

DOCKET NOS. RR06-1-012 AND RR07-1-002

**COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO MARCH 21, 2008 ORDER**

ATTACHMENT 10

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT
BETWEEN NERC AND
TEXAS REGIONAL ENTITY,
A DIVISION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS**

ATTACHMENT 10A: CLEAN VERSION

ATTACHMENT 10B: REDLINED VERSION

July 16, 2008

David Cook
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Blvd.
Princeton, New Jersey 08540

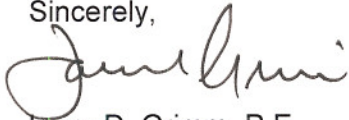
Re: Amended and Restated Delegation Agreement between NERC and Texas Regional Entity – a Division of Electric Reliability Council of Texas, Inc. (“Texas RE”)

Dear David:

Texas RE is pleased to submit the enclosed Amended and Restated Delegation Agreement Between North American Electric Reliability Corporation and Texas Regional Entity – a Division of Electric Reliability Council of Texas, Inc. (“Delegation Agreement”), which we understand you will submit to the Federal Energy Regulatory Commission (“FERC”) with the July 21, 2008 North American Electric Reliability Corporation (“NERC”) Compliance filing. This will confirm that Texas RE is prepared to execute this Amended and Restated Delegation Agreement with NERC upon receipt of FERC approval.

Please let us know if you have questions or require additional information.

Sincerely,



Larry D. Grimm, P.E.
Chief Executive Officer & Chief Compliance Officer
(512) 225-7025
Larry.Grimm@TexasRE.org

Enclosure

ATTACHMENT 10A

CLEAN VERSION

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND TEXAS REGIONAL ENTITY – A DIVISION OF ELECTRIC RELIABILITY
COUNCIL OF TEXAS, INC.**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made as of _____, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Texas Regional Entity – a Division of Electric Reliability Council of Texas, Inc. (“Texas RE”), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and Texas RE may be individually referred to herein as “Party” or collectively as “Parties.”

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

WHEREAS, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006; (114 FERC ¶ 61, 104; hereafter “Order 672”);

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the Commission's regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as Texas RE provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, Texas RE is organized on an Interconnection-wide basis and therefore is entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through Texas RE to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

WHEREAS, NERC has concluded that Texas RE meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and Texas RE, agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to Texas RE to propose and enforce Reliability Standards pursuant to the Act.

(d) Texas RE Rules means the bylaws, a rule of procedure or other organizational rule or protocol of Texas RE.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

2. Representations.

(a) For purposes of its Delegated Authority, Texas RE hereby represents and warrants to NERC that:

(i) Texas RE is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. Texas RE is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any Texas RE decision and no single industry sector can veto any Texas RE decision. The relevant portions of such bylaws are attached hereto as **Exhibit B**, and as so attached are in full force and effect. No other such corporate governance documents are binding upon Texas RE.

(ii) As set forth in **Exhibit C** hereto, Texas RE has developed a standards development procedure, which provides the process that Texas RE may use to develop Regional Reliability Standards and Regional Variances that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, Texas RE has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to Texas RE that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

3. Covenants.

(a) During the term of this Agreement, Texas RE shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the Texas RE Rules without

NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and Texas RE shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of Texas RE in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to Texas RE for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both Texas RE and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, Texas RE shall comply with the applicable provisions of NERC's

Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. Reliability Standards.

- (a) In connection with its Delegated Authority, Texas RE shall be entitled to:
- (i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords Texas RE reasonable notice and opportunity to be heard; and
 - (ii) develop Regional Reliability Standards and Regional Variances through Texas RE's process as set forth in **Exhibit C**. Proposals approved through Texas RE's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. Texas RE may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.
- (b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Texas RE shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Texas RE during NERC's review of the proposal.

6. Enforcement.

(a) In connection with its delegated authority pursuant to this Agreement, Texas RE shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and Texas RE agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. Texas RE may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, Texas RE agrees to comply with the NERC Rules in implementing this program.

(b) Texas RE shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and Texas RE shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. However, any hearing conducted by the Public Utility Commission of Texas (PUCT) concerning an alleged violation in the ERCOT power region shall be conducted as a public hearing and any evidence or other submissions concerning the hearing,

except for information that is confidential or privileged under law, shall be publicly available. Following the hearing, the PUCT shall issue its recommendation on the appropriate resolution of the allegations in a written document that will be publicly available. Notwithstanding the foregoing, the disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by Texas RE shall be filed with NERC, in accordance with the NERC Rules.

(e) Texas RE shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) Texas RE shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, Texas RE shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review Texas RE's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) Texas RE shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

7. Delegation-Related Services. NERC will engage Texas RE on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

8. Funding. Texas RE and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund Texas RE activities necessary for Texas RE to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon Texas RE without providing appropriate funding to carry out such mandates;

(b) Texas RE and NERC agree that costs of carrying out Texas RE's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net-energy-for load or through such other formula as is proposed by Texas RE and approved by NERC and the Commission. If Texas RE proposes to use a formula other than net energy for load beginning in the following year, Texas RE shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and Texas RE to the Commission pursuant to 18 C.F.R. §39.4, for such year.

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equity requirement.

(d) NERC shall provide Texas RE with the form for budget submittal no later than April 30 of the prior year.

(e) Texas RE shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other Texas RE activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The Texas RE budget submission shall include supporting materials, including Texas RE's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures, as well as the budget, supporting materials, and proposed allocation and method of collection for the costs of any approved regional advisory body. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. Texas RE shall follow NERC's prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) Texas RE's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve Texas RE's budget for meeting its responsibilities under the Delegation Agreement.

(h) Texas RE shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) Texas RE shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of Texas RE in order to ensure that the

documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which Texas RE shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which Texas RE shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of Texas RE.

9. Assignment. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Texas RE may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit Texas RE from contracting with other entities to assist it in carrying out its Delegated Authority, provided Texas RE retains control and responsibility for such Delegated Authority.

10. Default and Cure. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be

suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

11. Term and Termination.

(a) This Agreement shall become effective April 5, 2008, pursuant to the March 21, 2008 order of the Federal Energy Regulatory Commission (122 FERC 61,245).

(b) The initial term of the Agreement shall be three (3) years from the original effective date of May 16, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that Texas RE continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If Texas RE meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of Texas RE's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time Texas RE may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and

Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

12. Limitation of Liability. Texas RE and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and Texas RE shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the Texas RE's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the Texas RE or NERC is found liable for gross negligence or intentional misconduct, in which case Texas RE or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

13. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

14. Confidentiality. During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or

that issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. Amendment. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. Amendments to the NERC Rules. NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed. To the extent Texas RE does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of Texas RE under this Agreement, Texas RE shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by Texas RE to NERC and the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

17. Dispute Resolution. In the event a dispute arises under this Agreement between NERC and Texas RE, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to

pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

18. Notice. Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:
North American Electric
Reliability Corporation
116-390 Village Blvd.
Princeton, NJ 08540-5721
Attn: David Nevius

Facsimile: (609) 452-9550

If to Texas RE:
Texas Regional Entity
7620 Metro Center Drive
Austin, Texas 78744

Attn: Larry Grimm,
Chief Executive Officer & CCO
Facsimile: (512) 225-7165

19. Governing Law. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. Headings. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. Savings Clause. Nothing in this Agreement shall be construed to preempt or limit any authority that Texas RE may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in

Exhibit A that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. Execution of Counterparts. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION

TEXAS REGIONAL ENTITY – A
DIVISION OF ELECTRIC
RELIABILITY COUNCIL OF TEXAS,
INC.

By: _____

By: _____

Name: David A. Whiteley
Title: Executive Vice President

Name: Larry Grimm
Title: Chief Executive Officer &
Chief Compliance Officer

Date: March 28, 2008

Date: March 28, 2008

EXHIBIT A – REGIONAL BOUNDARIES

The ERCOT Region is 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. The ERCOT Region does not interconnect synchronously across state lines to import or export power with neighboring reliability regions. The ERCOT geographic region includes 200,000 square miles, 85% of Texas load, and 75% of Texas land area (does not include the Panhandle, El Paso area, and 2 areas of East Texas). The ERCOT Region includes the following Texas cities and towns: Dallas, Ft. Worth, Houston, San Antonio, Austin, Paris, Tyler, Nacogdoches, Lufkin, Bryan, College Station, Corpus Christi, Harlingen, Brownsville, Laredo, Brownwood, San Angelo, Abilene, Midland, Odessa, Fort Stockton, Monahans, Snyder, Vernon, Wichita Falls, Denton, Garland, Greenville, Waco, Temple, Killeen, Weatherford, and Graham, as indicated on the map below.

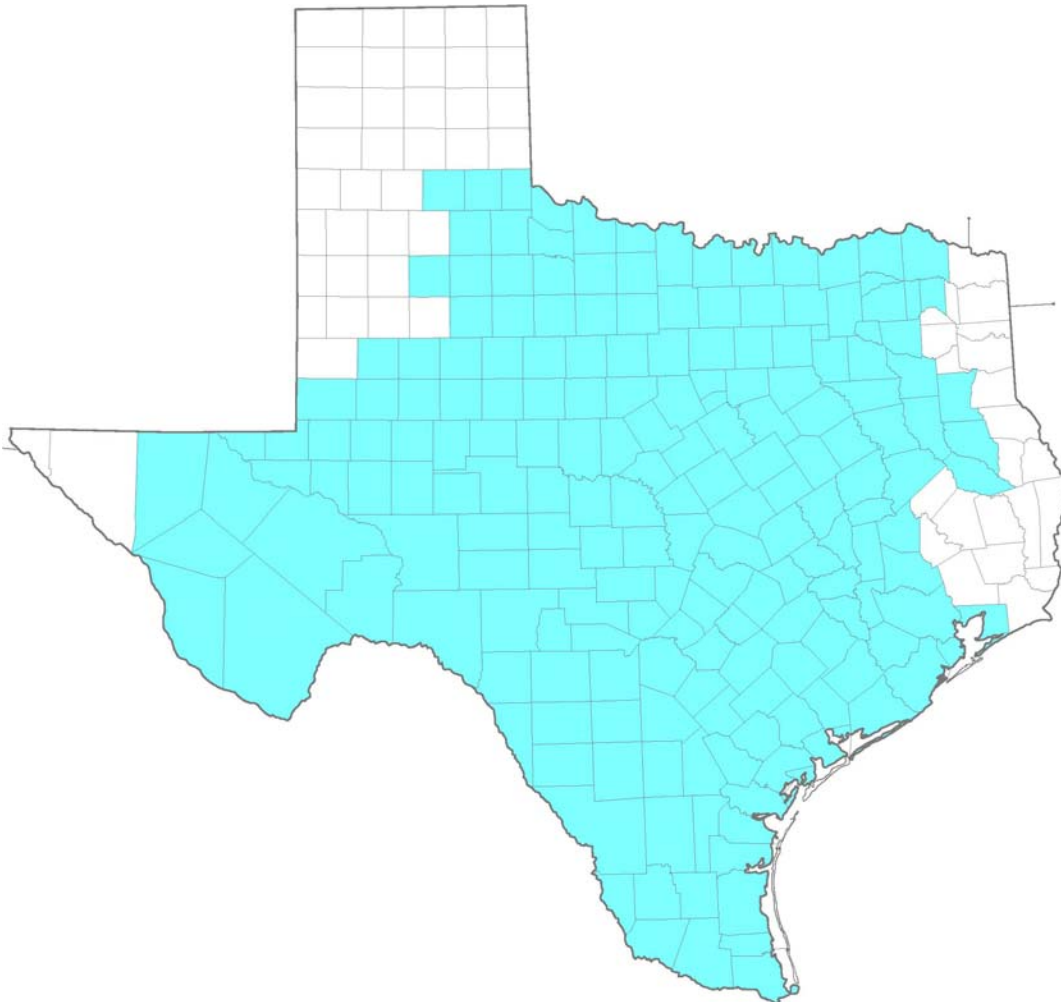


Exhibit B – Governance

CRITERION 1: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

A. Texas RE is governed by a combination independent and balanced stakeholder board.

B. Section 4.2 of Texas RE's bylaws (the bylaws of Electric Reliability Council of Texas, Inc.) specify that its board shall have 16 members, as follows:

- A. Five (5) independent individuals who are unaffiliated with any electric market participant ("Unaffiliated Directors") who are each approved by the Public Utility Commission of Texas ("PUC") for a three-year term;
- B. Six (6) electric market participant representatives (plus a segment alternate for each such representative) from each of the following market segments: independent generators, investor-owned utilities; power marketers; retail electric providers, municipally owned utilities, and cooperatives;
- C. Three (3) consumer representatives;
- D. CEO of ERCOT (as ex officio voting Director); and
- E. Chairman of the PUC, as an ex officio non-voting Director.

C. Subsection 4.3 (b)(2) ii of Texas RE's bylaws define the requirements of "independence" as follows:

- a. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives, and household member) shall not have current or recent ties (within the last two years) as a director, officer or employee of a Market Participant or its Affiliates.
- b. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and any household member) shall not have direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates.
- c. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board."
- d. Unaffiliated Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority.

D. Texas RE's bylaws achieve balance on the board because the board has representation from seven (7) segments (six (6) market segments plus consumer representatives) and five (5) independent directors, and Section 4.7 of the bylaws contains the following quorum and voting requirements:

Except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the seated Directors shall constitute a quorum for the transaction of business. The act of at least sixty-seven percent (67%) affirmative votes of the eligible voting Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Articles of Incorporation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.

CRITERION 2: The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

A. Texas RE or its affiliate is an RTO or ISO and therefore a user, owner, or operator of bulk power system facilities. Article 6 and Section 7.2 of Texas RE's bylaws establish a strong separation between Texas RE's oversight and operations functions, as follows:

Section 6.1 TRE Responsibilities and Duties. The TRE shall be a functionally independent division within ERCOT which shall be responsible for proposing, developing, implementing and enforcing Reliability Standards in accordance with the Delegated Authority. The TRE shall also be responsible for investigating compliance with and enforcing violations of the ERCOT Protocols ("ERCOT Compliance"), so long as the ERCOT Compliance activities do not conflict with the Delegated Authority. The TRE shall develop policies, processes, standards, and procedures to implement the Delegated Authority and the ERCOT Compliance activities. The TRE shall form a Reliability Standards Committee ("RSC"), comprised of members from all ERCOT Segments, to propose, receive, consider, authorize, and vote on Reliability Standards and Reliability Variances, in accordance with the Texas Regional Entity Standards Development Process and procedures. All proposed ERCOT-specific Reliability Standards and Reliability Variances requests must be approved by the Board, prior to being submitted to NERC.

Section 6.2 TRE Independence. The TRE and its employees shall function independently of the other divisions, departments and employees of ERCOT. TRE employees shall be responsible for creating and monitoring a separate budget to be submitted to the Board for approval and then to the North American Electric Reliability Corporation ("NERC") for approval, pursuant to a Delegation Agreement ("TRE Budget"). The portion of the TRE Budget which is for activities that are not related to the Delegated Authority but are for ERCOT Compliance activities will be approved by the PUCT. Except for ERCOT Compliance activities and any extraordinary activities that are specifically approved by NERC in the

TRE Budget, the TRE shall be funded separately by NERC. The TRE shall (i) maintain separate books and records to account for its finances, separating income and expenditures for the Delegated Authority and the ERCOT Compliance Activities and (ii) pay a fair market rate for any goods and services obtained from ERCOT, or if a fair market rate is not readily determinable without undue effort or expense, at least the out-of-pocket cost incurred by ERCOT in respect thereof. The ERCOT acknowledges that the TRE Chief Compliance Officer and the TRE staff will conduct investigations into and will prosecute enforcement actions regarding the matters within the scope of the TRE's responsibilities and duties, including investigations and prosecutions of ERCOT.

Section 6.3 TRE Management. The business and affairs of the TRE shall be managed directly by the Board, or a subcommittee thereof, to insure independence of the TRE from the other ERCOT operations and activities, including the ERCOT Independent System Operator functions. The Board shall hire a Chief Compliance Officer ("CCO") who, under its supervision and direction, shall carry on the general affairs of the TRE as the chief executive officer. The CCO shall be independent of any market participant and shall be an independent member of the staff of ERCOT, reporting exclusively to the Board. The Board shall only hire a CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director. The Board may also appoint a financial director who will report to the CCO, with responsibility for overseeing the budgeting, finance and accounting functions necessary for the independent operation of the TRE. The TRE may retain outside advisors as it deems necessary. The CCO shall have the sole authority to retain or terminate such outside counsel and other advisors as the CCO may deem appropriate in his or her sole discretion. The CCO shall have the sole authority to approve related fees and retention terms for such advisors, in accordance with the TRE Budget. The CCO shall make an annual report and periodic reports to the Board concerning the activities and expenditures of the TRE, and the TRE shall have its separate financial statements reviewed or audited annually. The CCO shall ensure that the TRE files all required reports with NERC. CCO shall, in cooperation with the financial director of the TRE, monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board and NERC.

Section 6.4 TRE Employees. To the fullest extent practicable under applicable law, the TRE and the CCO shall be responsible for hiring, firing and compensating all TRE employees. TRE employees shall be compensated from the TRE budget. If permissible, and consistent with the Board's and CCO's compensation policies for the TRE employees, such employees may participate in insurance and other benefits extended to ERCOT employees, provided that the TRE reimburses ERCOT for the full cost of providing such benefits. The TRE is authorized to employ attorneys, and all such attorneys shall report to the CCO and shall have ethical and other obligations solely to the TRE and not to ERCOT. Such attorneys are expressly authorized and required to provide advice to the CCO and TRE regarding the Delegated Authority and ERCOT Compliance activities, including investigations and enforcement actions

involving ERCOT. Such attorneys are specifically authorized to assist with the prosecution of enforcement actions relating to the Delegated Authority or ERCOT Compliance activities.

Section 6.5 Evaluation of TRE Performance. The Board shall monitor the TRE and CCO's performance, establish and review the CCO's compensation and provide annual, or at its election, more frequent, evaluations. The Board may receive and will consider input from the PUCT regarding the compliance and enforcement activities of the CCO and the TRE. It shall be the CCO's duty, in cooperation with the financial director of the TRE, to monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board, PUCT and NERC. The Board will consider input from the PUCT regarding the compliance and enforcement activities and performance of the CCO and TRE. Neither the CCO nor any TRE employee may be retaliated against by ERCOT or its Board for investigating or participating in any enforcement activities pursuant to the Delegated Authority. The Board may not terminate, discipline, or demote the CCO or any TRE employees, advisors or contractors because of compliance or enforcement activities conducted in good faith.

Section 7.2 CCO. The Board shall hire a Chief Compliance Officer ("CCO") who, under the Board's supervision and direction shall carry on the affairs of the TRE. The CCO shall comply with all orders of the Board and will coordinate with the NERC regarding activities relating to the Delegated Authority and with PUCT regarding ERCOT Compliance activities. All employees and contractors of the TRE shall report and be responsible, to the CCO. The CCO shall be responsible for employment-related decisions for all employees of the TRE that are not appointed by the Board and shall provide input to the Board with respect to TRE employees appointed by the Board. The CCO shall perform such other duties as may be determined from time to time by the Board, for the benefit of the TRE. The Board may only terminate, discipline, not renew, or demote the CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director.

CRITERION 3: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

A. Texas RE has an open membership policy that permits full and fair participation of all stakeholders through their representatives, including in the development and voting on Regional Reliability Standards.

1. Membership Categories. Section 3.1 (a) of the Texas RE bylaws provides that members may qualify in one of the six market segments, if they have an actual financial interest

in and are able to business in the ERCOT Region, or in the Consumer segment. Section 3.2 of the bylaws provides that members may qualify in one of three membership categories:

(a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

2. Membership Obligations. Section 3.3 of the bylaws provides that, (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 and promote comparable access to the transmission system by all users, and (b) consistent with applicable laws and regulations, Members must share information at ERCOT's or TRE's request as necessary for the furtherance of ERCOT or TRE's activity and consistent with PUCT and NERC rules relating to confidentiality.

3. Full and Fair Participation. Section 3.6 of the bylaws provides that no Entity may simultaneously hold more than one Corporate Membership or more than one seat on the Board, TAC, or RSC and that members may join as a Corporate member in only one segment. Subsection 3.6(c) provides that each Corporate member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate members.

The Texas Regional Entity Standards Development Process ("TRE SDP," see Exhibit D) provides for due process, openness, and balance in Standards development and modification. Section IV of the TRE SDP provides that any person, acting as a representative of an organization which is directly and materially affected by the operation of ERCOT's Bulk Power System ("BPS") is allowed to request a Standard be developed or an existing Standard modified or deleted by creating a Standards Authorization Request (SAR). Section V of the TRE SDP provides that (1) any person representing an organization with a direct and material interest in the bulk power system has a right to participate in the standards development process by: a) expressing an opinion and its basis, b) having that position considered, and c) appealing any negative decision. Section V specifically provides that, "Participation is open to all organizations that are directly and materially affected by ERCOT's BPS [Bulk Power System] reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs [Standards Drafting Teams] are open to ERCOT's Membership and to others and all proposed SARs and Standards are posted for comment on the Texas RE Website."

B. Texas RE charges no more than a nominal membership fee and agrees to waive the fee for good cause shown. Section 3.4 of the bylaws provides for the following fees:

Annual Member Service Fees for Corporate Members shall be \$2,000. Annual Member Service Fees for Associate Members shall be \$500. Annual Member Service Fees for Adjunct Members shall be \$500. The Annual Member Service Fees for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership; provided that there will be no charge for Annual Member Service Fees for associations that qualify for Commercial Consumer Membership or for other associations or persons, upon good cause shown. 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 Service Fees. Any Member may request that the Member’s Annual Member Service Fees be waived for good cause shown.

CRITERION 4: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

A. Texas RE’s bylaws, procedural rules, and protocols assure balance in decision-making committees and subordinate organizational structures in how such groups are structured.

Section 6.1 of the bylaws provides that the Texas RE shall form a Reliability Standards Committee (“RSC”), comprised of members from all ERCOT Segments, to propose, consider and vote on Reliability Standards and Reliability Variances, in accordance with the Texas Regional Entity Standards Development Process and procedures. All proposed ERCOT-specific Reliability Standards and Reliability Variances requests and must be approved by the Board, prior to being submitted to NERC.

B. Texas RE’s bylaws, procedural rules, and protocols assure balance in decision-making committees and subordinate organizational structures in how such groups make decisions.

Step 1 of the TRE SDP provides that any entity that is directly or materially impacted by the operation of the Bulk Power System within the geographical footprint of the ERCOT Region may request the development, modification, or deletion of an ERCOT Standard or Regional Variance. The RSC, comprised of the seven Segments, will consider and determine which requests will be assigned for development, modification, or deletion (Article II and Step 1 of the TRE SDP). Step 6A of the TRE SDP provides that all members may vote on proposed new standards, standard revisions, or standard deletions (“Standards” herein), and at least one member from five of the seven segments must vote to constitute a quorum. Step 6A further provides that each Segment shall receive one Segment Vote, the representative of each voting member shall receive an equal fraction of its Segment Vote, and if a draft Standard receives 4.67 affirmative votes during the 15 day voting period, the RSC will forward the Standard to the board for a vote. Step 6B of the TRE SDP provides that, if a Standard does not timely receive 4.67 affirmative votes, the Standard may be remanded for further work and reposted for a second comment period before a second vote. The board may approve, remand to RSC or disapprove a proposed Standard.

C. Texas RE's bylaws, procedural rules, and protocols assure no two industry sectors can control any action and no one industry sector can veto any action. The RSC is comprised of representatives from each Segment. The TRE SDP requires five (5) of the seven (7) Segments to constitute a quorum for a vote on a proposed Standard. (Step 6A of TRE SDP). Even if a proposed Standard does not receive a 4.67 or greater affirmative vote during a second voting period, the RSC will forward the Standard and implementation plan to the board.

CRITERION 5: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Texas RE's bylaws, procedural rules, and protocols provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties, as follows:

A. Notice of Meetings. Section 4.6(a) of the bylaws requires the board to meet at least quarterly, with at least one meeting occurring in conjunction with the annual meeting of the members. Section 4.6(b) requires notice of any meeting of the board or any board subcommittee where at least one board director is present be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation). Section 4.6 (e) also provides that notice of the agenda, place, date, and hour of any meeting of the RSC be made available electronically to the public on the Internet not less than one week before the date of the meeting; provided that, RSC may meet on urgent matters on such shorter notice, not less than 2 hours, in the event of urgent matters.

B. **Public Meetings.** Section 4.6(e) of the bylaws requires that meetings of the board or board subcommittees be open to the public, although they, at their 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. Executive session is limited to matters involving sensitive matters including, but, 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 attorneys. Section 4.6(d) of the bylaws requires the board to 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.

C. Available Minutes. Section 4.6(f) of the bylaws requires the Secretary to keep minutes for all Board meetings.

D. Bylaws Amendment. Section 13.1 (d) (4) of the bylaws provides that an affirmative vote by at least four of the seven Segments is necessary to amend the bylaws, and, if permission for any amendment is required by NERC or FERC under the Delegation Agreement, the required permission must be obtained before such amendment is effective.

Attachment 1 to Exhibit B

ERCOT Amended and Restated Bylaws

***Note: Complete Set of ERCOT Bylaws Provided for
Informational Purposes Only***



AMENDED AND RESTATED BYLAWS
OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS
(A Texas Non-Profit Corporation)
Approved on September 18, 2007

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ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc. ("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 in the Texas Non-Profit Corporation Act.

Section 1.3 Texas Regional Entity Division. ERCOT will maintain separate facilities or a separate office within ERCOT's existing facilities in which a division called the Texas Regional Entity Division ("TRE") will function independently of the rest of the company for purposes of developing and enforcing federally mandated reliability standards within the ERCOT Region (the "Delegated Authority" as defined below). If the TRE maintains offices within ERCOT's facilities, it shall be required to pay ERCOT a fair market rate of rent.

ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

1. **Affiliate.** This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.
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 or an organization representing the interests of commercial consumers in the ERCOT Region: (a) **Small Commercial Consumer** - A commercial consumer having a peak

demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** - A commercial consumer having a peak demand of greater than 1000 kilowatts (or an organization representing such consumers). 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. In the case of an organization representing interests of commercial consumers, the organization may have members who have interests in the electric industry provided that such members do not control, or have the ability to control, the activities of the consumer organization. Additionally, in order to qualify for Membership, the organization's membership must represent at least one million MWh of annual electric consumption in the ERCOT Region. The three Board Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

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 Tex. Rev. Civ. Stat. 1396-50.01 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. **Delegated Authority.** The authority delegated by NERC to the TRE to propose and enforce Reliability Standards in the ERCOT Region, pursuant to the Federal Act.
6. **Entity.** An Entity includes an organization and all of its Affiliates.
7. **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas ("PUCT"), as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.

8. **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.
9. **Federal Act.** Subtitle A of the Electricity Modernization Act of 2005, which added Section 215 to the Federal Power Act (16 U.S.C. § 824n).
10. **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant as qualified under Section 4.3(b).
11. **Independent Generator.** Any entity that is not a Transmission and Distribution (“T&D”) Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, 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 Public Utility Regulatory Act (“PURA”) §39.352 and that is not an Affiliate of a T&D Entity.
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);
 - 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. **Member.** The Member or the Member's appointed representative as the context so requires.
18. **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 municipally owned utility as defined in PURA §11.003 or
 - b. a River Authority as defined in Tex. Water Code §30.003.
19. **NERC.** The North American Electric Reliability Corporation, which has been authorized by the Federal Energy Regulatory Commission ("FERC) as the Electric Reliability Organization ("ERO") under the Federal Act.
20. **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.
21. **Reliability Standards.** The standards adopted by NERC which set forth the reliability requirements for planning and operating the North American bulk electric system, as specifically applicable to the ERCOT Region.
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 a end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators. The three Board Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.
23. **Segment Alternate.** An elected designated alternate Board representative who can attend meetings in the absence of a Director and vote on the absent Director's behalf in the event that such Director cannot attend a Board meeting. Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.
24. **Texas Regional Entity Division ("TRE").** The functionally separate and independent division of ERCOT that is responsible for performing the activities and functions required: (i) pursuant to the Delegated Authority and (ii) for compliance monitoring and enforcement of the ERCOT Protocols.

25. **Transmission and Distribution 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.

ARTICLE 3 MEMBERS

Section 3.1 Membership.

- (a) Members must qualify in one of the following segments as defined in Article 2:
- (1) Cooperative;
 - (2) Independent Generator;
 - (3) Independent Power Marketer;
 - (4) Independent REP (For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP);
 - (5) Investor Owned Utility;
 - (6) Municipal; or,
 - (7) Consumer – three subsegments: Commercial, Industrial, and Residential. The Commercial Consumer subsegment is further divided into Large and Small Commercial Consumers.
- (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 right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 the ERCOT Board, TAC or any subcommittee of the Board or 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 and promote comparable access to the transmission system by all users.
- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's or TRE's request as necessary for the furtherance of ERCOT or TRE activity and consistent with PUCT and NERC rules relating to confidentiality.

Section 3.4 Annual Member Services Fees. ERCOT provides various services, as determined by the Board, to its Members. In return for such services, each Member shall pay its Annual Member Services Fees within thirty (30) days after receipt of ERCOT's annual statement of such fees. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Service Fees for Corporate Members shall be \$2,000. Annual Member Service Fees for Associate Members shall be \$500. Annual Member Service Fees for Adjunct Members shall be \$500. The Annual Member Service Fees for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership; provided that there will be no charge for Annual Member Service Fees for associations that qualify for Commercial Consumer 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 Service Fees. Any Member may request that the Member's Annual Member Service Fees be waived for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his 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 each of the following: the Board, TAC, and the Regional Standards Committee.
- (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 Services Fees for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has elected to be 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, an Entity no longer meets the qualifications for the Segment so elected, 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 the Board, TAC or any subcommittee of the Board or TAC.
- (c) Subject to any specific provisions in these Bylaws or the Articles of Incorporation, 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 Services Fees 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 of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters 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 and at a place to be established by the Board ("Annual Meeting"). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other 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 weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail or facsimile. 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 days but not more than thirty-six 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. Except as otherwise provided in these Bylaws and in the Texas Regional Entity Standards Development Process, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members.

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 a procedure that is fair and reasonable and is carried out in good faith. The Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member. In the event that the Board does not adopt procedures, the following procedures shall apply:

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.

- (a) **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, her 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.
- (b) **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.
- (c) **Challenges.** Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one 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 (b) of this 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, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or 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 fees and expenses for a fiscal year, the Member shall be obligated to pay its Annual Member Services Fees 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 include a total of sixteen (16) Directors apportioned among the Segments as follows:

- (a) One (1) Independent REP and one (1) Segment Alternate
- (b) One (1) Independent Generator and one (1) Segment Alternate
- (c) One (1) Independent Power Marketer and one (1) Segment Alternate
- (d) One (1) IOU and one (1) Segment Alternate
- (e) One (1) Municipal and one (1) Segment Alternate
- (f) One (1) Cooperative and one (1) Segment Alternate
- (g) Three (3) Consumers: the Public Counsel, representing Residential Consumers and Small Commercial Consumers, as an *ex officio* voting member, one (1) Large Commercial, and one (1) Industrial

- (h) Five (5) Unaffiliated Directors
- (i) The CEO as an *ex officio* voting member
- (j) The Chair of the PUCT as an *ex officio* non-voting member

Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

(a) Selection of Market Participant Directors and Segment Alternates:

- (1) For Consumer Directors, the following shall apply: The Director from the Commercial Consumer subsegment shall be selected by the Large Commercial Consumer Corporate Members and must be an employee of a Large Commercial Consumer which is either a Large Commercial Consumer Member of ERCOT or a member of an organization that is a Large Commercial Consumer Member of ERCOT. If there are no Large Commercial Consumer Corporate Members, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director. The Industrial Consumer Director shall be elected by the Corporate Members of that subsegment.
- (2) Within each Market Participant elected Segment, only Corporate Members of the Membership Segment described for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat.
- (3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at least sixty-seven percent (67%) of members of that Segment.
- (4) Each Market Participant Director and each Segment Alternate, except as provided above for the Commercial Consumer Director, must be an employee of a Member. Unless otherwise provided in these Bylaws, if an employee of a Member is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member or organization as he or she was at the time of such election or appointment.

(b) Selection of Unaffiliated Directors:

- (1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO.
- (2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:

- (i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.
- (ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:
 - a. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have current or recent ties (within the last two years) as a director, officer or employee of a Market Participant or its Affiliates.
 - b. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates.
 - c. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
 - d. Unaffiliated Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority.
- (iii) Residence in the State of Texas preferred.
- (iv) Other criteria as approved by the Board.
- (3) The Nominating Committee shall interview the qualified candidates and select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.
- (4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) during the same time period as election of the Market Participant Directors. A proposed Unaffiliated Director(s) that is approved by at least four out of seven

Segments shall become an Unaffiliated Director(s). Upon approval of the Membership, the proposed Unaffiliated Director(s) shall be filed with the PUCT for approval.

