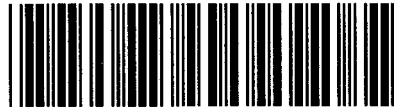




Control Number: 29801



Item Number: 293

Addendum StartPage: 0

SOAH DOCKET NO. 473-04-6558
PUC DOCKET NO. 29801

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APPLICATION OF SOUTHWESTERN
PUBLIC SERVICE COMPANY FOR
RECONCILIATION OF ITS FUEL COSTS
FOR 2002 AND 2003, A FINDING OF
SPECIAL CIRCUMSTANCES, AND
RELATED RELIEF

§ BEFORE THE STATE OFFICE
§ FILING CLERK
§ OF
§ ADMINISTRATIVE HEARINGS
§

TEXAS INDUSTRIAL ENERGY CONSUMERS RESPONSE TO
SOUTHWESTERN PUBLIC SERVICE COMPANY'S
SECOND REQUEST FOR INFORMATION

Texas Industrial Energy Consumers ("TIEC") hereby files its response to the Second Request for Information ("RFI") to TIEC filed by Southwestern Public Service Company. Southwestern Public Service Company's Second RFI was filed at the Commission and received by TIEC on October 29, 2004. Pursuant to P.U.C. PROC. R. 22.144(c), TIEC's response is timely filed. TIEC's responses to specific questions are set forth as follows, on separate pages, in the order of the questions asked. Pursuant to P.U.C. PROC. R. 22.144(c)(2)(F), these responses may be treated as if they were filed under oath. Each response was prepared by or under the supervision of the undersigned.

Furthermore, all of the responses to these RFIs are subject to the Rule 11 Agreement entered into by counsel for TIEC and SPS on November 8, 2004.

Respectfully submitted,

ANDREWS KURTH LLP



Phillip Oldham
State Bar No. 00794392
Karen Whitt
State Bar No. 24034738
111 Congress Avenue, Suite 1700
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ATTORNEYS FOR TEXAS INDUSTRIAL
ENERGY CONSUMERS

CERTIFICATE OF SERVICE

I, Karen P. Whitt, attorney for Texas Industrial Energy Consumers, hereby certify that a copy of Texas Industrial Energy Consumers' Response to Southwestern Public Service Company's Second Request for Information was served on all parties of record in this proceeding on this 8th day of November, 2004, by facsimile, email and/or first class U.S. mail.



Karen P. Whitt

Question No. 2-1:

Refer to page 4 of the Direct Testimony of Ali Al-Jabir. Does Mr. Al-Jabir believe the ERCOT satisfies the requirements of PUCT Substantive Rule 25.236(a)(8) for the retention of off-system sales margins? If not, please explain why not.

Response:

The Public Utility Commission of Texas has certified ERCOT as an independent organization under PURA Section 39.151. As noted on page 4 of Mr. Al-Jabir's direct testimony, one criterion for the retention of off-system sales margins is that the transaction(s) cannot be to the detriment of retail customers. Given that this criterion is transaction-specific, it is not possible to reach a generic conclusion that all off-system sales transactions in ERCOT would satisfy the requirements of Substantive Rule 25.236(a)(8) for the retention of off-system sales margins.

Sponsored by: Ali Al-Jabir

Question No. 2-2:

Please explain TIEC's understanding of the ERCOT governance structure that was in place during the Reconciliation Period.

Response:

Please see the attached Amended and Restated Bylaws of the Electric Reliability Council of Texas.

Sponsored by: Ali Al-Jabir

Question No. 2-3:

Please provide any agreements TIEC has entered into for SPS to participate in a regional transmission tariff prior to SPS being a member of an independent system operator or regional transmission organization.

Response:

TIEC is not aware of having entered into any agreement “for SPS to participate in a regional transmission tariff prior to SPS being a member of an independent system operator or regional transmission organization.”

Sponsored by: Ali Al-Jabir

Question No. 2-4:

Refer to page 14 of the Direct Testimony of Ali Al-Jabir. Please explain in detail whether the market prices used to calculate the imputed REC off-set were the market price expectations at the time the Llano contract was negotiated.

