

RESOLUTION NO. 34-2001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ADOPTING THE REVISED BYLAWS OF THE TEXAS CONFERENCE OF URBAN COUNTIES AGGREGATION PROJECT, INC.; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, on April 16, 2001, by passing Resolution No. 13-2001, the City Council of the City of Mesquite approved the Articles of Incorporation and Bylaws of the Texas Conference of Urban Counties Aggregation Project, Inc. (TCAP), thereby incorporating and joining TCAP in order to obtain the lowest cost of electricity available in the restructured competitive retail electric market scheduled to open in Texas in January 2002; and

WHEREAS, retail electric providers have indicated that they would prefer that the TCAP bylaw provision authorized by Section 303.001, Texas Local Government Code, that provides TCAP with clear authority to contract on behalf of member political subdivisions for electric power be even more clear; and

WHEREAS, on June 7, 2001, the TCAP Board adopted revised bylaws for TCAP that make the existing provisions in question completely clear; and

WHEREAS, statutes require that the revised bylaws be reapproved by the City Council of the City of Mesquite, Texas; and

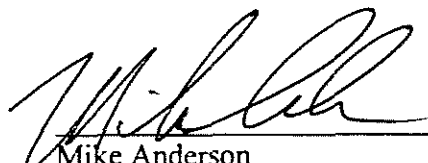
WHEREAS, nothing in the revised bylaws changes the right of the City of Mesquite, Texas, to withdraw from TCAP before the date TCAP begins the procurement process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council of the City of Mesquite hereby adopts the revised bylaws of the Texas Conference of Urban Counties Aggregation Project, Inc. (TCAP), as presented and attached hereto as Exhibit "A".


SECTION 2. That this resolution shall take effect from and after its passage.


DULY RESOLVED by the City Council of the City of Mesquite, Texas on the 2nd day of July, 2001.


Mike Anderson
Mayor

ATTEST:

APPROVED:


Ellen Williams
City Secretary


B. J. Smith
City Attorney

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BYLAWS
OF
TEXAS CUC AGGREGATION PROJECT, INC.

ARTICLE I.

Name and Purpose

Section 1. Name. The name of this Corporation shall be Texas CUC Aggregation Project, Inc., which is referred to in these Bylaws as the Corporation.

Section 2. Purpose. The specific and primary purpose of the Corporation is to act as an agent to negotiate the purchase of electricity on behalf of the member political subdivisions with respect to their own electricity use for their respective public facilities. Other purposes of the Corporation will be those permitted by law for political subdivision corporations.

ARTICLE II.

Powers

Section 1. In effectuating its purpose, the Corporation shall have all powers conferred by applicable law, specifically including, but not limited to, the following powers:

- a. To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated, as the purpose of the Corporation shall require, or as shall be donated to it.
- b. To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.
- c. To make contracts and incur liabilities, borrow money at such rates of interest as the Corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property and income.
- d. To sue and be sued, complain and defend, in the name of the Corporation.

Section 2. Notwithstanding any of the foregoing statements of powers, this Corporation shall not engage in any activities which are not in furtherance of, and limited to, the purposes set forth in Section 2 of Article I.

ARTICLE III.

Members

Section 1. Qualifications. The initial members of the corporation shall be the Counties of Dallas, Harris, Jefferson and Tarrant. Thereafter, additional political subdivisions shall qualify for membership in the Corporation upon the following:

- a. Adoption by the governing body of the political subdivision of the Corporation's Bylaws and Articles of Incorporation, which, pursuant to Section 303.001 of the Texas Local Government Code, authorizes the Corporation to negotiate and execute a binding contract or contracts on behalf of its members for the purchase of electric energy, capacity, energy services, ancillary services, or other electric services for retail or wholesale consumption;
- b. Designation by the governing body of the political subdivision of account(s) for the public facilities of the political subdivision for which TCAP is authorized to negotiate and execute a binding contract or contracts for the purchase of electric energy, capacity, energy services, ancillary services, or other electric services for retail or wholesale consumption; and,
- c. An affirmative vote of a majority of the Board of Directors of the Corporation approving the political subdivision as a member.

