5, Representation

- Retains Corporate Members' right to participate in meetings of the Corporate Members

Article 3.6, [TAC] Participation

- Retains voting rights of Corporate Members with respect to matters submitted to the Corporate Members

Article 3.7, Meetings of the Corporate Members

- Retains rights of Corporate Members to conduct business and vote on issues submitted to Corporate Members

Proposed Alternative Amendments

Article 5, TAC

Article 5.1, TAC Representatives

- Removes ERCOT's proposed language giving the Board authority to amend the TAC procedures without a vote of the TAC Representatives
 - Amendment process is properly addressed in the [TAC Procedures document](#)
- Keeps other changes proposed by ERCOT

Proposed Alternative Amendments

Article 13, Amendments

Article 13.1, Amendments to these Bylaws

- Gives the Board ability to amend Articles 1-2, 4, 6-12 and 14 without requiring a vote by Corporate Members
 - Process:
 - Proposed by the Secretary, a Seated Director or Corporate Member;
 - Placed on Board agenda by the Secretary after a **21-day notice/comment period for Corporate Members**;
 - **Approved** by the Board; and
 - **Approved** by the PUCT.
- Retains Corporate Member voting rights to add new Articles/Bylaws and to amend Articles 3, 5, and 13
 - Process:
 - Proposed by the Secretary, a Seated Director or Corporate Member;
 - Placed on Board agenda by the Secretary;
 - **Approved** by the Board;
 - **Approved** by **4/7 Corporate Member Segments**; and
 - **Approved** by the PUCT.
- PUCT retains final approval on all changes

Article 13.2, Amendments to the Certificate of Formation

- Retains Corporate Member voting rights to modify the Certificate of Formation amendment process



AMENDED AND RESTATED BYLAWS
OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
(A Texas Non-Stock, Non-Profit Corporation)

Approved on ~~October 12, 2021~~ [Month Day, Year – Date of PUCT Approval]

ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc., a Texas non-stock, non-profit corporation ("ERCOT"), shall be located at such place in Texas as the ERCOT Board of Directors (the "Board") may determine. Additional offices may be established and maintained at such place or places as the Board may from time to time designate.

Section 1.2 Registered Office and Registered Agent. ERCOT will maintain a registered office and a registered agent in Texas. The Board may change the registered office and the registered agent as permitted by the Texas Business Organizations Code, including Chapter 22 thereof (Nonprofit Corporations).

ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

1. **Affiliate.** "Affiliate" shall mean, with respect to any person, any other person who, directly or indirectly, through one or more intermediaries: (i) controls, is controlled by, or is under common control with such person, as set forth in Subsection (B) below; or (ii) exercises substantial influence over such person, is substantially influenced by such person, or is under common substantial influence with such person, as set forth in Subsection (C) below. Membership in ERCOT shall not create an affiliation with ERCOT.

(A) Construction

As used in this definition:

(x) "party" shall mean any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, or other entity;

(y) "person" shall mean any party, but shall exclude electric cooperatives and all of the entities listed in Section 11.0042(a)(1)-(4) of the Public Utility Regulatory Act ("PURA"), as well as the entities listed in PURA § 11.0042(a)(5) if the conditions in PURA §11.0042(a)(5)(A) and (B) are satisfied; and

(z) "controls", "controlled by", or "under common control with" shall mean the possession by a person, directly or indirectly, through one or more intermediaries, of the power to direct or cause the direction of the

management and/or policies and procedures of another person, whether through voting securities, contract or otherwise.

(B) *Affiliation Through Control*

Ownership by a person of equity securities (whether publicly traded or not) of another person shall result in a presumption of no control for purposes of this definition if:

1. the holder owns (in its name or via intermediaries) less than ~~20~~twenty percent (20%) of the outstanding securities of the person; or
2. the holder owns (in its name or via intermediaries) ~~20~~twenty percent (20%) or more of the outstanding securities of the person, and:
 - a. the securities are held as an investment;
 - b. the holder does not have representation on the person's board of directors (or equivalent governing body) or vice versa; and
 - c. the holder does not in fact exercise influence over day to day management decisions.

An ownership interest of ~~20~~twenty percent (20%) or more without all of the conditions set forth in Subsection (B)(2)(a) through (c) above shall create a presumption of control that may be challenged pursuant to Subsection (D) below.

For purposes of determining whether two otherwise unrelated persons are affiliated based on a holder's ownership of equity securities of both persons, the holder's ownership interest shall not result in common control for purposes of this definition if such holder's ownership meets the foregoing conditions for either person.

(C) *Affiliation Through Substantial Influence*

A person who is not controlling, controlled by or under common control with another person as described in Subsection (B) above, may nonetheless be determined by the Board, pursuant to Subsection (D) below, to be an Affiliate of another person, if allegations brought before the Board are substantiated that such person, directly or indirectly, through one or more intermediaries, exercises substantial influence over such person, is substantially influenced by such person, or is under common substantial influence with such person. Such a determination may be made by the

Board only after notice and an opportunity for hearing at an ERCOT Board meeting as set forth in Subsection (D).

(D) *Procedure for Board Determinations Regarding Affiliation*

1. Any party may challenge the presumption of control pursuant to Subsection (B) above, or allege substantial influence pursuant to Subsection (C) above, to the Board pursuant to the procedure set forth in this Subsection (D).
2. The challenging party shall submit written notice of the challenge to ERCOT's General Counsel. Such written notice shall identify any persons that are the subject of the challenge and shall include a detailed summary of the facts supporting the challenge. ERCOT's General Counsel will provide a recommendation to the Board on the challenge.
3. The Board will hear such matter at the next regularly-scheduled Board meeting that is at least ten (10) ~~B~~business ~~D~~days after the date the written notice of challenge is received by ERCOT's General Counsel. Notice of the Board's consideration of the challenge shall be given pursuant to Section 4.6(b) of these Bylaws.
4. The Board shall have discretion to determine whether the persons who are the subject of the challenge are Affiliates of one another for purposes of these Bylaws by reference to the factors set forth in this definition and other persuasive evidence. The challenging party shall bear the burden of proof.

