

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered by and between Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT"), and William L. "Bill" Magness, an individual ("Executive"), effective January 1, 2016 ("Effective Date").

### **RECITALS**

**WHEREAS**, Executive is currently employed as an officer of ERCOT with the title of General Counsel, Senior Vice President – Governance Risk & Compliance and Corporate Secretary;

**WHEREAS**, ERCOT and Executive executed a Retention Incentive Agreement, effective January 1, 2014 (the "Prior Agreement");

**WHEREAS**, the current President and Chief Executive Officer has announced his intention to resign and retire from ERCOT in 2016; and

**WHEREAS**, Executive has indicated an interest to be promoted and to serve as the President and Chief Executive Officer of ERCOT, and the Board of Directors ("Board") of ERCOT desires to promote and has selected Executive as the President and Chief Executive Officer of ERCOT, pursuant to the terms of this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ERCOT and Executive hereby agree as follows:

#### **1. Employment.**

- (a) **Employment Term.** Subject to Section 4 of this Agreement, Executive shall be employed by ERCOT as President and Chief Executive Officer, subject to annual election by the Board as required by the ERCOT bylaws, for a three-year period commencing on the Commencement Date (defined below) and ending December 31, 2018 (the "Employment Term"). At the end of the Employment Term, this Agreement shall continue on a month-to-month basis unless terminated by either Party on at least sixty (60) days written notice to the other Party. The Parties may consider extensions of this Agreement, and extensions must be mutually agreed upon in writing and signed by both parties and may be governed by different terms and conditions. The Parties will use reasonable efforts to discuss the possibility of Executive's re-election no later than June 30, 2018, if Executive continues to be employed then pursuant to this Agreement, to allow ample time for any necessary approvals.

- (b) **Position, Commencement Date.** Executive's employment with ERCOT pursuant to this Agreement shall be effective January 1, 2016 (the "Commencement Date"), and this Agreement shall supersede and terminate the Prior Agreement and any prior Board Resolutions or other agreements relating to Executive's service at ERCOT. As of the Commencement Date, ERCOT shall continue to employ Executive with the new officer position of its President and Chief Executive Officer. During the Employment Term and any extensions thereof, Executive shall render such business and professional services in the performance of his duties, consistent with Executive's position with ERCOT, as shall reasonably be assigned to him by the Board.
- (c) **Obligations.** During his employment, Executive shall devote his full business efforts and time to ERCOT and further agrees:
- (i) Not to serve on the board of directors of any member of ERCOT;
  - (ii) Not to serve on the board of directors of any other organization (whether for-profit or not-for-profit) without advance approval of the Board;
  - (iii) Not to actively engage in any other employment, occupation or consulting activity;
  - (iv) Not to acquire or continue to own any securities issued by any member of ERCOT or any affiliate of any member of ERCOT which would violate ERCOT's Corporate Standards or policies;
  - (v) To abide by all other ERCOT employment policies and regulations, including executing and abiding by the ERCOT Ethics Agreement.

## 2. Compensation.

- (a) **Base Annual Salary; Retention Incentive Compensation.** Other than employment benefits, as discussed in Section 3 below, Employee shall:
- (i) Receive compensation in the form of a base salary, which shall be paid in bi-monthly payments on the 15<sup>th</sup> and last day of the month, and which shall be increased annually as provided in this Section 2 (the "Base Annual Salary"); and
  - (ii) Be eligible to receive an additional payment, calculated on a percentage of Executive's then-current Base Annual Salary, which is accrued for each year of the Employment in which Executive continues to serve as Chief Executive Officer of ERCOT (the "Retention Incentive"), subject to the provisions of this Section 2. If Executive is terminated for Cause [as defined in Section 5(b) below] or resigns as Chief Executive Officer at any time during the Employment Term, Executive shall not receive any unpaid portion of the Retention Incentive, whether accrued or unaccrued.
- (b) **Year One of Employment Term.** Beginning on the Commencement Date, Executive shall receive Base Annual Salary in the annualized amount of \$597,000. In addition to

the Base Annual Salary, Executive shall be eligible to receive an annual Retention Incentive payment of ten percent (10%) of Executive's Base Annual Salary so long as Executive continues to serve as Chief Executive Officer of ERCOT until December 31, 2016. Such annual Retentive Incentive payment, if earned, will be paid on the next regular pay date after December 31, 2016.

