

**PROJECT NO. 40862**

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**RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION  
AMEND PUC SUBST. R. 25.362, §  
RELATING TO ELECTRIC § OF TEXAS  
RELIABILITY COUNCIL OF TEXAS §  
(ERCOT) GOVERNANCE §**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.362  
AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. The proposed amendment, establishes that the commission may remove an unaffiliated member of the ERCOT governing board only for “cause.” This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 40862 is assigned to this proceeding.

Rebecca Reed, Wholesale Markets Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Reed has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment will be to provide regulatory certainty to unaffiliated members of the governing board by removing the broad authority of the commission to remove such a board member with or without cause. The amendment also provides four categorical definitions of cause for removal. There are no economic costs to persons who are required to comply with the amendment. There will be no adverse economic

effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required.

Ms. Reed has also determined that for each year of the first five years the proposed amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 10:00 a.m. on Wednesday, January 23, 2013. The request for a public hearing must be received by Monday, January 7, 2013.

Initial comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, on or before Monday, January 7, 2013. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted on or before Monday, January 21, 2013. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and

benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 40862.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. In addition, PURA §39.151 provides that an independent organization certified by the commission is directly responsible and accountable to the commission, and provides that the commission may take appropriate action against an independent organization that does not adequately perform the organization's functions or duties or does not comply with PURA §39.151.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and §39.151.

**§25.362. Electric Reliability Council of Texas (ERCOT) Governance.**

(a) - (f) (No change.)

(g) **Qualifications, selection, and removal of members of the governing board.** ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) - (4) (No change.)

(5) ERCOT shall notify the commissioners when a vacancy occurs for an unaffiliated member of the governing board. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of an unaffiliated member of the governing board is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection. An unaffiliated board member whose three-year term has expired shall, if reappointed by the ERCOT governing board, cease serving as a member of the governing board until the reappointment is approved by the commission. The commission may remove an unaffiliated member of the governing board ~~for~~without cause. Compensation, per diem and travel reimbursements to be paid

to unaffiliated members of the governing board shall be subject to commission review and approval. As used in this paragraph, “cause” shall mean:

(A) a violation of a commission rule or applicable statute, an ERCOT rule, or written ERCOT policy or procedure adopted under this section;

(B) a director is indicted or charged with a felony or is convicted of a misdemeanor involving moral turpitude;

(C) conduct inconsistent with a director’s fiduciary duty to ERCOT or that may reflect poorly upon the board or ERCOT; or

(D) a fundamental disagreement with the commission as to the policies or procedures that ERCOT shall adopt, in each case as determined by the commission at its sole discretion.

(6) (No change.)

(h) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 19<sup>th</sup> DAY OF NOVEMBER 2012 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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