(E) *Changes in Affiliates*

Members shall notify ERCOT of any change in Affiliates in accordance with Section 3.3(c) of these Bylaws.

2. **Consumers.** Any entity meeting the definition for Residential Consumers, Commercial Consumers or Industrial Consumers as set forth in this Article.
3. **Commercial Consumers.** A commercial consumer in the ERCOT Region: (a) **Small Commercial Consumer** – A commercial consumer having a peak demand of 1,000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** – A commercial consumer having a peak demand of greater than 1,000 kilowatts. An entity applying for ERCOT membership as either a Small Commercial Consumer or a Large Commercial Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use

consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators and the interest is of such an extent or nature that its decisions might be affected or determined by it.

4. **Cooperative.** An entity operating in the ERCOT Region that is:
 - a. a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
 - b. a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas;
 - c. a cooperative association organized under Chapter 251 of the Texas Business Organizations Code or a predecessor to that statute and operating under that statute; or
 - d. a River Authority as defined in Tex. Water Code §30.003.
5. **Director.** A member of the Board of ERCOT.
6. **Eligible Voting Director.** A Seated Director of the Board of ERCOT, other than the non-voting *ex officio* Directors who are the Chairman of the Public Utility Commission of Texas (“PUC”) and the ERCOT Chief Executive Officer (“CEO”), pursuant to these Bylaws, who votes ~~in-person-or-by-proxy~~ at a meeting properly noticed and held pursuant to these Bylaws.
7. **Eligible Voting Representative.** A Seated Representative, pursuant to these Bylaws, who votes in person or by proxy at a meeting properly noticed and held pursuant to these Bylaws.
8. **Entity.** An Entity includes an organization and all of its Affiliates.
9. **ERCOT Protocols.** The document adopted by ERCOT and approved by the ~~Public Utility Commission of Texas~~PUC, as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.
10. **ERCOT Region.** The geographic area and associated transmission and distribution facilities that are not synchronously interconnected with electric utilities operating outside the jurisdiction of the ~~Public Utility Commission of Texas~~PUC.
11. **Independent Generator.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 ~~MW~~megawatts in the ERCOT Region, or (ii) is preparing to operate and control

generation of at least 10 ~~MW~~megawatts, in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.

12. **Independent Power Marketer.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and is registered at the PUCT as a Power Marketer to serve in the ERCOT Region.
13. **Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (“REP”) under PURA §39.352 and that is not an Affiliate of a T&D Entity. For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP.
14. **Industrial Consumers.** An industrial consumer is a consumer with at least one meter with average monthly demand greater than 1 megawatt consumed within the ERCOT Region engaged in an industrial process.
15. **Investor-Owned Utility (“IOU”).**
 - a. An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an entity described in (a), (b) or (c); or
 - b. A public utility holding company of any such electric utility.
16. **Market Participant.** For purposes of these Bylaws, a Market Participant is (i) any entity that engages in any activity that is in whole or in part the subject of the ERCOT Protocols and has, or should have, a contract regarding such activities with ERCOT or (ii) any entity that qualifies for ERCOT membership.
17. **Market Segment.** For purposes of these Bylaws, any of the segments (all of which are defined within this Article 2 of these Bylaws) as follows:
 - a. Cooperative;
 - b. Independent Generator;
 - c. Independent Power Marketer;
 - d. Independent REP;
 - e. IOU;
 - f. Municipal; or

- g. Consumer (including: (1) Commercial Consumer comprised of Small Commercial Consumer and Large Commercial Consumer, (2) Industrial Consumer, or (3) Residential Consumer).
18. **Member.** A member of ERCOT, the Texas non-stock, non-profit corporation, which has been approved by ERCOT to meet the applicable membership qualifications described in Sections 3.1 and 3.2 of these Bylaws, or the member's appointed representative, as the context so requires.
19. **Municipal.** An entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either:
- a. a municipal owned utility as defined in PURA §11.003 or
 - b. a River Authority as defined in Tex. Water Code §30.003.
20. **Officer.** An individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.
21. **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.
22. **Residential Consumers.** The appointed Board Director representing residential consumer interests, an organization or agency representing the interests of residential consumers in the ERCOT Region, or the Residential Consumer Technical Advisory Committee ("TAC") Representative. An entity applying for ERCOT membership as a Residential Consumer is ineligible if that entity has interests in the electric industry in any other capacity than as an end-use consumer or represents the interests of another entity that has interests in the electric industry in any other capacity than as an end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators.
23. **Seated Director.** A Director who is currently serving, either *ex officio* or having been selected in accordance with PURA §39.151, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Director."
24. **Seated Representative.** A TAC Representative (as defined in Section 5.1 of these Bylaws) or a member of a subcommittee of TAC, or the TAC Representative's designated alternate representatives when serving in the TAC Representative's stead (if applicable), who is currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. A vacant position shall not be considered a "Seated Representative."

25. **Secretary.** The Officer of ERCOT holding the position of “secretary” as defined in Section 22.231(a) of the Texas Business Organizations Code.

25-26. **Segment.** For purposes of these Bylaws, a “Segment” refers to a Market Segment as defined in this Article 2 of these Bylaws.

27. **Selected Director.** A Director who is selected in accordance with PURA §39.1513.

26. **Transmission and Distribution (“T&D”) Entity.** Any entity that is an IOU, Cooperative or Municipal that owns or controls transmission and/or distribution facilities including at least 200 pole miles of such facilities in the ERCOT Region or any entity that is a “retail electric utility,” as defined in PURA §37.001, operating in the ERCOT Region.

27. **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant, and who meets the requirements identified in and is selected in accordance with PURA §39.151.

ARTICLE 3 MEMBERS

Section 3.1 Membership.

