

**The Human Resources and Governance (HR&G) Committee is expected to consider HR&G Committee Agenda Item 7.1:**

***Recommendation regarding  
Proposed Modifications to Form  
Ethics Agreement for Directors***

**at its meeting on February 27, 2023.**

**The Board of Directors is expected to hear the HR&G Committee's recommendation on this matter as part of the HR&G Committee Report at the Board meeting on February 28, 2023.**

**Attached are the Board materials in relation to these agenda items.**



**Date:** February 21, 2023 (Revised February 22, 2023)  
**To:** Board of Directors  
**From:** Peggy Heeg, Human Resources and Governance (HR&G) Committee Chair  
**Subject:** Proposed Modifications to Form Ethics Agreement for Directors

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Directors Meeting Date:** February 28, 2023

**Item No.:** 11.5

**Issue:**

Whether the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) should approve modifications to the Ethics Agreement for Directors (Agreement).

**Background/History:**

Section IV(B)(1)(a)(v) of the HR&G Committee Charter requires annual Committee review of the form for the Ethics Agreement for Directors (Agreement). The HR&G Committee is responsible for recommending any modifications to the Agreement to the Board for approval.

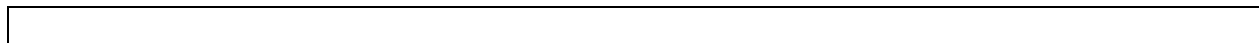
ERCOT Legal has reviewed the Agreement and recommends modifications, as illustrated in **Attachment A**, to eliminate language that is duplicative of requirements contained in the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), change the term “Qualified Institution” to “Qualified Financial Institution” consistent with an anticipated change to the Investment Corporate Standard, and align the introductory paragraph with changes made to the Certificate of Incorporation (Certificate) when it was amended effective January 31, 2019. A comparison of the proposed revised Agreement against the current Agreement is also included as **Attachment B**.

**Key Factors Influencing Issue:**

- ERCOT Legal recommends, and the HR&G Committee is expected to recommend, that the Agreement be modified as set forth in **Attachment A**.
- The proposed modifications to the Agreement do not alter or diminish the ethical requirements or obligations of ERCOT Directors included in prior versions of the Agreement. Rather, the revisions streamline the document and eliminate redundant recitations of requirements applicable to Directors and conform the Agreement to the current Certificate.

**Conclusion/Recommendation:**

ERCOT Legal recommends, and the HR&G Committee is expected to recommend, 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, after its meeting on February 27, 2023, the Human Resources and Governance (HR&G) Committee of the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) recommended modifications to the Ethics Agreement for Directors (Agreement) in the form attached hereto as **Attachment A**; 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 as recommended by the HR&G Committee;

THEREFORE, BE IT RESOLVED, that the Board hereby approves the modifications to the Agreement consistent with **Attachment A**, effective upon Board approval.

**CORPORATE SECRETARY'S CERTIFICATE**

I, Jonathan M. Levine, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its February 28, 2023 meeting, the Board passed a motion approving the above Resolution by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of February, 2023.

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

## Ethics Agreement for Directors

Electric Reliability Council of Texas, Inc. (“ERCOT”) is a Texas non-profit corporation organized pursuant to the Texas Business Organizations Code. ERCOT has been formed for the limited purpose of: (a) ensuring open access to the transmission and distribution systems within the ERCOT region for all buyers and sellers of electricity on non-discriminatory basis terms, ensuring the reliability and adequacy of the regional electrical network, ensuring that information relating to a customer’s choice of retail electric provider is conveyed in a timely manner to the persons who need that information, and ensuring that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers within the ERCOT region; (b) coordinating activities within the region of ERCOT to fulfill these purposes; (c) performing the functions of an Independent Organization as certified by the Public Utility Commission of Texas (“PUCT”) and provided by the Public Utility Regulatory Act and PUCT Rules; and (d) engaging in any lawful act or activity consistent with the foregoing for which nonprofit corporations may be formed under the Texas Business Organizations Code. ERCOT is certified as the Independent Organization for the ERCOT region by the 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 Certificate of Formation, applicable laws and the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* (Bylaws), as may be amended from time to time.

### Potential Conflicts of Interest

Each Director of ERCOT shall have an affirmative duty to disclose to the Board, any actual or potential conflicts of interest as required by Article 9 of the Bylaws.

Each Director 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.

If a Director or member of 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 Financial Institution (as defined in ERCOT’s Investment Corporate Standard), such Director shall provide full disclosure of such stock holdings or relationship in documented form to be filed with the permanent records of ERCOT.

### Prohibited Acts

As long as ERCOT exists, no Director may engage in any prohibited acts as set forth in Article 9 of the Bylaws. Violations of any such 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 as set forth in the 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 Certificate of Formation, Bylaws or applicable law, the Certificate of Formation, Bylaws and applicable laws, as they may be amended from time to time, shall control. Directors 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 Signature: \_\_\_\_\_

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



## Ethics Agreement for Directors

Electric Reliability Council of Texas, Inc. ("ERCOT") is a Texas non-profit corporation organized pursuant to the Texas ~~Non-Profit Corporation Act~~Business Organizations Code. ERCOT has been formed for the limited purpose of: ~~promoting the reliable and efficient operations of electric power systems;~~(a) ensuring open access for all users of the ERCOT transmission and distribution systems on a non-discriminatory basis within the ERCOT region for all buyers and sellers of electricity on non-discriminatory basis terms, ensuring the reliability and adequacy of the regional electrical network, ensuring that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information, and ensuring that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers within the ERCOT region; ~~(b) coordinating activities within the region of the Electric Reliability Council of Texas ("ERCOT Region") and as liaison to the North American Electric Reliability Corporation, to fulfill these purposes;~~ (b) coordinating activities within the region of the Electric Reliability Council of Texas ("ERCOT Region") and as liaison to the North American Electric Reliability Corporation, to fulfill these purposes; ~~(c) performing the functions of an Independent Organization, as certified by the Public Utility Commission of Texas ("PUCT") and provided by the Public Utility Regulatory Act and PUCT Rules;~~ and (d) engaging in any lawful act and/or activity consistent with the foregoing for which nonprofit corporations may be formed under the Texas Non-Profit Corporation ActBusiness Organizations Code. ERCOT is certified as the Independent Organization for the ERCOT ~~R~~egion 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 Certificate of Formation, applicable laws and the Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc. (Bylaws), as may be amended from time to time.

### Potential Conflicts of Interest

Each Director of ERCOT shall have an affirmative duty to disclose to the Board, any actual or potential conflicts of interest ~~of the Director or 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 Article 9 of the Bylaws. A Director with a direct interest in a matter, personally or via their employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse 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 recuses themselves from the deliberation and action on the matter in which the conflict arises, shall not constitute participation.~~



**Attachment B**

Each Director 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 of ERCOT. A Director may lend money to and otherwise transact business with, ERCOT except as otherwise provided by the 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. If a Director or member of 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 Financial Institution (as defined in ERCOT's Investment Corporate Standard), such Director 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 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 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.~~



### Prohibited Acts

As long as ERCOT exists, no Director may:

- ~~• Do any act in violation of the 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, ERCOT Members' 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.~~

engage in any prohibited acts as set forth in Article 9 of the Bylaws. Violations of ~~these~~any such 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 as set forth in the Certificate of Formation, Bylaws and applicable law, as they

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**Attachment B**

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 Certificate of Formation, Bylaws or applicable law, the Certificate of Formation, Bylaws and applicable laws, as they may be amended from time to time, shall control. Directors 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 Signature: \_\_\_\_\_

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