- (5) Pending PUCT approval, the Membership-approved Unaffiliated Director(s) shall be seated at the Annual Meeting. Should the PUCT not approve the Unaffiliated Director(s), the seated Director(s) shall remain seated until a new Unaffiliated Director(s) is elected and approved in accordance with the process set forth above.
- (c) Terms. The term for all Market Participant Directors shall be for one year. Any Market Participant Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be staggered three year terms unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. Notwithstanding the forgoing, in 2005, three of the five Unaffiliated Directors will be seated, serving subject to the final approval of the PUCT. Of these three, one position shall be for a term of two years and two positions shall be for three year terms.
- (d) Director Voting Weights. All voting Directors shall have a single vote each.
- (e) Alternates and Proxies. Directors serving in Segments with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director as a proxy if unable to attend a Board meeting. Consumer and *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.

Section 4.4 Chair and Vice Chair. Annually, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. Beginning no later than September 1, 2006, the Chair shall be one of the Unaffiliated Directors. The CEO shall not be qualified to act as the Vice Chair.

Section 4.5 Vacancies and Removal. A vacancy will occur if the Director elected or appointed is no longer employed by the Entity for which the Director was employed at the time of his/her election or appointment. A vacancy will also occur through any other resignation of a Director from the Board. A Director may be removed with or without cause at any time by whomever had the right to appoint such Director, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the persons authorized to elect or appoint such Director. Any Director so chosen shall hold office until his successor is duly elected or appointed and qualified or until his earlier resignation, ineligibility 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 as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, 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 week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation). Notice of the agenda, place, date, and hour of any meeting of the RSC shall be made available electronically to the public on the Internet not less than one week before the day of the meeting; provided however, the RSC may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 14.8. The Board must ratify any action taken on notice of less than one week or by teleconference 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) Meetings 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 shall keep minutes of every Board meeting.

Section 4.7 Quorum; Action by Directors. Except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the seated Directors shall constitute a quorum for the transaction of business. The act of at least sixty-seven percent (67%) affirmative votes of the eligible voting Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Articles of Incorporation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of 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 by law. Any non-Director who becomes a member of TAC or a subcommittee shall have the same responsibility with respect to TAC or such subcommittee as a Director who is a member thereof.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Council ("NERC"), the Board shall elect, from among its members, persons to serve on the NERC Stakeholders Committee. 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 their opinion, to fulfill the purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the Articles of Incorporation, 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 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; (f) initiation of any lawsuit; and (g) management and oversight of the TRE. 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 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 listed in Section 3.1.
- (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment 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
 - (v) The Public Counsel or his or her designee as an *ex officio* voting member
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (c) Fifty-one percent (51%) of the eligible, seated Representatives of TAC shall constitute a quorum for the transaction of business. Affirmative votes of sixty-seven percent (67%) of the eligible, seated Representatives of TAC shall be the act of TAC.
- (d) 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.

- (e) 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 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.
- (f) Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a 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 an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (g) 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 same subsegment 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, 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 an employee or representative of the same company as he or she was at the time of such appointment.

Section 5.2 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 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. If requested by NERC, TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups. 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 TEXAS REGIONAL ENTITY

Section 6.1 TRE Responsibilities and Duties. The TRE shall be a functionally independent division within ERCOT which shall be responsible for proposing, developing, implementing and enforcing Reliability Standards in accordance with the Delegated Authority. The TRE shall also be responsible for investigating compliance with and enforcing violations of the ERCOT Protocols ("ERCOT Compliance"), so long as the ERCOT Compliance activities do not conflict with the Delegated Authority. The TRE shall develop policies, processes, standards, and procedures to implement the Delegated Authority and the ERCOT Compliance activities. The TRE shall form a Reliability Standards Committee ("RSC"), comprised of members from all ERCOT Segments, to propose, receive, consider, authorize, and vote on Reliability Standards and Reliability Variances, in accordance with the Texas Regional Entity Standards Development Process and procedures. All proposed ERCOT-specific Reliability Standards and Reliability Variances requests must be approved by the Board, prior to being submitted to NERC.

Section 6.2 TRE Independence. The TRE and its employees shall function independently of the other divisions, departments and employees of ERCOT. TRE employees shall be responsible for creating and monitoring a separate budget to be submitted to the Board for approval and then to the North American Electric Reliability Corporation ("NERC") for approval, pursuant to a Delegation Agreement ("TRE Budget"). The portion of the TRE Budget which is for activities that are not related to the Delegated Authority but are for ERCOT Compliance activities will be approved by the PUCT. Except for ERCOT Compliance activities and any extraordinary activities that are specifically approved by NERC in the TRE Budget, the TRE shall be funded separately by NERC. The TRE shall (i) maintain separate books and records to account for its finances, separating income and expenditures for the Delegated

Authority and the ERCOT Compliance Activities and (ii) pay a fair market rate for any goods and services obtained from ERCOT, or if a fair market rate is not readily determinable without undue effort or expense, at least the out-of-pocket cost incurred by ERCOT in respect thereof. ERCOT acknowledges that the TRE Chief Compliance Officer and the TRE staff will conduct investigations into and will prosecute enforcement actions regarding the matters within the scope of the TRE's responsibilities and duties, including investigations and prosecutions of ERCOT.

Section 6.3 TRE Management. The business and affairs of the TRE shall be managed directly by the Board, or a subcommittee thereof, to insure independence of the TRE from the other ERCOT operations and activities, including the ERCOT Independent System Operator functions. The Board shall hire a Chief Compliance Officer ("CCO") who, under its supervision and direction, shall carry on the general affairs of the TRE as the chief executive officer. The CCO shall be independent of any market participant, and shall be an independent member of the staff of ERCOT, reporting exclusively to the Board. The Board shall only hire a CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director. The Board may also appoint a financial director, who will report to the CCO, with responsibility for overseeing the budgeting, finance and accounting functions necessary for the independent operation of the TRE. The TRE may retain outside advisors as it deems necessary. The CCO shall have the sole authority to retain or terminate such outside counsel and other advisors as the CCO may deem appropriate in his or her sole discretion. The CCO shall have the sole authority to approve related fees and retention terms for such advisors, in accordance with the TRE Budget. The CCO shall make an annual report and periodic reports to the Board concerning the activities and expenditures of the TRE, and the TRE shall have its separate financial statements reviewed or audited annually. The CCO shall ensure that the TRE files all required reports with NERC. CCO shall, in cooperation with the financial director of the TRE, monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board and NERC.

Section 6.4 TRE Employees. To the fullest extent practicable under applicable law, the TRE and the CCO shall be responsible for hiring, firing and compensating all TRE employees. The TRE employees shall be compensated from the TRE budget. If permissible, and consistent with the Board's and CCO's compensation policies for the TRE employees, such employees may participate in insurance and other benefits extended to ERCOT employees, provided that the TRE reimburses ERCOT for the full cost of providing such benefits. The TRE is authorized to employ attorneys, and all such attorneys shall report to the CCO and shall have ethical and other obligations solely to the TRE and not to ERCOT. Such attorneys are expressly authorized and required to provide advice to the CCO and the TRE regarding the Delegated Authority and ERCOT Compliance activities, including investigations and enforcement actions involving ERCOT. Such attorneys are specifically authorized to assist with the prosecution of enforcement actions relating to the Delegated Authority or ERCOT Compliance activities.

Section 6.5 Evaluation of TRE Performance. The Board shall monitor the TRE and CCO's performance, establish and review the CCO's compensation and provide annual, or at its election, more frequent, evaluations. The Board may receive and will consider input from the PUCT regarding the compliance and enforcement activities of the CCO and the TRE. It shall be the CCO's duty, in cooperation with the financial director of the TRE, to monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board, PUCT and NERC. The Board will consider input from the PUCT regarding the compliance and enforcement activities and performance of the CCO and TRE. Neither the CCO nor any TRE employee may be retaliated against by ERCOT or its Board for investigating or participating in any enforcement activities pursuant to the Delegated Authority. The Board may not terminate, discipline, or demote the CCO or any TRE employees, advisors or contractors because of compliance or enforcement activities conducted in good faith.

ARTICLE 7 CHIEF EXECUTIVE OFFICERS

Section 7.1 CEO. 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 a voting Director. It shall be his or her 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 shall comply with all orders of the Board. All agents and employees of ERCOT shall report, and be responsible, to the CEO, except for the CCO and other employees, contractors, and advisors of the TRE. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 CCO. The Board shall hire a Chief Compliance Officer ("CCO") who, under the Board's supervision and direction shall carry on the affairs of the TRE. The CCO shall comply with all orders of the Board and will coordinate with the NERC regarding activities relating to the Delegated Authority and with PUCT regarding ERCOT Compliance activities. All employees and contractors of the TRE shall report and be responsible, to the CCO. The CCO shall be responsible for employment-related decisions for all employees of the TRE that are not appointed by the Board and shall provide input to the Board with respect to TRE employees appointed by the Board. The CCO shall perform such other duties as may be determined from time to time by the Board, for the benefit of the TRE. The Board may only terminate, discipline, not renew, or demote the CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director.

ARTICLE 8 OFFICERS

Section 8.1 General. The officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, a CCO of the TRE, 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 or CCO. 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 and the CCO of TRE 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.

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 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 employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in a Director's Market Segment or a general interest of some or all Market Participant Directors in a matter does not constitute direct interest. 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, without participating in discussion of the issue raising the potential conflict, shall not constitute participation.

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 Articles of Incorporation, 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 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 carrying on ERCOT's business.
- (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.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing 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 Directors who may be paid a fixed sum plus 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 Directors, who are members of standing or special committees, may be allowed like compensation and travel expenses for attending committee meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities.
- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, TNT, 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. The expenses of the TRE shall be accounted for separately.

Section 10.3 Budget. A budget (the "Budget") for ERCOT for the ensuing fiscal year shall be adopted by the Board. The Budget, including cost of liability insurance, for ERCOT for each fiscal year shall be compiled by the CEO 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. A separate budget for the TRE ("TRE Budget") shall be prepared each fiscal year, in accordance with the Delegation Agreement.

Section 10.4 Loans and Guarantees. Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Articles of Incorporation 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. In addition, the separate financial statements of the TRE will be reviewed or audited annually. 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 ARTICLE 1396-2.22A OF THE TEXAS NON-PROFIT CORPORATION ACT 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 or her address as it appears on the corporate records, with postage

prepaid. A person may change his or her address in the corporate records by giving written notice of the change to the CEO.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Articles of Incorporation 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 Chair of such meeting shall determine if such objection is reasonable.

ARTICLE 13 AMENDMENTS

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.
- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) 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 14.8.
- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
 - (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.

- (2) 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.
- (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following Consumer subgroups:
 - (i) Residential Consumers
 - (ii) Commercial Consumers
 - (iii) 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.

- (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws. If permission for any amendment is required by NERC or FERC under the Delegation Agreement, the required permission must be obtained before such amendment is effective.

Section 13.2 Amendments to the Articles of Incorporation. In accordance with the procedures set forth in Article 1396-4.02 of the Texas Non-Profit Corporation Act, an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Articles of Incorporation.

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 Quorum, Proxies and Seated Members. Written proxies may be used for meetings of the Board, TAC or any subcommittees of the Board or TAC in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of the Board, TAC or any subcommittee of the Board or TAC, a Segment Alternate or 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. For any meeting of the Corporate Members, proxies shall count towards a quorum. "Seated" members of the Board, TAC, and subcommittees shall mean members, or their designated alternate representatives when serving in their stead (if applicable), that are currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. Vacant positions shall not be considered "Seated" members.

Section 14.7 Abstentions. For purposes of voting on the Board or TAC, Directors or TAC Representatives 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. In the event of such abstentions, however, for a vote to become an act of the Board or TAC, there must be an affirmative vote of (i) the requisite percentage of the remaining non-abstaining votes of seated members *and* (ii) at least 50% of the total members. Abstentions do not affect calculation of a quorum. Absences do not decrease the number of votes required for action.

Section 14.8 Actions Without a Meeting and Meetings by Telephone. Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members, 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 Corporate Members, TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the Corporate Members or subcommittee members were present and voted. Corporate Members, Directors (for urgent matters in accordance with Section 4.6), TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, 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.

Section 14.9 Effective Date. The effective date of these Amended and Restated Bylaws is September 18, 2007, 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.

Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No regional reliability standard shall be effective within the Texas Regional Entity – A Division of Electric Reliability Council of Texas, Inc. (“Texas RE”) area unless filed by NERC with FERC and approved by FERC.

COMMON ATTRIBUTE 2

Texas RE regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A Texas RE reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

COMMON ATTRIBUTE 3

Texas RE regional reliability standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

COMMON ATTRIBUTE 4

Requester — The requester is the sponsor of the regional reliability standard request may assist in the development of the standard. Any member of Texas RE, or group within Texas RE shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the Texas RE area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

COMMON ATTRIBUTE 5

Reliability Standards Committee (RSC) — The Texas RE RSC manages the standards development process. The RSC will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The RSC will advise the Texas RE board on standards presented for adoption.

COMMON ATTRIBUTE 6

[Registered Ballot Body (RBB)]— The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with Texas RE as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the RBB is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

COMMON ATTRIBUTE 7

Texas RE will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the Texas RE and NERC websites.

COMMON ATTRIBUTE 8

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

COMMON ATTRIBUTE 9

Within [no greater than 60] days of receipt of a completed standard request, the RSC shall determine the disposition of the standard request.

COMMON ATTRIBUTE 10

The RSC may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The RSC may, at its discretion, expand or narrow the scope of the standard request under consideration. The RSC shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the RSC rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the RSC.

COMMON ATTRIBUTE 11

Any standard request that is accepted by the RSC for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the Texas RE website within [no greater than 30] days of acceptance by the committee.

COMMON ATTRIBUTE 12

The Reliability Standards Manager (RSM) shall submit the proposed members of the drafting team to the Reliability and Operations Subcommittee (ROS). The ROS shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the RSM as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

COMMON ATTRIBUTE 13

At the direction from the RSC, the RSM shall facilitate the posting of the draft standard on the Texas RE website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day] comment period. The RSM shall provide notice to Texas RE stakeholders and other potentially interested entities, both within and outside of the Texas RE area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

COMMON ATTRIBUTE 14

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the Texas RE website no later than the next posting of the proposed standard.

COMMON ATTRIBUTE 15

Upon recommendation of the drafting team, and if the RSC concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

COMMON ATTRIBUTE 16

The RSM shall schedule a vote by the Texas RE RBB/ ballot pool. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

COMMON ATTRIBUTE 17

The Texas RE RBB shall be able to vote on the proposed standard during a period of [not less than 10] days.

COMMON ATTRIBUTE 18

All members of Texas RE are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

COMMON ATTRIBUTE 19

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [RBB/ballot pool] submitted a ballot.

COMMON ATTRIBUTE 20

Under no circumstances may the board substantively modify the proposed regional reliability standard.

COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC.

COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the Texas RE bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in Texas RE, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the Texas RE members and others.

COMMON ATTRIBUTE 23

- **Balanced** - The Texas RE standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

COMMON ATTRIBUTE 26

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

COMMON ATTRIBUTE 27

- Does not unnecessarily delay development of the proposed reliability standard.

COMMON ATTRIBUTE 28

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

COMMON ATTRIBUTE 29

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC’s market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

COMMON ATTRIBUTE 30

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

COMMON ATTRIBUTE 31

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

COMMON ATTRIBUTE 32

Applicability	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions. If not applicable to the entire Texas RE area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
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COMMON ATTRIBUTE 33

Measure(s)	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.
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COMMON ATTRIBUTE 34

Compliance Monitoring Process	Defines for each measure: <ul style="list-style-type: none">• The specific data or information that is required to measure performance or outcomes.• The entity that is responsible for providing the data or information for measuring performance or outcomes.• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.• The entity that is responsible for evaluating data or information to assess performance or outcomes.• The time period in which performance or outcomes is measured, evaluated, and then reset.• Measurement data retention requirements and assignment of responsibility for data archiving.• Violation severity levels.
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Texas Regional Entity Standards Development Process

Exhibit C to the Delegation Agreement Between NERC and ERCOT

October 19, 2006

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I. Introduction

This document defines the fair and open process for adoption, approval, revision, reaffirmation, and deletion of an ERCOT-Specific Reliability Standard (Standard) by the Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc. (“Texas RE”). Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System (BPS), consistent with Good Utility Practice within a Regional Entity’s (“RE’s”) geographical footprint.

Due process is the key to ensuring that Standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in a Standard's development.

Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system has a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

Proposed ERCOT-Specific Standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Texas RE area unless filed by NERC with FERC and approved by FERC.

ERCOT-Specific Standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. An ERCOT-Specific Standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. An ERCOT-Specific Standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

ERCOT-Specific Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

II. Background

The Texas RE may develop, through their own processes, separate Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or otherwise address issues that are not addressed in NERC Reliability Standards.

NERC Reliability Standards and ERCOT-Specific Standards are all to be included within the Texas RE's Compliance Program.

Standards are developed consistent with the following philosophies according to the process defined within this document:

- Developed in a fair and open process that provides an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and does not have a significant adverse impact on reliability; and
- Based on a justifiable difference between regions or between sub-regions within the Regional geographic area.

The NERC Board of Trustees has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. As these principles are fundamental to reliability and the market interface, these principles provide a constant beacon to guide the development of reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards. Persons and committees that are responsible for the Texas RE Standards Process shall consider these NERC Principles in the execution of those duties.

NERC Reliability Standards are based on certain reliability principles that define the foundation of reliability for the North American BPS. Each Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Standard serves a purpose in support of reliability of the North American BPS. Each Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Standard undermines reliability through an unintended consequence.

While NERC Reliability Standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Standards shall be consistent with the market interface principles. Consideration of the market interface principles is intended to ensure that Standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

III. Regional Reliability Standards Definition

A NERC Reliability Standard defines certain obligations or requirements of entities that operate, plan, and use the Bulk Power Systems of North America. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the stated reliability principles and shall be consistent with all of the stated reliability and market interface principles.

The Texas RE may develop, through its own processes, separate Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or that cover matters not addressed in NERC Reliability Standards. Regional Criteria may be developed and exist in ERCOT Protocols, Operating Guides, and/or Procedures separately from NERC Reliability Standards, or may be proposed as NERC Reliability Standards. Regional Criteria that exist separately from NERC Reliability Standards shall not be inconsistent with or less stringent than NERC Reliability Standards.

IV. Roles in the Texas Regional Entity (RE) Reliability Standards Development Process

Originator - Any person, acting as a representative of an organization which is directly and materially affected by the operation of ERCOT's BPS, is allowed to request a Standard be developed or an existing Standard modified, or deleted, by creating a Standards Authorization Request (SAR) as described in Appendix B to this document.

Board of Directors (BOD) – The ERCOT Board of Directors shall act on any proposed Standard that has gone through the process. Once the Standard is approved by the Federal Energy Regulatory Commission (FERC), compliance with the Standard will be enforced consistent with the terms of the Standard.

Registered ballot body — The registered ballot body comprises all entities or individuals that a) qualify for one of the stakeholder segments; are registered with ERCOT as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. Each standard action has its own ballot pool formed of interested members of the registered ballot body.

Reliability and Operations Subcommittee (ROS) – A balanced subcommittee comprised of the seven (7) ERCOT Market Participant Segments responsible for reviewing events and issues as they may impact ERCOT system reliability and operations.

Reliability Standards Committee (RSC) – A balanced committee comprised of the seven (7) ERCOT Market Participant Segments that will consider which requests for new or revised Standards shall be assigned for development (or existing Standards considered for deletion). The RSC will also vote to recommend whether proposed new or revised Standards should be presented for a vote to all ERCOT Market Participants.

Reliability Standards Manager (RSM) – A person or persons on the Texas RE staff assigned the task of ensuring that the development, revision or deletion of Standards is in accordance with this document. The RSM works to ensure the integrity of the process and consistency of quality and completeness of the Standards. The RSM manages the Standards Development Process, and coordinates and facilitates all actions contained in all steps in the process.

Reliability Standards Staff – Employees of the Texas RE that work with or for the Reliability Standards Manager.

Standard Drafting Team (SDT) – A team of technical experts, assigned by the ERCOT Reliability and Operations Subcommittee (ROS), and typically includes a member of the Texas RE staff and the Originator, assigned the task of developing a proposed Standard based upon an approved SAR using the Standard Development Process contained in this document.

V. Texas RE Reliability Standards Development Process

A. Assumptions and Prerequisites

The process for developing and approving Standards is generally based on the procedures of the American National Standards Institute (ANSI) and other standards-setting organizations in the United States and Canada. The Standards development process has the following characteristics:

- **Due process** – Any person representing an organization with a direct and material interest has a right to participate by:
 - a) Expressing an opinion and its basis,
 - b) Having that position considered, and
 - c) Appealing any negative decision
- **Openness** – Participation is open to all organizations that are directly and materially affected by ERCOT's BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to ERCOT's Membership and to others and all proposed SARs and Standards are posted for comment on the Texas RE Website.
- **Balance** – The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any single interest category.

B. Regional Reliability Standards Development Process Steps

Note: The term “days” below refers to calendar days.

The Texas RE will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in Step 1, notice of comment posting period identified in Step 4, and notice for vote identified in Step 5 below are concurrently posted on both the Texas RE and NERC websites.

Step 1 - Development of a Standards Authorization Request (SAR) to Develop, Revise or Delete a Regional Reliability Standard

Any entity (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the Texas RE may request, via a submittal of a Standard Authorization Request (SAR) form, for the development, modification, or deletion of an ERCOT Standard or Regional Variance. The following entities may submit a SAR:

- Any market participant,
- Any entity that is an ERCOT Member,
- PUCT Staff,
- ERCOT Staff,
- TRE Staff, and
- Any entity that resides (or represents residents) in Texas or operates in the Texas electricity market.

Any such request shall be submitted to the Texas RE Reliability Standards Manager, or his/her designee. The SAR form may be downloaded from the Texas RE Website.

An acceptable SAR contains a description of the proposed Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Standard.

The Reliability Standards Manager will verify that the submitted SAR form has been adequately completed. The Reliability Standards Manager may offer the Originator suggestions regarding changes and/or improvements to enhance clarity and assist the ERCOT community to understand the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the Reliability Standards Manager will electronically acknowledge receipt of the SAR.

The Reliability Standards Manager will forward all adequately completed SARs to the RSC. Within 60 days of receipt of an adequately completed SAR, the RSC shall determine the disposition of the SAR and post for review and possible comment.

The disposition decision and decision process shall use the normal "business rules and procedures" of the RSC then in effect. The RSC may take one of the following actions by motion and majority vote:

- Accept the SAR as a candidate for: development of a new Standard, revision of an existing Standard, or deletion of an existing Standard. The RSC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The RSC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the RSC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.

- Remand the SAR back to the Originator for additional work. The Reliability Standards Manager will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the RSC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the RSC.

Any SAR that is accepted by the RSC for development of a Standard (or modification or deletion of an existing Standard) shall be posted for public viewing on the Texas RE Website. SARs will be posted and the status publicly noted at regularly scheduled (appropriately two weeks) intervals.

Any documentation of the deliberations of the RSC concerning SARs shall be made available according to normal “business rules and procedures” of the RSC then in effect.

Texas RE Staff shall submit a written report to the ERCOT BOD on a periodic basis (at least quarterly at regularly scheduled ERCOT BOD Meetings) showing the status of all SARs that have been brought to the RSC for consideration.

Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date

Upon acceptance by the RSC of a SAR for development of a new Standard (or modification or deletion of an existing Standard), the RSC shall direct the ROS to assemble a qualified balanced slate for the SDT. The Reliability Standards Manager will solicit drafting team nominees. The SDT will consist of a group of people (members of ERCOT and, as appropriate, non-members) who collectively have the necessary technical expertise and work process skills. The Reliability Standards Manager will recommend a slate of ad-hoc individuals or a pre-existing task force, work group, or similar for the SDT based upon the ROS’ desired team capabilities.

The Reliability Standards Manager will insure that team membership receives all necessary administrative support. This support typically includes a Texas RE staff member and the Originator if he/she chooses to participate. The ROS appoints the interim chair (should not be a staff person) of the SDT. The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The Reliability Standards Manager submits the proposed list of names of the SDT to the ROS. The ROS will either accept the recommendations of the Reliability Standards Manager or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

Upon approval of the SDT slate by the ROS, the RSC will declare a preliminary date on which the SDT is expected to have ready a completed draft Standard and associated supporting documentation available for consideration by the ERCOT Membership.

Step 3 – Work and Work Product of the Standard Drafting Team

The Reliability Standards Manager will then develop a work plan for completing the Standard development work, including the establishment of milestones for completing critical elements of the work in sufficient detail to ensure that the SDT will meet the date objective established by the RSC or the SDT shall propose an alternative date. This plan is then delivered to the RSC for its concurrence.

The SDT is to meet, either in person or via electronic means as necessary, establish sub-work teams (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established by the RSC.

The work product of the SDT will consist of the following:

- A draft Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Standard that will be deleted, in part or whole, or otherwise impacted by the implementation of the draft Standard
- Technical reports and/or work papers that provide technical support for the draft Standard under consideration.
- Document the perceived reliability impact should the Standard be approved.

Upon completion of these tasks, the SDT submits these documents to the RSC, which will verify that the proposed Standard is consistent with the SAR on which it was developed.

The SDT regularly (at least once each month) informs the RSC of its progress in meeting a timely completion of the draft Standard. The SDT may request RSC scope changes of the SAR at any point in the Standard Development Process.

The RSC may, at any time, exercise its authority over the Standards Development Process by directing the SDT to move to Step 4 (below) and post for comment the current work product. If there are competing drafts, the RSC may, at its sole discretion, have posted the version(s) of the draft Standard for comment on the Texas RE Website. The RSC may take this step at any time after a SDT has been commissioned to develop the Standard.

Step 4 – Comment Posting Period

At the direction from the RSC, the Reliability Standards Manager then facilitates the posting of the draft Standard on the Texas RE Website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The Reliability Standards Manager shall also inform ERCOT Members and other potentially interested entities inside or outside of ERCOT of the posting using typical membership communication procedures then currently in effect or by other means as deemed appropriate.

Within 30 days of the conclusion of the 30-day comment posting period the SDT shall convene and consider changes to the draft Standard, the implementation plan and/or supporting technical documents based upon comments received. Based upon these comments, the SDT may elect to return to Step 3 to revise the draft Standard, implementation plan, and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the Texas RE Website no later than the next posting.

Step 5 – Posting for Voting by ERCOT Membership

Upon recommendation of the drafting team, and if the RSC concurs that all of the requirements for development of the standard have been met, the Reliability Standards Manager shall post the proposed standard and implementation plan for ballot on the Texas RE Website and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

The Reliability Standards Manager will schedule a Vote by the ERCOT Membership which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting.

The ERCOT Membership shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the RSC. All members of ERCOT are eligible to participate in voting on proposed new Standards, Standard revisions, or Standard deletions. Each member company shall have one vote. The contact designated as primary representative to the Texas RE is the voting member with the secondary contact as the backup.

Voting is an advisory to the ERCOT BOD. The voting results will be composed of only the votes from ERCOT Members responding within the 15-day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the Texas RE Website prior to going to the RSC or ERCOT BOD.

Step 6A – Membership Voting Receives 4.67 Affirmative Votes

The Texas RE registered ballot body shall be able to vote on the proposed standard during a 15-day period.

Votes shall be submitted electronically, or through other means as approved by the RSC.

All members of ERCOT are eligible to participate in voting on proposed new standards, standard revisions, or standard deletions. There shall be one person designated as the primary representative of each entity.

At least one (1) ERCOT Member Representative from five (5) of the seven (7) ERCOT Market Participant Segments must vote to constitute a quorum. Each Segment shall have one (1) Segment Vote. The representative of each Voting ERCOT Member shall receive an equal fraction of its Segment Vote. If a draft Standard receives 4.67 or greater affirmative votes during the 15-day voting period, the RSC will forward the Standard to the ERCOT BOD for action (Step 7).

Step 6B – Membership Voting Does Not Receive 4.67 Affirmative Votes

If a draft Standard does not receive 4.67 or greater affirmative votes during the 15-day voting period, the RSC may:

- Revise the SAR on which the draft Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The RSC may require a second comment period prior to a second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.
 - If a draft Standard receives 4.67 or greater affirmative votes during the second voting period, the RSC will forward to the ERCOT BOD for action (Step 7).
 - If a draft Standard does not receive 4.67 or greater affirmative votes during the second voting period, the RSC will refer the draft Standard and implementation plan to the ERCOT BOD. The RSC may also submit an assessment, opinion, and recommendations to the ERCOT BOD (Step 7).
- Direct the existing SDT to reconsider or modify certain aspects of the draft Standard and/or implementation plan. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The RSC may require a second comment period prior to the second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.
 - If a draft Standard receives 4.67 or greater affirmative votes on the second voting period, the RSC will forward it to the ERCOT BOD for action (Step 7).
 - If a draft Standard does not receive 4.67 or greater affirmative votes on the second voting period, the RSC will refer the draft Standard and implementation plan to the ERCOT BOD. The RSC may also submit an assessment, opinion, and recommendations to the ERCOT BOD (Step 7).

- Recommend termination of all work on the development of the Standard action under consideration and so notify the ERCOT BOD.

Step 7 – Action by the RE Board of Directors

A proposed Regional Reliability Standard submitted to the ERCOT BOD for action shall be publicly posted at least 10 days prior to action by the BOD. At a regular or special meeting, the ERCOT BOD shall consider adoption of the draft Standard. The BOD shall be provided with an “informational package” which includes:

- The draft Standard and any modification or deletion of other related existing Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The BOD will consider the results of the voting and dissenting opinions. The BOD will consider any advice offered by the RSC and may:

- Approve the proposed Regional Reliability Standard;
- Remand the proposed Regional Reliability Standard to the RSC with comments and instructions; or
- Disapprove the proposed Regional Reliability Standard action without recourse.

Under no circumstances may the board substantively modify the proposed ERCOT-Specific Reliability Standard.

Once an ERCOT-Specific Reliability Standard is approved by the BOD, the standard will be submitted to NERC for approval and filing with FERC.

Step 8 - Implementation of Regional Reliability Standard

Upon approval of a draft Standard action by the ERCOT BOD, the Reliability Standards Manager will notify the membership of such action of the BOD through the normal and customary membership communication procedures and processes then in effect. The Reliability Standards Manager will take whatever steps are necessary to have a Standard reviewed and/or approved by NERC or any successor organization.

C. Regional Reliability Standards Integration

Once the regional reliability standard is approved by FERC the Reliability Standards Manager shall notify the stakeholders of the effective date. The Reliability Standards Manager will also notify the Texas RE Compliance Staff for integration into the Texas RE Compliance Program.

Appendix A – Stakeholder Representation

The Texas RE stakeholder representation for ERCOT-Specific Reliability Standards development is as follows:

I. Balanced Decision-Making in Committees

A Reliability Standards Committee (RSC), comprised of representatives from all market segments (Independent Generators, Investor-Owned Utilities, Power Marketers, Retail Electric Providers, Municipally-Owned Utilities, Cooperatives, and Consumers), to provide balanced decision-making and due process for ERCOT-Specific Reliability Standards and Regional Variances. The RSC will receive, consider, and vote upon requests for new or revised ERCOT-Specific Reliability Standards and Regional Variances.

The RSC will consider any requests for ERCOT-Specific Reliability Standards or Regional Variances from parties that are directly and materially affected by the operation of the ERCOT Bulk Power System.

II. ERCOT Board of Directors (BOD)

The Texas RE is a division of the Electric Reliability Council of Texas (ERCOT), a Texas non-profit corporation that is the Independent System Operator for the ERCOT Region, and is governed by a combination independent and balanced stakeholder board, as required by Section 39.151 of the Texas Public Utility Regulatory Act (PURA). The BOD includes the following individuals:

- Five independent individuals who are unaffiliated with any electric market participant who are each approved by the Texas Public Utility Commission (PUCT) for a three-year term;
- Six electric market participant representatives from each of the following market segments: Independent Generators, Investor-Owned Utilities, Power Marketers, Retail Electric Providers, Municipally-Owned Utilities, and Cooperatives;
- Three Consumer representatives;
- CEO of ERCOT (as ex officio voting Director); and
- Chairman of the PUCT (as ex officio non-voting Director).

Although the ERCOT BOD will have the final vote on proposed ERCOT-Specific Reliability Standards and Regional Variances, the ERCOT BOD will not have involvement in Reliability Standard compliance and enforcement activities. The PUCT will provide due process (a hearing).

III. Ballot Body

A Ballot Body will be comprised of representatives from all market segments (Independent Generators, Investor-Owned Utilities, Power Marketers, Retail Electric Providers,

Municipally-Owned Utilities, Cooperatives, and Consumers), to provide balanced decision-making on ERCOT-Specific Reliability Standards and Regional Variances. The Ballot Body will vote on all proposed new or revised ERCOT-Specific Reliability Standards and Regional Variances.