- (a) Members must qualify in one of the following ~~s~~**S**egments as defined in Article 2:
- (1) Cooperative;
 - (2) Independent Generator;
 - (3) Independent Power Marketer;
 - (4) Independent REP;
 - (5) Investor-Owned Utility;
 - (6) Municipal; or
 - (7) Consumer in one of three subsegments: (i) Commercial (which is further divided into Large and Small Commercial Consumer); (ii) Industrial; and (iii) Residential.
- (b) Except for the Consumer Segment, Members must have an actual financial interest in the retail or wholesale electric market in the ERCOT Region and be able to do business in one of these markets. A Member must maintain its registration

or certification by the PUCT to the extent it is required to do so by statute or PUCT rule.

- (c) The Board may adopt and amend Member application procedures.

Section 3.2 Membership Types and Voting Rights.

ERCOT Members may be Corporate Members, Associate Members, or Adjunct Members as hereinafter described:

- (a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the rights to be elected or appointed to TAC or any subcommittee of TAC and to vote on all matters submitted to the general membership (such as election of TAC Representatives by Segment or subsegment as set forth in Section 5.1 and amendments to the Certificate of Formation and these Bylaws).
- (b) Associate Members – shall have the rights and obligations as described in these Bylaws excluding the right to vote on any matter submitted to the general Membership (such as election of TAC Representatives and amendments to the Certificate of Formation and these Bylaws).
- (c) Adjunct Members – may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Corporate or Associate Member. Adjunct Members shall have no right to vote on any matter submitted to the general Membership nor any right to be elected or appointed to TAC or any subcommittee of TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

Section 3.3 Obligations of All Members.

- (a) Each Member must comply with any applicable planning and operating criteria, procedures and guides adopted by or under the direction of the Board to maintain electric system reliability, coordinate planning, promote comparable access to the transmission system by all users and to further the exempt purposes of ERCOT.
- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's request as necessary for the furtherance of the exempt purposes or activities of ERCOT and consistent with PUCT rules relating to confidentiality.
- (c) Each Member shall fully disclose any Affiliates in its annual Membership application submitted pursuant to procedures adopted under Section 3.1(c). If a Member's Affiliates change prior to submission of the next year's Membership application, the Member shall notify ERCOT of any change in writing by letter to the General Counsel or by the online link found on ERCOT's website on the Membership page. When there is a change to Affiliates previously submitted to ERCOT, the notice must be submitted upon the earliest of: (i) promptly after the

Member's designated representative has obtained actual knowledge; (ii) promptly after any Member's representative who serves on an ERCOT committee with Membership representation (such as TAC or a TAC subcommittee) has obtained actual knowledge; or (iii) within ninety (90) days of a change to the Member's Affiliates. A Member's designated and voting representatives and TAC and TAC subcommittee representatives are responsible for taking steps to remain informed about the Member's Affiliates and for conducting a reasonable inquiry if they have reason to believe that there may have been a change in Affiliates.

Section 3.4 Annual Member Dues. Each Member annually shall pay dues to ERCOT (the "Annual Member Dues"). Each Member shall pay its Annual Member Dues within thirty (30) days after receipt of ERCOT's annual statement of such dues. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Dues for Corporate Members shall be \$2,000. Annual Member Dues for Associate Members shall be \$500. Annual Member Dues for Adjunct Members shall be \$500. The Annual Member Dues for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership. Office of Public Utility Counsel ("OPUC") and the appointed Residential Consumer TAC Representative(s) shall be eligible to be Corporate Members without the payment of Annual Member Dues. Any Member may request that the Member's Annual Member Dues be waived by the Board ~~of Directors~~ for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ~~CEO~~Secretary or ~~his~~their designee in writing (signed by a duly authorized representative of the Member) the name of the person thus appointed. For Corporate Members, such appointed representative shall also act on behalf of the Corporate Member at all meetings of the Corporate Members.

Section 3.6 Participation.

- (a) No Entity shall simultaneously hold more than one Corporate Membership. Any Entity may also simultaneously have a maximum of one seat on TAC.
- (b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member Dues for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has applied to be and has been approved by ERCOT to meet the minimum qualifications as a Corporate Member of a Segment, the Entity must continue to vote in that Segment for a minimum of one (1) year. If, at any point during the membership year, an Entity no longer meets the qualifications for the Segment for which it was originally approved by ERCOT, the Entity may not vote in that Segment; however, that Entity may then immediately elect to become a Corporate Member in any Segment for which it does qualify.

Except as otherwise provided in these Bylaws, an Associate Member may be selected by the Corporate Members of a Segment in which the Associate Member participates to serve as a voting member of TAC or any subcommittee of TAC.

- (c) Subject to any specific provisions in these Bylaws or the Amended and Restated Certificate of Formation of ERCOT (the "Certificate of Formation"), each Corporate Member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate Members. A Corporate Member in good standing is one that is not in arrears for payment of its Annual Member Dues for a Corporate Membership or payment of any other fees owed to ERCOT unless in good faith disputed, is not in breach of any contract with ERCOT, and is not suspended or expelled as a Corporate Member as of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters unless and until they have regained good standing.

Section 3.7 Meetings of the Corporate Members.

- (a) Corporate Members shall meet at least annually on a date to be established by the Board ("Annual Meeting"). The representatives of the Corporate Members shall conduct such business as may be properly brought before them.
- (b) Special meetings of the Corporate Members may be called by the Board.
- (c) Written or printed notice of any meeting of the Corporate Members shall be delivered to each Member at least three (3) weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail, facsimile, or email. Notice shall include an agenda explaining the purpose of the meeting and any business upon which the Corporate Members will be requested to vote.
- (d) The record date for determining Corporate Members entitled to notice shall be on the Friday which is at least thirty (30) days but not more than thirty-six (36) days prior to the meeting date.
- (e) Representation at any meeting of ERCOT of at least fifty-one percent (51%) of the Corporate Members, in person or by proxy, shall constitute a quorum for the transaction of business at such meeting; and abstentions do not affect calculation of a quorum. Except as otherwise provided in these Bylaws, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members. For purposes of voting of the Corporate Members, Corporate Members who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.
- (f) Written proxies may be used for meetings of the Corporate Members in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of the Corporate Members, proxies shall count towards a quorum.