Each member shall appoint, by formal order of its governing body, a membership representative to the Corporation. Each representative shall serve until a successor is appointed by the governing body of the respective member political subdivision. Any notice to be sent to the membership shall be sent to the respective representatives. Only duly appointed representatives may act on behalf of members in the conduct of business of the Corporation.

Section 2. Title. The members of the Corporation shall be referred to collectively as the Membership.

Section 3. Withdrawal.

- a. Membership in the Corporation may be withdrawn without prejudice to any rights the Corporation may have under any contract to which the member is a party or to any membership dues and/or fees owed the Corporation.
- b. Membership in the Corporation may be withdrawn by providing the Corporation written notice comprised of a resolution duly adopted by the governing body of the member clearly stating that the member is withdrawing from the Corporation and the Corporation is not to aggregate electricity purchasing for any electricity accounts of the member.
- c. Membership in the Corporation may be withdrawn at any time before the date on which the Corporation begins a competitive procurement process for the aggregated group. The Corporation shall notify each member representative at least 30 days before the date on which the Corporation will begin a

competitive procurement process for the aggregated group.

d. Membership in the Corporation may be withdrawn after the date on which the Corporation begins a competitive procurement process, but such withdrawal shall be effective at the end of the term of any contract procured in that competitive procurement process.

e. Withdrawal of Membership also constitutes resignation from the Board of Directors of the Corporation.

Section 4. Meetings.

a. The Membership shall meet annually and at such other times and locations as may be set by the Board of Directors.

b. Upon receipt of a written petition by five (5) or more members requesting a special meeting of the Membership, the Board of Directors shall call such meeting.

c. Written notice of all meetings shall be sent to all members at least ten (10) days prior to the date of the meeting.

d. The transactions taken at any meeting of the Membership, however called and noticed, shall be as valid as if taken at a meeting held after regular call and notice, provided at least 10 days written notice is sent to all members and a quorum is present.

e. A majority of the members shall constitute a quorum for the transaction of business at any meeting of the Membership. Unless otherwise provided in these Bylaws, meetings will be conducted in accordance with Robert's Rules of Order.

Section 5. Voting.

a. Each member of the Corporation shall be entitled to one vote, to be cast by the member's representative, on all matters voted upon by the Membership as decided by the Board of Directors. Proxy voting will be permitted, but only if a written proxy is presented to the Chairman prior to the call for a vote.

b. Except as otherwise provided, action by the Membership shall require the affirmative vote of a majority of the members present at a meeting attended by a quorum.

c. The method of voting – whether by voice vote, a show of hands, a roll call or by written ballot – shall be at the election of the Chairman of the Corporation in his/her discretion.

d. The Chairman of the Corporation may initiate a vote on any matter by mail, telephone, facsimile, electronic mail or similar means, in which case a deadline for response shall be established and a lack of response within the designated time shall be recorded as "not voting." Action by such means shall require an affirmative vote of a majority of the members.

Section 6. Liabilities. No member shall be personally liable for any indebtedness or liability of the

Corporation, and any and all creditors shall look only to the assets of the Corporation for payment.

ARTICLE IV.

Board of Directors

Section 1. Number. There shall be a Board of Directors, referred to hereafter as the Board. The Board shall be composed of four directors who are members of the Texas Conference of Urban Counties (hereafter "CUC Director"), and up to three directors who are not members of the Texas Conference of Urban Counties (hereafter "Non-CUC Director").

Section 2. Qualifications of CUC Directors.

- a. Each CUC Director shall be an appointed representative of a member of the Corporation that is a dues-paying member of the Texas Conference of Urban Counties.
- b. Initially, the four CUC Directors shall be the representatives for Dallas, Harris, Jefferson and Tarrant Counties, and shall serve successive two (2) year terms until recoupment of initial investments as provided for in Article X, Section 3 of these bylaws. Upon final recoupment of initial investments by the initial members of the Corporation, and thereafter upon the expiration of the remaining term of each director from Dallas, Harris, Jefferson and Tarrant Counties respectively, the four CUC Directors will thereafter be elected from any eligible member.
- c. At no time may the total number of CUC Directors be less than four.