At all meetings, each Segment shall have one (1) Segment Vote. The representative of each Voting Entity, present at the meeting and participating in the vote, shall receive an equal fraction of its Segment's Vote, except for the Consumer Segment which shall be divided into three sub-segments (Residential, Commercial, and Industrial) that receive one third of the Consumer Segment Vote. For the Consumer Segment, if no representative from a sub-segment is present at a meeting, such sub-segment's fractional vote is allocated equally to the sub-segment(s) that are present. If a representative from a sub-segment abstains from a vote, the fraction of the Consumer Segment Vote allocated to such representative is not included in the vote tally.

Entities entitled to vote (Voting Entities) are ERCOT Corporate Members, ERCOT Associate Members, and ERCOT Adjunct Members. Voting Entities must align themselves each calendar year with a Segment for which they qualify or, for Adjunct Members, a Segment to which they are similar. Voting Entities that align themselves with a Segment must be aligned with that same Segment for all ERCOT subcommittees, and remain aligned with that Segment for the entire calendar year. For the Residential sub-segment of the Consumer Segment, Voting Entities are limited to the Standing Representative or their designated Alternate Representative. Only one representative of each Voting Entity present at the meeting may vote. In the event that a representative of a Voting Entity abstains from a vote, the Segment Vote is allocated among the members casting a vote; except for the Consumer Segment.

In the majority of cases, e-mail votes for the purpose of approving an ERCOT-Specific Reliability Standard will be conducted. For e-mail votes, a representative of each Voting Entity shall have one (1) vote. Each Segment shall have one (1) Segment Vote and participation requires casting a vote or abstaining. The same rules apply to e-mail voting as voting at a meeting.

Appendix B — Principles, Characteristics, and Special Procedures

I. Principles

Due process is the key to ensuring that regional reliability standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in the development of a standard.

The Texas RE develops ERCOT-Specific Reliability Standards with due consideration of the following principles, in accordance with the steps outlined in this procedure. The process must ensure that any ERCOT-Specific Reliability Standard is technically sound and the technical specifications proposed would achieve a valuable reliability objective.

The standards development process has the following characteristics:

- **Open** - Participation in the development of an ERCOT-Specific Reliability Standard shall be open to all organizations that are directly and materially affected by ERCOT bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to ERCOT members and others.
- **Balanced** - The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the ERCOT Bulk Power System in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Fair due process** — The Texas RE Reliability Standards Development Process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.
- Does not unnecessarily delay development of the proposed ERCOT-Specific Reliability Standard.

NERC has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. These principles are to be used to guide the development of reliability standards, including regional reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards.

Each ERCOT-Specific Reliability Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Standard serves a purpose in support of the reliability of the ERCOT bulk power system. Each Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Standard undermines reliability through an unintended consequence.

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all ERCOT-Specific Reliability Standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

II. Regional Reliability Standard Characteristics and Elements

a. Characteristics of a Regional Reliability Standard

The following characteristics describe objectives to be considered in the development of ERCOT-Specific Reliability Standards:

1. **Applicability** — Each ERCOT-Specific Reliability Standard clearly identifies the functional classes of entities responsible for complying with the standard, with any specific additions or exceptions noted. Such functional classes include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, Market Operators, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each ERCOT-Specific Reliability Standard identifies the geographic applicability of the standard. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** — Each ERCOT-Specific Reliability Standard has a clear statement of purpose that describes how the standard contributes to the reliability of the ERCOT bulk power system.
3. **Requirement or Outcome** — Each ERCOT-Specific Reliability Standard states one or more requirements, which if achieved by the applicable entities, will provide for a

reliable bulk power system, consistent with good utility practices and the public interest.

4. **Measurability** — Each performance requirement is stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement has one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics are provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each ERCOT-Specific Reliability Standard is based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
6. **Completeness** — Each ERCOT-Specific Reliability Standard is complete and self-contained. Supporting references may be provided with standards, but they are not part of the standard and do not impose mandatory requirements.
7. **Clear Language** - Each ERCOT-Specific Reliability Standard is stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in keeping with good utility practice, are able to arrive at a consistent understanding of the required performance.
8. **Practicality** — Each ERCOT-Specific Reliability Standard establishes requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
9. **Consistent Terminology** — To the extent possible, ERCOT-Specific Reliability Standards use a set of standard terms and definitions that are approved through the regional standards development procedure.

Although ERCOT-Specific Reliability Standards have a common format and process, several types of standards may exist, each with a different approach to measurement:

- **Technical standards** are related to the provision, maintenance, operation, or state of electric systems, and will likely contain measures of physical parameters that are technical in nature.
- **Performance standards** are related to the actions of entities providing for or impacting the reliability of the bulk power system, and will likely contain measures of the results of such actions or qualities of performance of such actions.
- **Preparedness standards** are related to the actions of entities to be prepared for conditions that are unlikely to occur, but are nonetheless critical to reliability,

and will likely contain measures of such preparations or the state of preparedness.

b. Elements of a Regional Reliability Standard

To ensure uniformity of regional reliability standards, an ERCOT-Specific Reliability Standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

Table 1 — Performance Elements of a Regional Reliability Standard

Identification Number	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
Title	A brief, descriptive phrase identifying the topic of the standard.
Applicability	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions. If not applicable to the entire Texas RE area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
Effective Date and Status	The effective date of the standard or, prior to approval of the standard, the proposed effective date.
Purpose	The purpose of the standard. The purpose shall explicitly state what outcome will be achieved or is expected by this standard.
Requirement(s)	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.
Risk Factor(s)	The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below: A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to bulk power system instability, separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to bulk power system instability,

	<p>separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to normal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the bulk power system, or the ability to effectively monitor and control the bulk power system, but is unlikely to lead to bulk power system instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to bulk power system instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor and control the bulk power system; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system.</p>
Measure(s)	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>

Table 2 — Compliance Elements of a Regional Reliability Standard

Compliance Monitoring Process	<p>Defines for each measure:</p> <ul style="list-style-type: none"> • The specific data or information that is required to measure performance or outcomes. • The entity that is responsible for providing the data or information for measuring performance or outcomes. • The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.
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	<ul style="list-style-type: none"> • The entity that is responsible for evaluating data or information to assess performance or outcomes. • The time period in which performance or outcomes is measured, evaluated, and then reset. • Measurement data retention requirements and assignment of responsibility for data archiving. • Violation severity levels.
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Supporting Information Elements

Interpretation	Any interpretation of regional reliability standard that is developed and approved in accordance with Section VI “Interpretation of Standards” in Appendix B of this procedure, to expound on the application of the standard for unusual or unique situations or to provide clarifications.
Implementation Plan	Each regional reliability standard shall have an associated implementation plan describing the effective date of the standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the standard in the compliance program and other considerations in the initial use of the standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
Supporting References	<p>This section references related documents that support reasons for, or otherwise provide additional information related to the regional reliability standard. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • Glossary of terms • Developmental history of the standard and prior versions • Notes pertaining to implementation or compliance • Standard references • Standard supplements • Procedures • Practices • Training references • Technical references • White papers • Internet links to related information

III. Maintenance of the Texas RE Reliability Standards Development Process

Significant changes to this process shall begin with the preparation of a SAR and be addressed using the same procedure as a request to add, modify, or delete an ERCOT-Specific Reliability Standard.

The RSC has the authority to make ‘minor’ changes to this process as deemed appropriate by the RSC and subject to the RSC voting practices and procedures then in effect. The Reliability Standards Manager, on behalf of the RSC, shall promptly notify the ERCOT BOD of such ‘minor’ changes to this process for their review and concurrence at the next ERCOT BOD meeting.

IV. Maintenance of Regional Reliability Standards

The Reliability Standards Manager shall ensure that each Standard is reviewed at least once every five years from the effective date of the Standard or the latest revision to the Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the Reliability Standards Manager shall recommend to the ERCOT BOD that the Standard be reaffirmed. If the review indicates a need to revise or delete a Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this process.

V. Urgent Action

Under certain conditions, the RSC may designate a proposed ERCOT-Specific Reliability Standard or revision to a standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed standard or revision could materially impact reliability of the bulk power systems. The RSC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Standard.

A requester prepares a SAR and a draft of the proposed standard and submits both to the Reliability Standards Manager. The standard request must include a justification for urgent action. The Reliability Standards Manager submits the request to the RSC for its consideration. If the RSC designates the requested standard or revision as an urgent action item, then the Reliability Standards Manager shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 6.

Any ERCOT-Specific Reliability Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the standard permanent the standard would be required to go through the full Standard Development Process. All urgent action standards require BOD, NERC, and FERC approval, as outlined for standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent standard is not adopted. In determining whether to authorize an urgent action standard for a renewal ballot, the RSC shall consider the impact of the standard on the reliability of the bulk power system and whether expeditious progress is being made toward a permanent replacement standard. The RSC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement standard or if the RSC lacks

confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action standard renewal shall be effective only upon approval by the ERCOT BOD, and approval by applicable governmental authorities.

Any person or entity, including the drafting team working on a permanent replacement standard, may at any time submit a standard request proposing that an urgent action standard become a permanent standard by following the full standards process.

VI. Interpretations of Standards

All persons who are directly and materially affected by ERCOT's Bulk Power System reliability shall be permitted to request an interpretation of a Standard. The person requesting an interpretation will send a request to the Reliability Standards Manager explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The Reliability Standards Manager will assemble a team with the relevant expertise to address the clarification. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The Reliability Standards Manager submits the proposed list of names of the IDT to the ROS. The ROS will either accept the recommendations of the Reliability Standards Manager or modify the IDT slate.

As soon as practical (not more than 45 days), the team will draft a written interpretation to the Standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Standard addressing only the issues raised, the team will forward the draft interpretation to the Reliability Standards Manager. The Reliability Standards Manager will forward the draft interpretation to the Texas RE Director of Compliance. The Director of Compliance is to assess if the inclusion of the interpretation lessens the measurability of the Standard. In addition the Reliability Standards Manager will forward the interpretation to the ROS. Barring receipt of an opinion from either the Director of Compliance or ROS within 21 days, that the interpretation lessens measurability or is not technically appropriate for the Standard, respectively, the Reliability Standards Manager will forward the interpretation to the RSC. The RSC will determine if the interpretation is consistent with the Standard. The Reliability Standards Manager, on behalf of the RSC, will forward the interpretation to the ERCOT BOD for informational purposes as being appended to the approved Standard.

Note: In the event that the Director of Compliance determines that measurability is lessened, the Director of Compliance shall provide an explanation of his/her reasoning to the Reliability Standards Manager and IDT for inclusion in a subsequent reversion. The ROS shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation

makes the standard technically inappropriate. In either case, the IDT and Reliability Standards Manager will continue to re-circulate the interpretation as stated above.

The interpretation will stand until such time as the Standard is revised through the normal process, at which time the Standard will be modified to incorporate the clarifications provided by the interpretation.

VII. Appeals

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of an ERCOT-Specific Reliability Standard shall have the right to appeal. This Appeals Process applies only to this Standards Process.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

The Appeals Process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants:

Level 1 Appeal

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the Reliability Standards Manager that describes the substantive or procedural action or inaction associated with a Reliability Standard or the Standards Process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the Reliability Standards Manager shall prepare a written response addressed to the appellant as soon as practical, but not more than 45-days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the Standard.

Level 2 Appeal

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the Reliability Standards Manager, the Reliability Standards Manager shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by ERCOT's BOD. In all cases, Level 2 Appeals Panel Members shall have no direct affiliation with the participants in the appeal.

The Reliability Standards Manager shall post the complaint and other relevant materials and provide at least 30-days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the RSC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a Reliability Standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to ERCOT's BOD for consideration at the time the BOD decides whether to adopt a particular Reliability Standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30-days after the announcement of the vote on the Standard in question.

Appendix C – Sample Standard Request Form

ERCOT-Specific Reliability Standard Authorization Request

The tables below provide a representative example of information in a Regional Reliability Standard Authorization Request. The Reliability Standards Manager shall be responsible for implementing and maintaining the applicable form as needed to support the information requirements of the Texas RE Standards Process. The latest version of the form will be downloadable from the Texas RE's Standards Development Web page.

Texas RE Reliability Standard Authorization Request Form

Texas RE to complete

ID
Authorized for Posting
Authorized for Development

Title of Proposed Standard:
Request Date:

SAR Requestor Information

<i>Name:</i>	SAR Type (Check one box.)
Company:	<input type="checkbox"/> New Standard
Telephone:	<input type="checkbox"/> Revision to Existing Standard
Fax:	<input type="checkbox"/> Withdrawal of Existing Standard
Email:	<input type="checkbox"/> Urgent Action

Purpose (Describe the purpose of the proposed regional reliability standard – what the standard will achieve in support of reliability.)

Industry Need (Provide a detailed statement justifying the need for the proposed regional reliability standard, along with any supporting documentation.)

Brief Description (Describe the proposed regional reliability standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others.)

Reliability Functions

The Standard will Apply to the Following Functions <i>(Check all applicable boxes.)</i>		
<input type="checkbox"/>	Reliability Coordinator	The entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
<input type="checkbox"/>	Balancing Authority	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
<input type="checkbox"/>	Interchange Authority	Authorizes valid and balanced Interchange Schedules.
<input type="checkbox"/>	Planning Authority	The responsible entity that coordinates and integrates transmission facility and service plans, resource plans, and protection systems.
<input type="checkbox"/>	Transmission Service Provider	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.
<input type="checkbox"/>	Transmission Owner	The entity that owns and maintains transmission facilities.
<input type="checkbox"/>	Transmission Operator	The entity responsible for the reliability of its "local" transmission system, and that operates or directs the operations of the transmission facilities.
<input type="checkbox"/>	Transmission Planner	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area.
<input type="checkbox"/>	Resource Planner	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area.
<input type="checkbox"/>	Generator Operator	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
<input type="checkbox"/>	Generator Owner	Entity that owns and maintains generating units.
<input type="checkbox"/>	Purchasing-Selling Entity	The entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.

<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer.
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.

Reliability and Market Interface Principles

Applicable Reliability Principles <i>(Check all boxes that apply.)</i>	
<input type="checkbox"/>	1. Interconnected bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
<input type="checkbox"/>	2. The frequency and voltage of interconnected bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
<input type="checkbox"/>	3. Information necessary for the planning and operation of interconnected bulk power systems shall be made available to those entities responsible for planning and operating the systems reliably.
<input type="checkbox"/>	4. Plans for emergency operation and system restoration of interconnected bulk power systems shall be developed, coordinated, maintained, and implemented.
<input type="checkbox"/>	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk power systems.
<input type="checkbox"/>	6. Personnel responsible for planning and operating interconnected bulk power systems shall be trained, qualified, and have the responsibility and authority to implement actions.
<input type="checkbox"/>	7. The security of the interconnected bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
Does the proposed Standard comply with all of the following Market Interface Principles? <i>(Select ‘yes’ or ‘no’ from the drop-down box.)</i>	
Recognizing that reliability is an Common Attribute of a robust North American economy:	
1. A reliability standard shall not give any market participant an unfair competitive advantage. Yes	
2. A reliability standard shall neither mandate nor prohibit any specific market structure. Yes	
3. A reliability standard shall not preclude market solutions to achieving compliance with that standard. Yes	
4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards. Yes	

Detailed Description (Provide enough detail so that an independent entity familiar with the industry could draft a standard based on this description.)

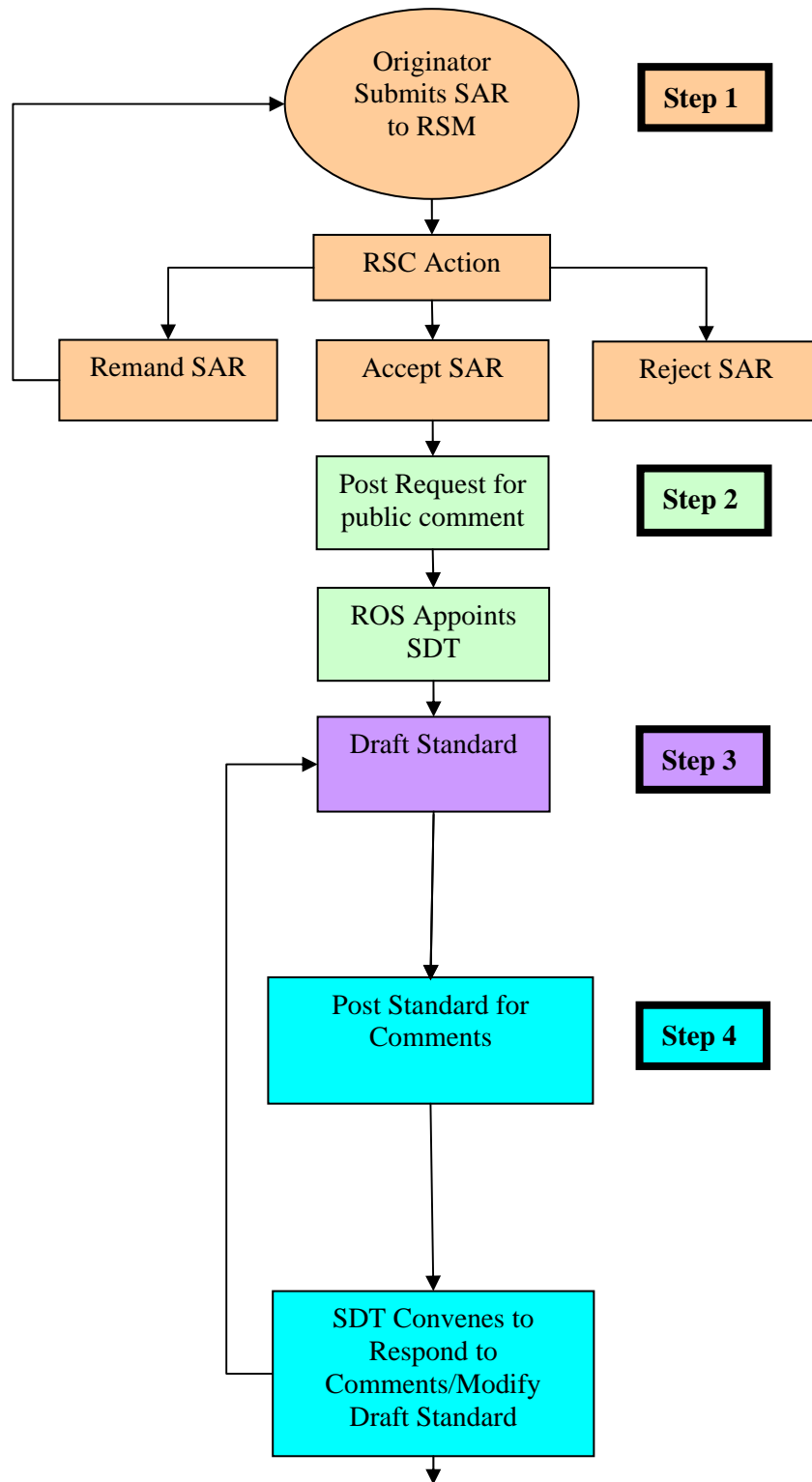
Related Standards

Standard No.	Explanation

Related SARs

SAR ID	Explanation

Appendix D – Process Flow Diagram



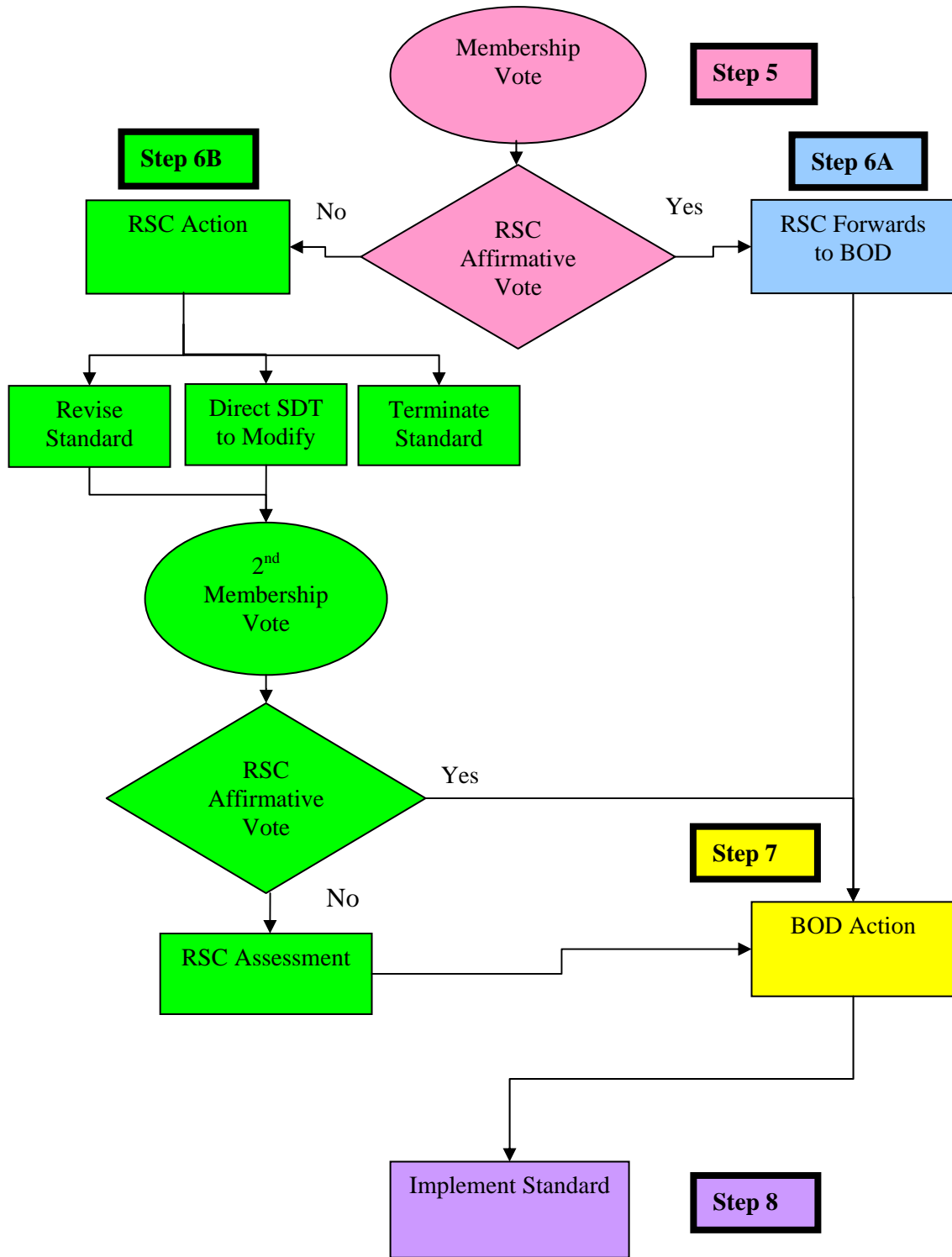


EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of Texas Regional Entity

The Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc. (Texas RE), will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure (NERC CMEP)) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within Texas RE's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

A. Hearing Body. Texas RE will use the Public Utility Commission of Texas (PUCT) as its Hearing Body, and the PUCT (as Hearing Body) will issue recommendations to the Texas RE Chief Compliance Officer who will make final decisions following regional hearings of compliance matters. The PUCT has extensive experience in conducting contested case hearings and other adjudicatory proceedings in a manner that assures due process of law to all participants. Texas RE intends to rely upon the PUCT's experience and expertise in conducting the hearing process under the Delegation Agreement. Texas RE believes that it is more efficient and cost-effective to use existing PUCT procedures than to attempt to establish a redundant hearing process within Texas RE. The PUCT is uniquely well-positioned to perform this function for the ERCOT Region since electric utilities operating in the ERCOT Region do not synchronously interconnect with electric utilities operating outside of Texas, and ERCOT market participants have experience in participating in PUCT proceedings.

B. Public Hearings. The PUCT as Hearing Body will hold public hearings on all matters referred to it by the Texas RE for hearing and recommendation. The PUCT's performance of Hearing Body responsibilities is fully consistent with the NERC Rules of Procedure and with Section 39.7 of FERC Order 672, with the exception of Section 39.7(b)(4), which requires "[e]ach violation or alleged violation [to] be treated as nonpublic until the matter is filed with [FERC] as a notice of penalty or resolved by an admission ... or by a settlement or other negotiated disposition." Because the PUCT is a "governmental body" under the Texas Open Meetings Act (Texas Government Code § 551.002), the PUCT is required to conduct any deliberations and render a decision in a meeting that is open to the public. The Texas Open Meetings Act also requires that any evidence or other submissions concerning a PUCT hearing, except for information that is confidential or privileged under law, be publicly available. Texas Attorney General opinions have determined that the need to consider confidential information does not justify conducting a closed meeting or executive session. Although PUCT hearings, including those contemplated under this Exhibit D, are conducted as open meetings, steps are taken to prevent the disclosure of confidential information during the hearing process. Direct testimony in such cases is generally presented in written question and answer format, with any confidential information redacted, filed under seal and provided

to parties pursuant to a protective order. In hearings conducted under these rules, the Hearing Body shall use best efforts to avoid the inadvertent disclosure of confidential information. The Presiding Officer may use the following methods to protect confidential information, in addition to the entry of an appropriate protective order: (1) Requiring the aggregation of confidential information aggregated to eliminate its confidentiality; (2) Permitting or requiring the redaction of testimony where the non-public information is not material to the merits; (3) Closing the public hearings on a temporary basis to those not bound under the terms of any case-specific protective order in place while the specific, confidential data is the subject of testimony or argument; and (4) other reasonable means in the discretion of the Presiding Officer.

Under the Texas Public Utility Regulatory Act (PURA) §39.151(j), market participants in the ERCOT market are required to comply with all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures ERCOT establishes. The PUCT is given authority to enforce this obligation through the imposition of penalties, revocation of certifications or other means. In any enforcement proceeding under PURA, PUCT deliberations are conducted in an open meeting in accordance with the procedures outlined above. ERCOT is thus unlike other power regions that may be implementing an enforcement mechanism for the first time. The history of public availability of this information in the ERCOT power region argues in favor of the continued public availability of information considered in enforcement hearings the PUCT conducts as Hearing Body for the Texas RE.

Moreover, elsewhere in Order No. 672, FERC stated that: “If the ERO or a Regional Entity wishes to conduct a public investigation, enforcement audit or permit interventions when determining whether to impose a penalty, the ERO or the Regional Entity must receive advance authorization from the Commission.”¹

In response to Texas RE’s request to be permitted to hold public hearings as outlined herein, FERC issued *In the matter of Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT*, Docket No. RR07-1-000, *Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements and Accepting Regional Entity 2007 Business Plans*, 119 FERC 61,060 at ¶253 (Issued April 19, 2007)(Delegation Agreement Acceptance Order). The Delegation Agreement Acceptance Order provides for open hearings as requested.

C. Hearing Administration. PUCT, as Hearing Body, is authorized to hear cases and render its recommendations through the PUCT Commissioners. The Hearing Body is authorized to use the PUCT staff of Administrative Law Judges (ALJs) and other trained employees to establish the procedures and timelines that will be followed in the regional hearings, including the conduct of hearings and the preparation of draft recommendations. These presiding officers will not, however, have any authority to issue a final recommendation on any alleged violation. The ALJs and staff may preside over hearings before the PUCT, may establish the procedural schedule for these proceedings, take evidence, prepare a draft recommendation, and perform all tasks

¹ Order 672, ¶511.

delegated from the PUCT, except the final rendition and approval of the final recommendation to be provided to the Chief Compliance Officer.

D. Detailed Hearing Procedures. The details of the proposed Texas Regional Entity Regional Hearing Process are attached hereto as **Attachment 1 and Attachment 2**. **Attachment 1** consists of a summary of the NERC CMEP procedures that must be altered to accommodate Texas RE's request to have the PUCT act as its Hearing Body. **Attachment 1** is a summary of necessary revisions to Attachment 2 of the CMEP, and together with **Attachment 2** hereto and the incorporated PUCT Chapter 22 Procedural Rules, provides the details of the regional hearing process Texas RE has adopted.

In addition to the requested modifications to procedures set forth in Attachment 2 of the CMEP, Texas RE also varies from Section 5.5 of the main body of the CMEP, allowing the Chief Compliance Officer's decision (instead of the hearing body's decision) be appealed to NERC. This language is contained as subsection 9.2 of **Attachment 1**: "The Registered Entity may appeal the Chief Compliance Officer's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410."

E. Regional Hearing of Compliance Matters. Texas RE shall establish the PUCT as the hearing body, with authority to conduct compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan. The PUCT will issue a final recommendation to the Chief Compliance Officer rather than a final order.

1.3 Other Decision-Making Bodies.

Texas RE will not use other decision-making bodies within its compliance program.

ATTACHMENT 1 TO EXHIBIT D
TEXAS RE REGIONAL HEARING PROCESS

1.0 Designation of Hearing Body

All formal compliance hearings shall be held before the Compliance Enforcement Authority's Hearing Body. The Hearing Body shall be the Public Utility Commission of Texas. All hearings shall be conducted under the hearing procedures set forth in Attachment 2 to Exhibit D ("Attachment 2—Rules of Procedure"), supplementing this Attachment 1. As set forth in Attachment 2— Rules of Procedure, the Hearing Body may delegate any hearing-related task to a Presiding Officer, except for the issuance of the final recommendation.

The Compliance Enforcement Authority shall initiate the hearing process following the completion of the Notice of Alleged Violation and proposed sanction and registered entity response processes in accordance with Section 5.1 of the North American Electric Reliability Corporation ("NERC") Compliance Monitoring and Enforcement Program ("NERC CMEP"), as set forth below.

Following the filing of a proceeding contesting an Alleged Violation or a Remedial Action Directive, no person shall engage in ex parte communications with the Hearing Body, including without limitation any appointed Presiding Officer, concerning the matter in dispute until the Chief Compliance Officer's written decision issued pursuant to Section 9.1 is appealed or the deadline for filing an appeal has passed; provided, however, that: (a) a member of the Hearing Body or the Presiding Officer may communicate ex parte with another member of the Hearing Body unless prohibited by other law, and (b) a member of the Hearing Body or the Presiding Officer may communicate ex parte with a Commission employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

The Hearing Body may rule on all procedural and discovery matters pursuant to Attachment 2—Rules of Procedure.

The Hearing Body may delegate to a single commissioner, a hearings examiner, or an administrative law judge (a "Presiding Officer") the authority to establish the procedures and dates for the presentation of all materials concerning the alleged violation and the power to hear evidence and to issue a draft recommendation, but the Hearing Body may not delegate its authority to issue a final recommendation on the alleged violation to the Chief Compliance Officer of the Compliance Enforcement Authority.

In accordance with Attachment 2—Rules of Procedure, the Hearing Body may provide for additional procedures as it deems necessary to effectively carry out a compliance hearing. To the extent permitted by law, any provision in this Attachment 1 may be waived, suspended, or modified by the Presiding Officer or the Hearing Body, as defined in Attachment 2—Rules of Procedure §1.1.5, for good cause shown, either upon the Presiding Officer's or the Hearing Body's own motion or upon the motion of any Party.

2.0 Recusal of Member of Hearing Body

A Hearing Body member, Presiding Officer, or Technical Advisor shall recuse himself or herself if participation in the enforcement proceeding would violate the Compliance Enforcement Authority's Conflict of Interest or Code of Conduct policy.

The Registered Entity may raise an objection to any member of the Hearing Body, a Presiding Officer or Technical Advisor on grounds of a conflict of interest or the existence of other circumstances that could interfere with the that person's impartial performance of his or her duties. Such objections must be provided in writing and filed reasonably in advance of the start of the hearing and the Presiding Officer shall make a decision on the objection promptly. Upon request of the Registered Entity, the Hearing Body (without participation of the Hearing Body member, Presiding Officer, or Technical Advisor) may review the determination and, if so, shall issue a decision on the objection promptly.

3.0 Authorized Representatives

Both the Compliance Enforcement Authority and the Registered Entity shall submit to the Hearing Body the names of the persons authorized to represent them in the Hearing Process pursuant to Attachment 2—Rules of Procedure. Such persons shall be officers or equivalents of the Regional Entity and the Registered Entity that have the authority to act on behalf of the Regional Entity and the Registered Entity, respectively. In addition, a party shall advise the Hearing Body and the other party if the party will be represented by legal counsel.

4.0 Statement of Alleged Violation and Response by Registered Entity

The Registered Entity shall initiate the compliance hearing process in accordance with Section 5.1 of the NERC CMEP and Attachment 2—Rules of Procedure by filing with the Hearing Body Clerk a statement or complaint contesting the written Notice of Alleged Violation and proposed sanction and serving a copy upon the Compliance Enforcement Authority. Specifically, the Registered Entity shall file with the Hearing Body (with service of copies upon the Compliance Enforcement Authority) a written statement of reasons why the Alleged Violation is in error or a written statement of reasons why the proposed penalty or sanction is inappropriate (if applicable in the particular case), along with copies of all documents relied on by the Registered Entity to support its position. If the dispute involves a Registered Entity's proposed mitigation plan ("Registered Entity's Mitigation Proposal") that has not been accepted by the Compliance Enforcement Authority, the Registered Entity may initiate the hearing process by filing a request for hearing with the Hearing Body Clerk and serving a copy upon the Compliance Enforcement Authority.