- (g) Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Corporate Members as would be necessary to take that action at a meeting at which all of the Corporate Members were present and voted. Corporate Members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken without a meeting, notice of the proposed action shall be provided to Corporate Members in accordance with Section 3.7(c).

Section 3.8 Sanction, Suspension, Expulsion, or Termination of Members. No Member, either a Member organization or a Member representative, may be sanctioned, expelled or suspended, and no Membership or Memberships in ERCOT may be terminated or suspended except pursuant to the following procedure, which is intended to be fair and reasonable and carried out in good faith, absent a Board resolution providing an alternative procedure:

- (a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days' written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in ERCOT's records.
- (b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to participate in the hearing at ~~his~~their or its own expense, and to present and cross-examine any witnesses. The hearing shall be conducted at the next meeting of the Board for which there is time to give proper notice.
- (c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.
- (d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion,

suspension, sanction or termination. Any such proceeding before the Board will be subject to the hearing requirements described in paragraph (b) of this ~~s~~Section.

Section 3.9 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of ERCOT at any time upon written notice to the ~~CEO~~Secretary, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of TAC or any subcommittee of TAC and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of Annual Member Dues for a fiscal year, the Member shall be obligated to pay its Annual Member Dues for the full fiscal year within which such termination is effective.

Section 3.10 Reinstatement. A former Member may submit a written request for reinstatement of Membership. The Board may choose to reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 3.11 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and ERCOT Protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member, or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction maintenance and operation of its own facilities, present and future. A Member has no interest in specific property of ERCOT and waives the right to require a partition of any ERCOT property.

ARTICLE 4 BOARD OF DIRECTORS

Section 4.1 Powers. The affairs of ERCOT shall be managed by the Board ~~("Board")~~.

Section 4.2 The Board. The Board shall be composed of a total of eleven (11) Directors as follows:

- (a) The Chair of the PUCT as an *ex officio* non-voting Director;
- (b) The Public Counsel of OPUC as an *ex officio* voting Director representing Residential Consumers and Small Commercial Consumers;
- (c) The CEO as an *ex officio* non-voting Director; and
- (d) Eight (8) voting Directors selected as ~~Unaffiliated~~Selected Directors.

Section 4.3 Selection, Tenure, and Requirements of Directors.

- (a) Selection of ~~Unaffiliated~~Selected Directors. ~~Unaffiliated~~Selected Directors shall be selected in accordance with PURA §§39.151 and 39.1513.
- (b) Terms. The term for all ~~Unaffiliated~~Selected Directors shall be three (3) year terms, which shall be staggered to the extent possible, unless changed by Amendment to these Bylaws. ~~An Unaffiliated~~Selected Director may ~~be reelected~~serve for up to ~~twethree~~ (3) consecutive terms. In order to serve on the Board during their terms, all Directors shall continuously remain in good standing and meet their respective minimum requirements and qualifications of their Director positions.
- (c) Director Voting Weights. All voting Directors shall have a single vote each.
- (d) ~~Alternates and Proxies.~~ ~~Unaffiliated Directors may designate another Director, preferably an Unaffiliated Director whenever possible, as a proxy if unable to attend a Board meeting.~~ *Ex officio* Directors may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Director.

(e) Requirements of Directors.

(1) Each Director shall be a resident of Texas.

(2) No legislator may serve as a Director.

(3) No Director shall have a fiduciary duty or assets in the ERCOT Region.

(4) No more than two Directors may be employed by an institution of higher education, as defined by Section 61.003, Education Code, in a professorial role.

- (e)(f) Prohibitions on Certain Stakeholder Memberships and Representation. With the exception of the Public Counsel and representatives of OPUC, no Director shall vote or otherwise become or hold themselves out as a member, representative or alternate of TAC; any of TAC's subcommittees, task forces or working groups; or any other group the decisions of which may ultimately be appealed to the Board. For a period of one (1) year from the last date of service as an ~~an~~ ~~Unaffiliated~~Selected Director, the former ~~Unaffiliated~~Selected Director shall not represent a Market Participant before the Board, TAC, any of TAC's subcommittees, task forces or working groups.

Section 4.4 Chair and Vice Chair. The Board Chair and a Vice Chair shall be designated in accordance with PURA §39.1513.

Section 4.5 Vacancies and Removal.

- (a) A vacancy of a Director position will occur if: (1) the respective Director resigns ~~his~~their Director position from the Board; or (2) the Director is removed from the Board in accordance with the provisions of Section 4.5(b).
- (b) A Director may be removed: (1) with cause upon a change in circumstances that causes a Director to become ineligible to serve under the provisions of PURA §39.151; or (2) with cause by the Board upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. Removal shall occur if a Director is: (A) found by the Board to have committed a prohibited act as identified in Section 9.3 of these Bylaws pursuant to and after completion of a hearing process as described in Section 9.3 of these Bylaws, and (B) the Board recommends removal of the Director from the Board. Any Board action to remove a Director from the Board shall be subject to review by the PUCT. ~~An Unaffiliated Director may be removed by the PUCT in accordance with applicable law.~~
- (c) A vacancy may be filled only by the persons authorized to select or appoint such Director.
- (d) The ~~CEO~~Board Chair, or the Board Vice Chair in the case the Board Chair position is vacant, shall notify the ERCOT board selection committee established pursuant to PURA §39.1513 (i) when a vacancy of an Unaffiliated Selected Director position occurs or (ii) six (6) months in advance of the end of the term of any Selected Director, and shall provide information to the committee as required by the committee.
- (e) Any Director so chosen shall serve in ~~his~~their Director position until the earlier of the expiration of ~~his~~their term, resignation, ineligibility, inability to serve or removal.

Section 4.6 Meetings.