Response:

Mr. Al-Jabir has made no analysis of what the market price expectations may have been at the time SPS entered into the Llano contract.

Sponsored by: Ali Al-Jabir



AMENDED AND RESTATED BYLAWS
OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS
(A Texas Non Profit Corporation)

October 15, 2002

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

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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.

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.** A Director representing the Consumer Segment or any organization or agency representing the interests of end-users of electricity in the ERCOT Region.
3. **Commercial Consumers.** (a) **Small Commercial Consumer** - A commercial customer having a peak demand of 1000 kilowatts or less; (b) **Large Commercial Consumer** - A commercial customer having a peak demand of greater than 1000 kilowatts.

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4. **Cooperative.** An entity operating in the ERCOT Region that is:
 - (i) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter;
 - (ii) 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;
 - (iii) a cooperative association organized under Tex. Rev. Civ. Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or
 - (iv) a River Authority as defined in Tex. Water Code §30.003.
5. **Entity.** An Entity includes an organization and all of its Affiliates.
6. **ERCOT Protocols.** The document adopted by ERCOT and approved by the 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.
7. **Independent Board Member or Independent Director.** A Board member who is unaffiliated with a Market Participant as qualified under Section 4.5(b).
8. **Independent Generator.** Any entity that is not a T&D Entity or Affiliate of a T&D Entity and that (i) owns or controls generation capable of operating at least 10 MW 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.
9. **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.
10. **Independent REP.** Any entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider ("REP") under PURA §39.352 and that is not an Affiliate of a T&D Entity.
11. **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.

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12. **Investor Owned Utility ("IOU").**
- (i) An investor-held, for-profit "electric utility" as defined in PURA §31.002(6) that (a) operates entirely 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);
- (ii) A public utility holding company of any such electric utility.
13. **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.
14. **Member.** The Member or the Member's appointed representative as the context so requires.
15. **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:
- (i) a municipally owned utility as defined in PURA §11.003 or
- (ii) a River Authority as defined in Tex. Water Code §30.003.
16. **Residential Consumers.** The appointed Board Director representing residential consumer interests, or an organization or agency representing the interests of residential consumers in the ERCOT Region.
17. **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.
18. **Transmission and Distribution Entity ("T&D Entity").** Any entity that is a 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 Public Utility Regulatory Act ("PURA") §37.001, operating in the ERCOT Region.

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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;
- (7) Consumer.

(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.

(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 Technical Advisory Committee ("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

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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 request as necessary for the furtherance of ERCOT activity and consistent with PUCT 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. 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 entities represented by Directors representing the Consumer Segment shall be deemed Corporate Members without the payment of Annual Member Service Fees.

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 or more than one seat on the Board or TAC.

(b) Except for Adjunct Members, Members must qualify for Membership in a Segment. Entities may join ERCOT in any Segment in which they qualify for Membership provided that an Entity may join as a Corporate Member in only one Segment. In the event that an Entity qualifies for more than one Segment, such Entity may join such other Segments as an Associate Member upon payment of the Associate Annual Member 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,

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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 one month 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, 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:

(a) Written notice. An intent to terminate, expel or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be expelled, suspended, terminated or sanctioned. Such notice shall set forth the reasons therefore. Said notice must be given by first class or certified mail sent to the last address of the Member to be expelled, suspended, terminated or sanctioned, as shown in

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ERCOT's records.

(b) Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing. The Member shall be entitled to have counsel present at and to participate in the hearing at his, 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.

(c) Liability. A Member who has been sanctioned, expelled, terminated or suspended shall be liable to ERCOT for fees as a result of obligations incurred or commitments made prior to sanction, expulsion, termination or suspension.