Within five (5) business days after the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed, the Compliance Enforcement Authority's designated representative shall file with the Hearing Body (with copies to the Registered Entity) a copy of the written Notice of the Alleged Violation and proposed sanction that was originally provided to the Registered Entity, along with copies of any non-privileged or non-exempt documents gathered and reviewed by the Compliance Enforcement Authority in the course of determining an Alleged Violation has occurred and in determining the proposed sanction or penalty.

If the hearing involves the question of whether a Registered Entity's Mitigation Proposal should be accepted, within twenty (20) days after the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed, the Compliance Enforcement Authority shall file a report stating why the Registered Entity's Mitigation Proposal was not accepted. If the hearing involves a Registered Entity's Mitigation Proposal, the Registered Entity shall file its proposed Mitigation Plan and supporting information stating why the Mitigation Plan should be accepted within thirty (30) days after the date the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed.

5.0 Setting of Hearings and Conferences

The Hearing Body shall set a date for an initial conference within thirty (30) days after the date the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed. At the initial conference, the Hearing Body shall establish specific procedures for the hearing including (1) any procedures for exchange of additional documents, (2) any written testimony, (3) the hearing date(s), and (4) dates for any briefs. Subject to Section 6.0 and the Attachment 2—Rules of Procedure, each party shall be entitled to (1) present the testimony of witnesses, (2) cross-examination of opposing witnesses, (3) make an oral presentation of position, and (4) file a written post-hearing brief.

The Hearing Body may hold additional conferences. All notices of conferences and hearings shall set forth the date, time and place of hearing. The Hearing Body shall issue a written order setting forth the agreements and rulings made at each conference.

By agreement of the parties or order of the Hearing Body, any conference or hearing may be conducted via teleconference, except that, subject to section 6.0 of this hearing process, witnesses shall personally appear at the hearing.

All prehearing conferences and hearings shall be open to the public, except when the use of a closed meeting is authorized by Texas law.

6.0 Conduct of Hearing

The hearing will be conducted under the provisions of this section 6.0 and the Attachment 2— Rules of Procedure.

The hearing need not be held on consecutive days, and shall be held at the offices of the Hearing Body unless the Hearing Body decides on a different location after consulting with the parties.

The party requesting transcription of the hearing, the Registered Entity or Compliance Enforcement Authority, will arrange and pay for transcription of the hearing.

The Hearing Body shall direct the direct testimony of any witnesses be in written form in accordance with Attachment 2— Rules of Procedure. All witnesses shall be required to appear in person, unless waived by the parties and the Hearing Body. Motions shall be made and decided, evidence shall be presented, and a record shall be made in accordance with Attachment 2— Rules of Procedure.

7.0 Submission of Post-Hearing Briefs

The parties may submit post-hearing briefs on a schedule established by the Hearing Body pursuant to Attachment 2— Rules of Procedure. The parties may, and on request of the Hearing Body shall, submit proposed findings of fact and conclusions of law.

8.0 Record of the Compliance Hearing

If applicable, copies of the following documents shall be maintained by the Hearing Body as the record of the hearing process:

- (1) The written notice that a request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive has been filed with the Hearing Body Clerk;
- (2) The Notice of Alleged Violation and sanction issued by the Compliance Enforcement Authority and the response filed by the Registered Entity, including in each case all attachments thereto and documents provided therewith;
- (3) If the hearing involves a Registered Entity's Mitigation Proposal, (a) the Registered Entity's Mitigation Proposal and supporting information as to why the Registered Entity's Mitigation Proposal should be accepted and (b) the report of the Compliance Enforcement Authority stating why the Registrant's Mitigation Proposal was not accepted;
- (4) Any requests for recusal of a member of the Hearing Body, a Presiding Officer, or a Technical Advisor, and any responses to such requests;
- (5) All motions, notices and responses filed by the parties during the hearing process;
- (6) All documents that set forth or that summarize any ex parte communications;
- (7) All notices and rulings issued by the Hearing Body during the hearing process;
- (8) All interlocutory orders;
- (9) All written testimony and all exhibits received into evidence;
- (10) All written testimony and documentary exhibits that were proffered but not admitted into evidence;
- (11) Any transcript(s);
- (12) The parties' post-hearing briefs, any exceptions to the draft recommendation, any motions for reconsideration or rehearing, and any other post-decision briefing or motion;
- (13) The draft recommendation of the Presiding Officer, if any; and
- (14) The final recommendation of the Hearing Body.

9.0 Timing of Written Recommendation to the Chief Compliance Officer

The Hearing Body shall issue its written final recommendation to the Chief Compliance Officer within thirty (30) days following the submission of post-hearing briefs, or, if

briefing is waived, following the conclusion of the hearing. The Hearing Body may in its discretion extend the time for the issuance of the written final recommendation to the Chief Compliance Officer for up to an additional sixty (60) days. The written final recommendation shall state the opinion of the Hearing Body with respect to Alleged Violations of Reliability Standards and proposed penalties or sanctions at issue in the hearing. If the hearing involves a Registered Entity's Mitigation Proposal, the written final recommendation shall either propose acceptance or rejection of the Registered Entity's Mitigation Proposal. If the proposed Registered Entity's Mitigation Proposal is recommended for rejection, the Hearing Body may specify the provisions of an alternative plan of mitigation that the Registered Entity should be required to implement. The written final recommendation shall explain the reasons for the Hearing Body's conclusions and cite the testimony and exhibits relied on by the Hearing Body in reaching its opinions. Copies of the written final recommendation shall be served electronically and by certified mail on the Registered Entity and on the Compliance Enforcement Authority's designated representative at the time it is issued to the Chief Compliance Officer.

9.1 Written Decision by the Chief Compliance Officer

The Chief Compliance Officer shall issue his written decision accepting, rejecting or modifying the Hearing Body's recommendation, within twenty (20) business days following the issuance of the Hearing Body's written final recommendation. The Chief Compliance Officer may extend the date for issuance of his written decision for an additional twenty (20) business days in his sole discretion. The Chief Compliance Officer's written decision shall state the conclusion of the Chief Compliance Officer with respect to Alleged Violations of Reliability Standards and proposed penalties or sanctions at issue in the hearing. If the hearing involves a Registered Entity's Mitigation Proposal, the written decision shall either accept or reject the Registered Entity's Mitigation Proposal. If the proposed Registered Entity's Mitigation Proposal is rejected, the Chief Compliance Officer may specify the provisions of the Registered Entity's Mitigation Proposal that the Registered Entity should be required to implement, together with other mitigation measures the Chief Compliance Officer shall require. The written decision shall explain the reasons for the Chief Compliance Officer's conclusions and cite the testimony and exhibits relied on by the Chief Compliance Officer in reaching its conclusions. Copies of the written decision shall be served electronically and by certified mail on the Registered Entity, on the Compliance Enforcement Authority's designated representative, and on the Hearing Body.

9.2 NERC Appeal Process

The Registered Entity may appeal an adverse decision of the Chief Compliance Officer to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410.

10.0 Expedited Hearing Process for Disputes Concerning Remedial Action Directives

A Registered Entity that disputes a Remedial Action Directive issued by a Compliance Enforcement Authority may request an expedited hearing. To facilitate the expedited hearing, the Compliance Enforcement Authority may request that the Hearing Body convene for purposes of the expedited hearing process. The following expedited procedures shall be followed:

- (1) The Registered Entity shall file its written response the Remedial Action Directive and request for emergency hearing with the Hearing Body, with a copy to the Compliance Enforcement Authority's designated representative within two (2) business days after receipt of the Remedial Action Directive. The Hearing Body may appoint a Presiding Officer to conduct all proceedings under this Section 10.0, except for the issuance of a final recommendation to the Chief Compliance Officer.
- (2) The Hearing Body shall be convened for purposes of a prehearing, and if requested, for interim relief, not less than two (2) nor more than five (5) business days after receipt of the Registered Entity's request for a hearing.
- (3) The Hearing Body shall conduct a hearing on the matter, in person or by teleconference, within thirty (30) days after the Hearing Body is convened. At the hearing, the Compliance Enforcement Authority shall explain why the Remedial Action Directive should be complied with, and the Registered Entity shall explain why the Remedial Action Directive is not necessary or should be modified.
- (4) The Hearing Body shall issue a summary written recommendation to the Chief Compliance Officer within twenty (20) business days following the hearing, stating whether the Registered Entity should or should not be required to comply with the Remedial Action Directive and identifying any modifications to the directive that it finds appropriate.
- (5) The Chief Compliance Officer shall issue a summary written decision within ten (10) business days following the Hearing Body's issuance of its summary written recommendation, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the directive that it finds appropriate.
- (6) If the Chief Compliance Officer's summary written decision concludes that the Registered Entity is required to comply with the Remedial Action Directive or any modification to such directive (including adjustments to the timetable for implementation), the Registered Entity shall be required to begin implementing the Remedial Action Directive upon receipt of the summary written decision, if it has not already implemented the Remedial Action Directive.
- (7) Within thirty (30) days following issuance of its summary written decision, the Chief Compliance Officer shall issue a full written decision regarding the Remedial Action Directive to the requirements of Section 9.0, above, that may be appealed consistent with Section 9.2.
- (8) This Section 10.0 provides procedures for the expeditious determination of the propriety of a contested Remedial Action Directive. Nothing in this Section shall be read to impair the Compliance Enforcement Authority's authority to issue a Notice of Alleged Violation and proposed sanction on alleged violations of standards addressed by a Remedial Action Directive or on other alleged violations occurring contemporaneously with the Remedial Action Directive or at any other time using the non-expedited procedures of this Attachment 1 or Attachment 2— Rules of Procedure.

ATTACHMENT 2 TO EXHIBIT D – TEXAS RE RULES OF PROCEDURE

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 to the Texas Regional Entity, a division of Electric Reliability Council of Texas (“Texas RE” or “Compliance Enforcement Authority”) (“Rules of Procedure”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority and Hearing Board, as defined herein, in hearings in the ERCOT region of the United States conducted into (a) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (b) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Rules of Procedure shall be conducted before the Public Utility Commission of Texas (“Commission”), as is further provided herein.

1.1.2 Deviations and Exceptions

- (a) To the extent permitted by law, any provision in these Rules of Procedure may be waived, suspended or modified by the Presiding Officer or the Hearing Body, as defined in Section 1.1.5, for good cause shown, either upon the Presiding Officer’s or the Hearing Body’s own motion or upon the motion of any Party.
- (b) Where an issue is not addressed by the terms of these Rules, the Hearing Body shall use the Chapter 22 Procedural Rules.
- (c) The following provisions of Chapter 22 shall not be applicable to proceedings brought under these Procedural Rules:
 - (1) P.U.C. PROC. R. § 22.32;
 - (2) P.U.C. PROC. R. § 22.33;
 - (3) P.U.C. PROC. R. § 22.35;
 - (4) P.U.C. PROC. R. §§ 22.51-22.54;
 - (5) P.U.C. PROC. R. § 22.56;
 - (6) P.U.C. PROC. R. § 22.71(j);
 - (7) P.U.C. PROC. R. §§ 22.102(a)(3), (4) and (c);
 - (8) P.U.C. PROC. R. §§ 22.103-22.105;
 - (9) P.U.C. PROC. R. §§ 22.125-22.126;
 - (10) P.U.C. PROC. R. § 22.202(e);
 - (11) P.U.C. PROC. R. §§ 22.206-22.207;
 - (12) P.U.C. PROC. R. §§ 22.241-22.246;
 - (13) P.U.C. PROC. R. §§ 22.251-22.252;

- (14) P.U.C. PROC. R. § 22.263(d); and
 - (15) P.U.C. PROC. R. §§ 22.281-22.284.
- (d) For purposes of this Attachment 2—Rules of Procedure, the following shall supplement the terms of a Chapter 22 Rule, as specified:
- (1) P.U.C. PROC. R. § 22.31. The following subsection (d) shall be added:
 - “(d) The Hearing Body Clerk shall designate each proceeding brought under these rules as a docket.”
 - (2) P.U.C. PROC. R. § 22.72(e). The following sentence shall be added at the end of this subsection:
 - “A party or its authorized representative shall also provide in its signature block one or more electronic mail addresses to which service may be made.”
 - (3) P.U.C. PROC. R. § 22.74(b). The following sentence shall be added at the end of this subsection:
 - “(b) . . . Service may be made by electronic mail to the email address included in a signature block of a party or its authorized representative.

* * *

 - “(4) Service by email shall be complete upon transmission of the communication from the electronic mail server of the serving party.”
- (e) All proceedings filed under these rules shall be conducted under the Commission’s Chapter 22 Procedural Rules, as modified herein, but may not be referred to the State Office of Administrative Hearings.

1.1.3 Standards for Discretion

The Hearing Body’s discretion under these Rules of Procedure shall be exercised to accomplish the following goals:

- (a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- (b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Parties should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Party that would otherwise result from another Party’s failure to act diligently and in good faith.
- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Party or interest group.

- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

- (a) These Rules of Procedure shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Section 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- (b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- (c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

1.1.5 Definitions

- (a) Unless otherwise defined, as used in these Rules of Procedure (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

"Bulk-Power System," for the purposes of these Rules of Procedure, has the meaning set forth in 16 U.S.C. §824o(a)(1).

"Chapter 22" or "Commission Procedural Rules" shall mean the Chapter 22 Procedural Rules of the Commission, 16 TEX. ADMIN. CODE ch. 22., and be cited as "P.U.C. PROC. R. § []."

"Chief Compliance Officer" means the Chief Executive Officer of the Texas Regional Entity.

"Commission" means the Public Utility Commission of Texas.

"Compliance Enforcement Authority Clerk," as designated by the Compliance Enforcement Authority.

"Compliance Enforcement Authority" means the Regional Entity, by and through its Chief Compliance Officer.

"Compliance Enforcement Authority's area of responsibility" means the Texas Regional Entity's corporate region.

"Critical Energy Infrastructure Information" means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could

be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software, and data that are essential to the Reliable Operation of the Bulk-Power System.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. §39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Filing Clerk” or “Hearing Body Clerk” means the Central Records filing clerk of the Public Utility Commission of Texas.

“Hearing Body” means the Public Utility Commission of Texas.

“Mitigation Plan” means an action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent reoccurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority Decision, settlement agreement, or otherwise.

“Party” means any Person who is allowed or required to participate in a proceeding conducted pursuant to these Rules of Procedure. The term “Party” as used herein shall include the members of the Compliance Staff of the Compliance Enforcement Authority that participate in a proceeding.

“Penalty” as used herein includes all penalties and sanctions that may be imposed pursuant to 16 U.S.C. §824o-1 and applicable regulations, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Presiding Officer” or “Hearing Examiner” means an individual employed or contracted by the Hearing Body and designated by the Hearing Body to preside over hearings conducted pursuant to these Rules of Procedure.

“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.

“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with the Regional Entity pursuant to 18 C.F.R. § 39.2.

“Regional Entity” means Texas Regional Entity or Texas RE, a division of Electric Reliability Council of Texas.

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent threat of harm.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation or contested Mitigation Plan that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by the Compliance Enforcement Authority who have the authority to make initial determinations of Registered Entities’ compliance with or violation of the Reliability Standards and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, Hearing Body employee, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Presiding Officer and/or the Hearing Body.

- (b) For purposes of this Attachment 2--Rules of Procedure and in application to any proceeding brought under these rules, the following terms shall be substituted for the term used in a Chapter 22 rule:

“Administrative law judge” shall mean and refer to the defined term “Presiding Officer.”

“Central records” shall mean “Hearing Body Clerk.”

“Final order” shall mean “final recommendation.”

“Proposal for decision” shall mean “draft recommendation.”

“Public utility” shall mean “party.”

- (c) If a term is defined in this Attachment 2—Rules of Procedure and in Chapter 22, the meaning expressed herein shall prevail.

1.1.6 Interventions Are Not Permitted

The Respondent(s) and Compliance Staff shall be Parties to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Party to the proceeding.

1.1.7. Proceedings Open to the Public

All hearings, oral arguments, and meetings of the Hearing Body shall be open to the public, and every notice, ruling, order or any other issuance of the Presiding Officer or Hearing Body, and any transcript, made in any proceeding shall be publicly released unless a Party has requested that it be kept confidential in accordance with Texas law, and the Presiding Officer or Hearing Body determines that the information should not be released publicly.

1.1.8 Numbering and Docketing System

The Staff of the Compliance Enforcement Authority shall maintain a system of numbering proceedings before they are sent to the Hearing Body for a hearing under these procedures. A numbered proceeding shall be created within the Compliance Enforcement Authority upon the issuance of a notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authority, proceeding numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[RE]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year. If the proceeding is not settled and becomes a contested matter before the Hearing Body, the Hearing Body’s numbering and docketing system shall govern the tracking of such filings while under the Hearing Body’s administration.

1.2 Hold Harmless

A condition of a Party invoking these Rules of Procedure and participating in a hearing is that the Party agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, attorneys and experts (outside or in-house), Hearing Body members, Presiding Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct, or breach of confidentiality.

1.3 Initiation of the Hearing Process

Except when contesting a Remedial Action Directive pursuant to section 1.5 of these Rules of Procedure, a Registered Entity may file a response or complaint with the Compliance Enforcement Authority and the Filing Clerk requesting a hearing if:

- (a) The Registered Entity contests a Notice of Alleged Violation as to the existence or scope of the alleged violation, the proposed Penalty, or both; or
- (b) The Registered Entity contests the Compliance Enforcement Authority's rejection of Registered Entity's Mitigation Proposal in whole or in part.

A Registered Entity must file its hearing request within forty (40) days after (i) the Registered Entity files its response to the notice of Alleged Violation; or (ii) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's Mitigation Proposal, whichever is applicable. If the Registered Entity does not file a hearing request within the time period set forth in this Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff's stated position on the Registered Entity's Mitigation Proposal, whichever is applicable.

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its disagreement with a Registered Entity's Mitigation Proposal shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's position on the Registered Entity's Mitigation Proposal.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- (a) The Registered Entity's Self-Reporting of a violation;
- (b) The Notice of Alleged Violation and the Registered Entity's response thereto; or
- (c) The Registered Entity's Mitigation Proposal and the Compliance Staff's statement identifying its disagreement with the Registered Entity's Mitigation Proposal.

1.4 General Hearing Procedure

Except as otherwise specified in this Attachment 2—Rules of Procedure, the procedures and timelines set forth in Chapter 22 shall govern the conduct of a hearing arising under these rules.

1.4.1 Hearing Body

The Hearing Body, consisting of a quorum of the Commission, shall hear all proceedings brought under these Rules of Procedure, unless the Commission elects to delegate all or part of the proceeding to a Presiding Officer who is a member of the Commission Staff. The Hearing Body is vested with the exclusive authority to issue a final recommendation to the Chief Compliance Officer for the resolution of the issue(s) presented. The following procedures shall also apply:

- (a) The Hearing Body or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, or to submit questions to the Presiding Officer to submit to a Party or any witness at any such hearing. No more than one member of the Hearing Body may be present for any prehearing

conference, status hearing, or evidentiary hearing unless the Hearing Body has complied with the Open Meetings requirements of Texas law.

- (b) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a final recommendation to the Chief Compliance Officer. In issuing a final recommendation to the Chief Compliance Officer, the Hearing Body shall consider the Presiding Officer's draft recommendation but shall have the authority to reject, modify or approve the draft recommendation in whole or in part in issuing its final recommendation.

1.4.2 Technical Advisor

The Presiding Officer or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not otherwise participate in the proceeding on which such technical advice would be rendered.

If the Presiding Officer or Hearing Body uses a Technical Advisor to assist in any hearing, the Presiding Officer or Hearing Body shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) days of the Technical Advisor's assignment to the proceeding, and Parties to the hearing may raise objections to the Technical Advisor's participation within 10 business days of disclosure.

1.5 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Compliance Enforcement Authority will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive in accordance with these Rules of Procedure and Delegation Agreement, Exhibit D, Attachment 1, §10, by filing a written notice with the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following issuance of the Remedial Action Directive. If the Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Registered Entity shall simultaneously file with the Hearing Body Clerk a copy of the notice that it is contesting the Remedial Action Directive.

The Hearing Body Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene.

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

The Texas Regional Entity Division of Electric Reliability Council of Texas, Inc. (“Texas RE”) shall include in its annual budget submission to the North American Electric Reliability Corporation (“NERC”) amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC’s responsibilities as the ERO under the Act, as specified in the NERC Rules . These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

2. Allocation of Costs

Texas RE shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method or methods of allocating and calculating such dues, fees, or charges has been submitted to and approved by NERC and the Commission, in accordance with Section 8(b) of the delegation agreement. Texas RE shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net-energy-for load or such other data or information as is necessary to allocate and calculate Texas RE’s dues, fees, or charges under any other method of allocation or calculation that is to be used.

3. Collection of Funding

(a) NERC, Texas RE, and Electric Reliability Council of Texas, Inc. (“ERCOT”) have agreed that ERCOT shall act as the billing agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities, ERCOT Qualified Scheduling Entities (“QSEs”), or such other entities as agreed by NERC, Texas RE, and ERCOT. ERCOT and Texas RE agree that ERCOT shall: (i) issue all invoices to load-serving entities, QSEs, or other agreed entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoice; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC quarterly, in a timely manner. Texas RE shall confirm that ERCOT complies with these obligations, and shall notify NERC promptly of any compliance failures.

NERC shall submit invoices on a quarterly basis to ERCOT covering the NERC and Texas RE budgets approved for collection for the ERCOT region. Within ten (10) business days after receiving this quarterly invoice, ERCOT will electronically transfer to NERC the amount reflected in the invoice, in immediately available funds, unless ERCOT has been unable to collect and does not reasonably believe it can collect such amount from load-serving entities, QSEs, or other agreed entities, after exercise of commercially reasonable efforts. On the same day as ERCOT makes each electronic transfer of funds to NERC, ERCOT or Texas RE will send an e-mail to the

Chief Financial Officer of NERC either (i) confirming that the full invoiced amount has been electronically transmitted to NERC or (ii) stating that ERCOT is unable to collect the full amount of the NERC invoice and reasonably believes that it will not be able to collect the full amount of the NERC invoice from load-serving entities, QSEs, or other agreed entities after exercise of commercially reasonable efforts and confirming the amount that has been transmitted to NERC. In the event ERCOT is unable to transfer to NERC the full invoiced amount, ERCOT shall also send to NERC and Texas RE a listing of any load-serving entity, QSE or other agreed entity that has not fully paid its load ratio share and an itemization of the collections that ERCOT received, by entity and amount. ERCOT will maintain a detailed list of the entities from which payments were collected and the amount collected from each entity.

ERCOT and Texas RE agree that they shall not in any way use their position as billing or collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of Texas RE's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this agreement. ERCOT's confirmation of its agreements as set forth in this Paragraph 3 is attached hereto as Attachment 1.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund Texas RE's costs identified in Section 1 of this Exhibit E in four equal quarterly payments, within ten (10) business days after receiving the remittance from ERCOT.

4. Application of Penalties

All penalty monies received by Texas RE, other than penalty monies it receives from its affiliated operational entity, ERCOT, shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received by Texas RE from its affiliated operational entity, ERCOT, shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

5. Description of Non-Statutory Activities

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this Exhibit E (such functions and activities referred to in this Section 5 as "statutory activities"), Texas RE shall also perform the following other functions and activities (referred to in this Section 5 as "non-statutory activities"):

- Investigation of market participants' compliance with the ERCOT Protocols and Operating Guides which contain the Regional criteria for planning and operating reliable interconnected bulk electrical systems in the ERCOT region, and assistance or cooperation in enforcement of violations ("ERCOT Compliance Activities"), so long as the ERCOT Compliance Activities do not conflict with the statutory activities, including: (i) maintaining a record of all material occurrences of non-compliance with ERCOT procedures and tracking recurrence of such material occurrences of non-compliance; (ii) promptly providing information to and responding to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures; (iii) maintaining a record of the resolutions of such material occurrences of non-compliance and of corrective actions taken by the

market participants in each instance; and (iv) informing the Public Utility Commission of Texas Staff immediately if the material occurrence of non-compliance is not resolved.

- Development of policies, processes, standards, and procedures to implement the ERCOT Compliance Activities.

ERCOT, of which Texas RE is an independent division, operates as an independent system operator under the jurisdiction of the Public Utility Commission of Texas.

Texas RE shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs and expense it incurs in the performance of its non-statutory functions separately from the costs and expense it incurs in the performance of its statutory functions:

- A. Texas RE segregates the funding for its statutory activities and non-statutory activities by recording the funding transactions in separate and distinct general ledger accounts, in accordance with Generally Accepted Accounting Principles.
- B. Texas RE utilizes and must maintain a time recording and expense management system under which employee time and expenses incurred in the conduct of non-statutory activities will be tracked to ensure that they are not funded by NERC remittances intended for the funding of statutory activities.
- C. Texas RE has adopted a detailed system of Account Codes, Department Codes and Activity Codes which are used in recording expenses. The Activity Codes are specific to statutory activities and non-statutory activities. The Texas RE Activity Codes are modeled on the NERC Functional Categories. Texas RE shall use Department Codes that are unique to Texas RE to record all costs and expenses incurred by Texas RE for statutory activities and non-statutory activities.
- D. Texas RE shall use Activity Codes to appropriately track its costs for statutory activities separately from its costs for non-statutory activities.
- E. Where employee time or an expense affects multiple activities, Texas RE will use an accurate basis of allocation of the time or expense between the activities being performed based on specific metrics, such as time tracking, data observations or total cost input. Total cost input relates the portion of the expense to the total expense to establish an appropriate method to allocate.

Texas RE shall provide its budget for such non-statutory activities to NERC at the same time that Texas RE submits its annual budget request to NERC pursuant to Section 1. Texas RE's budget for non-statutory activities that is provided to NERC shall contain a detailed list of Texas RE's non-statutory activities. Texas RE agrees that no costs of non-statutory activities are to be included in the calculation of Texas RE dues, fees, and other charges for its statutory activities pursuant to this Agreement.

Confirmation of Electric Reliability Council of Texas, Inc. (ERCOT)

ERCOT has agreed to act as the billing agent on behalf of NERC to bill and collect assessments for the costs of activities under Section 215(c) of the Federal Power Act from load-serving entities, Qualified Scheduling Entities (QSEs), or such other entities as agreed by North American Electric Reliability Corporation (NERC), Texas Regional Entity (Texas RE), and ERCOT. ERCOT agrees that ERCOT shall: (i) issue all invoices to load-serving entities, QSEs, or other agreed entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoice; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC on a quarterly basis, in a timely manner.

On a quarterly basis, NERC will send ERCOT an invoice covering the NERC and Texas RE budgets approved for collection for the ERCOT region. Within ten (10) business days after receiving this invoice, ERCOT will electronically transfer to NERC, in immediately available funds, the amount reflected in the NERC invoice, unless ERCOT has been unable to collect and does not reasonably believe it will be able to collect this amount from load-serving entities, QSEs, or other agreed entities after exercise of commercially reasonable efforts. On the same day as ERCOT makes its electronic transfer of funds to NERC, ERCOT will send an e-mail to the Chief Financial Officer of NERC, copying the Texas RE Chief Compliance Officer and the Texas RE financial analyst, either (i) confirming that the full invoiced amount has been electronically transmitted to NERC; or, (ii) stating that ERCOT is unable to collect the full amount of the NERC invoice and reasonably believes that it will not be able to collect the full amount of the NERC invoice from load-serving entities, QSEs, or other agreed entities after exercising commercially reasonable efforts and confirming the amount that has been transmitted to NERC. In the event ERCOT is unable to transfer to NERC the full invoice amount, ERCOT shall also send to NERC and Texas RE a listing of any load-serving entity, QSE, or other agreed entity that has not paid its load ratio share and an itemization of the collections that ERCOT received by entity and amount. ERCOT shall maintain a detailed list of the entities from which payments are collected and the amount collected from each entity.

ERCOT agrees that it shall not in any way use its position as billing or collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of Texas RE's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this agreement.

Electric Reliability Council of Texas, Inc.

By: _____

Name: _____

Title: _____

ATTACHMENT 10B
REDLINED VERSION

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND TEXAS REGIONAL ENTITY – A DIVISION OF ELECTRIC RELIABILITY
COUNCIL OF TEXAS, INC.**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made as of April 5, 2008, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Texas Regional Entity – a Division of Electric Reliability Council of Texas, Inc. (“Texas RE”), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and Texas RE may be individually referred to herein as “Party” or collectively as “Parties.”

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

WHEREAS, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006; (114 FERC ¶ 61, 104; hereafter “Order 672”);

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the Commission's regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as Texas RE provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, Texas RE is organized on an Interconnection-wide basis and therefore is entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through Texas RE to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

WHEREAS, NERC has concluded that Texas RE meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and Texas RE, agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to Texas RE to propose and enforce Reliability Standards pursuant to the Act.

(d) Texas RE Rules means the bylaws, a rule of procedure or other organizational rule or protocol of Texas RE.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

2. Representations.

(a) For purposes of its Delegated Authority, Texas RE hereby represents and warrants to NERC that:

(i) Texas RE is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. Texas RE is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any Texas RE decision and no single industry sector can veto any Texas RE decision. The relevant portions of such bylaws are attached hereto as **Exhibit B**, and as so attached are in full force and effect. No other such corporate governance documents are binding upon Texas RE.

(ii) As set forth in **Exhibit C** hereto, Texas RE has developed a standards development procedure, which provides the process that Texas RE may use to develop Regional Reliability Standards and Regional Variances that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, Texas RE has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to Texas RE that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

3. Covenants.

(a) During the term of this Agreement, Texas RE shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the Texas RE Rules without

NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and Texas RE shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of Texas RE in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to Texas RE for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both Texas RE and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, Texas RE shall comply with the applicable provisions of NERC's

Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. Reliability Standards.

(a) In connection with its Delegated Authority, Texas RE shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords Texas RE reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards and Regional Variances through Texas RE's process as set forth in **Exhibit C**. Proposals approved through Texas RE's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. Texas RE may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the Texas RE shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the Texas RE during NERC's review of the proposal.

6. Enforcement.

(a) In connection with its delegated authority pursuant to this Agreement, Texas RE shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and Texas RE agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. Texas RE may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, Texas RE agrees to comply with the NERC Rules in implementing this program.

(b) Texas RE shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and Texas RE shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. However, any hearing conducted by the Public Utility Commission of Texas (PUCT) concerning an alleged violation in the ERCOT power region shall be conducted as a public hearing and any evidence or other submissions concerning the hearing,

except for information that is confidential or privileged under law, shall be publicly available. Following the hearing, the PUCT shall issue its recommendation on the appropriate resolution of the allegations in a written document that will be publicly available. Notwithstanding the foregoing, the disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by Texas RE shall be filed with NERC, in accordance with the NERC Rules.

(e) Texas RE shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) Texas RE shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, Texas RE shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review Texas RE's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) Texas RE shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

7. **Delegation-Related Services.** NERC will engage Texas RE on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

8. **Funding.** Texas RE and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund Texas RE activities necessary for Texas RE to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon Texas RE without providing appropriate funding to carry out such mandates;

(b) Texas RE and NERC agree that costs of carrying out Texas RE's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net-energy-for load or through such other formula as is proposed expressly provided for in the annual business plan and budget submitted by NERC and by Texas RE to and approved by NERC and the Commission. If Texas RE proposes to use a formula other than net energy for load beginning in the following year, Texas RE shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and Texas RE to the Commission pursuant to 18 C.F.R. §39.4, as set forth in **Exhibit E** for such year;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable

interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide Texas RE with the form for budget submittal no later than April 30 of the prior year.

(e) Texas RE shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other Texas RE activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The Texas RE budget submission shall include supporting materials, including Texas RE's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures, as well as the budget, supporting materials, and proposed allocation and method of collection for the costs of any approved regional advisory body. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. Texas RE shall follow NERC's prescribed system of accounts. [NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.](#)

(f) Texas RE's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve Texas RE's budget for meeting its responsibilities under the Delegation Agreement.

(h) Texas RE shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) Texas RE shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of Texas RE in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which Texas RE shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which Texas RE shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of Texas RE.

9. Assignment. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Texas RE may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit Texas RE from contracting with other entities to assist it in carrying out its Delegated Authority, provided Texas RE retains control and responsibility for such Delegated Authority.

10. Default and Cure. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by

written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

11. Term and Termination.

(a) This Agreement shall become effective April 5, 2008, pursuant to the March 21, 2008 order of the Federal Energy Regulatory Commission (122 FERC 61,245).

(b) The initial term of the Agreement shall be three (3) years [from the original effective date of May 16, 2007](#), prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that Texas RE continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If Texas RE meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of Texas RE's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time Texas RE may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

12. Limitation of Liability. Texas RE and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and Texas RE shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the Texas RE's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the Texas RE or NERC is found liable for gross negligence or intentional misconduct, in which case Texas RE or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

13. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

14. Confidentiality. During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or

narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or that issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. Amendment. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. Amendments to the NERC Rules. NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of Texas RE under this Agreement without first obtaining the consent of Texas RE, which consent shall not be unreasonably withheld or delayed. To the extent Texas RE does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of Texas RE under this Agreement, Texas RE shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by Texas RE to NERC and the Commission, or at such other time as may be mutually agreed by Texas RE and NERC.