- (a) The Board shall meet at least quarterly, with at least one meeting occurring in conjunction with the Annual Meeting of the Members. Additional meetings of the Board shall be held at such time and at such place or (for meetings held in accordance with Section 4.7(e)) via such means as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair or Vice Chair of the Board, or the CEO or ~~his~~their designee. Special meetings of any subcommittee having at least one Director may be called by the Chair or Vice Chair of the subcommittee, or the CEO or ~~his~~their designee.
- (b) Notice stating the purpose, business to be transacted, place or (for meetings held in accordance with Section 4.7(e)) access information, date and hour of any meeting of the Board or any Board subcommittee where at least one Board Director is present shall be given to each Director and made available electronically to the public on the Internet not less than one (1) week before the date of the meeting; provided, however, the Board or any subcommittee having at least one Director may meet on urgent matters on such shorter notice, not less

than one (1) hour, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters. For purposes of these Bylaws, an urgent matter is an emergency or public necessity (including but not limited to an imminent threat to public health and safety or to the ERCOT market or system), or a reasonably unforeseen situation. A matter shall be considered an urgent matter if it would be difficult or impossible for a quorum of Directors or subcommittee members to physically convene in one location and failure to consider the matter without delay 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.

- (c) The Board and its subcommittees having at least one Director may meet to consider urgent matters in accordance with Section 4.7(e). The Board must ratify any action taken on notice of less than one (1) week or at a meeting held in accordance with Section 4.7(e) at its next regularly scheduled meeting.
- (d) The Board shall promulgate procedures allowing public access to meetings of the Board and Board subcommittees and allowing for members of the public to provide comment on the matters under discussion at public portions of meetings of the Board and subcommittees.
- (e) Consistent with PURA §39.1511, Mmeetings of the Board or Board subcommittees shall be open to the public provided that the Board or Board subcommittee on which at least one Board Director sits may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting held in Executive Session, including for purposes of voting. An Executive Session shall be held at the discretion of the Board or Board subcommittee for sensitive matters including, but not limited to, confidential personnel ~~—~~information, contracts, lawsuits, deliberation of purchase of real property, competitively sensitive information, deployment or implementation of security devices or other information related to the security of ERCOT's regional electrical network and discussion of any matters on which the Board receives legal advice from its attorney(s) in which the Texas Disciplinary Rules of Professional Conduct impose on the attorney(s) a duty to preserve confidentiality, including but not limited to anticipated or pending litigation, administrative agency contested cases, and other regulatory matters.
- (f) The Secretary or ~~his~~their designee shall keep minutes of every Board meeting.

Section 4.7 Quorum; Action by Directors; Abstentions; ~~Proxies; Seated Directors; and~~ Meetings and Participation by Telephone.

- (a) Except as may be otherwise specifically provided by law, the Certificate of Formation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the ~~Seated~~Eligible Voting Directors shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum. For any meeting of the Board or any subcommittee of the Board, the Public Counsel Director's

designated alternate representative, when attending in place of the Public Counsel Director, shall be counted towards a quorum.

- (b) ~~¶~~Provided a quorum is present at a meeting, the act of ~~:(i)~~ at least two-thirds of the affirmative votes of the Eligible Voting Directors; ~~and (ii) at least 50% of the total Seated Directors~~ shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Certificate of Formation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.
- (c) For purposes of voting on the Board, Directors who abstain from voting shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action.
- ~~(d) Written proxies may be used for meetings of the Board or any subcommittees of the Board in accordance with any relevant provisions in these Bylaws and the Texas Business Organizations Code, including Chapter 22 thereof. For any meeting of the Board or any subcommittee of the Board, a designated alternate representative, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.~~
- ~~(d)~~ (e) Directors (for urgent matters in accordance with Section 4.6) may participate in and hold a meeting by means of a conference telephone or other similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting; ~~and p.~~ Participation in a meeting pursuant to this Section paragraph (e) shall constitute presence in person at such meeting, including for purposes of establishing a quorum, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.
- ~~(d)~~ (e) For non-urgent matters, at any meeting of the Board, provided that a quorum is present in person, Directors that are not present in person may participate in and vote at such meeting by means of a conference telephone or other similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. Participation in a meeting pursuant to this paragraph (e) shall constitute presence in person at such meeting, except for purposes of establishing a quorum, and except where such Director participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of ~~the Technical Advisory Committee (TAC)~~ and may appoint subcommittees as it deems necessary and appropriate to conduct the business of ERCOT. The designation of subcommittees and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it or ~~him~~them by law.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Corporation ("NERC"), the Board shall elect, from among its members, persons to serve on the NERC Member Representatives Committee or its successor. The selection of the representatives shall require an act of the Board as set forth in Section 4.7. If more than one representative is requested, such representatives shall be from different Segments.

Section 4.10 Duties. It shall be the duty of the Board to initiate any specific action required, in its opinion, to fulfill the exempt purposes of ERCOT as stated in the ~~Articles of Incorporation~~Certificate of Formation, within the limitations of the Certificate of Formation, applicable law, and these Bylaws. Such action may be taken by the Board, by such subcommittee(s) as may be formed by the Board, the CEO as directed by the Board or by individuals appointed by the Board provided that the following actions of the Board may not be delegated: (a) approval of the Budget (as defined in Section 10.3); (b) approval of the employment and terms for the CEO, as well as termination of CEO's employment; (c) ratification of other Officers of ERCOT; (d) annual selection of a qualified independent public accounting firm ("Auditor") to audit the financial statements of ERCOT; (e) approval of the initiation of any non-routine filing to a regulatory agency that requests regulatory action; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

ARTICLE 5 TECHNICAL ADVISORY COMMITTEE

Section 5.1 TAC Representatives.

- (a) For the purposes of this ~~s~~Section, membership in the TAC shall be divided in accordance with the definitions of the Segments described in Section 3.1. TAC shall be comprised of the following ("Representatives"):
 - (1) Representatives of four Members elected from each of the six Segments (other than as described for the Consumer Segment) listed in Section 3.1.
 - (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. ~~F~~Subject to paragraph (j) below, for any subsegment in which there are no Corporate Members, the ~~Consumer Director of that subsegment~~Board shall appoint such Representatives. For

the Residential, Commercial and Industrial subsegments, the TAC Representative seats are as follows:

- (i) Two Representatives of Industrial Consumers;
- (ii) One Representative of Small Commercial Consumers;
- (iii) One Representative of Large Commercial Consumers;
- (iv) One Representative of Residential Consumers; and
- (v) The Public Counsel's designee as an *ex officio* voting member.