Section 3. Qualifications of Non-CUC Directors.

- a. Each Non-CUC Director shall be an appointed representative of a member of the Corporation that is not a member of the Texas Conference of Urban Counties.
- b. At such time as the Non-CUC Corporation membership reaches, and so long as it maintains, a combined yearly amount of electricity purchasing of at least \$50 million, one Non-CUC Director shall be elected from those eligible member representatives.
- c. If the Non-CUC Corporation membership reaches, and so long as it maintains, a combined yearly amount of electricity purchasing of at least \$100 million, two Non-CUC Directors shall be elected from those eligible member representatives.
- d. If the Non-CUC Corporation membership reaches, and so long as it maintains, a combined yearly amount of electricity purchasing of at least \$150 million, three Non-CUC Directors shall be elected from those eligible member representatives.
- e. At no time may the total number of Non-CUC Directors be more than three.

Section 4. Election and Term of Office of CUC and Non-CUC Directors.

- a. Each Director shall serve for a term of two years and until a qualified successor is elected.
Notwithstanding, a Director shall not be precluded from being re-elected and serving more than one term.
- b. If a Directorship becomes vacant, the Board shall select an eligible member representative, in accordance with these bylaws, to serve during the remainder of the term for which the vacating Director was elected.
- c. Only a representative of a member of the Corporation that is a dues paying member of the Texas Conference of Urban Counties may vote in the election of a CUC Director.
- d. Only a representative of a member of the Corporation that is not a dues paying member of the Texas Conference of Urban Counties may vote in the election of a Non-CUC Director.
- e. The voting strength of each member of the Corporation for the election of a CUC or Non-CUC Director shall be based solely upon the pro-rata share of that member of the estimated total amount of electricity purchased through the Corporation of all members eligible to vote in the election for that Director as of the date of the proposed election. The Board of Directors, before any meeting of the membership in which an election for director is scheduled, shall estimate annual electricity purchasing of the members eligible to vote in that election and determine the voting strength of each member for that election.
- f. If the Non-CUC membership falls below the applicable aggregated amount, then all Non-CUC Director terms shall expire at the next annual meeting of the Corporation and the Non-CUC Membership shall hold elections for the then applicable Non-CUC Director positions.

Section 5. Authority. The Board shall have the authority to manage the business affairs of the Corporation, including all lawful powers necessary, expedient and appropriate to:

- a. Issue policy statements on behalf of the Corporation;
- b. Determine the scope and extent of the activities of the Corporation in furtherance of its purpose and policies;
- c. Appoint and set the compensation of an Executive Director;
- d. Approve contracts;
- e. Initiate or respond to legal actions;
- f. Create committees in accordance with Article VI;
- g. Approve the publication and dissemination of any report or other document prepared by a component body of the Corporation, except where such approval is the responsibility of the Membership;
- h. Establish membership dues in accordance with Article X; and
- i. Submit issues to a vote of the membership.

Section 6. Meetings.

- a. The Board shall meet as often, at such locations, on such dates and upon such notice as it deems necessary and appropriate, but at least annually.
- b. A majority of the members of the Board shall constitute a quorum for the transaction of business.
- c. Executive sessions may be called either by a majority of the Board, or by the Chairman of the Corporation.
- d. Minutes of the meetings of the Board shall be available to all members of the Board and the Membership.

Section 7. Voting.

- a. Each member of the Board shall have one vote on every matter voted on by the Board. No proxy voting shall be permitted.
- b. A majority of the Board members shall constitute a quorum.
- c. Action by the Board shall require the affirmative vote of a majority of the members at the meeting attended by a quorum. The method of voting shall be at the discretion of the Chairman of the Corporation.
- d. The Chairman of the Corporation may initiate a vote on any matter coming before the Board by mail, telephone, facsimile, electronic mail or similar means, in which event a deadline for response shall be fixed and a lack of response within the designated time shall be recorded as "not voting." Approval of any action by such means of voting shall require the affirmative vote of a majority of the members of the Board.