17. Dispute Resolution. In the event a dispute arises under this Agreement between NERC and Texas RE, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other

period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

18. Notice. Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:
North American Electric
Reliability Corporation
116-390 Village Blvd.
Princeton, NJ 08540-5721
Attn: David Nevius

Facsimile: (609) 452-9550

If to Texas RE:
Texas Regional Entity
7620 Metro Center Drive
Austin, Texas 78744

Attn: Larry Grimm,
Chief [Executive Compliance](#) Officer & [CCO](#)
Facsimile: (512) 225-7165

19. Governing Law. When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. Headings. The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. Savings Clause. Nothing in this Agreement shall be construed to preempt or limit any authority that Texas RE may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

24. Execution of Counterparts. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION

TEXAS REGIONAL ENTITY – A
DIVISION OF ELECTRIC
RELIABILITY COUNCIL OF TEXAS,
INC.

By: _____

By: _____

Name: David A. Whiteley
Title: Executive Vice President

Name: Larry Grimm
Title: [Chief Executive Officer &
Chief Compliance Officer](#)

Date: March 28, 2008

Date: March 28, 2008

EXHIBIT A – REGIONAL BOUNDARIES

The ERCOT Region is 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. The ERCOT Region does not interconnect synchronously across state lines to import or export power with neighboring reliability regions. The ERCOT geographic region includes 200,000 square miles, 85% of Texas load, and 75% of Texas land area (does not include the Panhandle, El Paso area, and 2 areas of East Texas). The ERCOT Region includes the following Texas cities and towns: Dallas, Ft. Worth, Houston, San Antonio, Austin, Paris, Tyler, Nacogdoches, Lufkin, Bryan, College Station, Corpus Christi, Harlingen, Brownsville, Laredo, Brownwood, San Angelo, Abilene, Midland, Odessa, Fort Stockton, Monahans, Snyder, Vernon, Wichita Falls, Denton, Garland, Greenville, Waco, Temple, Killeen, Weatherford, and Graham, as indicated on the map below.

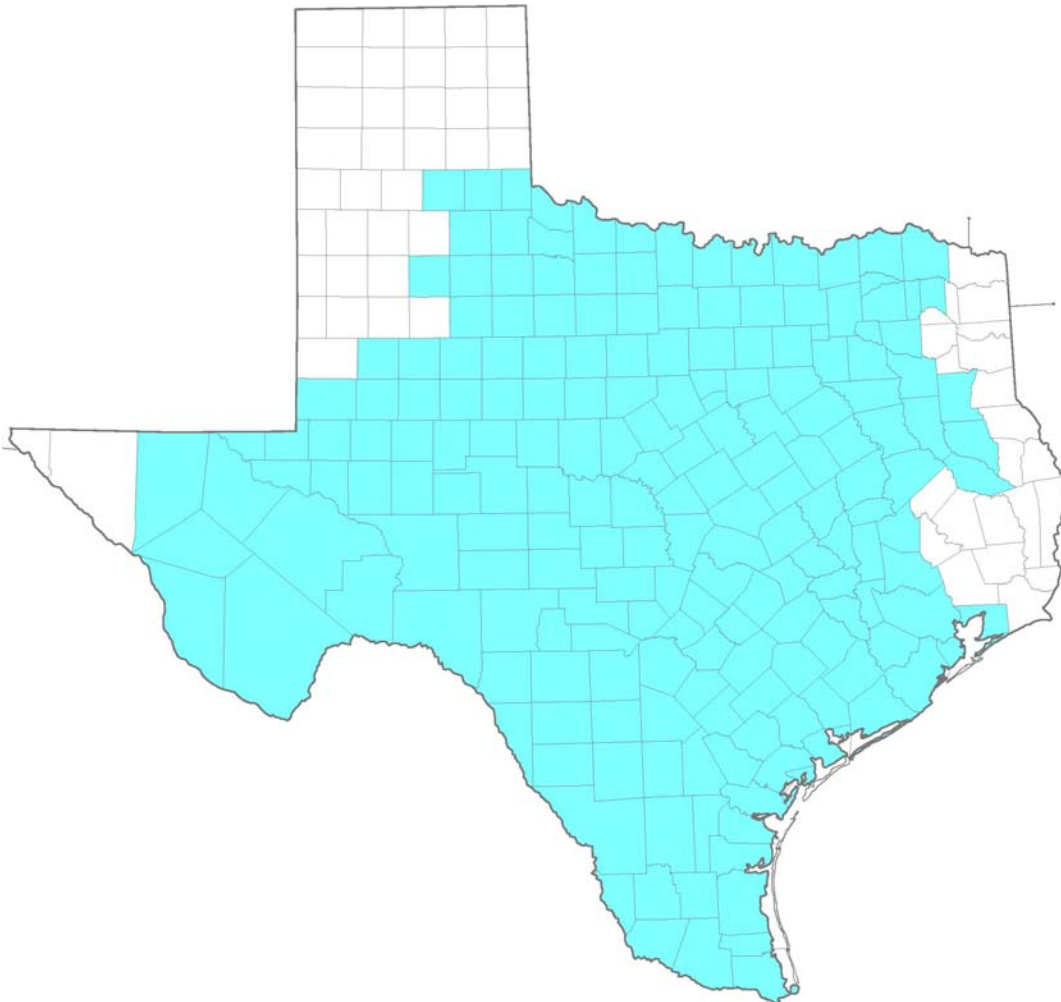


Exhibit B – Governance

~~Note: The complete ERCOT bylaws, including provisions applicable to the governance of ERCOT in its many state-law functions and to governance of the independent division of ERCOT, Texas Regional Entity, in its functions under this Amended and Restated Delegation Agreement, are attached hereto as Attachment 1 for informational purposes. Consistent with In the matter of: North American Electric Reliability Council, North American Electric Reliability Corporation, Docket No. RR06-1-008, and In the matter of: Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a Division of ERCOT, Docket No. RR07-1-001, Order on Rehearing, 120 FERC ¶61,260, ¶¶16-20 (Issued September 21, 2007), ERCOT and Texas Regional Entity respectfully request that (a) the Commission review, approve, and adopt only the ERCOT bylaws cited or quoted in Exhibit B below as Texas Regional Entity rules under the Commission's regulations; and (b) the Commission determine that the remainder of the ERCOT bylaws are not Texas Regional Entity rules under the Commission's regulations and do not require NERC or Commission approval.~~

CRITERION 1: The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

A. Texas RE is governed by a combination independent and balanced stakeholder board.

B. Section 4.2 of Texas RE's bylaws (the bylaws of Electric Reliability Council of Texas, Inc.) specify that its board shall have 16 members, as follows:

- A. Five (5) independent individuals who are unaffiliated with any electric market participant ("Unaffiliated Directors") who are each approved by the Public Utility Commission of Texas ("PUCT") for a three-year term;
- B. Six (6) electric market participant representatives (plus a segment alternate for each such representative) from each of the following market segments: independent generators, investor-owned utilities; power marketers; retail electric providers, municipally owned utilities, and cooperatives;
- C. Three (3) consumer representatives;
- D. CEO of ERCOT (as ex officio voting Director); and
- E. Chairman of the PUCT, as an ex officio non-voting Director.

C. Subsection 4.3 (b)(2) ii of Texas RE's bylaws define the requirements of "independence" as follows:

- a. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives, and household member) shall not have current or recent ties (within the last two years) as a director, officer or employee of a Market Participant or its Affiliates.
- b. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and any household member) shall not have direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates.

- c. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.”
- d. Unaffiliated Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority.

D. Texas RE’s bylaws achieve balance on the board because the board has representation from seven (7) segments (six (6) market segments plus consumer representatives) and five (5) independent directors, and Section 4.7 of the bylaws contains the following quorum and voting requirements:

Except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the seated Directors shall constitute a quorum for the transaction of business. The act of at least sixty-seven percent (67%) affirmative votes of the eligible voting Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Articles of Incorporation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.

CRITERION 2: The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

A. Texas RE or its affiliate is an RTO or ISO and therefore a user, owner, or operator of bulk power system facilities. Article 6 and Section 7.2 of Texas RE’s bylaws establish a strong separation between Texas RE’s oversight and operations functions, as follows:

Section 6.1 TRE Responsibilities and Duties. The TRE shall be a functionally independent division within ERCOT which shall be responsible for proposing, developing, implementing and enforcing Reliability Standards in accordance with the Delegated Authority. The TRE shall also be responsible for investigating compliance with and enforcing violations of the ERCOT Protocols (“ERCOT Compliance”), so long as the ERCOT Compliance activities do not conflict with the Delegated Authority. The TRE shall develop policies, processes, standards, and procedures to implement the Delegated Authority and the ERCOT Compliance activities. The TRE shall form a Reliability Standards Committee (“RSC”), comprised of members from all ERCOT Segments, to propose, receive, consider, authorize, and vote on Reliability Standards and Reliability Variances, in accordance with the Texas Regional Entity Standards Development Process and procedures. All proposed ERCOT-specific Reliability Standards and Reliability

Variances requests must be approved by the Board, prior to being submitted to NERC.

Section 6.2 TRE Independence. The TRE and its employees shall function independently of the other divisions, departments and employees of ERCOT. TRE employees shall be responsible for creating and monitoring a separate budget to be submitted to the Board for approval and then to the North American Electric Reliability Corporation (“NERC”) for approval, pursuant to a Delegation Agreement (“TRE Budget”). The portion of the TRE Budget which is for activities that are not related to the Delegated Authority but are for ERCOT Compliance activities will be approved by the PUCT. Except for ERCOT Compliance activities and any extraordinary activities that are specifically approved by NERC in the TRE Budget, the TRE shall be funded separately by NERC. The TRE shall (i) maintain separate books and records to account for its finances, separating income and expenditures for the Delegated Authority and the ERCOT Compliance Activities and (ii) pay a fair market rate for any goods and services obtained from ERCOT, or if a fair market rate is not readily determinable without undue effort or expense, at least the out-of-pocket cost incurred by ERCOT in respect thereof. The ERCOT acknowledges that the TRE Chief Compliance Officer and the TRE staff will conduct investigations into and will prosecute enforcement actions regarding the matters within the scope of the TRE’s responsibilities and duties, including investigations and prosecutions of ERCOT.

Section 6.3 TRE Management. The business and affairs of the TRE shall be managed directly by the Board, or a subcommittee thereof, to insure independence of the TRE from the other ERCOT operations and activities, including the ERCOT Independent System Operator functions. The Board shall hire a Chief Compliance Officer (“CCO”) who, under its supervision and direction, shall carry on the general affairs of the TRE as the chief executive officer. The CCO shall be independent of any market participant and shall be an independent member of the staff of ERCOT, reporting exclusively to the Board. The Board shall only hire a CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director. The Board may also appoint a financial director who will report to the CCO, with responsibility for overseeing the budgeting, finance and accounting functions necessary for the independent operation of the TRE. The TRE may retain outside advisors as it deems necessary. The CCO shall have the sole authority to retain or terminate such outside counsel and other advisors as the CCO may deem appropriate in his or her sole discretion. The CCO shall have the sole authority to approve related fees and retention terms for such advisors, in accordance with the TRE Budget. The CCO shall make an annual report and periodic reports to the Board concerning the activities and expenditures of the TRE, and the TRE shall have its separate financial statements reviewed or audited annually. The CCO shall ensure that the TRE files all required reports with NERC. CCO shall, in cooperation with the financial director of the TRE, monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board and NERC.

Section 6.4 TRE Employees. To the fullest extent practicable under applicable law, the TRE and the CCO shall be responsible for hiring, firing and compensating all TRE employees. TRE employees shall be compensated from the TRE budget. If permissible, and consistent with the Board's and CCO's compensation policies for the TRE employees, such employees may participate in insurance and other benefits extended to ERCOT employees, provided that the TRE reimburses ERCOT for the full cost of providing such benefits. The TRE is authorized to employ attorneys, and all such attorneys shall report to the CCO and shall have ethical and other obligations solely to the TRE and not to ERCOT. Such attorneys are expressly authorized and required to provide advice to the CCO and TRE regarding the Delegated Authority and ERCOT Compliance activities, including investigations and enforcement actions involving ERCOT. Such attorneys are specifically authorized to assist with the prosecution of enforcement actions relating to the Delegated Authority or ERCOT Compliance activities.

Section 6.5 Evaluation of TRE Performance. The Board shall monitor the TRE and CCO's performance, establish and review the CCO's compensation and provide annual, or at its election, more frequent, evaluations. The Board may receive and will consider input from the PUCT regarding the compliance and enforcement activities of the CCO and the TRE. It shall be the CCO's duty, in cooperation with the financial director of the TRE, to monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board, PUCT and NERC. The Board will consider input from the PUCT regarding the compliance and enforcement activities and performance of the CCO and TRE. Neither the CCO nor any TRE employee may be retaliated against by ERCOT or its Board for investigating or participating in any enforcement activities pursuant to the Delegated Authority. The Board may not terminate, discipline, or demote the CCO or any TRE employees, advisors or contractors because of compliance or enforcement activities conducted in good faith.

Section 7.2 CCO. The Board shall hire a Chief Compliance Officer ("CCO") who, under the Board's supervision and direction shall carry on the affairs of the TRE. The CCO shall comply with all orders of the Board and will coordinate with the NERC regarding activities relating to the Delegated Authority and with PUCT regarding ERCOT Compliance activities. All employees and contractors of the TRE shall report and be responsible, to the CCO. The CCO shall be responsible for employment-related decisions for all employees of the TRE that are not appointed by the Board and shall provide input to the Board with respect to TRE employees appointed by the Board. The CCO shall perform such other duties as may be determined from time to time by the Board, for the benefit of the TRE. The Board may only terminate, discipline, not renew, or demote the CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director.

CRITERION 3: If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

A. Texas RE has an open membership policy that permits full and fair participation of all stakeholders through their representatives, including in the development and voting on Regional Reliability Standards.

1. Membership Categories. Section 3.1 (a) of the Texas RE bylaws provides that members may qualify in one of the six market segments, if they have an actual financial interest in and are able to business in the ERCOT Region, or in the Consumer segment. Section 3.2 of the bylaws provides that members may qualify in one of three membership categories:

(a) Corporate Members – shall have the rights and obligations as described in these Bylaws including the right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 the ERCOT Board, TAC or any subcommittee of the Board or TAC. Adjunct Members shall be bound by the same obligations as other Members of ERCOT.

2. Membership Obligations. Section 3.3 of the bylaws provides that, (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 and promote comparable access to the transmission system by all users, and (b) consistent with applicable laws and regulations, Members must share information at ERCOT's or TRE's request as necessary for the furtherance of ERCOT or TRE's activity and consistent with PUCT and NERC rules relating to confidentiality.

3. Full and Fair Participation. Section 3.6 of the bylaws provides that no Entity may simultaneously hold more than one Corporate Membership or more than one seat on the Board, TAC, or RSC and that members may join as a Corporate member in only one segment. Subsection 3.6(c) provides that each Corporate member in good standing is entitled to one vote on each matter submitted to a vote of the Corporate members.

The Texas Regional Entity Standards Development Process ("TRE SDP," see Exhibit D) provides for due process, openness, and balance in Standards development and modification. Section IV of the TRE SDP provides that any person, acting as a representative of an organization which is directly and materially affected by the operation of ERCOT's Bulk Power

System (“BPS”) is allowed to request a Standard be developed or an existing Standard modified or deleted by creating a Standards Authorization Request (SAR). Section V of the TRE SDP provides that (1) any person representing an organization with a direct and material interest in the bulk power system has a right to participate in the standards development process by: a) expressing an opinion and its basis, b) having that position considered, and c) appealing any negative decision. Section V specifically provides that, “Participation is open to all organizations that are directly and materially affected by ERCOT’s BPS [Bulk Power System] reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs [Standards Drafting Teams] are open to ERCOT’s Membership and to others and all proposed SARs and Standards are posted for comment on the Texas RE Website.”

B. Texas RE charges no more than a nominal membership fee and agrees to waive the fee for good cause shown. Section 3.4 of the bylaws provides for the following fees:

Annual Member Service Fees for Corporate Members shall be \$2,000.
Annual Member Service Fees for Associate Members shall be \$500.
Annual Member Service Fees for Adjunct Members shall be \$500. The
Annual Member Service Fees for Residential and Commercial Consumer
Members shall be \$100 for Corporate Membership and \$50 for Associate
Membership; provided that there will be no charge for Annual Member
Service Fees for associations that qualify for Commercial Consumer
Membership or for other associations or persons, upon good cause shown.
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 Service Fees. Any
Member may request that the Member’s Annual Member Service Fees be
waived for good cause shown.

CRITERION 4: The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

A. Texas RE’s bylaws, procedural rules, and protocols assure balance in decision-making committees and subordinate organizational structures in how such groups are structured.

Section 6.1 of the bylaws provides that the Texas RE shall form a Reliability Standards Committee (“RSC”), comprised of members from all ERCOT Segments, to propose, consider and vote on Reliability Standards and Reliability Variances, in accordance with the Texas Regional Entity Standards Development Process and procedures. All proposed ERCOT-specific Reliability Standards and Reliability Variances requests and must be approved by the Board, prior to being submitted to NERC.

B. Texas RE’s bylaws, procedural rules, and protocols assure balance in decision-making committees and subordinate organizational structures in how such groups make decisions.

Step 1 of the TRE SDP provides that any entity that is directly or materially impacted by the operation of the Bulk Power System within the geographical footprint of the ERCOT Region may request the development, modification, or deletion of an ERCOT Standard or Regional Variance. The RSC, comprised of the seven Segments, will consider and determine which requests will be assigned for development, modification, or deletion (Article II and Step 1 of the TRE SDP). Step 6A of the TRE SDP provides that all members may vote on proposed new standards, standard revisions, or standard deletions (“Standards” herein), and at least one member from five of the seven segments must vote to constitute a quorum. Step 6A further provides that each Segment shall receive one Segment Vote, the representative of each voting member shall receive an equal fraction of its Segment Vote, and if a draft Standard receives 4.67 affirmative votes during the 15 day voting period, the RSC will forward the Standard to the board for a vote. Step 6B of the TRE SDP provides that, if a Standard does not timely receive 4.67 affirmative votes, the Standard may be remanded for further work and reposted for a second comment period before a second vote. The board may approve, remand to RSC or disapprove a proposed Standard.

C. Texas RE’s bylaws, procedural rules, and protocols assure no two industry sectors can control any action and no one industry sector can veto any action. The RSC is comprised of representatives from each Segment. The TRE SDP requires five (5) of the seven (7) Segments to constitute a quorum for a vote on a proposed Standard. (Step 6A of TRE SDP). Even if a proposed Standard does not receive a 4.67 or greater affirmative vote during a second voting period, the RSC will forward the Standard and implementation plan to the board.

CRITERION 5: The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

Texas RE’s bylaws, procedural rules, and protocols provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties, as follows:

A. Notice of Meetings. Section 4.6(a) of the bylaws requires the board to meet at least quarterly, with at least one meeting occurring in conjunction with the annual meeting of the members. Section 4.6(b) requires notice of any meeting of the board or any board subcommittee where at least one board director is present be given to each Director and made available electronically to the public on the Internet not less than one week before the date of the meeting; provided, however, the board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation). Section 4.6 (e) also provides that notice of the agenda, place, date, and hour of any meeting of the RSC be made available electronically to the public on the Internet not less than one week before the date of the meeting; provided that, RSC may meet on urgent matters on such shorter notice, not less than 2 hours, in the event of urgent matters.

B. **Public Meetings.** Section 4.6(e) of the bylaws requires that meetings of the board or board subcommittees be open to the public, although they, at their 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. Executive session is limited to matters involving sensitive matters including, but, 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 attorneys. Section 4.6(d) of the bylaws requires the board to 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.

C. Available Minutes. Section 4.6(f) of the bylaws requires the Secretary to keep minutes for all Board meetings.

D. Bylaws Amendment. Section 13.1 (d) (4) of the bylaws provides that an affirmative vote by at least four of the seven Segments is necessary to amend the bylaws, and, if permission for any amendment is required by NERC or FERC under the Delegation Agreement, the required permission must be obtained before such amendment is effective.

Attachment 1 to Exhibit B

ERCOT Amended and Restated Bylaws

**Note: Complete Set of ERCOT Bylaws Provided for
Informational Purposes Only**



AMENDED AND RESTATED BYLAWS
OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS
(A Texas Non-Profit Corporation)
Approved on September 18, 2007

AUSTIN
7620 Metro Center Drive
Austin, Texas 78744
Tel. 512.225-7000
Fax 512.225-7020

TAYLOR
2705 West Lake Drive
Taylor, Texas 76574
Tel. 512.248.3000
Fax 512.248.3095

ARTICLE 1 OFFICES

Section 1.1 Principal Office. The principal office of Electric Reliability Council of Texas, Inc. ("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 in the Texas Non-Profit Corporation Act.

Section 1.3 Texas Regional Entity Division. ERCOT will maintain separate facilities or a separate office within ERCOT's existing facilities in which a division called the Texas Regional Entity Division ("TRE") will function independently of the rest of the company for purposes of developing and enforcing federally mandated reliability standards within the ERCOT Region (the "Delegated Authority" as defined below). If the TRE maintains offices within ERCOT's facilities, it shall be required to pay ERCOT a fair market rate of rent.

ARTICLE 2 DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

1. **Affiliate.** This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. In cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.
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 or an organization representing the interests of commercial consumers in the ERCOT Region: (a) **Small Commercial Consumer** - A commercial consumer having a peak

demand of 1000 kilowatts or less (or an organization representing such consumers); (b) **Large Commercial Consumer** - A commercial consumer having a peak demand of greater than 1000 kilowatts (or an organization representing such consumers). 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. In the case of an organization representing interests of commercial consumers, the organization may have members who have interests in the electric industry provided that such members do not control, or have the ability to control, the activities of the consumer organization. Additionally, in order to qualify for Membership, the organization's membership must represent at least one million MWh of annual electric consumption in the ERCOT Region. The three Board Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.

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 Tex. Rev. Civ. Stat. 1396-50.01 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. **Delegated Authority.** The authority delegated by NERC to the TRE to propose and enforce Reliability Standards in the ERCOT Region, pursuant to the Federal Act.
6. **Entity.** An Entity includes an organization and all of its Affiliates.
7. **ERCOT Protocols.** The document adopted by ERCOT and approved by the Public Utility Commission of Texas ("PUCT"), as amended from time to time that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT.

8. **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.
9. **Federal Act.** Subtitle A of the Electricity Modernization Act of 2005, which added Section 215 to the Federal Power Act (16 U.S.C. § 824n).
10. **Unaffiliated Director.** A Director who is unaffiliated with a Market Participant as qualified under Section 4.3(b).
11. **Independent Generator.** Any entity that is not a Transmission and Distribution (“T&D”) Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW in the ERCOT Region, or (ii) is preparing to operate and control generation of at least 10 MW, 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 Public Utility Regulatory Act (“PURA”) §39.352 and that is not an Affiliate of a T&D Entity.
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);
 - 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. **Member.** The Member or the Member's appointed representative as the context so requires.
18. **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 municipally owned utility as defined in PURA §11.003 or
 - b. a River Authority as defined in Tex. Water Code §30.003.
19. **NERC.** The North American Electric Reliability Corporation, which has been authorized by the Federal Energy Regulatory Commission ("FERC") as the Electric Reliability Organization ("ERO") under the Federal Act.
20. **PUCT.** The Public Utility Commission of Texas, which is the Texas state agency that has responsibility and oversight of the activities conducted by ERCOT.
21. **Reliability Standards.** The standards adopted by NERC which set forth the reliability requirements for planning and operating the North American bulk electric system, as specifically applicable to the ERCOT Region.
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 a end-use consumer, such as but not limited to, aggregators, power marketers, retail electric providers, transmission or distribution companies, cooperatives, municipals, or generators. The three Board Consumer Directors have the right to determine by majority vote of the Consumer Directors whether any applicant or member is ineligible, as described above, to become or remain a member of the Consumer Segment.
23. **Segment Alternate.** An elected designated alternate Board representative who can attend meetings in the absence of a Director and vote on the absent Director's behalf in the event that such Director cannot attend a Board meeting. Each Segment Alternate must meet all qualifications of a Director and shall receive all Board materials.
24. **Texas Regional Entity Division ("TRE").** The functionally separate and independent division of ERCOT that is responsible for performing the activities and functions required: (i) pursuant to the Delegated Authority and (ii) for compliance monitoring and enforcement of the ERCOT Protocols.

25. **Transmission and Distribution 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.

ARTICLE 3 MEMBERS

Section 3.1 Membership.

- (a) Members must qualify in one of the following segments as defined in Article 2:
- (1) Cooperative;
 - (2) Independent Generator;
 - (3) Independent Power Marketer;
 - (4) Independent REP (For the purposes of Segment classification, an aggregator, if such Member does not fit in any other classification, shall participate as an Independent REP);
 - (5) Investor Owned Utility;
 - (6) Municipal; or,
 - (7) Consumer – three subsegments: Commercial, Industrial, and Residential. The Commercial Consumer subsegment is further divided into Large and Small Commercial Consumers.
- (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 right to vote on all matters submitted to the general membership (such as election of Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 Directors, election of TAC Representatives and amendments to the Articles of Incorporation 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 the ERCOT Board, TAC or any subcommittee of the Board or 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 and promote comparable access to the transmission system by all users.
- (b) Consistent with applicable laws and regulations, Members must share information at ERCOT's or TRE's request as necessary for the furtherance of ERCOT or TRE activity and consistent with PUCT and NERC rules relating to confidentiality.

Section 3.4 Annual Member Services Fees. ERCOT provides various services, as determined by the Board, to its Members. In return for such services, each Member shall pay its Annual Member Services Fees within thirty (30) days after receipt of ERCOT's annual statement of such fees. Failure to do so shall constitute such Member as being in arrears. Except as provided below, Annual Member Service Fees for Corporate Members shall be \$2,000. Annual Member Service Fees for Associate Members shall be \$500. Annual Member Service Fees for Adjunct Members shall be \$500. The Annual Member Service Fees for Residential and Commercial Consumer Members shall be \$100 for Corporate Membership and \$50 for Associate Membership; provided that there will be no charge for Annual Member Service Fees for associations that qualify for Commercial Consumer 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 Service Fees. Any Member may request that the Member's Annual Member Service Fees be waived for good cause shown.

Section 3.5 Representation. Each Member shall appoint a representative to receive notices from ERCOT and shall give to the ERCOT Chief Executive Officer ("CEO") or his 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 each of the following: the Board, TAC, and the Regional Standards Committee.
- (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 Services Fees for each Segment in which such Entity desires to participate as an Associate Member. Once an Entity has elected to be 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, an Entity no longer meets the qualifications for the Segment so elected, 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 the Board, TAC or any subcommittee of the Board or TAC.
- (c) Subject to any specific provisions in these Bylaws or the Articles of Incorporation, 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 Services Fees 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 of the record date of the meeting. Corporate Members that are not in good standing are not entitled to vote on any matters 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 and at a place to be established by the Board ("Annual Meeting"). Except for appointed Directors, the representatives of the Corporate Members shall confirm the members of the Board at the Annual Meeting, and conduct such other 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 weeks prior to the date of the meeting. Notice to Members of such meetings shall be by mail or facsimile. 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 days but not more than thirty-six 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. Except as otherwise provided in these Bylaws and in the Texas Regional Entity Standards Development Process, an act of fifty-one percent (51%) of the Corporate Members shall be the act of the Corporate Members.

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 a procedure that is fair and reasonable and is carried out in good faith. The Board may, by resolution, establish a procedure to terminate, expel, suspend, or sanction a Member. In the event that the Board does not adopt procedures, the following procedures shall apply:

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.

- (a) **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, her 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.
- (b) **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.
- (c) **Challenges.** Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one 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 (b) of this 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, whereupon it shall cease to be a Member, shall cease to be entitled or obligated to participate in the activities of the Board, TAC or any subcommittee of the Board or 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 fees and expenses for a fiscal year, the Member shall be obligated to pay its Annual Member Services Fees 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 include a total of sixteen (16) Directors apportioned among the Segments as follows:

- (a) One (1) Independent REP and one (1) Segment Alternate
- (b) One (1) Independent Generator and one (1) Segment Alternate
- (c) One (1) Independent Power Marketer and one (1) Segment Alternate
- (d) One (1) IOU and one (1) Segment Alternate
- (e) One (1) Municipal and one (1) Segment Alternate
- (f) One (1) Cooperative and one (1) Segment Alternate
- (g) Three (3) Consumers: the Public Counsel, representing Residential Consumers and Small Commercial Consumers, as an *ex officio* voting member, one (1) Large Commercial, and one (1) Industrial

- (h) Five (5) Unaffiliated Directors
- (i) The CEO as an *ex officio* voting member
- (j) The Chair of the PUCT as an *ex officio* non-voting member

Section 4.3 Selection, Tenure, and Requirements of Directors and Segment Alternates.

(a) Selection of Market Participant Directors and Segment Alternates:

- (1) For Consumer Directors, the following shall apply: The Director from the Commercial Consumer subsegment shall be selected by the Large Commercial Consumer Corporate Members and must be an employee of a Large Commercial Consumer which is either a Large Commercial Consumer Member of ERCOT or a member of an organization that is a Large Commercial Consumer Member of ERCOT. If there are no Large Commercial Consumer Corporate Members, then the current Large Commercial Consumer Director shall appoint the Large Commercial Consumer Director. The Industrial Consumer Director shall be elected by the Corporate Members of that subsegment.
- (2) Within each Market Participant elected Segment, only Corporate Members of the Membership Segment described for the available Board seat shall be allowed to elect a Director and a Segment Alternate for that seat.
- (3) The Board shall establish procedures for the election and appointment of new Directors, Segment Alternates and Representatives of TAC. A Segment may choose an alternate election procedure for the year by an affirmative vote of at least sixty-seven percent (67%) of members of that Segment.
- (4) Each Market Participant Director and each Segment Alternate, except as provided above for the Commercial Consumer Director, must be an employee of a Member. Unless otherwise provided in these Bylaws, if an employee of a Member is elected or appointed to serve on the Board, such person is only eligible to serve in such capacity so long as he or she is an employee of the same Member or organization as he or she was at the time of such election or appointment.

(b) Selection of Unaffiliated Directors:

- (1) The Nominating Committee shall consist of all of the voting Directors, other than the CEO.
- (2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Unaffiliated Directors shall be as follows:

- (i) Experience in one or more of these fields: senior corporate leadership; professional disciplines of finance, accounting, engineering or law; regulation of utilities; risk management; and information technology.
- (ii) Independence of any Market Participant in the ERCOT Region. Requirements of such independence include, but are not limited to, the following:
 - a. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have current or recent ties (within the last two years) as a director, officer or employee of a Market Participant or its Affiliates.
 - b. Unaffiliated Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives and household member) shall not have direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates.
 - c. To the extent that an Unaffiliated Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household or any other household member owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.
 - d. Unaffiliated Directors shall not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of an ERCOT board member, including the Delegated Authority.
- (iii) Residence in the State of Texas preferred.
- (iv) Other criteria as approved by the Board.
- (3) The Nominating Committee shall interview the qualified candidates and select, by at least a two-thirds majority, an Unaffiliated Director(s) (as such seat is vacant) to present to ERCOT Membership for its approval.
- (4) The Membership shall vote by Segment as described in Section 13.1(d) in favor or against the proposed Unaffiliated Director(s) during the same time period as election of the Market Participant Directors. A proposed Unaffiliated Director(s) that is approved by at least four out of seven

Segments shall become an Unaffiliated Director(s). Upon approval of the Membership, the proposed Unaffiliated Director(s) shall be filed with the PUCT for approval.

- (5) Pending PUCT approval, the Membership-approved Unaffiliated Director(s) shall be seated at the Annual Meeting. Should the PUCT not approve the Unaffiliated Director(s), the seated Director(s) shall remain seated until a new Unaffiliated Director(s) is elected and approved in accordance with the process set forth above.
- (c) Terms. The term for all Market Participant Directors shall be for one year. Any Market Participant Director may be reappointed or reelected for consecutive terms. The term for all Unaffiliated Directors shall be staggered three year terms unless changed by Amendment to these Bylaws. An Unaffiliated Director may be reelected for up to two consecutive terms. Notwithstanding the forgoing, in 2005, three of the five Unaffiliated Directors will be seated, serving subject to the final approval of the PUCT. Of these three, one position shall be for a term of two years and two positions shall be for three year terms.
- (d) Director Voting Weights. All voting Directors shall have a single vote each.
- (e) Alternates and Proxies. Directors serving in Segments with a Segment Alternate may not designate other alternate representatives and may not designate another Director as a proxy unless their Segment Alternate is unavailable. Unaffiliated Directors may designate another Director as a proxy if unable to attend a Board meeting. Consumer and *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.

Section 4.4 Chair and Vice Chair. Annually, the Board shall elect, from the Board's membership, by an act of the Board as set forth in Section 4.7, a Chair and a Vice Chair. Beginning no later than September 1, 2006, the Chair shall be one of the Unaffiliated Directors. The CEO shall not be qualified to act as the Vice Chair.