(b) TAC shall adopt policies regarding the qualifications for TAC Representatives, except for the Residential Consumer TAC Representative and representatives of OPUC, which at a minimum shall require five (5) years of electric industry experience.

(1) Such policies shall set forth the acceptable areas of industry experience that satisfy this requirement.

(2) Such policies shall require that for each TAC Representative, the represented Corporate Member must certify that the TAC Representative is authorized to make decisions on behalf of the relevant Segment or subsegment and meets the minimum qualifications for TAC Representatives.

(3) At least annually, TAC shall confirm to the Board that each TAC Representative subject to this paragraph (b) meets the minimum qualifications for TAC Representatives.

(b)(c) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.

(e)(d) Fifty-one percent (51%) of the eligible, Seated Representatives of TAC shall constitute a quorum for the transaction of business; and abstentions do not affect calculation of a quorum. Affirmative votes of: (i) two-thirds of the Eligible Voting Representatives of TAC; and (ii) at least fifty percent (50%) of the total Seated Representatives shall be the act of TAC. For purposes of voting on TAC, TAC Representatives shall not have their votes included in the total number of votes from which the requisite percentage of affirmative votes is required for action if: (i) they are not present and have not designated a proxy, or (ii) they abstain from voting.

(d)(e) Written proxies may be used for meetings of TAC or any subcommittees of TAC in accordance with any relevant provisions in these Bylaws and the Texas Business

Organizations Code, including Chapter 22 thereof. For any meeting of TAC or any subcommittee of TAC, where permitted by these Bylaws, attending in place of a member shall be counted towards a quorum, while proxies shall not be counted towards a quorum.

~~(e)~~(f) ~~(e)~~—Unless otherwise provided by law, any action required or permitted to be taken at any meeting of TAC Representatives or any subcommittee of TAC may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the TAC Representatives and subcommittee members were present and voted. TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Where action is taken by TAC without a meeting, notice of the proposed action shall be provided to the TAC Representatives in accordance with Section 5.3.

~~(f)~~(g) Each Segment may choose to participate in “Participatory Voting” as described herein. If a Segment chooses to engage in Participatory Voting, each TAC Representative elected by that Segment shall be required to present the decision of the Corporate Members of that Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 3.5 to vote on its behalf for purposes of Participatory Voting. If a Corporate Member of a Segment using Participatory Voting is unable or does not wish to attend a TAC meeting that Member may deliver a written proxy, at any time prior to the start of the meeting at which it will be voted, to a Participatory Voting delegate of any Member of the same Segment. A Corporate Member delegate in attendance at a TAC meeting may give a written proxy to a Participatory Voting delegate of any Member of the same Segment during such meeting.

~~(g)~~(h) All TAC Representatives shall be appointed or elected annually by the Corporate Members of their respective Segments. The term for all TAC Representatives shall be one (1) year. Any TAC Representative may be reappointed or reelected for consecutive terms, without limitation. A vacancy shall be filled by the same means used to elect or appoint the previous TAC Representative. No Entity shall participate in more than one Segment of TAC. The Representatives of TAC shall elect from amongst themselves a Chair and Vice Chair subject to confirmation by the Board. The Chair and Vice Chair shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws during the confirmation

process, and any person speaking on behalf of TAC before the Board shall provide full disclosure pursuant to Section 9.2 (Potential Conflicts of Interest) of these Bylaws before speaking on behalf of TAC.

~~(h)~~(i) ~~(h)~~—Each person (other than the Residential Consumer s TAC Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a Corporate or Associate Member. Unless otherwise provided in these Bylaws, if an employee or agent of a Member is elected or appointed to serve on TAC or any subcommittee thereof, such person is only eligible to serve in such capacity so long as ~~he or she is~~they are an employee or agent of the same Member as ~~he or she was~~they were at the time of such election or appointment.

~~(i)~~(j) In the event that a Small Commercial Consumer Representative cannot be identified to serve on TAC, that seat may be filled by any other Commercial Consumer representative appointed by the ~~Consumer Director of the Small Commercial subsegment~~Public Counsel provided that such representative represents at least one consumer in the ERCOT Region. Any Representative of the Consumer Segment appointed to TAC by ~~a Consumer Director~~the Public Counsel pursuant to this paragraph or the Board pursuant to paragraph (a)(2) above, if not otherwise a Member of ERCOT, shall be allowed to vote on TAC without the payment of the Annual Member Service Fees. An appointed Commercial Consumer TAC Representative is eligible to serve in such capacity so long as ~~he or she is~~they are an employee or representative of the same company as ~~he or she was~~they were at the time of such appointment.

Section 5.2 Subcommittees: Functions of TAC. TAC shall have the authority to create subcommittees, task forces and study groups (“subcommittees”). TAC shall determine the eligibility requirements, quorum requirements and voting structure for each subcommittee. TAC shall (a) through its subcommittees make such studies and plans as it deems appropriate to accomplish the purposes of ERCOT, the duties of its subcommittees and the policies of the Board, (b) report the results of such studies and plans to the Board as required by the Board, (c) review and coordinate the activities and reports of its subcommittees, (d) make such recommendations to the Board as it deems appropriate or as required by the Board, (e) perform such other duties as directed by the Board and (f) make recommendations regarding ERCOT expenditures and projects. In accordance with ERCOT procedures and applicable law and regulations, certain guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that such actions are reported to the Board for review and nothing herein shall affect the ability of the Board to independently consider such guidelines, criteria and actions, and to take such action with respect thereto as the Board deems appropriate, including revocation and remand with instructions.

Section 5.3 Meetings. TAC and its subcommittees shall meet as often as necessary to perform their duties and functions. All meetings of TAC and its subcommittees shall be called by their respective chairmen and all such meeting notices shall be sent in writing to each member at least one (1) week prior to the meeting, unless an emergency condition

should suggest otherwise (such emergency to be by mutual consent of a majority of the Seated Representatives of TAC or subcommittee). Any Member may request notification of any such meetings and may have an employee or a TAC-approved representative for that Member attend as an observer. Each Representative of TAC may designate in writing an alternate representative who may attend meetings in the absence of the Representative and vote on the Representative's behalf.