(d) Challenges. Any proceeding challenging an expulsion, suspension, sanction or termination, including a proceeding in which defective notice is alleged, must be commenced within one 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 seated in December 2002. The Board seated in December 2002 shall include a total of nineteen (19) members ("Directors" or "Board Members") with representation as follows:

- (a) Two (2) Independent REPs and one Segment Alternate
- (b) Two (2) Independent Generators and one Segment Alternate
- (c) Two (2) Independent Power Marketers and one Segment Alternate
- (d) Two (2) IOUs and one Segment Alternate
- (e) Two (2) Municipals and one Segment Alternate
- (f) Two (2) Cooperatives and one Segment Alternate
- (g) The General Manager of LCRA as an *ex officio* voting member
- (h) Consumers: the Public Counsel as an *ex officio* voting member, one representative of Residential Consumers, one representative of Commercial Consumers, and one representative of Industrial Consumers
- (i) The CEO as an *ex officio* voting member
- (j) The Chair of the Public Utility Commission of Texas ("PUCT") as an *ex officio* non-voting member

Section 4.3 The Board as modified in June 2003. At the June 2003 Board meeting, three (3) Independent Directors shall be seated in addition to the then seated Directors, for a total of twenty two (22) Directors to serve for the remainder of 2003.

Section 4.4 The Board seated in December 2003 (and thereafter). The Board seated in December 2003 shall include a total of fourteen (14) Directors with representation as follows:

- (a) One (1) Independent REP and one Segment Alternate
- (b) One (1) Independent Generator and one Segment Alternate
- (c) One (1) Independent Power Marketer and one Segment Alternate

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- (d) One (1) IOU and one Segment Alternate
- (e) One (1) Municipal and one Segment Alternate
- (f) One (1) Cooperative and one Segment Alternate
- (g) Three (3) Consumers: OPUC, one Commercial, and one Industrial
- (h) Three (3) Independent Directors
- (i) The CEO as an *ex officio* voting member
- (j) The Chair of the PUCT as an *ex officio* non-voting member

Section 4.5 Selection, Tenure, and Requirements of Board Members.

(a) Selection of Market Participant Board Members:

(1) For Consumer Directors seated in December 2002, the following shall apply: The Director representing the Commercial Consumer subsegment shall be appointed by the current Commercial Consumer Director. Public Counsel and the current Residential Consumer Director shall appoint the next Residential Consumer Director. The Residential and Commercial Consumer Directors shall be approved by the ERCOT Board, subject to approval by the PUCT. The Industrial Consumer Director shall be elected by the Corporate Members of that subsegment.

(2) For Consumer Directors seated in December 2003, the following shall apply: The Director representing the Commercial Consumer subsegment shall be appointed by the current Commercial Consumer Director, subject to approval by the ERCOT Board and the PUCT. The Industrial Consumer Director shall be elected by the Corporate Members of that subsegment.

(3) 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 for that seat.

(4) The Board shall establish procedures for the election and appointment of new Directors 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.

(5) Each Market Participant Director, except for the Residential 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 as he or she was at the time of such election or appointment.

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(b) Selection of Independent Board Members:

(1) The Board shall select a nine member Nominating Committee consisting of one Director representing each of the following: (i) Independent Generators, (ii) Independent REPs, (iii) Independent Power Marketers, (iv) IOUs, (v) Municipals, (vi) Cooperatives, (vii) OPUC, (viii) Commercial Consumers, and (ix) Industrial Consumers; provided that the Chair of the ERCOT Board shall automatically serve as the representative Director from the Segment to which he or she belongs.

(2) The Nominating Committee shall retain an executive search firm to locate and present candidates with the required qualifications. Qualifications for Independent 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. Independent Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) 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. Independent Directors or family members (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) shall not have direct business relationships, other than retail customer relationships, with a Market Participant or its Affiliates.
- c. To the extent that an Independent Director or family member (any spouse, parent, spouse of a parent, child or sibling, including step and adoptive relatives) living in the same household owns stocks or bonds of Market Participants, these must be divested or placed in a blind trust prior to being seated on the Board.

(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, a slate of three Independent Board Members to present to ERCOT Membership for its approval.