(c) **Year Two of Employment Term.** Executive shall receive an annual increase of five percent (5%) to Executive's first-year Base Annual Salary on the second anniversary date of the Commencement Date. In addition to the Base Annual Salary increase, Executive shall be eligible to receive an annual Retention Incentive payment of fifteen percent (15%) of Executive's second-year Base Annual Salary so long as Executive continues to serve as Chief Executive Officer of ERCOT until December 31, 2017. Such annual Retentive Incentive payment, if earned, will be paid on the next regular pay date after December 31, 2017.

(d) **Year Three of Employment Term.** Executive shall receive an annual increase of five percent (5%) to Executive's then-current Base Annual Salary on the third anniversary date of the Commencement Date. In addition to the Base Annual Salary increase, Executive shall be eligible to receive a semi-annual Retention Incentive payment of twenty percent (20%) of Executive's then-current Base Annual Salary so long as Executive continues to serve as Chief Executive Officer of ERCOT until June 30, 2018, and then December 31, 2018. Such semi-annual Retentive Incentive payments, if earned, will be paid on the next regular pay dates after June 30, 2018, and December 31, 2018.

(e) **Payment Withholdings and Deductions.** All payments made pursuant to this Agreement, including payments pursuant to Section 2, will be subject to withholding of applicable income and employment taxes and any other withholdings or deductions required by law. Executive may, at his option, defer the payment of Retention Incentive compensation up to, but no longer than, the end of the Employment Term.

### **3. Employment Benefits.**

(a) **General.** During Executive's employment, Executive shall be eligible to participate in the employee benefit plans maintained by ERCOT that are applicable to other ERCOT employees to the full extent provided under such plans. The terms of the employee benefit plans may, from time to time, be changed without advance notice and without cause.

(b) **Vacation.** Executive will accrue 160 hours of vacation per annum in accordance with ERCOT's standard vacation accrual policy.

#### **4. At-will Employment.**

Executive and ERCOT understand, acknowledge and agree that Executive's employment with ERCOT constitutes "at-will" employment, meaning that it may be terminated at any time, by either party, with or without cause and with or without notice. There is no agreement between Executive and ERCOT regarding any guarantee of employment for any specific period of time.

#### **5. Termination; Severance Pay.**

(a) **Severance Compensation in the Event of Termination.** In the event of termination of this Agreement or Executive's employment by ERCOT during the Employment Term for "Cause", as defined in Section 5(b), Executive shall be entitled only to the Base Annual Salary compensation earned prior to the date of termination. If Executive is terminated without Cause during the Employment Term, Executive shall be entitled to payment of severance compensation equal to one full year of Executive's then-current Base Annual Salary, as defined in Section 2.

(b) **Definition of "Cause".** As used herein, "Cause" means:

- (i) an intentional act of fraud, embezzlement, theft or any other material violation of law that occurs during or in the course of Executive's employment by ERCOT; or
- (ii) willful and continued failure to substantially perform Executive's duties for ERCOT (other than as a result of incapacity due to physical or mental illness); or
- (iii) willful and continued material violation of ERCOT's corporate standards; or
- (iv) willful conduct that is demonstrably and materially injurious to ERCOT.

(c) **Definition of "Willful".** For purposes of this Section, an act or a failure to act, shall be deemed willful if done in bad faith or without a reasonable belief that the act or omission was in the best interest of ERCOT.

