

PROJECT NO. 54444¹

**CY 2022 REPORTS OF THE
ELECTRIC RELIABILITY COUNCIL OF
TEXAS** § **PUBLIC UTILITY COMMISSION**
 § **OF TEXAS**
 §

PROJECT NO. 52933

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ELECTRIC RELIABILITY COUNCIL OF
TEXAS** § **PUBLIC UTILITY COMMISSION**
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**TEXAS INDUSTRIAL ENERGY CONSUMERS’
MOTION FOR RECONSIDERATION AND MOTION FOR REHEARING**

I. Introduction

Texas Industrial Energy Consumers (TIEC) respectfully moves for the reconsideration and rehearing of the Commission’s December 20, 2022 Order that addresses the petition of the Electric Reliability Council of Texas, Inc. (ERCOT) filed on December 19, 2022, for approval of its amendments to its amended and restated bylaws (the Bylaws). TIEC requests rehearing because the Commission failed to process ERCOT’s petition in accordance with the requirements of its own rules. Notably, Ordering Paragraph 5, “ERCOT’s petition was processed in accordance with the requirements of PURA and the Commission’s rules,” and Conclusion of Law 1 “The Commission approves the ERCOT bylaws, as amended...” should be rejected. The Commission is bound to follow its own regulations,² and because “the Commission has failed to follow the clear, unambiguous language of its own regulation[s], [a court] must reverse its action as arbitrary and capricious.”³

¹ TIEC is filing this motion in the project number associated with CY 2023 Reports of the Electric Reliability Council of Texas because the CY 2022 project number has been closed by Central Records.

² See generally *Tex. Tel. Ass’n v. Pub. Util. Comm’n of Tex.*, 653 S.W.3d 227, 247 (Tex. App.—Austin 2022, no pet.) (“An agency is bound by its own regulations.”).

³ *Pub. Util. Comm’n of Tex. v. Gulf States Utilities Co.*, 809 S.W.2d 201, 207 (Tex. 1991).

Second, the Commission failed to evaluate whether ERCOT properly approved the amendments prior to filing a petition. The Commission should not have approved ERCOT's amendments to its Bylaws because under Texas law, the ERCOT Board of Directors (Board) does not have authority to unilaterally amend its Bylaws. The Texas Business Organization Code (TBOC) controls how corporate entities like ERCOT are governed, and the Board is precluded from amending or repealing the Bylaws without following Section 13.1 of the Bylaws, which provides that Corporate Members must vote to enact Bylaw amendments. Further, ERCOT's Certificate of Formation reserves the power to approve changes to ERCOT's Bylaws exclusively to its Corporate Members. For those reasons, ERCOT's petition should have been deemed invalid, and the Commission should have rejected the proposed Bylaws amendments.

Lastly, the Commission's Order was arbitrary and capricious because the Commission failed to provide any evidence that supports marginalizing stakeholders, and doing so deviates from its longstanding policy. The Commission has an established policy of utilizing stakeholders to implement PUC and ERCOT directives. Stakeholders have specialized knowledge and expertise, and their participation ensures that ERCOT's policies are thoroughly vetted and the implications are considered from all sides. Through the stakeholder process, different market participants with disparate positions and interests work together to build consensus, which leads to better policies that account for the collective interests of all Texans. Nevertheless, the changes to the Bylaws open the door to the marginalization of the stakeholder process. The current Bylaws ensure stakeholder input will always be considered by requiring ERCOT's corporate members to approve any amendments to the Bylaws. It is critically important that stakeholders remain involved as the PUC continues its effort to overhaul the ERCOT market. Approving the amendments to the Bylaws without providing any evidence to justify marginalizing stakeholders was therefore arbitrary and capricious. For these reasons, the Commission should reconsider and rescind its order adopting changes to the ERCOT Bylaws.

II. POINT OF ERROR #1: The Commission failed to process ERCOT's petition to amend the Bylaws in accordance with Commission rules.

The Commission (1) failed to review ERCOT's Bylaws as set out in 16 TAC § 25.362; (2) improperly used informal disposition for an unqualified application; and (3) failed to classify ERCOT's petition correctly by including it in Project No. 52933 instead of its own docket.

A. The Commission failed to follow its procedures for review of ERCOT's Bylaws.

The Commission violated its own rules for review of ERCOT Bylaws by failing to utilize the process outlined in 16 TAC § 22.251. Under its substantive rules, the Commission must process requests for review of provisions of ERCOT's Bylaws in accordance with 16 TAC § 22.251.⁴ That rule requires ERCOT to provide notice “to all qualified scheduling entities and, at ERCOT's discretion, all relevant ERCOT committees and subcommittees,”⁵ and requires the Commission to give interested parties 45 days to intervene.⁶ These procedural steps were not followed. First, ERCOT did not provide notice of its petition for Commission approval of the amendments,⁷ and unlike the previous amendments to the Bylaws, the Commission did not grant an exception to the notice requirement.⁸ Additionally, there was only one day between ERCOT's petition for the Bylaws amendments and the Commission's Order approving it, rather than 45 days.⁹ Again, the Commission failed to grant an exception to this rule as well.¹⁰ Because the Commission did not follow its rules as required by 16 TAC § 25.362, interested persons were deprived of notice and an opportunity to participate in the Bylaw amendment process.

⁴ 16 TAC § 25.362(c)(5) (“The commission shall process requests for review of a provision of ERCOT's articles of incorporation or by-laws, a new or amended ERCOT rule, or ERCOT decision in accordance with §22.251 of this title.”).

⁵ 16 TAC § 22.251(e).

⁶ 16 TAC § 22.251(g); see also 16 TAC § 22.104(b) (providing that motions to intervene in a proceeding “shall be filed within 45 days from the date an application is filed with the [C]ommission, unless otherwise provided by statute, [C]ommission rule or order of the presiding officer”).

⁷ Compare Project No. 52933, Petition of Electric Reliability Council of Texas, Inc. for Approval of Bylaws Amendment (Dec. 19, 2022) (failing to provide evidence of proper notice), with *Petition of the Electric Reliability Council of Texas, Inc. for Expedited Approval of Bylaw Amendment*, Docket No. 52683, ERCOT's Proof of Notice (Oct. 7, 2021) (containing a sworn affidavit and evidence of the notice provided by ERCOT).

⁸ Docket No. 52683, Order at FoF 11 (Oct. 20, 2021) (“It is appropriate to consider this Order at the earliest open meeting available; therefore, good cause exists to waive the requirements in 16 TAC § 22.35 to the extent such notice requirements are required prior to approval of the petition.”).

⁹ Project No. 52933, Order at 1 (Dec. 20, 2022).

¹⁰ Compare Project No. 52933, Order (Dec. 20, 2022) (listing no good-cause exceptions), with *Petition of Electric Reliability Council of Texas, Inc. for Expedited Approval of Bylaws Amendment*, Docket No. 50918, Order No. 2 at 1 (Jul. 1, 2020) (granting ERCOT's request to reduce the intervention period “from 45 days to 21 days”).

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