(4) No later than the April 2003 Board Meeting, The Membership shall vote by Segment as described in Section 12.1(d) in favor or against the slate. A slate of Independent Board Members that is approved by at least four out of seven Segments shall become the Independent

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Board Members. Upon approval of the Membership, the proposed slate of Independent Directors shall be filed with the PUCT for approval.

(5) Pending PUCT approval, the Membership-approved slate of Independent Directors shall be seated at the June 2003 Board meeting. Should the PUCT not approve the slate, the seated Directors shall remain seated until a new slate is elected and approved.

(c) Terms. The term for all Market Participant Board Members shall be for one year. Any Market Participant Board Member may be reappointed or reelected for consecutive terms. The term for all Independent Directors shall staggered three year terms unless changed by Amendment to these Bylaws. In order to maintain staggered terms, the first three Independent Directors shall include one Director serving for a term of one and a half years, one Director serving for a term of two and a half years, and one Director serving for a term of three and a half years. An Independent Board Member may be reelected for up to two consecutive 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. Independent Directors may designate another Director as a proxy if unable to attend a Board meeting. Consumer and *ex officio* Board Members may designate a proxy or an alternate representative who may attend meetings and vote (if applicable) in the absence of such Board Member.

Section 4.6 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, who shall not be Members of the same Segment. The CEO shall not be qualified to act as the Chair or Vice Chair.

Section 4.7 Vacancies and Removal. 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 4.8 Meetings. 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. Notice stating the purpose, business to be transacted, place, date and hour of any meeting shall be given to each Director not less than one week before the date of the meeting or on such shorter notice, not less than 48 hours, as the person or persons calling such meeting reasonably may deem necessary or

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appropriate in the circumstances. The Board shall promulgate procedures allowing Members open access to meetings of the Board. Members shall have the right to attend any meeting of the Board provided that the Board may, at its discretion, exclude any persons who are not Directors from any meeting or portion of any meeting the Board holds in Executive Session including for purposes of voting. An "Executive Session" shall be held at the discretion of the Board for matters including, but not limited to, personnel issues, legal matters, negotiations and other business involving confidential information. The Board shall keep minutes of every Board meeting.

Section 4.9 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 from time to time, without notice other than announcement that the Board will reconvene when a quorum is present.

Section 4.10 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 4.11 Other Appointments. If requested by NERC, the Board shall elect, from among its members, persons to serve on the North American Electric Reliability Council ("NERC") Stakeholders Committee. The selection of the representatives shall require an act of the Board as set forth in Section 4.9. If more than one representative is requested, such representatives shall be from different Segments.

Section 4.12 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; (b) approval of the employment and terms for the CEO; (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; and (f) initiation of any lawsuit. The Board shall adopt policies regarding the delegation of the following actions: (a) the acquisition of real property; (b) the sale of ERCOT assets; (c) the execution of contracts; (d) large purchases; and (e) borrowing money or establishing a line of credit in the name of ERCOT.

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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 Directors 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 Representatives of TAC shall constitute a quorum for the transaction of business. Affirmative votes of sixty-seven percent (67%) of the eligible 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 to serve shall be required to present the decision of the Corporate Members of their Segment. A Corporate Member may delegate an employee or agent other than the Member representative described in Section 2.5 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.

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(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 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 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 Services Fees.

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) submit an annual budget to the ERCOT CEO covering expenditures of projects proposed by TAC. Guidelines, criteria and other actions approved by TAC may be effective upon approval by TAC; provided however, that actions are submitted 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.

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 two (2) weeks prior to the meeting, unless an emergency condition should suggest otherwise (such emergency to be by mutual consent of a majority of the 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. A quorum must be in attendance for TAC to conduct business. A majority of the Representatives of TAC shall constitute a quorum for the transaction of business. Each Representative of TAC may

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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 North American Electric Reliability Council ("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 CHIEF EXECUTIVE OFFICER

Section 6.1 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 the 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 shall report, and be responsible, to the CEO. He or she shall perform such other duties as may be determined from time to time by the Board.