Section 5.4 Other Appointments. TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups whose members are appointed by the NERC Regions. The selection of TAC representatives to NERC shall require an act of TAC as set forth in Section 5.1(c). If more than one representative is requested, TAC should consider selecting representatives from different Segments.

ARTICLE 6

Intentionally Omitted.

ARTICLE 7 CHIEF EXECUTIVE OFFICER

Section 7.1 CEO Hiring and Duties. The Board shall hire a ~~Chief Executive Officer~~ ("CEO") who, under the Board's supervision and direction shall carry on the general affairs of ERCOT. The CEO shall be a member of the staff of ERCOT and shall be an *ex officio* non-voting Director. It shall be ~~his~~ the CEO's duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of ERCOT. The CEO shall serve as President of ERCOT. ~~He or she~~ The CEO shall comply with all orders of the Board. All agents and employees of ERCOT shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 Notice of CEO Vacancy. The Board Chair or the Board Chair's designee shall notify the PUCT Commissioners when a vacancy occurs for the CEO.

Section 7.3 CEO Selection. The Board Chair or the Board Chair's designee shall provide information to the PUCT Commissioners regarding selection of the CEO requested by any of the PUCT Commissioners as required by the PUCT.

Section 7.4 CEO Compensation. The compensation of the CEO shall be approved by the Board.

ARTICLE 8

OFFICERS

Section 8.1 General. The Officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, and such Officers and assistant Officers as the Board may create. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 8.2 Tenure. The CEO of ERCOT shall be elected and the other Officers of ERCOT shall be ratified by the Board at such time and in such manner and for such a term not exceeding one (1) ~~one~~-year, as shall be determined from time to time by the Board. Any Officer may be re-elected or re-ratified for consecutive terms, without limitation. All Officers of ERCOT shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any Officer elected or appointed may be removed by the persons authorized to elect or appoint such Officer whenever in their judgment the best interests of ERCOT will be served thereby.

ARTICLE 9 TRANSACTIONS OF CORPORATION

Section 9.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositories that the Board approves.

Section 9.2 Potential Conflicts of Interest.

- (a) Each Director, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest of the Director, TAC Representative or subcommittee member 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, TAC or subcommittee, as the case may be. A Director 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. Any disclosure of a direct interest by a Director 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, TAC Representative or subcommittee member recuses ~~himself or herself~~themselves from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.

- (b) ERCOT may not make any loan to a Director or Officer of ERCOT. A Member, Director, TAC Representative, Officer, or subcommittee member of ERCOT may lend money to and otherwise transact business with ERCOT except as otherwise provided by these Bylaws, the 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. ERCOT may not borrow money from, or otherwise transact business with, a Member, Director, TAC Representative, Officer, or subcommittee member of ERCOT 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 Member, Director, Officer, TAC Representative or subcommittee member of ERCOT 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.

Section 9.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, Officer, or subcommittee member of ERCOT may:

- (a) Do any act in violation of the Certificate of Formation or these Bylaws;
- (b) Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval;
- (c) Do any act with the intention of harming ERCOT or any of its operations;
- (d) Receive an improper personal benefit from the operation of ERCOT;
- (e) Use ERCOT's assets, directly or indirectly, for any purpose other than in furtherance of ERCOT's exempt purposes;
- (f) Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will;
- (g) 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;
- (h) Disclose any of ERCOT's or Members' 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;
- (i) 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; or

- (j) With regard to the Directors, 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 conducted using the same procedure as described in Article 3 of these Bylaws.

ARTICLE 10 EXPENSES, BOOKS AND RECORDS

Section 10.1 Member Representatives' Expenses and Compensation of Certain Directors and TAC Representatives.

- (a) Except as described below, ERCOT shall not bear the personal and travel expenses of each person who serves as a representative of a Member or as a Director, TAC Representative or subcommittee member. Except as provided below, no such person shall receive any salary or other compensation from ERCOT.
- (b) The Board shall have the authority to fix the compensation of its ~~Unaffiliated~~Selected Directors who may be paid a fixed sum plus reimbursement of travel expenses for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing. ~~Unaffiliated~~Selected Directors, who are members of standing or special committees, may be allowed like compensation and reimbursement of travel expenses for attending committee meetings. ~~Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and all reasonable Board-related expenses for training activities and Unaffiliated Directors shall be reimbursed for travel lodging and related expenses for attending each meeting of the Board. The reimbursement of travel expenses by ERCOT shall be in accordance with ERCOT policies on the reimbursement of appropriate and reasonable, documented travel expenses.~~
- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, or any standing or special committee of such on an annual basis. Any Residential Consumer TAC Representative shall not be an agent of ERCOT for any purpose and shall not be considered to be serving at ERCOT's request, even though compensated by ERCOT.

Section 10.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

Section 10.3 Budget. A budget (the “Budget”) for ERCOT for the ensuing one or more fiscal years shall be adopted by the Board. In connection with the Board’s approval, the Budget, including cost of liability insurance, for ERCOT shall be compiled by the CEO or their designee and submitted to the Board. To be effective, the Budget must be approved by an act of the Board as set forth in Section 4.7. The representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

Section 10.4 Loans and Guarantees. Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Certificate of Formation shall be deemed to constitute a pledge or loan of the credit of any Member for the benefit of ERCOT or a guarantee by any Member of any obligation of ERCOT.

Section 10.5 Access to Books and Records. All Members of ERCOT will have access to the books and records of the organization, including financial statements and budgets; however, the Board shall establish procedures by which a Member, upon written demand stating the purpose of the demand may examine and copy the books and records of ERCOT. If necessary to protect the confidential information of ERCOT, a Member requesting examination of ERCOT’s books and records may be required to sign a confidentiality and non-disclosure agreement before viewing such information. The procedures shall include policies that provide reasonable protection against the unnecessary disclosure of information related to individual employees, including their compensation.