#### **6. Non-disparagement.**

During the Employment Term, any extension thereof, and after the termination of this Agreement, Executive agrees that he shall not, through himself or acting through others, make any statement or disclose any information that disparages or otherwise harms the interest of ERCOT, its business, or ERCOT's directors, officers, employees or agents.

**7. Duty to Cooperate in Litigation.**

Executive agrees that during the Employment Term, any extension thereof and after termination of the Agreement, he shall, at ERCOT's request, render all assistance and perform all lawful acts ERCOT considers advisable in connection with any litigation involving ERCOT or any of its directors, officers, employees or agents, provided however, that if such assistance is provided after the Employment Term has ended, Executive shall be compensated for such assistance based on the fair market value of the assistance provided.

**8. Non-Solicitation of Employees.**

In consideration of receipt of ERCOT's confidential information and other good and valuable consideration, Executive agrees that he will not, while employed by ERCOT and for a period of one (1) year thereafter, directly or indirectly solicit, induce, or encourage any ERCOT employees to terminate their employment with ERCOT or to accept employment with any other independent system operator, any corporate member of ERCOT, any market participant of ERCOT, or any supplier or consultant of ERCOT, nor shall Executive cooperate with any others in attempting to do so. As used herein, the term "solicit, induce, or encourage" includes, but is not limited to, (a) initiating communications with an ERCOT employee relating to possible employment, (b) offering bonuses or additional compensation to encourage ERCOT employees to terminate their employment with ERCOT and accept employment with any other independent system operator, any corporate member of ERCOT, any market participant of ERCOT, or any supplier or consultant of ERCOT, or (c) referring ERCOT employees to recruiters or staffing agencies employed by any other independent system operator, any corporate member of ERCOT, any market participant of ERCOT, or any supplier or consultant of ERCOT.

**9. Confidential Information.**

As a condition of his employment, Executive agrees to annually execute ERCOT's Employee Ethics Agreement wherein he agrees to protect ERCOT's confidential information and trade secrets.

**10. Governing Law.**

THIS AGREEMENT IS ENTERED INTO IN THE STATE OF TEXAS AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAWS. Venue for any suit relating to this Agreement shall lie exclusively in the state courts of Travis County, Texas.

**11. Entirety and Amendments.**

This Agreement embodies the sole and entire agreement between the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. This Agreement may be amended or modified only in writing executed by the party against whom enforcement of any waiver, modification, amendment, change, discharge or termination is sought.

**12. Notices.**

Any notice or other communication hereunder must be in writing to be effective and shall be deemed to have been given when actually received by the intended recipient in person or by delivery to the notice address set forth below. Either party may from time to time change the notice address by giving written notice thereof to the other party. The address for each party for notices hereunder is as follows:

If to Executive: William L. Magness  
5349 Agatha Circle  
Austin, Texas 78724

If to ERCOT: ERCOT General Counsel  
Electric Reliability Council of Texas, Inc.  
7620 Metro Center Drive  
Austin, Texas 78744

**13. No Assignment; Binding Effect.**

This Agreement is binding upon the parties. This Agreement inures to the benefit of any successors or assigns of ERCOT. Executive shall not be entitled to assign his rights or obligations under this Agreement.

**14. Headings.**

The headings of sections contained in this Agreement are for convenience of reference and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

**15. Severability.**

If, but only to the extent that, any provision of this Agreement is declared or found to be invalid or unenforceable, in whole or in part, such term or provision shall be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining terms and provisions of this Agreement.

**16. No Representations.**

Executive acknowledges that he is not relying, and has not relied, on any promise, representation, or statement made by or on behalf of ERCOT, except as expressly set forth herein. Executive acknowledges ERCOT's in-house and outside legal counsel and ERCOT's in-house and outside financial and tax professionals represent ERCOT only and do not represent Executive. Executive further acknowledges that Executive has been advised to seek and has a right to obtain independent legal counsel and to seek independent financial, accounting, tax, and other needed advice and services with regard to Executive's employment relationship and this Agreement.