Section 8. Reimbursement. Each member of the Board shall be entitled to reimbursement for their expenses for attendance at official meetings of and official functions for the Corporation to the extent such expenses are not otherwise reimbursed from other sources.

ARTICLE V.**Officers**

Section 1. Number, Title and Qualifications. The officers of the Corporation shall be those designated as follows:

- a. Number and Title. There shall be a Chairman, a Vice-Chairman, a Secretary / Treasurer, and an Executive Director.
- b. Qualifications. The Chairman, Vice-Chairman and Secretary / Treasurer shall be duly appointed representatives of members of the Corporation and members of the Board of Directors.

Section 2. Chairman.

- a. Election. At the first meeting of the Board of Directors and at each biennial meeting of the Board thereafter (to coincide with the annual meeting of the Membership), a Chairman of the Corporation, heretofore designated as Chairman, shall be elected by the Board for a period of two years and until a qualified successor chairman is elected. Notwithstanding, a member of the Board shall not be precluded from being re-elected and serving more than one term as Chairman. Should the Chairman resign or be unable to continue in office, his/her duties and responsibilities shall be assumed by the Vice-Chairman for the remainder of the term and until a qualified Chairman is elected at the next biennial meeting of the Board.
- b. Authority and Responsibilities. The Chairman shall preside at meetings of the Membership and the Board, performing the usual duties of the presiding officer at such meetings. The Chairman shall be the official representative of the Corporation when the Corporation is to be represented, unless the Board, by a majority vote, shall designate some other member(s) or officer(s) to serve in such capacity. Where authorized, the Chairman shall, with the approval of the Board, appoint individuals to committees to serve at the pleasure of the Board.

Section 3. Vice-Chairman.

- a. Election. At the first meeting of the Board of Directors and at each biennial meeting of the Board thereafter (to coincide with the annual meeting of the Membership), a Vice-Chairman of the Corporation, heretofore designated as Vice-Chairman, shall be elected by the Board for a period of two years and until a qualified successor Chairman is elected. Notwithstanding, a member of the Board shall not be precluded from being re-elected and serving more than one term as Vice-Chairman. Should the Vice-Chairman resign or be unable to continue in office, the Chairman may designate a board member to serve as Vice-Chairman for the remainder of the term and until a qualified Vice-Chairman is elected at the next biennial meeting of the Board.
- b. Authority and Responsibilities. The Vice-Chairman shall, in the absence or disability of the Chairman, perform the duties of Chairman. He/she shall perform such other duties and have other responsibilities as may be delegated to him by the Board.

Section 4. Secretary / Treasurer.

- a. Election. At the first meeting of the Board of Directors and at each biennial meeting of the Board thereafter (to coincide with the annual meeting of the Membership), a Secretary / Treasurer of the Corporation, heretofore designated as Secretary / Treasurer, shall be elected by the Board for a period of two years and until a qualified successor Secretary / Treasurer is elected. Notwithstanding, a

member of the Board shall not be precluded from being re-elected and serving more than one term as Secretary / Treasurer. Should the Secretary / Treasurer resign or be unable to continue in office, his/her duties and responsibilities shall be assumed by a successor to be appointed by the Chairman from among the members of the Board for the remainder of the term and until a qualified Secretary / Treasurer is elected at the next biennial meeting of the Board.

b. Authority and Responsibilities. The Secretary / Treasurer, with such staff assistance as the Board shall deem appropriate to provide, shall perform all duties requisite of the Secretary / Treasurer of a Corporation, to include:

- (1) Keeping the minutes of the meetings of the Membership and of the Board;
- (2) Maintaining custody and supervision of the records and the books of the Corporation;
- (3) Providing oversight for the Board of financial transactions undertaken by the Executive Director;
and
- (4) Oversight of annual financial audits of the corporation to be conducted by an outside auditor and reporting of the findings to the Board.