Section 4.5 Vacancies and Removal. A vacancy will occur if the Director elected or appointed is no longer employed by the Entity for which the Director was employed at the time of his/her election or appointment. A vacancy will also occur through any other resignation of a Director from the Board. A Director may be removed with or without cause at any time by whomever had the right to appoint such Director, or if elected, by an affirmative vote of sixty percent (60%) of the Members allowed to elect that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the eligible, remaining voting Directors. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the persons authorized to elect or appoint such Director. Any Director so chosen shall hold office until his successor is duly elected or appointed and qualified or until his earlier resignation, ineligibility 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 as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chair, Vice Chair, or the CEO or his designee.
- (b) Notice stating the purpose, business to be transacted, place, 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 week before the date of the meeting; provided, however, the Board may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation). Notice of the agenda, place, date, and hour of any meeting of the RSC shall be made available electronically to the public on the Internet not less than one week before the day of the meeting; provided however, the RSC may meet on urgent matters on such shorter notice, not less than 2 hours, as the person or persons calling such meeting reasonably may deem necessary or appropriate for urgent matters (emergency conditions threatening public health or safety, or a reasonably unforeseen situation).
- (c) The Board and its subcommittees having at least one Director may meet by teleconference to consider urgent matters in accordance with Section 14.8. The Board must ratify any action taken on notice of less than one week or by teleconference 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) Meetings 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 shall keep minutes of every Board meeting.

Section 4.7 Quorum; Action by Directors. Except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws, at all meetings of the Board, fifty percent (50%) of the seated Directors shall constitute a quorum for the transaction of business. The act of at least sixty-seven percent (67%) affirmative votes of the eligible voting Directors shall be the act of the Board, unless the act of a greater number is otherwise required by law, the Articles of Incorporation, or these Bylaws. If a quorum shall not be present at any meeting of the Board, the Directors present may adjourn the meeting.

Section 4.8 Subcommittees. The Board shall confirm the Representatives of 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 by law. Any non-Director who becomes a member of TAC or a subcommittee shall have the same responsibility with respect to TAC or such subcommittee as a Director who is a member thereof.

Section 4.9 Other Appointments. If requested by the North American Electric Reliability Council ("NERC"), the Board shall elect, from among its members, persons to serve on the NERC Stakeholders Committee. 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 their opinion, to fulfill the purposes of ERCOT as stated in the Articles of Incorporation, within the limitations of the Articles of Incorporation, 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 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; (f) initiation of any lawsuit; and (g) management and oversight of the TRE. 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 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 listed in Section 3.1.
- (2) For the Consumer Segment, Corporate Members of each subsegment shall elect its Representatives. For any subsegment in which there are no Corporate Members, the Consumer Director of that subsegment 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
 - (v) The Public Counsel or his or her designee as an *ex officio* voting member
- (b) Each TAC Representative shall be entitled to one vote on matters submitted to TAC.
- (c) Fifty-one percent (51%) of the eligible, seated Representatives of TAC shall constitute a quorum for the transaction of business. Affirmative votes of sixty-seven percent (67%) of the eligible, seated Representatives of TAC shall be the act of TAC.
- (d) 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.

- (e) 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 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.
- (f) Each person (other than the Residential Consumers Representative) serving on TAC or any subcommittee thereof must be an employee or agent of a 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 an employee or agent of the same Member as he or she was at the time of such election or appointment.
- (g) 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 same subsegment 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, 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 an employee or representative of the same company as he or she was at the time of such appointment.

Section 5.2 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 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. If requested by NERC, TAC shall elect representatives to the various NERC committees and associated subcommittees, task forces, and working groups. 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 TEXAS REGIONAL ENTITY

Section 6.1 TRE Responsibilities and Duties. The TRE shall be a functionally independent division within ERCOT which shall be responsible for proposing, developing, implementing and enforcing Reliability Standards in accordance with the Delegated Authority. The TRE shall also be responsible for investigating compliance with and enforcing violations of the ERCOT Protocols ("ERCOT Compliance"), so long as the ERCOT Compliance activities do not conflict with the Delegated Authority. The TRE shall develop policies, processes, standards, and procedures to implement the Delegated Authority and the ERCOT Compliance activities. The TRE shall form a Reliability Standards Committee ("RSC"), comprised of members from all ERCOT Segments, to propose, receive, consider, authorize, and vote on Reliability Standards and Reliability Variances, in accordance with the Texas Regional Entity Standards Development Process and procedures. All proposed ERCOT-specific Reliability Standards and Reliability Variances requests must be approved by the Board, prior to being submitted to NERC.

Section 6.2 TRE Independence. The TRE and its employees shall function independently of the other divisions, departments and employees of ERCOT. TRE employees shall be responsible for creating and monitoring a separate budget to be submitted to the Board for approval and then to the North American Electric Reliability Corporation ("NERC") for approval, pursuant to a Delegation Agreement ("TRE Budget"). The portion of the TRE Budget which is for activities that are not related to the Delegated Authority but are for ERCOT Compliance activities will be approved by the PUCT. Except for ERCOT Compliance activities and any extraordinary activities that are specifically approved by NERC in the TRE Budget, the TRE shall be funded separately by NERC. The TRE shall (i) maintain separate books and records to account for its finances, separating income and expenditures for the Delegated

Authority and the ERCOT Compliance Activities and (ii) pay a fair market rate for any goods and services obtained from ERCOT, or if a fair market rate is not readily determinable without undue effort or expense, at least the out-of-pocket cost incurred by ERCOT in respect thereof. ERCOT acknowledges that the TRE Chief Compliance Officer and the TRE staff will conduct investigations into and will prosecute enforcement actions regarding the matters within the scope of the TRE's responsibilities and duties, including investigations and prosecutions of ERCOT.

Section 6.3 TRE Management. The business and affairs of the TRE shall be managed directly by the Board, or a subcommittee thereof, to insure independence of the TRE from the other ERCOT operations and activities, including the ERCOT Independent System Operator functions. The Board shall hire a Chief Compliance Officer ("CCO") who, under its supervision and direction, shall carry on the general affairs of the TRE as the chief executive officer. The CCO shall be independent of any market participant, and shall be an independent member of the staff of ERCOT, reporting exclusively to the Board. The Board shall only hire a CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director. The Board may also appoint a financial director, who will report to the CCO, with responsibility for overseeing the budgeting, finance and accounting functions necessary for the independent operation of the TRE. The TRE may retain outside advisors as it deems necessary. The CCO shall have the sole authority to retain or terminate such outside counsel and other advisors as the CCO may deem appropriate in his or her sole discretion. The CCO shall have the sole authority to approve related fees and retention terms for such advisors, in accordance with the TRE Budget. The CCO shall make an annual report and periodic reports to the Board concerning the activities and expenditures of the TRE, and the TRE shall have its separate financial statements reviewed or audited annually. The CCO shall ensure that the TRE files all required reports with NERC. CCO shall, in cooperation with the financial director of the TRE, monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board and NERC.

Section 6.4 TRE Employees. To the fullest extent practicable under applicable law, the TRE and the CCO shall be responsible for hiring, firing and compensating all TRE employees. The TRE employees shall be compensated from the TRE budget. If permissible, and consistent with the Board's and CCO's compensation policies for the TRE employees, such employees may participate in insurance and other benefits extended to ERCOT employees, provided that the TRE reimburses ERCOT for the full cost of providing such benefits. The TRE is authorized to employ attorneys, and all such attorneys shall report to the CCO and shall have ethical and other obligations solely to the TRE and not to ERCOT. Such attorneys are expressly authorized and required to provide advice to the CCO and the TRE regarding the Delegated Authority and ERCOT Compliance activities, including investigations and enforcement actions involving ERCOT. Such attorneys are specifically authorized to assist with the prosecution of enforcement actions relating to the Delegated Authority or ERCOT Compliance activities.

Section 6.5 Evaluation of TRE Performance. The Board shall monitor the TRE and CCO's performance, establish and review the CCO's compensation and provide annual, or at its election, more frequent, evaluations. The Board may receive and will consider input from the PUCT regarding the compliance and enforcement activities of the CCO and the TRE. It shall be the CCO's duty, in cooperation with the financial director of the TRE, to monitor the expenditure of the monies received by the TRE to ensure that such are deployed in accordance with the TRE Budget, as approved by the Board, PUCT and NERC. The Board will consider input from the PUCT regarding the compliance and enforcement activities and performance of the CCO and TRE. Neither the CCO nor any TRE employee may be retaliated against by ERCOT or its Board for investigating or participating in any enforcement activities pursuant to the Delegated Authority. The Board may not terminate, discipline, or demote the CCO or any TRE employees, advisors or contractors because of compliance or enforcement activities conducted in good faith.

ARTICLE 7 CHIEF EXECUTIVE OFFICERS

Section 7.1 CEO. 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 a voting Director. It shall be his or her 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 shall comply with all orders of the Board. All agents and employees of ERCOT shall report, and be responsible, to the CEO, except for the CCO and other employees, contractors, and advisors of the TRE. The CEO shall perform such other duties as may be determined from time to time by the Board.

Section 7.2 CCO. The Board shall hire a Chief Compliance Officer ("CCO") who, under the Board's supervision and direction shall carry on the affairs of the TRE. The CCO shall comply with all orders of the Board and will coordinate with the NERC regarding activities relating to the Delegated Authority and with PUCT regarding ERCOT Compliance activities. All employees and contractors of the TRE shall report and be responsible, to the CCO. The CCO shall be responsible for employment-related decisions for all employees of the TRE that are not appointed by the Board and shall provide input to the Board with respect to TRE employees appointed by the Board. The CCO shall perform such other duties as may be determined from time to time by the Board, for the benefit of the TRE. The Board may only terminate, discipline, not renew, or demote the CCO after consulting the PUCT Commissioners and Executive Director, and obtaining the approval of the PUCT Executive Director.

ARTICLE 8 OFFICERS

Section 8.1 General. The officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary, a CCO of the TRE, 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 or CCO. 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 and the CCO of TRE 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.

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 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 employer, or by having a substantial financial interest in a person with a direct interest in a matter, shall recuse himself from deliberations and actions on the matter in which the conflict arises and shall abstain on any vote on the matter and not otherwise participate in a decision on the matter. A direct interest is a specific interest of a person or entity in a particular matter, provided that an interest that is common to entities in a Director's Market Segment or a general interest of some or all Market Participant Directors in a matter does not constitute direct interest. 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, without participating in discussion of the issue raising the potential conflict, shall not constitute participation.

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 Articles of Incorporation, 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 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 carrying on ERCOT's business.
- (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.

Violations of these prohibited acts may lead to sanction, suspension, expulsion or termination after a hearing 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 Directors who may be paid a fixed sum plus 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 Directors, who are members of standing or special committees, may be allowed like compensation and travel expenses for attending committee meetings. Unaffiliated Directors and Consumer Directors may be reimbursed for registration, travel, lodging and related expenses for training activities.
- (c) The Board shall fix the compensation for the appointed Residential Consumer TAC Representative for attendance at each meeting of the Board, TAC, TNT, 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. The expenses of the TRE shall be accounted for separately.

Section 10.3 Budget. A budget (the "Budget") for ERCOT for the ensuing fiscal year shall be adopted by the Board. The Budget, including cost of liability insurance, for ERCOT for each fiscal year shall be compiled by the CEO 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. A separate budget for the TRE ("TRE Budget") shall be prepared each fiscal year, in accordance with the Delegation Agreement.

Section 10.4 Loans and Guarantees. Neither participation in the activities of ERCOT nor any provision of these Bylaws or of the Articles of Incorporation 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. In addition, the separate financial statements of the TRE will be reviewed or audited annually. 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 ARTICLE 1396-2.22A OF THE TEXAS NON-PROFIT CORPORATION ACT 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 or her address as it appears on the corporate records, with postage

prepaid. A person may change his or her address in the corporate records by giving written notice of the change to the CEO.

Section 12.2 Signed Waiver of Notice. Whenever any notice is required by law or under ERCOT's Articles of Incorporation 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 Chair of such meeting shall determine if such objection is reasonable.

ARTICLE 13 AMENDMENTS

Section 13.1 Amendments to these Bylaws. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, these Bylaws may be amended, altered, or repealed by the voting Segments through the following procedure:

- (a) Any Corporate Member suggesting amendments to these Bylaws must submit a proposal of the amendment, including any necessary supporting documents, to the CEO.
- (b) The CEO shall place the proposal on the agenda for a Board meeting in the time and manner prescribed by the Board.
- (c) 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 14.8.
- (d) Corporate Members must vote to enact the Board-approved amendment by the following voting procedure:
 - (1) For the purposes of voting on Bylaws, each Segment shall have one whole vote.

- (2) 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.
- (3) For purposes of voting on Bylaws amendments, the Consumer Segment shall be subdivided into the following Consumer subgroups:
 - (i) Residential Consumers
 - (ii) Commercial Consumers
 - (iii) 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.

- (4) An affirmative vote by at least four of the seven Segments shall be necessary to amend these Bylaws. If permission for any amendment is required by NERC or FERC under the Delegation Agreement, the required permission must be obtained before such amendment is effective.

Section 13.2 Amendments to the Articles of Incorporation. In accordance with the procedures set forth in Article 1396-4.02 of the Texas Non-Profit Corporation Act, an affirmative vote of at least two-thirds of all Corporate Members shall be required to amend the Articles of Incorporation.

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 Quorum, Proxies and Seated Members. Written proxies may be used for meetings of the Board, TAC or any subcommittees of the Board or TAC in accordance with any relevant provisions in these Bylaws and the Texas Non Profit Corporation Act. For any meeting of the Board, TAC or any subcommittee of the Board or TAC, a Segment Alternate or 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. For any meeting of the Corporate Members, proxies shall count towards a quorum. "Seated" members of the Board, TAC, and subcommittees shall mean members, or their designated alternate representatives when serving in their stead (if applicable), that are currently serving, having been selected in accordance with these Bylaws, regardless of attendance at meetings. Vacant positions shall not be considered "Seated" members.

Section 14.7 Abstentions. For purposes of voting on the Board or TAC, Directors or TAC Representatives 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. In the event of such abstentions, however, for a vote to become an act of the Board or TAC, there must be an affirmative vote of (i) the requisite percentage of the remaining non-abstaining votes of seated members *and* (ii) at least 50% of the total members. Abstentions do not affect calculation of a quorum. Absences do not decrease the number of votes required for action.

Section 14.8 Actions Without a Meeting and Meetings by Telephone. Unless otherwise provided by law, any action required or permitted to be taken at any meeting of the Corporate Members, 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 Corporate Members, TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the Corporate Members or subcommittee members were present and voted. Corporate Members, Directors (for urgent matters in accordance with Section 4.6), TAC Representatives or subcommittee members may participate in and hold a meeting by means of a conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, 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.

Section 14.9 Effective Date. The effective date of these Amended and Restated Bylaws is September 18, 2007, 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.

Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No regional reliability standard shall be effective within the Texas Regional Entity – A Division of Electric Reliability Council of Texas, Inc. (“Texas RE”) area unless filed by NERC with FERC and approved by FERC.

COMMON ATTRIBUTE 2

Texas RE regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A Texas RE reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

COMMON ATTRIBUTE 3

Texas RE regional reliability standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

COMMON ATTRIBUTE 4

Requester — The requester is the sponsor of the regional reliability standard request may assist in the development of the standard. Any member of Texas RE, or group within Texas RE shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the Texas RE area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

COMMON ATTRIBUTE 5

Reliability Standards Committee (RSC) — The Texas RE RSC manages the standards development process. The RSC will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The RSC will advise the Texas RE board on standards presented for adoption.

COMMON ATTRIBUTE 6

[Registered Ballot Body (RBB)]— The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with Texas RE as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the RBB is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

COMMON ATTRIBUTE 7

Texas RE will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the Texas RE and NERC websites.

COMMON ATTRIBUTE 8

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

COMMON ATTRIBUTE 9

Within [no greater than 60] days of receipt of a completed standard request, the RSC shall determine the disposition of the standard request.

Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

COMMON ATTRIBUTE 10

The RSC may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The RSC may, at its discretion, expand or narrow the scope of the standard request under consideration. The RSC shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the RSC rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the RSC.

COMMON ATTRIBUTE 11

Any standard request that is accepted by the RSC for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the Texas RE website within [no greater than 30] days of acceptance by the committee.

COMMON ATTRIBUTE 12

The Reliability Standards Manager (RSM) shall submit the proposed members of the drafting team to the Reliability and Operations Subcommittee (ROS). The ROS shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the RSM as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

COMMON ATTRIBUTE 13

At the direction from the RSC, the RSM shall facilitate the posting of the draft standard on the Texas RE website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day] comment period. The RSM shall provide notice to Texas RE stakeholders and other potentially interested entities, both within and outside of the Texas RE area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

COMMON ATTRIBUTE 14

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the Texas RE website no later than the next posting of the proposed standard.

COMMON ATTRIBUTE 15

Upon recommendation of the drafting team, and if the RSC concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

COMMON ATTRIBUTE 16

The RSM shall schedule a vote by the Texas RE RBB/ ballot pool. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

COMMON ATTRIBUTE 17

The Texas RE RBB shall be able to vote on the proposed standard during a period of [not less than 10] days.

COMMON ATTRIBUTE 18

All members of Texas RE are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

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COMMON ATTRIBUTE 19

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [RBB/ballot pool] submitted a ballot.

COMMON ATTRIBUTE 20

Under no circumstances may the board substantively modify the proposed regional reliability standard.

COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC.

COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the Texas RE bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in Texas RE, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the Texas RE members and others.

COMMON ATTRIBUTE 23

- **Balanced** - The Texas RE standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

COMMON ATTRIBUTE 26

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

COMMON ATTRIBUTE 27

- Does not unnecessarily delay development of the proposed reliability standard.

COMMON ATTRIBUTE 28

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

COMMON ATTRIBUTE 29

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC’s market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

COMMON ATTRIBUTE 30

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

COMMON ATTRIBUTE 31

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

COMMON ATTRIBUTE 32

Applicability	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions. If not applicable to the entire Texas RE area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
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Note: The list of 34 Common Attributes has been added to the Texas Regional Entity Delegation Agreement – it is not shown as redlined

COMMON ATTRIBUTE 33

Measure(s)	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.
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COMMON ATTRIBUTE 34

Compliance Monitoring Process	Defines for each measure: <ul style="list-style-type: none">• The specific data or information that is required to measure performance or outcomes.• The entity that is responsible for providing the data or information for measuring performance or outcomes.• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.• The entity that is responsible for evaluating data or information to assess performance or outcomes.• The time period in which performance or outcomes is measured, evaluated, and then reset.• Measurement data retention requirements and assignment of responsibility for data archiving.• Violation severity levels.
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Texas Regional Entity Standards Development Process

Exhibit C to the Delegation Agreement Between NERC and ERCOT

October 19, 2006

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I. Introduction

This document defines the fair and open process for adoption, approval, revision, reaffirmation, and deletion of an ERCOT-Specific Reliability Standard (Standard) by the Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc. (“Texas RE”). Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System (BPS), consistent with Good Utility Practice within a Regional Entity’s (“RE’s”) geographical footprint.

Due process is the key to ensuring that Standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in a Standard's development.

Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system has a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

Proposed ERCOT-Specific Standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Texas RE area unless filed by NERC with FERC and approved by FERC.

ERCOT-Specific Standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. An ERCOT-Specific Standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. An ERCOT-Specific Standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

ERCOT-Specific Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

II. Background

The Texas RE may develop, through their own processes, separate Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or otherwise address issues that are not addressed in NERC Reliability Standards.

NERC Reliability Standards and ERCOT-Specific Standards are all to be included within the Texas RE's Compliance Program.

Standards are developed consistent with the following philosophies according to the process defined within this document:

- Developed in a fair and open process that provides an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and does not have a significant adverse impact on reliability; and
- Based on a justifiable difference between regions or between sub-regions within the Regional geographic area.

The NERC Board of Trustees has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. As these principles are fundamental to reliability and the market interface, these principles provide a constant beacon to guide the development of reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards. Persons and committees that are responsible for the Texas RE Standards Process shall consider these NERC Principles in the execution of those duties.

NERC Reliability Standards are based on certain reliability principles that define the foundation of reliability for the North American BPS. Each Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Standard serves a purpose in support of reliability of the North American BPS. Each Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Standard undermines reliability through an unintended consequence.

While NERC Reliability Standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Standards shall be consistent with the market interface principles. Consideration of the market interface principles is intended to ensure that Standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

III. Regional Reliability Standards Definition

A NERC Reliability Standard defines certain obligations or requirements of entities that operate, plan, and use the Bulk Power Systems of North America. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the stated reliability principles and shall be consistent with all of the stated reliability and market interface principles.

The Texas RE may develop, through its own processes, separate Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or that cover matters not addressed in NERC Reliability Standards. Regional Criteria may be developed and exist in ERCOT Protocols, Operating Guides, and/or Procedures separately from NERC Reliability Standards, or may be proposed as NERC Reliability Standards. Regional Criteria that exist separately from NERC Reliability Standards shall not be inconsistent with or less stringent than NERC Reliability Standards.

IV. Roles in the Texas Regional Entity (RE) Reliability Standards Development Process

Originator - Any person, acting as a representative of an organization which is directly and materially affected by the operation of ERCOT's BPS, is allowed to request a Standard be developed or an existing Standard modified, or deleted, by creating a Standards Authorization Request (SAR) as described in Appendix B to this document.

Board of Directors (BOD) – The ERCOT Board of Directors shall act on any proposed Standard that has gone through the process. Once the Standard is approved by the Federal Energy Regulatory Commission (FERC), compliance with the Standard will be enforced consistent with the terms of the Standard.

Registered ballot body — The registered ballot body comprises all entities or individuals that a) qualify for one of the stakeholder segments; are registered with ERCOT as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. Each standard action has its own ballot pool formed of interested members of the registered ballot body.

Reliability and Operations Subcommittee (ROS) – A balanced subcommittee comprised of the seven (7) ERCOT Market Participant Segments responsible for reviewing events and issues as they may impact ERCOT system reliability and operations.

Reliability Standards Committee (RSC) – A balanced committee comprised of the seven (7) ERCOT Market Participant Segments that will consider which requests for new or revised Standards shall be assigned for development (or existing Standards considered for deletion). The RSC will also vote to recommend whether proposed new or revised Standards should be presented for a vote to all ERCOT Market Participants.

Reliability Standards Manager (RSM) – A person or persons on the Texas RE staff assigned the task of ensuring that the development, revision or deletion of Standards is in accordance with this document. The RSM works to ensure the integrity of the process and consistency of quality and completeness of the Standards. The RSM manages the Standards Development Process, and coordinates and facilitates all actions contained in all steps in the process.

Reliability Standards Staff – Employees of the Texas RE that work with or for the Reliability Standards Manager.

Standard Drafting Team (SDT) – A team of technical experts, assigned by the ERCOT Reliability and Operations Subcommittee (ROS), and typically includes a member of the Texas RE staff and the Originator, assigned the task of developing a proposed Standard based upon an approved SAR using the Standard Development Process contained in this document.

V. Texas RE Reliability Standards Development Process

A. Assumptions and Prerequisites

The process for developing and approving Standards is generally based on the procedures of the American National Standards Institute (ANSI) and other standards-setting organizations in the United States and Canada. The Standards development process has the following characteristics:

- **Due process** – Any person representing an organization with a direct and material interest has a right to participate by:
 - a) Expressing an opinion and its basis,
 - b) Having that position considered, and
 - c) Appealing any negative decision
- **Openness** – Participation is open to all organizations that are directly and materially affected by ERCOT's BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to ERCOT's Membership and to others and all proposed SARs and Standards are posted for comment on the Texas RE Website.
- **Balance** – The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any single interest category.

B. Regional Reliability Standards Development Process Steps

Note: The term “days” below refers to calendar days.

The Texas RE will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in Step 1, notice of comment posting period identified in Step 4, and notice for vote identified in Step 5 below are concurrently posted on both the Texas RE and NERC websites.

Step 1 - Development of a Standards Authorization Request (SAR) to Develop, Revise or Delete a Regional Reliability Standard

Any entity (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the Texas RE may request, via a submittal of a Standard Authorization Request (SAR) form, for the development, modification, or deletion of an ERCOT Standard or Regional Variance. The following entities may submit a SAR:

- Any market participant,
- Any entity that is an ERCOT Member,
- PUCT Staff,
- ERCOT Staff,
- TRE Staff, and
- Any entity that resides (or represents residents) in Texas or operates in the Texas electricity market.

Any such request shall be submitted to the Texas RE Reliability Standards Manager, or his/her designee. The SAR form may be downloaded from the Texas RE Website.

An acceptable SAR contains a description of the proposed Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Standard.

The Reliability Standards Manager will verify that the submitted SAR form has been adequately completed. The Reliability Standards Manager may offer the Originator suggestions regarding changes and/or improvements to enhance clarity and assist the ERCOT community to understand the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the Reliability Standards Manager will electronically acknowledge receipt of the SAR.

The Reliability Standards Manager will forward all adequately completed SARs to the RSC. Within 60 days of receipt of an adequately completed SAR, the RSC shall determine the disposition of the SAR and post for review and possible comment.

The disposition decision and decision process shall use the normal "business rules and procedures" of the RSC then in effect. The RSC may take one of the following actions by motion and majority vote:

- Accept the SAR as a candidate for: development of a new Standard, revision of an existing Standard, or deletion of an existing Standard. The RSC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The RSC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the RSC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.

- Remand the SAR back to the Originator for additional work. The Reliability Standards Manager will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the RSC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the RSC.

Any SAR that is accepted by the RSC for development of a Standard (or modification or deletion of an existing Standard) shall be posted for public viewing on the Texas RE Website. SARs will be posted and the status publicly noted at regularly scheduled (appropriately two weeks) intervals.

Any documentation of the deliberations of the RSC concerning SARs shall be made available according to normal “business rules and procedures” of the RSC then in effect.

Texas RE Staff shall submit a written report to the ERCOT BOD on a periodic basis (at least quarterly at regularly scheduled ERCOT BOD Meetings) showing the status of all SARs that have been brought to the RSC for consideration.

Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date

Upon acceptance by the RSC of a SAR for development of a new Standard (or modification or deletion of an existing Standard), the RSC shall direct the ROS to assemble a qualified balanced slate for the SDT. The Reliability Standards Manager will solicit drafting team nominees. The SDT will consist of a group of people (members of ERCOT and, as appropriate, non-members) who collectively have the necessary technical expertise and work process skills. The Reliability Standards Manager will recommend a slate of ad-hoc individuals or a pre-existing task force, work group, or similar for the SDT based upon the ROS’ desired team capabilities.

The Reliability Standards Manager will insure that team membership receives all necessary administrative support. This support typically includes a Texas RE staff member and the Originator if he/she chooses to participate. The ROS appoints the interim chair (should not be a staff person) of the SDT. The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The Reliability Standards Manager submits the proposed list of names of the SDT to the ROS. The ROS will either accept the recommendations of the Reliability Standards Manager or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

Upon approval of the SDT slate by the ROS, the RSC will declare a preliminary date on which the SDT is expected to have ready a completed draft Standard and associated supporting documentation available for consideration by the ERCOT Membership.

Step 3 – Work and Work Product of the Standard Drafting Team

The Reliability Standards Manager will then develop a work plan for completing the Standard development work, including the establishment of milestones for completing critical elements of the work in sufficient detail to ensure that the SDT will meet the date objective established by the RSC or the SDT shall propose an alternative date. This plan is then delivered to the RSC for its concurrence.

The SDT is to meet, either in person or via electronic means as necessary, establish sub-work teams (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established by the RSC.

The work product of the SDT will consist of the following:

- A draft Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Standard that will be deleted, in part or whole, or otherwise impacted by the implementation of the draft Standard
- Technical reports and/or work papers that provide technical support for the draft Standard under consideration.
- Document the perceived reliability impact should the Standard be approved.

Upon completion of these tasks, the SDT submits these documents to the RSC, which will verify that the proposed Standard is consistent with the SAR on which it was developed.

The SDT regularly (at least once each month) informs the RSC of its progress in meeting a timely completion of the draft Standard. The SDT may request RSC scope changes of the SAR at any point in the Standard Development Process.

The RSC may, at any time, exercise its authority over the Standards Development Process by directing the SDT to move to Step 4 (below) and post for comment the current work product. If there are competing drafts, the RSC may, at its sole discretion, have posted the version(s) of the draft Standard for comment on the Texas RE Website. The RSC may take this step at any time after a SDT has been commissioned to develop the Standard.

Step 4 – Comment Posting Period

At the direction from the RSC, the Reliability Standards Manager then facilitates the posting of the draft Standard on the Texas RE Website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The Reliability Standards Manager shall also inform ERCOT Members and other potentially interested entities inside or outside of ERCOT of the posting using typical membership communication procedures then currently in effect or by other means as deemed appropriate.

Within 30 days of the conclusion of the 30-day comment posting period the SDT shall convene and consider changes to the draft Standard, the implementation plan and/or supporting technical documents based upon comments received. Based upon these comments, the SDT may elect to return to Step 3 to revise the draft Standard, implementation plan, and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the Texas RE Website no later than the next posting.

Step 5 – Posting for Voting by ERCOT Membership

Upon recommendation of the drafting team, and if the RSC concurs that all of the requirements for development of the standard have been met, the Reliability Standards Manager shall post the proposed standard and implementation plan for ballot on the Texas RE Website and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

The Reliability Standards Manager will schedule a Vote by the ERCOT Membership which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting.

The ERCOT Membership shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the RSC. All members of ERCOT are eligible to participate in voting on proposed new Standards, Standard revisions, or Standard deletions. Each member company shall have one vote. The contact designated as primary representative to the Texas RE is the voting member with the secondary contact as the backup.

Voting is an advisory to the ERCOT BOD. The voting results will be composed of only the votes from ERCOT Members responding within the 15-day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the Texas RE Website prior to going to the RSC or ERCOT BOD.

Step 6A – Membership Voting Receives 4.67 Affirmative Votes

The Texas RE registered ballot body shall be able to vote on the proposed standard during a 15-day period.

Votes shall be submitted electronically, or through other means as approved by the RSC.

All members of ERCOT are eligible to participate in voting on proposed new standards, standard revisions, or standard deletions. There shall be one person designated as the primary representative of each entity.

At least one (1) ERCOT Member Representative from five (5) of the seven (7) ERCOT Market Participant Segments must vote to constitute a quorum. Each Segment shall have one (1) Segment Vote. The representative of each Voting ERCOT Member shall receive an equal fraction of its Segment Vote. If a draft Standard receives 4.67 or greater affirmative votes during the 15-day voting period, the RSC will forward the Standard to the ERCOT BOD for action (Step 7).

Step 6B – Membership Voting Does Not Receive 4.67 Affirmative Votes

If a draft Standard does not receive 4.67 or greater affirmative votes during the 15-day voting period, the RSC may:

- Revise the SAR on which the draft Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The RSC may require a second comment period prior to a second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.
 - If a draft Standard receives 4.67 or greater affirmative votes during the second voting period, the RSC will forward to the ERCOT BOD for action (Step 7).
 - If a draft Standard does not receive 4.67 or greater affirmative votes during the second voting period, the RSC will refer the draft Standard and implementation plan to the ERCOT BOD. The RSC may also submit an assessment, opinion, and recommendations to the ERCOT BOD (Step 7).
- Direct the existing SDT to reconsider or modify certain aspects of the draft Standard and/or implementation plan. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The RSC may require a second comment period prior to the second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.
 - If a draft Standard receives 4.67 or greater affirmative votes on the second voting period, the RSC will forward it to the ERCOT BOD for action (Step 7).
 - If a draft Standard does not receive 4.67 or greater affirmative votes on the second voting period, the RSC will refer the draft Standard and implementation plan to the ERCOT BOD. The RSC may also submit an assessment, opinion, and recommendations to the ERCOT BOD (Step 7).

- Recommend termination of all work on the development of the Standard action under consideration and so notify the ERCOT BOD.

Step 7 – Action by the RE Board of Directors

A proposed Regional Reliability Standard submitted to the ERCOT BOD for action shall be publicly posted at least 10 days prior to action by the BOD. At a regular or special meeting, the ERCOT BOD shall consider adoption of the draft Standard. The BOD shall be provided with an “informational package” which includes:

- The draft Standard and any modification or deletion of other related existing Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The BOD will consider the results of the voting and dissenting opinions. The BOD will consider any advice offered by the RSC and may:

- Approve the proposed Regional Reliability Standard;
- Remand the proposed Regional Reliability Standard to the RSC with comments and instructions; or
- Disapprove the proposed Regional Reliability Standard action without recourse.

Under no circumstances may the board substantively modify the proposed ERCOT-Specific Reliability Standard.

Once an ERCOT-Specific Reliability Standard is approved by the BOD, the standard will be submitted to NERC for approval and filing with FERC.

Step 8 - Implementation of Regional Reliability Standard

Upon approval of a draft Standard action by the ERCOT BOD, the Reliability Standards Manager will notify the membership of such action of the BOD through the normal and customary membership communication procedures and processes then in effect. The Reliability Standards Manager will take whatever steps are necessary to have a Standard reviewed and/or approved by NERC or any successor organization.