**17. Construction.**

The parties hereto have had the benefit of counsel of their own choice, have participated in the drafting of this Agreement, have reviewed this Agreement with their chosen counsel, and execute this Agreement of their own free will and accord for the purposes and consideration set forth herein.

**18. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be part of the same instrument.

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IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the Effective Date.

Electric Reliability Council of Texas, Inc.

By: Craven Crowell

Craven Crowell

Its: Chairman of the Board of Directors

Date Signed: 10/13/15

Executive

William L. Magness

William L. Magness

Date Signed: 10-13-2015



## **AMENDMENT TO EMPLOYMENT AGREEMENT**

This Amendment to Employment Agreement ("Amendment") is made and entered into by and between Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT") and Bill Magness, an individual ("Executive"), effective January 1, 2019 ("Effective Date"), in accordance with Sections 1.(a) and 11 of the Employment Agreement between ERCOT and Executive, effective January 1, 2016 ("Agreement").

### **RECITALS**

WHEREAS, the ERCOT Board of Directors ("Board"), by resolution on October 9, 2018 ("Resolution"), has approved an amendment to the Agreement for Executive's continued service as President and Chief Executive Officer (CEO) of ERCOT, effective January 1, 2019, and Executive has indicated an interest to continue to serve as President and CEO, effective January 1, 2019; and

WHEREAS, as further described in the Resolution, the Board approved the execution of an amendment to the Agreement to extend Executive's service as President and CEO for five additional years, beginning on January 1, 2019, and to establish Executive's compensation during the term of the amendment.

### **AMENDMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ERCOT and Executive hereby agree to amend the Agreement as follows:

1. Section 1.(a) (Employment Term) of the Agreement is amended and restated in its entirety as follows:

- "(a) **Employment Term.** Subject to Section 4 of this Agreement, Executive shall be employed by ERCOT as President and Chief Executive Officer, subject to annual election by the Board as required by the ERCOT bylaws, for a term commencing on the Commencement Date (defined below) and ending on December 31, 2023 ("Employment Term"). At the end of the Employment Term, this Agreement shall continue on a month-to-month basis unless terminated by either party on at least sixty (60) days written notice to the other party. The parties may consider extensions of this Agreement, and extensions must be mutually agreed upon in writing and signed by both parties and may be governed by different terms and conditions. The parties will use reasonable efforts to discuss the possibility of Executive's re-election as Chief Executive Officer no later than June 30, 2023, if Executive continues to be employed then pursuant to this Agreement, to allow ample time for any necessary approvals."

2. Section 2. (Compensation) of the Agreement is amended as follows:
- a. In subsection (a)(i), the word "bi-monthly" is replaced with "semi-monthly".
  - b. New subsection (e) is added as follows:

**"(e) Years Four through Eight of Employment Term.** Beginning on January 1, 2019, Executive shall receive Base Annual Salary in the annualized amount of \$813,525.93, but shall no longer receive any Retention Incentive payment related to Executive's service during January 1, 2019, through December 31, 2023. Beginning on January 1 of each subsequent year (that is, Years Five through Eight), Executive shall receive an annual increase of three percent of Executive's Base Annual Salary, calculated based on the rate of the prior year (for example, Executive's Base Annual Salary during 2019 shall be increased by three percent to calculate Executive's Base Annual Salary for 2020)."

- c. The former subsection (e) is now renumbered as subsection (f). The phrase in the last sentence of former subsection (e), "end of the Employment Term", is replaced with "the next regular pay date after December 31, 2018."

3. Executive's address for Section 12. (Notices) is amended and replaced with: Bill Magness, 908 Juanita Street, Austin, TX 78704.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to Employment Agreement to be executed to be effective on the Effective Date.

**ERCOT**  
Electric Reliability Council of Texas, Inc.

By: \_\_\_\_\_

Judy Walsh

Its: Vice Chair of the Board

**EXECUTIVE**

\_\_\_\_\_  
Bill Magness