Section 5. Executive Director.

- a. Selection and Term of Office. An Executive Director shall be selected and appointed by the Board to serve at the pleasure of the Board. At the discretion of the Board, the Executive Director may be an independent contractor or an employee of the Corporation.
- b. Authority and Responsibilities. The Executive Director shall be the chief executive officer of the Corporation, having all powers and performing all duties appropriate to the capacity and as may be further designated by the Board. Generally, he/she shall perform all acts and have all powers required or authorized by law for the chief executive officer of a corporation, including the signing or verifying of all documents required by law. The Executive Director shall maintain an annual budget and statement of objectives of the Corporation, to be approved by the Board. He/she shall have authority to bind the corporation contractually, and to make expenditures on behalf of the corporation. He/she shall exercise authority over the selection, employment, compensation and direction of all personnel necessary to operate the Corporation and of all vendors and contractors, including legal counsel.

Section 6. Compensation of Officers.

- a. Other than as set forth in Article IV, Section 7 (Reimbursement), the Chairman, Vice-Chairman and Secretary / Treasurer shall receive no compensation for their services as officers of the Corporation.
- b. The Executive Director shall receive such compensation and other benefits as the Board may determine, and, additionally, shall be entitled to reimbursement of expenses for attendance at official

meetings of and official functions for the Corporation.

ARTICLE VI.

Committees

Section 1. Purpose. The purpose of any committee established shall be to provide information and recommend a course of action to the Board on matters relevant to the business of the Corporation.

Section 2. Establishment. The Board may establish such committees, and appoint members thereto from among the membership, as it deems appropriate.

ARTICLE VII.

Contractor Selection

Section 1. Competitive Bids. The corporation shall utilize a formal procedure of inviting and evaluating bids or proposals from as many providers as reasonably possible when acting to procure goods and services on behalf of the membership. However, when a procurement would not be subject to competitive bids if conducted by a county in this state, the Board may vote to allow the corporation to make such procurement without competitive bids.

Section 2. Corporation Purchases. The Board shall set policies for the purchase of goods and services for the administration of the corporation consistent with all applicable laws.

ARTICLE VIII.

Conflict of Interest and Ethical Standards

Section 1. Conflict of Interest. Any member representative of the Corporation or its component bodies having the right to vote shall be disqualified from voting on any matter in which, or where, he/she has a financial interest.

Section 2. Ethical Standards. Any member representative of the Corporation or of its component bodies having the right to vote shall disclose as to the decision-making body any past, current, or prospective association – personal, financial, or otherwise – if in his/her opinion such association may unduly influence his decision. Moreover, it shall be the policy that all employees shall be guided by this standard in making recommendations upon which any decision may be reached.

ARTICLE IX.

Amendment

These Bylaws may be amended by the affirmative vote of a majority of the Board.

ARTICLE X.

Membership Dues and Aggregation Fees

Section 1. Board Authority. The Board shall have the authority to establish membership dues, an aggregation fee, or both, to be applicable to all members of the corporation. The Board may amend such dues and fee at its discretion.

Section 2. Method of Calculation and Payment. The Board shall determine the method of calculating membership dues, be it a fixed sum, a percentage of commodity usage, or any combination of these or other methods. An aggregation fee, if any, shall be set in accordance with applicable law. The Board shall determine the method of payment to the corporation of any such dues and fees.

Section 3. Recoupment of Initial Investments. The initial members of the corporation will be granted a credit against any membership dues or aggregation fee assessed equal to the amount of their respective initial contributions plus interest compounded annually at the prime rate of interest. The Board shall determine the period of recoupment, but it shall begin no later than January 1, 2003 and not exceed five (5) years.

Amendment History:

First adopted September 22, 2000.

Articles III & IV amended December 8, 2000.

Article III amended June 7, 2001.