C. Regional Reliability Standards Integration

Once the regional reliability standard is approved by FERC the Reliability Standards Manager shall notify the stakeholders of the effective date. The Reliability Standards Manager will also notify the Texas RE Compliance Staff for integration into the Texas RE Compliance Program.

Appendix A – Stakeholder Representation

The Texas RE stakeholder representation for ERCOT-Specific Reliability Standards development is as follows:

I. Balanced Decision-Making in Committees

A Reliability Standards Committee (RSC), comprised of representatives from all market segments (Independent Generators, Investor-Owned Utilities, Power Marketers, Retail Electric Providers, Municipally-Owned Utilities, Cooperatives, and Consumers), to provide balanced decision-making and due process for ERCOT-Specific Reliability Standards and Regional Variances. The RSC will receive, consider, and vote upon requests for new or revised ERCOT-Specific Reliability Standards and Regional Variances.

The RSC will consider any requests for ERCOT-Specific Reliability Standards or Regional Variances from parties that are directly and materially affected by the operation of the ERCOT Bulk Power System.

II. ERCOT Board of Directors (BOD)

The Texas RE is a division of the Electric Reliability Council of Texas (ERCOT), a Texas non-profit corporation that is the Independent System Operator for the ERCOT Region, and is governed by a combination independent and balanced stakeholder board, as required by Section 39.151 of the Texas Public Utility Regulatory Act (PURA). The BOD includes the following individuals:

- Five independent individuals who are unaffiliated with any electric market participant who are each approved by the Texas Public Utility Commission (PUCT) for a three-year term;
- Six electric market participant representatives from each of the following market segments: Independent Generators, Investor-Owned Utilities, Power Marketers, Retail Electric Providers, Municipally-Owned Utilities, and Cooperatives;
- Three Consumer representatives;
- CEO of ERCOT (as ex officio voting Director); and
- Chairman of the PUCT (as ex officio non-voting Director).

Although the ERCOT BOD will have the final vote on proposed ERCOT-Specific Reliability Standards and Regional Variances, the ERCOT BOD will not have involvement in Reliability Standard compliance and enforcement activities. The PUCT will provide due process (a hearing).

III. Ballot Body

A Ballot Body will be comprised of representatives from all market segments (Independent Generators, Investor-Owned Utilities, Power Marketers, Retail Electric Providers,

Municipally-Owned Utilities, Cooperatives, and Consumers), to provide balanced decision-making on ERCOT-Specific Reliability Standards and Regional Variances. The Ballot Body will vote on all proposed new or revised ERCOT-Specific Reliability Standards and Regional Variances.

At all meetings, each Segment shall have one (1) Segment Vote. The representative of each Voting Entity, present at the meeting and participating in the vote, shall receive an equal fraction of its Segment's Vote, except for the Consumer Segment which shall be divided into three sub-segments (Residential, Commercial, and Industrial) that receive one third of the Consumer Segment Vote. For the Consumer Segment, if no representative from a sub-segment is present at a meeting, such sub-segment's fractional vote is allocated equally to the sub-segment(s) that are present. If a representative from a sub-segment abstains from a vote, the fraction of the Consumer Segment Vote allocated to such representative is not included in the vote tally.

Entities entitled to vote (Voting Entities) are ERCOT Corporate Members, ERCOT Associate Members, and ERCOT Adjunct Members. Voting Entities must align themselves each calendar year with a Segment for which they qualify or, for Adjunct Members, a Segment to which they are similar. Voting Entities that align themselves with a Segment must be aligned with that same Segment for all ERCOT subcommittees, and remain aligned with that Segment for the entire calendar year. For the Residential sub-segment of the Consumer Segment, Voting Entities are limited to the Standing Representative or their designated Alternate Representative. Only one representative of each Voting Entity present at the meeting may vote. In the event that a representative of a Voting Entity abstains from a vote, the Segment Vote is allocated among the members casting a vote; except for the Consumer Segment.

In the majority of cases, e-mail votes for the purpose of approving an ERCOT-Specific Reliability Standard will be conducted. For e-mail votes, a representative of each Voting Entity shall have one (1) vote. Each Segment shall have one (1) Segment Vote and participation requires casting a vote or abstaining. The same rules apply to e-mail voting as voting at a meeting.

Appendix B — Principles, Characteristics, and Special Procedures

I. Principles

Due process is the key to ensuring that regional reliability standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in the development of a standard.

The Texas RE develops ERCOT-Specific Reliability Standards with due consideration of the following principles, in accordance with the steps outlined in this procedure. The process must ensure that any ERCOT-Specific Reliability Standard is technically sound and the technical specifications proposed would achieve a valuable reliability objective.

The standards development process has the following characteristics:

- **Open** - Participation in the development of an ERCOT-Specific Reliability Standard shall be open to all organizations that are directly and materially affected by ERCOT bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to ERCOT members and others.
- **Balanced** - The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the ERCOT Bulk Power System in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Fair due process** — The Texas RE Reliability Standards Development Process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.
- Does not unnecessarily delay development of the proposed ERCOT-Specific Reliability Standard.

NERC has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. These principles are to be used to guide the development of reliability standards, including regional reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards.

Each ERCOT-Specific Reliability Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Standard serves a purpose in support of the reliability of the ERCOT bulk power system. Each Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Standard undermines reliability through an unintended consequence.

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all ERCOT-Specific Reliability Standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

II. Regional Reliability Standard Characteristics and Elements

a. Characteristics of a Regional Reliability Standard

The following characteristics describe objectives to be considered in the development of ERCOT-Specific Reliability Standards:

1. **Applicability** — Each ERCOT-Specific Reliability Standard clearly identifies the functional classes of entities responsible for complying with the standard, with any specific additions or exceptions noted. Such functional classes include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, Market Operators, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each ERCOT-Specific Reliability Standard identifies the geographic applicability of the standard. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** — Each ERCOT-Specific Reliability Standard has a clear statement of purpose that describes how the standard contributes to the reliability of the ERCOT bulk power system.
3. **Requirement or Outcome** — Each ERCOT-Specific Reliability Standard states one or more requirements, which if achieved by the applicable entities, will provide for a

reliable bulk power system, consistent with good utility practices and the public interest.

4. **Measurability** — Each performance requirement is stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement has one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics are provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each ERCOT-Specific Reliability Standard is based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
6. **Completeness** — Each ERCOT-Specific Reliability Standard is complete and self-contained. Supporting references may be provided with standards, but they are not part of the standard and do not impose mandatory requirements.
7. **Clear Language** - Each ERCOT-Specific Reliability Standard is stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in keeping with good utility practice, are able to arrive at a consistent understanding of the required performance.
8. **Practicality** — Each ERCOT-Specific Reliability Standard establishes requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
9. **Consistent Terminology** — To the extent possible, ERCOT-Specific Reliability Standards use a set of standard terms and definitions that are approved through the regional standards development procedure.

Although ERCOT-Specific Reliability Standards have a common format and process, several types of standards may exist, each with a different approach to measurement:

- **Technical standards** are related to the provision, maintenance, operation, or state of electric systems, and will likely contain measures of physical parameters that are technical in nature.
- **Performance standards** are related to the actions of entities providing for or impacting the reliability of the bulk power system, and will likely contain measures of the results of such actions or qualities of performance of such actions.
- **Preparedness standards** are related to the actions of entities to be prepared for conditions that are unlikely to occur, but are nonetheless critical to reliability,

and will likely contain measures of such preparations or the state of preparedness.

b. Elements of a Regional Reliability Standard

To ensure uniformity of regional reliability standards, an ERCOT-Specific Reliability Standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

Table 1 — Performance Elements of a Regional Reliability Standard

Identification Number	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
Title	A brief, descriptive phrase identifying the topic of the standard.
Applicability	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions. If not applicable to the entire Texas RE area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
Effective Date and Status	The effective date of the standard or, prior to approval of the standard, the proposed effective date.
Purpose	The purpose of the standard. The purpose shall explicitly state what outcome will be achieved or is expected by this standard.
Requirement(s)	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.
Risk Factor(s)	The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below: A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to bulk power system instability, separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to bulk power system instability,

	<p>separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to normal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the bulk power system, or the ability to effectively monitor and control the bulk power system, but is unlikely to lead to bulk power system instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to bulk power system instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor and control the bulk power system; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system.</p>
Measure(s)	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>

Table 2 — Compliance Elements of a Regional Reliability Standard

Compliance Monitoring Process	<p>Defines for each measure:</p> <ul style="list-style-type: none"> • The specific data or information that is required to measure performance or outcomes. • The entity that is responsible for providing the data or information for measuring performance or outcomes. • The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.
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	<ul style="list-style-type: none"> • The entity that is responsible for evaluating data or information to assess performance or outcomes. • The time period in which performance or outcomes is measured, evaluated, and then reset. • Measurement data retention requirements and assignment of responsibility for data archiving. • Violation severity levels.
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Supporting Information Elements

Interpretation	Any interpretation of regional reliability standard that is developed and approved in accordance with Section VI “Interpretation of Standards” in Appendix B of this procedure, to expound on the application of the standard for unusual or unique situations or to provide clarifications.
Implementation Plan	Each regional reliability standard shall have an associated implementation plan describing the effective date of the standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the standard in the compliance program and other considerations in the initial use of the standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
Supporting References	<p>This section references related documents that support reasons for, or otherwise provide additional information related to the regional reliability standard. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • Glossary of terms • Developmental history of the standard and prior versions • Notes pertaining to implementation or compliance • Standard references • Standard supplements • Procedures • Practices • Training references • Technical references • White papers • Internet links to related information

III. Maintenance of the Texas RE Reliability Standards Development Process

Significant changes to this process shall begin with the preparation of a SAR and be addressed using the same procedure as a request to add, modify, or delete an ERCOT-Specific Reliability Standard.

The RSC has the authority to make ‘minor’ changes to this process as deemed appropriate by the RSC and subject to the RSC voting practices and procedures then in effect. The Reliability Standards Manager, on behalf of the RSC, shall promptly notify the ERCOT BOD of such ‘minor’ changes to this process for their review and concurrence at the next ERCOT BOD meeting.

IV. Maintenance of Regional Reliability Standards

The Reliability Standards Manager shall ensure that each Standard is reviewed at least once every five years from the effective date of the Standard or the latest revision to the Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the Reliability Standards Manager shall recommend to the ERCOT BOD that the Standard be reaffirmed. If the review indicates a need to revise or delete a Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this process.

V. Urgent Action

Under certain conditions, the RSC may designate a proposed ERCOT-Specific Reliability Standard or revision to a standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed standard or revision could materially impact reliability of the bulk power systems. The RSC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Standard.

A requester prepares a SAR and a draft of the proposed standard and submits both to the Reliability Standards Manager. The standard request must include a justification for urgent action. The Reliability Standards Manager submits the request to the RSC for its consideration. If the RSC designates the requested standard or revision as an urgent action item, then the Reliability Standards Manager shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 6.

Any ERCOT-Specific Reliability Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the standard permanent the standard would be required to go through the full Standard Development Process. All urgent action standards require BOD, NERC, and FERC approval, as outlined for standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent standard is not adopted. In determining whether to authorize an urgent action standard for a renewal ballot, the RSC shall consider the impact of the standard on the reliability of the bulk power system and whether expeditious progress is being made toward a permanent replacement standard. The RSC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement standard or if the RSC lacks

confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action standard renewal shall be effective only upon approval by the ERCOT BOD, and approval by applicable governmental authorities.

Any person or entity, including the drafting team working on a permanent replacement standard, may at any time submit a standard request proposing that an urgent action standard become a permanent standard by following the full standards process.

VI. Interpretations of Standards

All persons who are directly and materially affected by ERCOT's Bulk Power System reliability shall be permitted to request an interpretation of a Standard. The person requesting an interpretation will send a request to the Reliability Standards Manager explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The Reliability Standards Manager will assemble a team with the relevant expertise to address the clarification. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The Reliability Standards Manager submits the proposed list of names of the IDT to the ROS. The ROS will either accept the recommendations of the Reliability Standards Manager or modify the IDT slate.

As soon as practical (not more than 45 days), the team will draft a written interpretation to the Standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Standard addressing only the issues raised, the team will forward the draft interpretation to the Reliability Standards Manager. The Reliability Standards Manager will forward the draft interpretation to the Texas RE Director of Compliance. The Director of Compliance is to assess if the inclusion of the interpretation lessens the measurability of the Standard. In addition the Reliability Standards Manager will forward the interpretation to the ROS. Barring receipt of an opinion from either the Director of Compliance or ROS within 21 days, that the interpretation lessens measurability or is not technically appropriate for the Standard, respectively, the Reliability Standards Manager will forward the interpretation to the RSC. The RSC will determine if the interpretation is consistent with the Standard. The Reliability Standards Manager, on behalf of the RSC, will forward the interpretation to the ERCOT BOD for informational purposes as being appended to the approved Standard.

Note: In the event that the Director of Compliance determines that measurability is lessened, the Director of Compliance shall provide an explanation of his/her reasoning to the Reliability Standards Manager and IDT for inclusion in a subsequent reversion. The ROS shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation

makes the standard technically inappropriate. In either case, the IDT and Reliability Standards Manager will continue to re-circulate the interpretation as stated above.

The interpretation will stand until such time as the Standard is revised through the normal process, at which time the Standard will be modified to incorporate the clarifications provided by the interpretation.

VII. Appeals

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of an ERCOT-Specific Reliability Standard shall have the right to appeal. This Appeals Process applies only to this Standards Process.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

The Appeals Process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants:

Level 1 Appeal

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the Reliability Standards Manager that describes the substantive or procedural action or inaction associated with a Reliability Standard or the Standards Process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the Reliability Standards Manager shall prepare a written response addressed to the appellant as soon as practical, but not more than 45-days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the Standard.

Level 2 Appeal

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the Reliability Standards Manager, the Reliability Standards Manager shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by ERCOT's BOD. In all cases, Level 2 Appeals Panel Members shall have no direct affiliation with the participants in the appeal.

The Reliability Standards Manager shall post the complaint and other relevant materials and provide at least 30-days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the RSC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a Reliability Standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to ERCOT's BOD for consideration at the time the BOD decides whether to adopt a particular Reliability Standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30-days after the announcement of the vote on the Standard in question.

Appendix C – Sample Standard Request Form

ERCOT-Specific Reliability Standard Authorization Request

The tables below provide a representative example of information in a Regional Reliability Standard Authorization Request. The Reliability Standards Manager shall be responsible for implementing and maintaining the applicable form as needed to support the information requirements of the Texas RE Standards Process. The latest version of the form will be downloadable from the Texas RE's Standards Development Web page.

Texas RE Reliability Standard Authorization Request Form

Texas RE to complete

ID
Authorized for Posting
Authorized for Development

Title of Proposed Standard:
Request Date:

SAR Requestor Information

<i>Name:</i>	SAR Type (Check one box.)
Company:	<input type="checkbox"/> New Standard
Telephone:	<input type="checkbox"/> Revision to Existing Standard
Fax:	<input type="checkbox"/> Withdrawal of Existing Standard
Email:	<input type="checkbox"/> Urgent Action

Purpose (Describe the purpose of the proposed regional reliability standard – what the standard will achieve in support of reliability.)

Industry Need (Provide a detailed statement justifying the need for the proposed regional reliability standard, along with any supporting documentation.)

Brief Description (Describe the proposed regional reliability standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others.)

Reliability Functions

The Standard will Apply to the Following Functions <i>(Check all applicable boxes.)</i>		
<input type="checkbox"/>	Reliability Coordinator	The entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
<input type="checkbox"/>	Balancing Authority	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
<input type="checkbox"/>	Interchange Authority	Authorizes valid and balanced Interchange Schedules.
<input type="checkbox"/>	Planning Authority	The responsible entity that coordinates and integrates transmission facility and service plans, resource plans, and protection systems.
<input type="checkbox"/>	Transmission Service Provider	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.
<input type="checkbox"/>	Transmission Owner	The entity that owns and maintains transmission facilities.
<input type="checkbox"/>	Transmission Operator	The entity responsible for the reliability of its "local" transmission system, and that operates or directs the operations of the transmission facilities.
<input type="checkbox"/>	Transmission Planner	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area.
<input type="checkbox"/>	Resource Planner	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area.
<input type="checkbox"/>	Generator Operator	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
<input type="checkbox"/>	Generator Owner	Entity that owns and maintains generating units.
<input type="checkbox"/>	Purchasing-Selling Entity	The entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.

<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer.
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.

Reliability and Market Interface Principles

Applicable Reliability Principles <i>(Check all boxes that apply.)</i>	
<input type="checkbox"/>	1. Interconnected bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
<input type="checkbox"/>	2. The frequency and voltage of interconnected bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
<input type="checkbox"/>	3. Information necessary for the planning and operation of interconnected bulk power systems shall be made available to those entities responsible for planning and operating the systems reliably.
<input type="checkbox"/>	4. Plans for emergency operation and system restoration of interconnected bulk power systems shall be developed, coordinated, maintained, and implemented.
<input type="checkbox"/>	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk power systems.
<input type="checkbox"/>	6. Personnel responsible for planning and operating interconnected bulk power systems shall be trained, qualified, and have the responsibility and authority to implement actions.
<input type="checkbox"/>	7. The security of the interconnected bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
Does the proposed Standard comply with all of the following Market Interface Principles? <i>(Select ‘yes’ or ‘no’ from the drop-down box.)</i>	
Recognizing that reliability is an Common Attribute of a robust North American economy:	
1. A reliability standard shall not give any market participant an unfair competitive advantage. Yes	
2. A reliability standard shall neither mandate nor prohibit any specific market structure. Yes	
3. A reliability standard shall not preclude market solutions to achieving compliance with that standard. Yes	
4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards. Yes	

Detailed Description (Provide enough detail so that an independent entity familiar with the industry could draft a standard based on this description.)

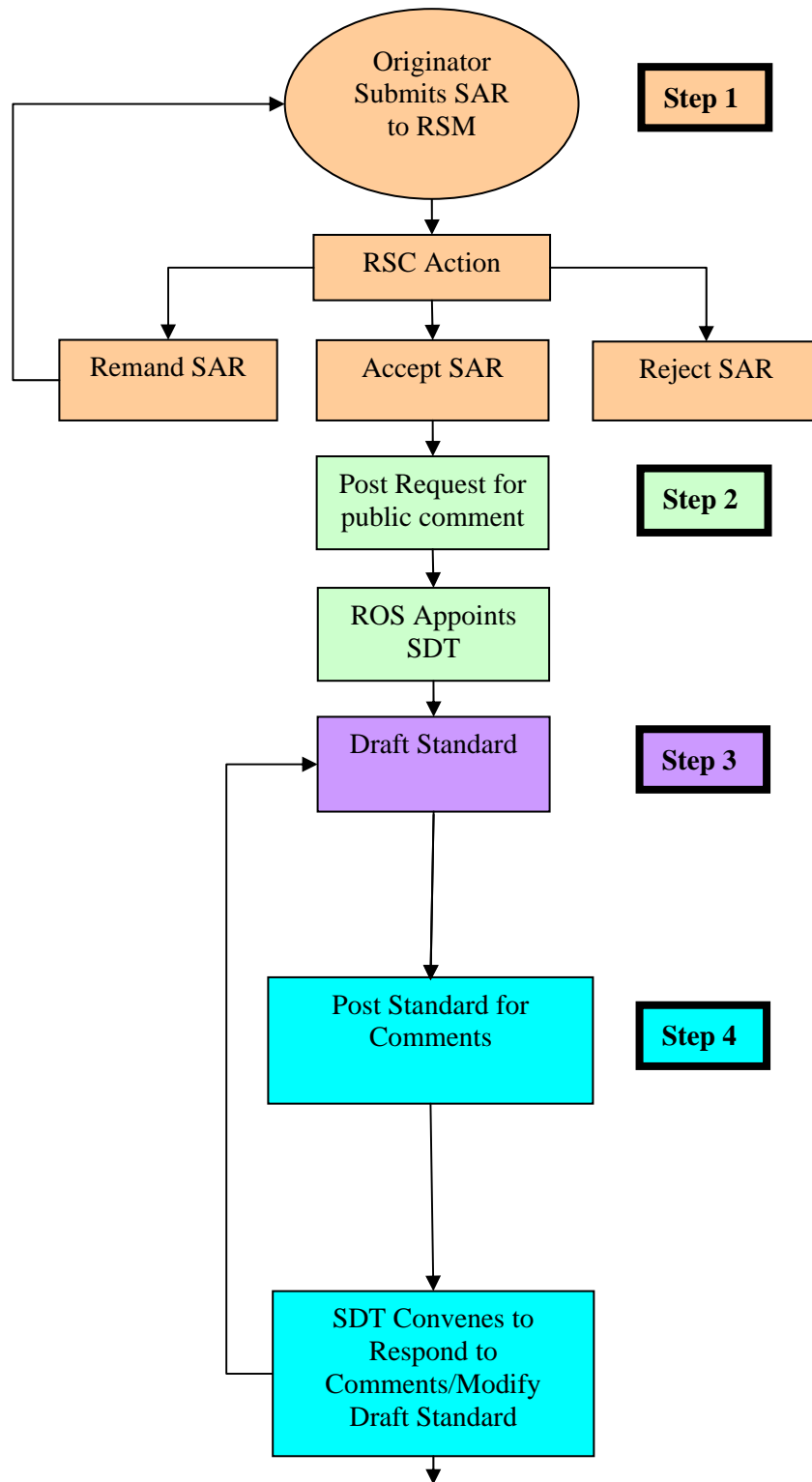
Related Standards

Standard No.	Explanation

Related SARs

SAR ID	Explanation

Appendix D – Process Flow Diagram



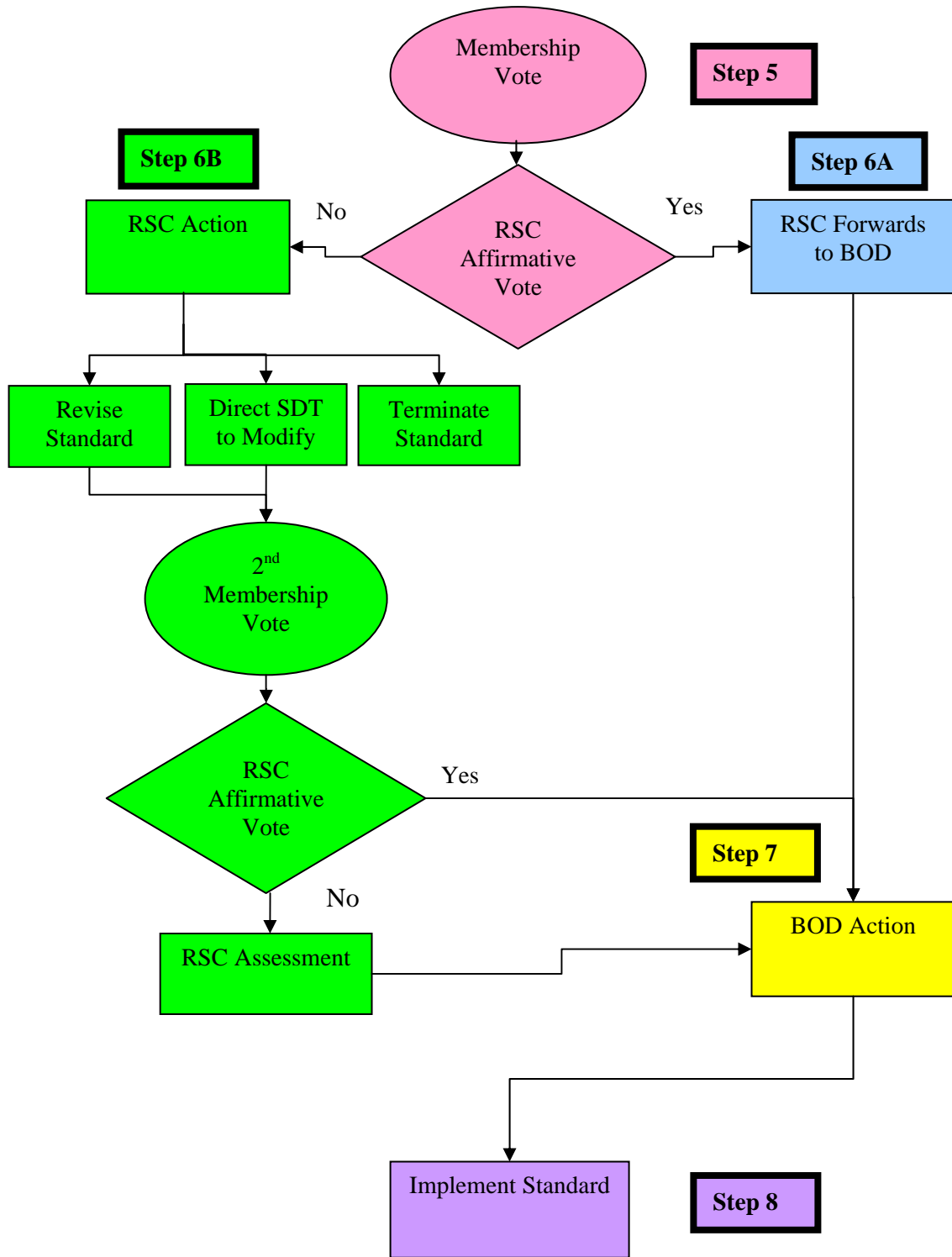


EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of Texas Regional Entity

The Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc. (Texas RE), will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure (NERC CMEP)) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within Texas RE's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

A. **Hearing Body.** Texas RE will use the Public Utility Commission of Texas (PUCT) as its Hearing Body, and the PUCT (as Hearing Body) will issue recommendations to the Texas RE Chief Compliance Officer who will make final decisions following regional hearings of compliance matters. The PUCT has extensive experience in conducting contested case hearings and other adjudicatory proceedings in a manner that assures due process of law to all participants. Texas RE intends to rely upon the PUCT's experience and expertise in conducting the hearing process under the Delegation Agreement. Texas RE believes that it is more efficient and cost-effective to use existing PUCT procedures than to attempt to establish a redundant hearing process within Texas RE. The PUCT is uniquely well-positioned to perform this function for the ERCOT Region since electric utilities operating in the ERCOT Region do not synchronously interconnect with electric utilities operating outside of Texas, and ERCOT market participants have experience in participating in PUCT proceedings.

B. **Public Hearings.** The PUCT as Hearing Body will hold public hearings on all matters referred to it by the Texas RE for hearing and recommendation. The PUCT's performance of Hearing Body responsibilities is fully consistent with the NERC Rules of Procedure and with Section 39.7 of FERC Order 672, with the exception of Section 39.7(b)(4), which requires "[e]ach violation or alleged violation [to] be treated as nonpublic until the matter is filed with [FERC] as a notice of penalty or resolved by an admission ... or by a settlement or other negotiated disposition." Because the PUCT is a "governmental body" under the Texas Open Meetings Act (Texas Government Code § 551.002), the PUCT is required to conduct any deliberations and render a decision in a meeting that is open to the public. The Texas Open Meetings Act also requires that any evidence or other submissions concerning a PUCT hearing, except for information that is confidential or privileged under law, be publicly available. Texas Attorney General opinions have determined that the need to consider confidential information does not justify conducting a closed meeting or executive session. Although PUCT hearings, including those contemplated under this Exhibit D, are conducted as open meetings, steps are taken to prevent the disclosure of confidential information during the hearing process. Direct testimony in such cases is generally presented in written question and answer format, with any confidential information redacted, filed under seal and provided

to parties pursuant to a protective order. In hearings conducted under these rules, the Hearing Body shall use best efforts to avoid the inadvertent disclosure of confidential information. The Presiding Officer may use the following methods to protect confidential information, in addition to the entry of an appropriate protective order: (1) Requiring the aggregation of confidential information aggregated to eliminate its confidentiality; (2) Permitting or requiring the redaction of testimony where the non-public information is not material to the merits; (3) Closing the public hearings on a temporary basis to those not bound under the terms of any case-specific protective order in place while the specific, confidential data is the subject of testimony or argument; and (4) other reasonable means in the discretion of the Presiding Officer.

Under the Texas Public Utility Regulatory Act (PURA) §39.151(j), market participants in the ERCOT market are required to comply with all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures ERCOT establishes. The PUCT is given authority to enforce this obligation through the imposition of penalties, revocation of certifications or other means. In any enforcement proceeding under PURA, PUCT deliberations are conducted in an open meeting in accordance with the procedures outlined above. ERCOT is thus unlike other power regions that may be implementing an enforcement mechanism for the first time. The history of public availability of this information in the ERCOT power region argues in favor of the continued public availability of information considered in enforcement hearings the PUCT conducts as Hearing Body for the Texas RE.

Moreover, elsewhere in Order No. 672, FERC stated that: “If the ERO or a Regional Entity wishes to conduct a public investigation, enforcement audit or permit interventions when determining whether to impose a penalty, the ERO or the Regional Entity must receive advance authorization from the Commission.”¹

In response to Texas RE’s request to be permitted to hold public hearings as outlined herein, FERC issued *In the matter of Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT*, Docket No. RR07-1-000, *Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements and Accepting Regional Entity 2007 Business Plans*, 119 FERC 61,060 at ¶253 (Issued April 19, 2007)(Delegation Agreement Acceptance Order). The Delegation Agreement Acceptance Order provides for open hearings as requested.

C. Hearing Administration. PUCT, as Hearing Body, is authorized to hear cases and render its recommendations through the PUCT Commissioners. The Hearing Body is authorized to use the PUCT staff of Administrative Law Judges (ALJs) and other trained employees to establish the procedures and timelines that will be followed in the regional hearings, including the conduct of hearings and the preparation of draft recommendations. These presiding officers will not, however, have any authority to issue a final recommendation on any alleged violation. The ALJs and staff may preside over hearings before the PUCT, may establish the procedural schedule for these proceedings, take evidence, prepare a draft recommendation, and perform all tasks

¹ Order 672, ¶511.

delegated from the PUCT, except the final rendition and approval of the final recommendation to be provided to the Chief Compliance Officer.

D. **Detailed Hearing Procedures.** The details of the proposed Texas Regional Entity Regional Hearing Process ~~is~~are attached hereto as **Attachment 1 and Attachment 2**. **Attachment 1** consists of a summary of the NERC CMEP procedures that must be altered to accommodate Texas RE's request to have the PUCT act as its Hearing Body. **Attachment 1** is a summary of necessary revisions to Attachment 2 of the CMEP, and together with **Attachment 2** hereto and the incorporated PUCT Chapter 22 Procedural Rules, provides the details of the regional hearing process Texas RE has adopted.

In addition to the requested modifications to procedures set forth in Attachment 2 of the CMEP, Texas RE also varies from Section 5.5 of the main body of the CMEP, allowing the Chief Compliance Officer's decision (instead of the hearing body's decision) be appealed to NERC. This language is contained as subsection 9.2 of **Attachment 1**: "The Registered Entity may appeal the Chief Compliance Officer's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410."

E. **Regional Hearing of Compliance Matters.** Texas RE shall establish the PUCT as the hearing body, with authority to conduct compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan. The PUCT will issue a final recommendation to the Chief Compliance Officer rather than a final order.

1.3 Other Decision-Making Bodies.

Texas RE will not use other decision-making bodies within its compliance program.

ATTACHMENT 1 TO EXHIBIT D –

COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM TEXAS REGIONAL ENTITY REGIONAL HEARING PROCESS

Texas Regional Entity Regional Hearing Process

1.0 Designation of Hearing Body

All formal compliance hearings shall be held before the Compliance Enforcement Authority's Hearing Body. The Hearing Body shall be the Public Utility Commission of Texas. All hearings shall be conducted under the hearing procedures set forth in Attachment 2 to Exhibit D ("Attachment 2—Rules of Procedure"), supplementing this Attachment 1. As set forth in Attachment 2— Rules of Procedure, the Hearing Body may delegate any hearing-related task to a Presiding Officer, except for the issuance of the final recommendation.

The Compliance Enforcement Authority shall initiate the hearing process following the completion of the Notice of Alleged Violation and proposed sanction and registered entity response processes in accordance with Section 5.1 of the North American Electric Reliability Corporation ("NERC") Compliance Monitoring and Enforcement Program ("NERC CMEP"), as set forth below.

Following the filing of a proceeding contesting an Alleged Violation or a Remedial Action Directive, no person shall engage in ex parte communications with the Hearing Body, including without limitation any appointed Presiding Officer, concerning the matter in dispute until the Chief Compliance Officer's written decision issued pursuant to Section 9.1 is appealed or the deadline for filing an appeal has passed; provided, however, that: (a) a member of the Hearing Body or the Presiding Officer may communicate ex parte with another member of the Hearing Body unless prohibited by other law, and (b) a member of the Hearing Body or the Presiding Officer may communicate ex parte with a Commission employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

The Hearing Body may rule on all procedural and discovery matters pursuant to Attachment 2—Rules of Procedure.

The Hearing Body may delegate to a single commissioner, a hearings examiner, or an administrative law judge (a "Presiding Officer") the authority to establish the procedures and dates for the presentation of all materials concerning the alleged violation and the power to hear evidence and to issue a draft recommendation, but the Hearing Body may not delegate its authority to issue a final recommendation on the alleged violation to the Chief Compliance Officer of the Compliance Enforcement Authority.