ARTICLE 7 OFFICERS

Section 7.1 General. The officers of ERCOT shall consist of a President, one or more Vice Presidents, a Secretary and such officers and assistant officers as the Board may appoint. The CEO shall serve as President of ERCOT. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. A subcommittee duly designated may perform the functions of any officer and the functions of two or more officers may be performed by a single subcommittee.

Section 7.2 Tenure. The officers of ERCOT shall be elected or appointed 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 reappointed 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 8 TRANSACTIONS OF CORPORATION

Section 8.1 Deposits and Checks. All of ERCOT's funds will be deposited to the credit of ERCOT in banks, trust companies, or other depositaries that the Board approves.

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Section 8.2 Potential Conflicts of Interest.

(a) Each Director, TAC Representative and subcommittee member shall have an affirmative duty to disclose to the Board, TAC or subcommittee (as the case may be) any actual or potential conflicts of interest 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.

(b) ERCOT may not make any loan to a Director or officer of ERCOT. A Member, Director, TAC Representative, officer, or subcommittee member of ERCOT may lend money to, and otherwise transact business with, ERCOT except as otherwise provided by these Bylaws, the 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 8.3 Prohibited Acts. As long as ERCOT exists, no Member, Director, officer, or subcommittee member of ERCOT may:

1. Do any act in violation of these Bylaws.
2. Do any act in violation of a binding obligation of ERCOT except with the Board's prior approval.
3. Do any act with the intention of harming ERCOT or any of its operations.
4. Receive an improper personal benefit from the operation of ERCOT.
5. Use ERCOT's assets, directly or indirectly, for any purpose other than carrying on ERCOT's business.
6. Wrongfully transfer or dispose of ERCOT property, including intangible property such as good will.
7. 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.

8. 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.

9. 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") 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 2 of these Bylaws.

ARTICLE 9 EXPENSES, BOOKS AND RECORDS

Section 9.1 Member Representatives' Expenses and Compensation of Certain Directors. Except for Independent Board Members and any Residential Consumer Director, 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 shall be borne by the entity which such person represents. No such person shall receive any salary or other compensation from ERCOT. The Board shall have the authority to fix the compensation of its Independent Directors who may be paid a fixed sum for attendance at each meeting of the Board, or a stated compensation as a member thereof, or any combination of the foregoing. Independent Directors who are members of standing or special committees, may be allowed like compensation for attending committee meetings. The Board shall have the authority to fix a *per diem* for the Residential Consumer Director for attendance at each meeting of the Board, TAC or any standing or special committees.

Section 9.2 ERCOT Expenses. The expenses of ERCOT shall include, but not be limited to, administrative expenses, operational costs and debt service.

Section 9.3 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 4.9. The Representatives of each Member shall be promptly notified of the Budget following adoption of the Budget by the Board.

Section 9.4 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 9.5 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 9.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board. The Auditor's opinion and the audited financial statements will be made available to all Members as described in Section 9.5.

Section 9.7 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 10 INDEMNIFICATION

Section 10.1 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 11 NOTICES

Section 11.1. Form. Unless otherwise provided in these Bylaws, any notice required or permitted by these Bylaws to be given to a Member, Director, TAC Representative, officer, or member of a subcommittee 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

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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 11.2 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 11.3 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 11.4 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 12 AMENDMENTS

Section 12.1 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 4.9, 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.

(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.

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(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.

Section 12.2 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 13 MISCELLANEOUS PROVISIONS

Section 13.1 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 13.2 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 13.3 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 13.4 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.

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Section 13.5 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 13.6 Quorum and Proxies. 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 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.

Section 13.7 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 *and* (ii) at least 50% of the total members.

Section 13.8 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, the Board, TAC Representatives or any subcommittee of the Board or 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, Directors, TAC Representatives or subcommittee members as would be necessary to take that action at a meeting at which all of the Corporate Members, Directors or subcommittee members were present and voted. Corporate Members, Directors, 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 13.9 Effective Date. The effective date of these Amended and Restated Bylaws is - December 17, 2002 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.

Section 13.10 Sunset. These Bylaws shall automatically expire on December 31, 2005.

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