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. The Auditor’s opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Section 10.7 Fiscal Year. The fiscal year of ERCOT shall be from January 1 through the following December 31, or as otherwise fixed by resolution of the Board.

ARTICLE 11 INDEMNIFICATION

Section 11.1 Indemnification. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF ERCOT, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST, EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY CHAPTER 8 OF THE TEXAS BUSINESS ORGANIZATIONS CODE OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, AS SO AMENDED, BEING INCORPORATED

IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT.

ARTICLE 12 NOTICES

Section 12.1 Form. Unless otherwise provided in these Bylaws, any notice required by these Bylaws to be given to a Member, Director, committee or subcommittee member, TAC Representative, member of a subcommittee of TAC, or Officer of ERCOT must be given by at least two of the following methods: mail, facsimile, email, or website posting. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at ~~his~~their address as it appears on the corporate records, with postage prepaid. A person may change ~~his~~their address in the corporate records by giving written notice of the change to the ~~CEO~~Secretary.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Certificate of Formation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice that was to be given.

Section 12.3 Waiver of Notice by Attendance at a Meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 12.4 Objection. If any person, who is a voting member of a group holding a meeting, reasonably objects to the transaction of business regarding a specific issue, or issues, at a meeting on the grounds that the meeting is not properly called or convened or that the issue, or issues, was improperly noticed, the issue or issues in question may not be addressed at that meeting. The ~~C~~hair of such meeting shall determine if such objection is reasonable.

ARTICLE 13 AMENDMENTS

Section 13.1 Amendments to these Bylaws.

(a) ~~Except as provided by subsection (b) below and s~~Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from

Membership and subject to approval by the PUCT, these Bylaws may be amended, altered, or repealed by the ~~voting Segments through the following procedure: Board pursuant to Section 4.7(b) and through the following procedures:~~

~~(1) Amendments to the Bylaws under this subsection may be proposed by:~~

~~(i) The Secretary; or~~

~~(ii) Any Seated Director or Corporate Member by submitting a proposal of the amendment, including any necessary supporting documents, to the Secretary.~~

~~(2) The Secretary, upon proposing an amendment to the Bylaws or upon receipt of a Seated Director's or Corporate Member's proposal to amend the Bylaws, shall notify the Board Chair and shall place the proposal to amend the Bylaws on the agenda for a Board meeting in the time and manner prescribed by the Board, subject to the notice and comment requirements contained in subdivision (3) below.~~

~~(3) Corporate Members shall be provided a minimum of twenty-one (21) days' advance notice and the opportunity to comment on any proposed Bylaws amendment prior to Board action on the proposed amendment.~~

~~(4) If the proposal is approved by an act of the Board as set forth in section 4.7, the Board shall petition the PUCT for approval of the proposal in accordance with PURA §39.151(g-1).~~

~~(b) Any other provision of these Bylaws notwithstanding and subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership and subject to approval by the PUCT, an Article may only be added, new Bylaws may only be adopted, and Articles 3, 5, and 13 of these Bylaws may only be amended, altered, or repealed by the voting Segments through the following procedures:~~

~~(1) Amendments to the Bylaws, additional Articles to the Bylaws, and new Bylaws under this subsection may be proposed by:~~

~~(i) The Secretary; or~~

~~(ii) Any Seated Director or Corporate Member by submitting a proposal, including any necessary supporting documents, to the Secretary.~~

~~(2) The Secretary, upon proposing an amendment to the Bylaws, additional Article to the Bylaws, or new Bylaws or upon receipt of a Seated Director's or Corporate Member's proposal to amend the Bylaws, add an Article to the Bylaws, or adopt new Bylaws, shall notify the Board Chair and shall place~~

the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.

~~(b) Any Seated Director or the Secretary may propose amendments to the Bylaws. In addition, Any Corporate Member suggesting may propose amendments to these Bylaws must by submitting a proposal of the amendment, including any necessary supporting documents, to the CEO Secretary.~~

~~(c) The CEO Secretary shall place the any proposal to amend the Bylaws on the agenda for a Board meeting in the time and manner prescribed by the Board, subject to the notice and comment requirements contained in paragraph (a) above.~~

~~(1)~~(3) If the proposal is approved by an act of the Board as set forth in Section 4.7, 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 to vote on the proposal or determines to seek Membership approval without a meeting as provided in Section 3.7(g).

~~(2)~~(4) Corporate Members must vote to enact the Board-approved ~~amendment~~ proposal by the following voting procedure:

- (i) For the purposes of voting on Bylaws, each Segment shall have one whole vote.
- (ii) 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.
- (iii) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following Consumer subgroups:
 - (a) Residential Consumers;
 - (b) Commercial Consumers; and
 - (c) Industrial Consumers.

An affirmative vote of the majority of the Corporate Members within a Consumer subgroup shall constitute an affirmative vote of that subgroup. An affirmative vote of at least two of the three Consumer subgroups shall constitute an affirmative vote of the Consumer Segment.

(iv) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws, ~~add an Article to these Bylaws, or adopt new Bylaws.~~

(5) If the proposal is approved by the Corporate Members in accordance with subdivision (4) above, the Board shall petition the PUCT for approval of the proposal in accordance with PURA §39.151(g-1).

Section 13.2 Amendments to the Certificate of Formation. 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.

ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 14.1 Legal Authorities Governing Construction of Bylaws. These Bylaws shall be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

Section 14.2 Legal Construction. Any question as to the application or interpretation of any provision of these Bylaws shall be resolved by the Board. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any Bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

Section 14.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 14.4 Number ~~and Gender.~~ All singular words include the plural, and all plural words include the singular. ~~All pronouns of one gender include reference to the other gender.~~

Section 14.5 Parties Bound. These Bylaws will bind and inure to the benefit of the Members, Directors, TAC Representatives, Officers, subcommittee members, employees, and agents of ERCOT and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

~~Section 14.6 Effective Date. The effective date of these Amended and Restated Bylaws is October 12, 2021, provided that the Board may implement transition procedures before~~

~~the effective date in order to ensure a smooth transition to the structure described in these Bylaws.~~