In accordance with Attachment 2—Rules of Procedure, the Hearing Body may provide for additional procedures as it deems necessary to effectively carry out a compliance hearing. To the extent permitted by law, any provision in this Attachment 1 may be waived, suspended, or modified by the Presiding Officer or the Hearing Body, as defined in Attachment 2—Rules of Procedure §1.1.5, for good cause shown, either

upon the Presiding Officer's or the Hearing Body's own motion or upon the motion of any Party.

2.0 Recusal of Member of Hearing Body

A Hearing Body member, Presiding Officer, or Technical Advisor shall recuse himself or herself if participation in the enforcement proceeding would violate the Compliance Enforcement Authority's Conflict of Interest or Code of Conduct policy.

The Registered Entity may raise an objection to any member of the Hearing Body, a Presiding Officer or Technical Advisor on grounds of a conflict of interest or the existence of other circumstances that could interfere with the that person's impartial performance of his or her duties. Such objections must be provided in writing and filed reasonably in advance of the start of the hearing and the Presiding Officer shall make a decision on the objection promptly. Upon request of the Registered Entity, the Hearing Body (without participation of the Hearing Body member, Presiding Officer, or Technical Advisor) may review the determination and, if so, shall issue a decision on the objection promptly.

3.0 Authorized Representatives

Both the Compliance Enforcement Authority and the Registered Entity shall submit to the Hearing Body the names of the persons authorized to represent them in the Hearing Process pursuant to Attachment 2—Rules of Procedure. Such persons shall be officers or equivalents of the Regional Entity and the Registered Entity that have the authority to act on behalf of the Regional Entity and the Registered Entity, respectively. In addition, a party shall advise the Hearing Body and the other party if the party will be represented by legal counsel.

4.0 Statement of Alleged Violation and Response by Registered Entity

The Registered Entity shall initiate the compliance hearing process in accordance with Section 5.1 of the NERC CMEP and Attachment 2—Rules of Procedure by filing with the Hearing Body Clerk a statement or complaint contesting the written Notice of Alleged Violation and proposed sanction and serving a copy upon the Compliance Enforcement Authority. Specifically, the Registered Entity shall file with the Hearing Body (with service of copies upon the Compliance Enforcement Authority) a written statement of reasons why the Alleged Violation is in error or a written statement of reasons why the proposed penalty or sanction is inappropriate (if applicable in the particular case), along with copies of all documents relied on by the Registered Entity to support its position. If the dispute involves a Registered Entity's proposed mitigation plan ("Registered Entity's Mitigation Proposal") that has not been accepted by the Compliance Enforcement Authority, the Registered Entity may initiate the hearing process by filing a request for hearing with the Hearing Body Clerk and serving a copy upon the Compliance Enforcement Authority.

Within five (5) business days after the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed, the Compliance Enforcement Authority's designated representative shall file with the Hearing Body (with copies to the Registered Entity) a copy of the written Notice of the Alleged Violation and proposed sanction that was originally provided to the Registered Entity, along with copies of any non-privileged or non-exempt documents gathered and reviewed by the

Compliance Enforcement Authority in the course of determining an Alleged Violation has occurred and in determining the proposed sanction or penalty.

If the hearing involves the question of whether a Registered Entity's Mitigation Proposal should be accepted, within twenty (20) days after the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed, the Compliance Enforcement Authority shall file a report stating why the Registered Entity's Mitigation Proposal was not accepted. If the hearing involves a Registered Entity's Mitigation Proposal, the Registered Entity shall file its proposed Mitigation Plan and supporting information stating why the Mitigation Plan should be accepted within thirty (30) days after the date the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed.

5.0 Setting of Hearings and Conferences

The Hearing Body shall set a date for an initial conference within thirty (30) days after the date the request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive is filed. At the initial conference, the Hearing Body shall establish specific procedures for the hearing including (1) any procedures for exchange of additional documents, (2) any written testimony, (3) the hearing date(s), and (4) dates for any briefs. Subject to Section 6.0 and the Attachment 2—Rules of Procedure, each party shall be entitled to (1) present the testimony of witnesses, (2) cross-examination of opposing witnesses, (3) make an oral presentation of position, and (4) file a written post-hearing brief.

The Hearing Body may hold additional conferences. All notices of conferences and hearings shall set forth the date, time and place of hearing. The Hearing Body shall issue a written order setting forth the agreements and rulings made at each conference.

By agreement of the parties or order of the Hearing Body, any conference or hearing may be conducted via teleconference, except that, subject to section 6.0 of this hearing process, witnesses shall personally appear at the hearing.

All prehearing conferences and hearings shall be open to the public, except when the use of a closed meeting is authorized by Texas law.

6.0 Conduct of Hearing

The hearing will be conducted under the provisions of this section 6.0 and the Attachment 2— Rules of Procedure.

The hearing need not be held on consecutive days, and shall be held at the offices of the Hearing Body unless the Hearing Body decides on a different location after consulting with the parties.

The party requesting transcription of the hearing, the Registered Entity or Compliance Enforcement Authority, will arrange and pay for transcription of the hearing.

The Hearing Body shall direct the direct testimony of any witnesses be in written form in accordance with Attachment 2— Rules of Procedure. All witnesses shall be required to appear in person, unless waived by the parties and the Hearing Body. Motions shall be made and decided, evidence shall be presented, and a record shall be made in accordance with Attachment 2— Rules of Procedure.

7.0 Submission of Post-Hearing Briefs

The parties may submit post-hearing briefs on a schedule established by the Hearing Body pursuant to Attachment 2— Rules of Procedure. The parties may, and on request of the Hearing Body shall, submit proposed findings of fact and conclusions of law.

8.0 Record of the Compliance Hearing

If applicable, copies of the following documents shall be maintained by the Hearing Body as the record of the hearing process:

- (1) The written notice that a request for review of the Alleged Violation, penalty, or mitigation plan or Remedial Action Directive has been filed with the Hearing Body Clerk;
- (2) The Notice of Alleged Violation and sanction issued by the Compliance Enforcement Authority and the response filed by the Registered Entity, including in each case all attachments thereto and documents provided therewith;
- (3) If the hearing involves a Registered Entity's Mitigation Proposal, (a) the Registered Entity's Mitigation Proposal and supporting information as to why the Registered Entity's Mitigation Proposal should be accepted and (b) the report of the Compliance Enforcement Authority stating why the Registrant's Mitigation Proposal was not accepted;
- (4) Any requests for recusal of a member of the Hearing Body, a Presiding Officer, or a Technical Advisor, and any responses to such requests;
- (5) All motions, notices and responses filed by the parties during the hearing process;
- (6) All documents that set forth or that summarize any ex parte communications;
- (7) All notices and rulings issued by the Hearing Body during the hearing process;
- (8) All interlocutory orders;
- (9) All written testimony and all exhibits received into evidence;
- (10) All written testimony and documentary exhibits that were proffered but not admitted into evidence;
- (11) Any transcript(s);
- (12) The parties' post-hearing briefs, any exceptions to the draft recommendation, any motions for reconsideration or rehearing, and any other post-decision briefing or motion;
- (13) The draft recommendation of the Presiding Officer, if any; and
- (14) The final recommendation of the Hearing Body.

9.0 Timing of Written Recommendation to the Chief Compliance Officer

The Hearing Body shall issue its written final recommendation to the Chief Compliance Officer within thirty (30) days following the submission of post-hearing briefs, or, if

briefing is waived, following the conclusion of the hearing. The Hearing Body may in its discretion extend the time for the issuance of the written final recommendation to the Chief Compliance Officer for up to an additional sixty (60) days. The written final recommendation shall state the opinion of the Hearing Body with respect to Alleged Violations of Reliability Standards and proposed penalties or sanctions at issue in the hearing. If the hearing involves a Registered Entity's Mitigation Proposal, the written final recommendation shall either propose acceptance or rejection of the Registered Entity's Mitigation Proposal. If the proposed Registered Entity's Mitigation Proposal is recommended for rejection, the Hearing Body may specify the provisions of an alternative plan of mitigation that the Registered Entity should be required to implement. The written final recommendation shall explain the reasons for the Hearing Body's conclusions and cite the testimony and exhibits relied on by the Hearing Body in reaching its opinions. Copies of the written final recommendation shall be served electronically and by certified mail on the Registered Entity and on the Compliance Enforcement Authority's designated representative at the time it is issued to the Chief Compliance Officer.

9.1 Written Decision by the Chief Compliance Officer

The Chief Compliance Officer shall issue his written decision accepting, rejecting or modifying the Hearing Body's recommendation, within twenty (20) business days following the issuance of the Hearing Body's written final recommendation. The Chief Compliance Officer may extend the date for issuance of his written decision for an additional twenty (20) business days in his sole discretion. The Chief Compliance Officer's written decision shall state the conclusion of the Chief Compliance Officer with respect to Alleged Violations of Reliability Standards and proposed penalties or sanctions at issue in the hearing. If the hearing involves a Registered Entity's Mitigation Proposal, the written decision shall either accept or reject the Registered Entity's Mitigation Proposal. If the proposed Registered Entity's Mitigation Proposal is rejected, the Chief Compliance Officer may specify the provisions of the Registered Entity's Mitigation Proposal that the Registered Entity should be required to implement, together with other mitigation measures the Chief Compliance Officer shall require. The written decision shall explain the reasons for the Chief Compliance Officer's conclusions and cite the testimony and exhibits relied on by the Chief Compliance Officer in reaching its conclusions. Copies of the written decision shall be served electronically and by certified mail on the Registered Entity, on the Compliance Enforcement Authority's designated representative, and on the Hearing Body.

9.2 NERC Appeal Process

The Registered Entity may appeal an adverse decision of the Chief Compliance Officer to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410.

10.0 Expedited Hearing Process for Disputes Concerning Remedial Action Directives

A Registered Entity that disputes a Remedial Action Directive issued by a Compliance Enforcement Authority may request an expedited hearing. To facilitate the expedited hearing, the Compliance Enforcement Authority may request that the Hearing Body convene for purposes of the expedited hearing process. The following expedited procedures shall be followed:

- (1) The Registered Entity shall file its written response the Remedial Action Directive and request for emergency hearing with the Hearing Body, with a copy to the Compliance Enforcement Authority's designated representative within two (2) business days after receipt of the Remedial Action Directive. The Hearing Body may appoint a Presiding Officer to conduct all proceedings under this Section 10.0, except for the issuance of a final recommendation to the Chief Compliance Officer.
- (2) The Hearing Body shall be convened for purposes of a prehearing, and if requested, for interim relief, not less than two (2) nor more than five (5) business days after receipt of the Registered Entity's request for a hearing.
- (3) The Hearing Body shall conduct a hearing on the matter, in person or by teleconference, within thirty (30) days after the Hearing Body is convened. At the hearing, the Compliance Enforcement Authority shall explain why the Remedial Action Directive should be complied with, and the Registered Entity shall explain why the Remedial Action Directive is not necessary or should be modified.
- (4) The Hearing Body shall issue a summary written recommendation to the Chief Compliance Officer within twenty (20) business days following the hearing, stating whether the Registered Entity should or should not be required to comply with the Remedial Action Directive and identifying any modifications to the directive that it finds appropriate.
- (5) The Chief Compliance Officer shall issue a summary written [recommendation decision](#) within ten (10) business days following the Hearing Body's issuance of its summary written recommendation, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the directive that it finds appropriate.
- (6) If the Chief Compliance Officer's summary written decision concludes that the Registered Entity is required to comply with the Remedial Action Directive or any modification to such directive (including adjustments to the timetable for implementation), the Registered Entity shall be required to begin implementing the Remedial Action Directive upon receipt of the summary written decision, if it has not already implemented the Remedial Action Directive.
- (7) Within thirty (30) days following issuance of its summary written decision, the Chief Compliance Officer shall issue a full written decision regarding the Remedial Action Directive to the requirements of Section 9.0, above, that may be appealed consistent with Section 9.2.
- (8) This Section 10.0 provides procedures for the expeditious determination of the propriety of a contested Remedial Action Directive. Nothing in this Section shall be read to impair the Compliance Enforcement Authority's authority to issue a Notice of Alleged Violation and proposed sanction on alleged violations of standards addressed by a Remedial Action Directive or on other alleged violations occurring contemporaneously with the Remedial Action Directive or at any other time using the non-expedited procedures of this Attachment 1 or Attachment 2— Rules of Procedure.

ATTACHMENT 2 TO EXHIBIT D – TEXAS RE RULES OF PROCEDURE

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 to the Texas Regional Entity, a division of Electric Reliability Council of Texas (“Texas RE” or “Compliance Enforcement Authority”) (“Rules of Procedure”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority and Hearing Board, as defined herein, in hearings in the ERCOT region of the United States conducted into (a) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (b) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Rules of Procedure shall be conducted before the Public Utility Commission of Texas (“Commission”), as is further provided herein.

1.1.2 Deviations and Exceptions

- (a) To the extent permitted by law, any provision in these Rules of Procedure may be waived, suspended or modified by the Presiding Officer or the Hearing Body, as defined in Section 1.1.5, for good cause shown, either upon the Presiding Officer’s or the Hearing Body’s own motion or upon the motion of any Party.
- (b) Where an issue is not addressed by the terms of these Rules, the Hearing Body shall use the Chapter 22 Procedural Rules.
- (c) The following provisions of Chapter 22 shall not be applicable to proceedings brought under these Procedural Rules:
 - (1) P.U.C. PROC. R. § 22.32;
 - (2) P.U.C. PROC. R. § 22.33;
 - (3) P.U.C. PROC. R. § 22.35;
 - (4) P.U.C. PROC. R. §§ 22.51-22.54;
 - (5) P.U.C. PROC. R. § 22.56;
 - (6) P.U.C. PROC. R. § 22.71(j);
 - (7) P.U.C. PROC. R. §§ 22.102(a)(3), (4) and (c);
 - (8) P.U.C. PROC. R. §§ 22.103-22.105;
 - (9) P.U.C. PROC. R. §§ 22.125-22.126;
 - (10) P.U.C. PROC. R. § 22.202(e);
 - (11) P.U.C. PROC. R. §§ 22.206-22.207;
 - (12) P.U.C. PROC. R. §§ 22.241-22.246;

- (13) P.U.C. PROC. R. §§ 22.251-22.252;
 - (14) P.U.C. PROC. R. § 22.263(d); and
 - (15) P.U.C. PROC. R. §§ 22.281-22.284.
- (d) For purposes of this Attachment 2—Rules of Procedure, the following shall supplement the terms of a Chapter 22 Rule, as specified:
- (1) P.U.C. PROC. R. § 22.31. The following subsection (d) shall be added:
 - “(d) The Hearing Body Clerk shall designate each proceeding brought under these rules as a docket.”
 - (2) P.U.C. PROC. R. § 22.72(e). The following sentence shall be added at the end of this subsection:
 - “A party or its authorized representative shall also provide in its signature block one or more electronic mail addresses to which service may be made.”
 - (3) P.U.C. PROC. R. § 22.74(b). The following sentence shall be added at the end of this subsection:
 - “(b) . . . Service may be made by electronic mail to the email address included in a signature block of a party or its authorized representative.
- * * *
- “(4) Service by email shall be complete upon transmission of the communication from the electronic mail server of the serving party.”
- (e) All proceedings filed under these rules shall be conducted under the Commission’s Chapter 22 Procedural Rules, as modified herein, but may not be referred to the State Office of Administrative Hearings.

1.1.3 Standards for Discretion

The Hearing Body’s discretion under these Rules of Procedure shall be exercised to accomplish the following goals:

- (a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- (b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Parties should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Party that would otherwise result from another Party’s failure to act diligently and in good faith.

- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Party or interest group.
- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

- (a) These Rules of Procedure shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Section 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- (b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- (c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

1.1.5 Definitions

- (a) Unless otherwise defined, as used in these Rules of Procedure (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

"Bulk-Power System," for the purposes of these Rules of Procedure, has the meaning set forth in 16 U.S.C. §824o(a)(1).

"Chapter 22" or "Commission Procedural Rules" shall mean the Chapter 22 Procedural Rules of the Commission, 16 TEX. ADMIN. CODE ch. 22., and be cited as "P.U.C. PROC. R. § [].".

"Chief Compliance Officer" means the Chief Executive Officer of the Texas Regional Entity.

"Commission" means the Public Utility Commission of Texas.

"Compliance Enforcement Authority Clerk," as designated by the Compliance Enforcement Authority.

"Compliance Enforcement Authority" means the Regional Entity, by and through its Chief Compliance Officer.

“Compliance Enforcement Authority’s area of responsibility” means the Texas Regional Entity’s corporate region.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates ~~details about~~ the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Cybersecurity Incident” means any malicious act or suspicious event that ~~disrupts~~compromises, or was an attempt to ~~compromisedisrupt~~, the operation ~~Electronic Security Perimeter or Physical Security Perimeter~~ of those programmable electronic devices and communications networks including hardware, software, and data that are essential to the Reliable Operation of the ~~facilities, systems, and equipment which, if destroyed, degraded or otherwise rendered unavailable, would affect the reliability or operability of the~~ Bulk-Power System ~~(a “Critical Cyber Asset”), or disrupts, or is an attempt to disrupt, the operation of a Critical Cyber Asset.~~

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. §39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Filing Clerk” or “Hearing Body Clerk” means the Central Records filing clerk of the Public Utility Commission of Texas.

“Hearing Body” means the Public Utility Commission of Texas.

“Mitigation Plan” means an action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent reoccurrence of the violation. A Mitigation Plan is ~~usually~~ required when ~~ever~~ a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority Decision, settlement agreement, or otherwise.

“Party” means any Person who is allowed or required to participate in a proceeding conducted pursuant to these Rules of Procedure. The term “Party” as used herein shall include the members of the Compliance Staff of the Compliance Enforcement Authority that participate in a proceeding.

“Penalty” as used herein includes all penalties and sanctions that may be imposed pursuant to 16 U.S.C. §824o-1 and applicable regulations,

including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity's violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.

"Person" means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

"Presiding Officer" or "Hearing Examiner" means an individual employed or contracted by the Hearing Body and designated by the Hearing Body to preside over hearings conducted pursuant to these Rules of Procedure.

"North American Electric Reliability Council" or "NERC" means North American Electric Reliability Corporation.

"Registered Entity" means each user, owner and operator of the Bulk-Power System within the United States that is required to register with the Regional Entity pursuant to 18 C.F.R. § 39.2.

"Regional Entity" means Texas Regional Entity or Texas RE, a division of Electric Reliability Council of Texas.

"Reliable Operation" has the meaning set forth in Section 215 of the Federal Power Act.

"Reliability Standards" means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

"Remedial Action Directive" means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent threat of harm.

"Respondent" means the Registered Entity who is the subject of the Notice of Alleged Violation or contested Mitigation Plan that is the basis for the proceeding, whichever is applicable.

"Staff" or "Compliance Staff" means individuals employed or contracted by the Compliance Enforcement Authority who have the authority to make initial determinations of Registered Entities' compliance with or violation of the Reliability Standards and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, Hearing Body employee, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Presiding Officer and/or the Hearing Body.

- (b) For purposes of this Attachment 2--Rules of Procedure and in application to any proceeding brought under these rules, the following terms shall be substituted for the term used in a Chapter 22 rule:

“Administrative law judge” shall mean and refer to the defined term “Presiding Officer.”

“Central records” shall mean “Hearing Body Clerk.”

“Final order” shall mean “final recommendation.”

“Proposal for decision” shall mean “draft recommendation.”

“Public utility” shall mean “party.”

- (c) If a term is defined in this Attachment 2—Rules of Procedure and in Chapter 22, the meaning expressed herein shall prevail.

1.1.6 Interventions Are Not Permitted

The Respondent(s) and Compliance Staff shall be Parties to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Party to the proceeding.

1.1.7. Proceedings Open to the Public

All hearings, oral arguments, and meetings of the Hearing Body shall be open to the public, and every notice, ruling, order or any other issuance of the Presiding Officer or Hearing Body, and any transcript, made in any proceeding shall be publicly released unless a Party has requested that it be kept confidential in accordance with Texas law, and the Presiding Officer or Hearing Body determines that the information should not be released publicly.

1.1.8 Numbering and Docketing System

The Staff of the Compliance Enforcement Authority shall maintain a system of numbering proceedings before they are sent to the Hearing Body for a hearing under these procedures. A numbered proceeding shall be created within the Compliance Enforcement Authority upon the issuance of a notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authority, proceeding numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[RE]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year. If the proceeding is not settled and becomes a contested matter before the Hearing Body,

the Hearing Body's numbering and docketing system shall govern the tracking of such filings while under the Hearing Body's administration.

1.2 Hold Harmless

A condition of a Party invoking these Rules of Procedure and participating in a hearing is that the Party agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, attorneys and experts (outside or in-house), Hearing Body members, Presiding Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This "hold harmless" provision does not extend to matters constituting gross negligence, ~~or~~ intentional misconduct, or breach of confidentiality.

1.3 Initiation of the Hearing Process

Except when contesting a Remedial Action Directive pursuant to section 1.5 of these Rules of Procedure, a Registered Entity may file a response or complaint with the Compliance Enforcement Authority and the Filing Clerk requesting a hearing if:

- (a) The Registered Entity contests a Notice of Alleged Violation as to the existence or scope of the alleged violation, the proposed Penalty, or both; or
- (b) The Registered Entity contests the Compliance Enforcement Authority's rejection of Registered Entity's Mitigation Proposal in whole or in part.

A Registered Entity must file its hearing request within forty (40) days after (i) the Registered Entity files its response to the notice of Alleged Violation; or (ii) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's Mitigation Proposal, whichever is applicable. If the Registered Entity does not file a hearing request within the time period set forth in this Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff's stated position on the Registered Entity's Mitigation Proposal, whichever is applicable.

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its disagreement with a Registered Entity's Mitigation Proposal shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's position on the Registered Entity's Mitigation Proposal.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- (a) The Registered Entity's Self-Reporting of a violation;
- (b) The Notice of Alleged Violation and the Registered Entity's response thereto; or

- (c) The Registered Entity's Mitigation Proposal and the Compliance Staff's statement identifying its disagreement with the Registered Entity's Mitigation Proposal.

1.4 General Hearing Procedure

Except as otherwise specified in this Attachment 2—Rules of Procedure, the procedures and timelines set forth in Chapter 22 shall govern the conduct of a hearing arising under these rules.

1.4.1 Hearing Body

The Hearing Body, consisting of a quorum of the Commission, shall hear all proceedings brought under these Rules of Procedure, unless the Commission elects to delegate all or part of the proceeding to a Presiding Officer who is a member of the Commission Staff. The Hearing Body is vested with the exclusive authority to issue a final recommendation to the Chief Compliance Officer for the resolution of the issue(s) presented. The following procedures shall also apply:

- (a) The Hearing Body or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, or to submit questions to the Presiding Officer to submit to a Party or any witness at any such hearing. No more than one member of the Hearing Body may be present for any prehearing conference, status hearing, or evidentiary hearing unless the Hearing Body has complied with the Open Meetings requirements of Texas law.
- (b) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a final recommendation to the Chief Compliance Officer. In issuing a final recommendation to the Chief Compliance Officer, the Hearing Body shall consider the Presiding Officer's draft recommendation but shall have the authority to reject, modify or approve the draft recommendation in whole or in part in issuing its final recommendation.

1.4.2 Technical Advisor

The Presiding Officer or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to ~~in~~ any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Proposal Plan that resulted in the proceeding in which technical advice would be rendered, and shall not otherwise participate in the proceeding on which such technical advice would be rendered.

If the Presiding Officer or Hearing Body uses a Technical Advisor to assist in any hearing, the Presiding Officer or Hearing Body shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) days of the Technical Advisor's assignment to the proceeding, and Parties to the hearing may raise objections to the Technical Advisor's participation within 10 business days of disclosure.

1.5 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Compliance Enforcement Authority will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive in accordance with these Rules of Procedure and Delegation Agreement, Exhibit D, Attachment 1, §10, by filing a written notice with the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following issuance of the Remedial Action Directive. If the Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Registered Entity shall simultaneously file with the Hearing Body Clerk a copy of the notice that it is contesting the Remedial Action Directive.

The Hearing Body Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene.

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

The Texas Regional Entity Division of Electric Reliability Council of Texas, Inc. (“Texas RE”) shall include in its annual budget submission to the North American Electric Reliability Corporation (“NERC”) amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC’s responsibilities as the ERO under the Act, as specified in the NERC Rules (“Statutory Functions”). These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness ~~Audit~~Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

2. Allocation of Costs

Texas RE shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method or methods of allocating and calculating such dues, fees, or charges ~~is expressly provided in the annual business plan has been submitted to and budget Texas RE and approved by NERC submit to and the Commission pursuant to 18 C.F.R. §39.4, in accordance with Section 8(b) of the delegation agreement.~~ Texas RE shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net-energy-for load or such other data or information as is necessary to allocate and calculate Texas RE’s dues, fees, or charges under any other method of allocation or calculation that is to be used.

3. Collection of Funding

~~NERC shall submit invoices on a quarterly basis to (a) NERC, Texas RE, and Electric Reliability Council of Texas, Inc. (“ERCOT”) have agreed that ERCOT shall act as the billing agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities, ERCOT Qualified Scheduling Entities (“QSEs”), or such other entities as agreed by NERC, Texas RE, and ERCOT. ERCOT and Texas RE agree that ERCOT shall: (i) issue all invoices to load-serving entities, QSEs, or other agreed entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoice; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC quarterly, in a timely manner. Texas RE shall confirm that ERCOT complies with these obligations, and shall notify NERC promptly of any compliance failures.~~

NERC shall submit invoices on a quarterly basis to ERCOT covering the NERC and Texas RE budgets approved for collection for the ERCOT region. Within ten (10) business days after receiving this quarterly invoice, ERCOT will electronically transfer to NERC the amount reflected in the invoice, in immediately available funds, unless ERCOT has been unable to collect and does not reasonably believe it can collect such amount from load-serving entities, QSEs, or other agreed entities, after exercise of commercially reasonable efforts. On the same day as ERCOT

makes each electronic transfer of funds to NERC, ERCOT or Texas RE will send an e-mail to the Chief Financial Officer of NERC either (i) confirming that the full invoiced amount has been electronically transmitted to NERC or (ii) stating that ERCOT is unable to collect the full amount of the NERC invoice and reasonably believes that it will not be able to collect the full amount of the NERC invoice from load-serving entities, QSEs, or other agreed entities after exercise of commercially reasonable efforts and confirming the amount that has been transmitted to NERC. In the event ERCOT is unable to transfer to NERC the full invoiced amount, ERCOT shall also send to NERC and Texas RE a listing of any load-serving entity, QSE or other agreed entity that has not fully paid its load ratio share and an itemization of the collections that ERCOT received, by entity and amount. ERCOT will maintain a detailed list of the entities from which payments were collected and the amount collected from each entity.

ERCOT and Texas RE agree that they shall not in any way use their position as billing or collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of Texas RE's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this agreement. ERCOT's confirmation of its agreements as set forth in this Paragraph 3 is attached hereto as Attachment 1.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund Texas RE's costs for Statutory Functions, as identified in the approved budget attached hereto, on a quarterly basis Section 1 of this Exhibit E in four equal quarterly payments, within ten (10) business days after receiving the remittance from ERCOT.

4. Application of Penalties

~~Texas RE shall offset penalty monies it receives from unaffiliated Registered Entities against its next year's annual budget for carrying out Statutory Functions.~~ All penalty monies received by Texas RE, other than penalty monies it receives from its affiliated operational entity, ERCOT, shall be sent to NERC and applied as a general offset to the entity's budget requirements for Statutory Functions U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received by Texas RE from its affiliated operational entity, ERCOT, shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

5. Description of Non-Statutory Activities

~~The Texas RE shall also conduct non-Federal Power Act, §215 activities ("Non-Statutory Activities"). Texas RE's Non-Statutory Activities include:~~

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this Exhibit E (such functions and activities referred to in this Section 5 as "statutory activities"), Texas RE shall also perform the following other functions and activities (referred to in this Section 5 as "non-statutory activities"):

- Investigation of market participants' compliance with the ERCOT Protocols and Operating Guides which contain the Regional criteria for planning and operating reliable interconnected bulk electrical systems in the ERCOT region, and assistance or cooperation in enforcement of violations ("ERCOT Compliance Activities"), so long as the

ERCOT Compliance Activities do not conflict with the ~~Delegated Authority;~~statutory activities, including: (i) maintaining a record of all material occurrences of non-compliance with ERCOT procedures and tracking recurrence of such material occurrences of non-compliance; (ii) promptly providing information to and responding to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures; (iii) maintaining a record of the resolutions of such material occurrences of non-compliance and of corrective actions taken by the market participants in each instance; and (iv) informing the Public Utility Commission of Texas Staff immediately if the material occurrence of non-compliance is not resolved.

- Development of policies, processes, standards, and procedures to implement the ERCOT Compliance Activities; ~~and,~~
- ~~Other activities not in implementation or exercise of Delegated Authority.~~

ERCOT, of which Texas RE is an independent division, operates as an independent system operator under the jurisdiction of the Public Utility Commission of Texas.

6. ~~Time and Expense Tracking to Ensure Separate Funding of Non-Statutory Activities~~

Texas RE shall ~~implement~~employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs and expense it incurs in the performance of its non-statutory functions separately from the costs and expense it incurs in the performance of its statutory functions:

- A. Texas RE segregates the funding for its statutory activities and non-statutory activities by recording the funding transactions in separate and distinct general ledger accounts, in accordance with Generally Accepted Accounting Principles.
- B. Texas RE utilizes and must maintain a time recording and expense management system under which employee time and expenses incurred in the conduct of ~~Non-Statutory Activities~~non-statutory activities will be tracked to ensure that they are not funded by NERC remittances intended for the funding of ~~Statutory Functions~~statutory activities.
- C. Texas RE has adopted a detailed system of Account Codes, Department Codes and Activity Codes which are used in recording expenses. The Activity Codes are specific to statutory activities and non-statutory activities. The Texas RE Activity Codes are modeled on the NERC Functional Categories. Texas RE shall use Department Codes that are unique to Texas RE to record all costs and expenses incurred by Texas RE for statutory activities and non-statutory activities.
- D. Texas RE shall use Activity Codes to appropriately track its costs for statutory activities separately from its costs for non-statutory activities.
- E. Where employee time or an expense affects multiple activities, Texas RE will use an accurate basis of allocation of the time or expense between the activities being performed based on specific metrics, such as time tracking, data observations or total cost input. Total cost input relates the portion of the expense to the total expense to establish an appropriate method to allocate.

Texas RE shall provide its budget for such non-statutory activities to NERC at the same time that Texas RE submits its annual budget request to NERC pursuant to Section 1. Texas RE's budget for non-statutory activities that is provided to NERC shall contain a detailed list of Texas RE's non-statutory activities. Texas RE agrees that no costs of non-statutory activities are to be included in the calculation of Texas RE dues, fees, and other charges for its statutory activities pursuant to this

| [Agreement.](#)

Attachment 1 to Exhibit E

Confirmation of Electric Reliability Council of Texas, Inc. (ERCOT)

ERCOT has agreed to act as the billing agent on behalf of NERC to bill and collect assessments for the costs of activities under Section 215(c) of the Federal Power Act from load-serving entities, Qualified Scheduling Entities (QSEs), or such other entities as agreed by North American Electric Reliability Corporation (NERC), Texas Regional Entity (Texas RE), and ERCOT. ERCOT agrees that ERCOT shall: (i) issue all invoices to load-serving entities, QSEs, or other agreed entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoice; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC on a quarterly basis, in a timely manner.

On a quarterly basis, NERC will send ERCOT an invoice covering the NERC and Texas RE budgets approved for collection for the ERCOT region. Within ten (10) business days after receiving this invoice, ERCOT will electronically transfer to NERC, in immediately available funds, the amount reflected in the NERC invoice, unless ERCOT has been unable to collect and does not reasonably believe it will be able to collect this amount from load-serving entities, QSEs, or other agreed entities after exercise of commercially reasonable efforts. On the same day as ERCOT makes its electronic transfer of funds to NERC, ERCOT will send an e-mail to the Chief Financial Officer of NERC, copying the Texas RE Chief Compliance Officer and the Texas RE financial analyst, either (i) confirming that the full invoiced amount has been electronically transmitted to NERC; or, (ii) stating that ERCOT is unable to collect the full amount of the NERC invoice and reasonably believes that it will not be able to collect the full amount of the NERC invoice from load-serving entities, QSEs, or other agreed entities after exercising commercially reasonable efforts and confirming the amount that has been transmitted to NERC. In the event ERCOT is unable to transfer to NERC the full invoice amount, ERCOT shall also send to NERC and Texas RE a listing of any load-serving entity, QSE, or other agreed entity that has not paid its load ratio share and an itemization of the collections that ERCOT received by entity and amount. ERCOT shall maintain a detailed list of the entities from which payments are collected and the amount collected from each entity.

ERCOT agrees that it shall not in any way use its position as billing or collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of Texas RE's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this agreement.

Electric Reliability Council of Texas, Inc.

By: _____

Name: _____

Title: _____