



MEMO

Date: December 7, 2004
To: Board of Directors
From: Bob Kahn, Chair HR & Governance Committee
Subject: Amendment to Flexible Benefits Plan

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: December 14, 2004

Agenda Item No.: 12a(2)

Issues:

Amendment and restatement of the Flexible Benefits Plan to provide for pre-tax treatment of the contributions paid by employees for dependent coverage under the Medical Plan.

Background/History:

Effective July 1, 2004, ERCOT began charging employees who elected dependent coverage under the Medical Plan a portion of the cost of the dependent coverage. As a related matter, ERCOT allows employees to elect to make their contributions under the Medical Plan on a pre-tax basis in accordance with Section 125 of the Internal Revenue Code of 1986 (the "Code"). Currently, however, the ERCOT Flexible Benefits Plan (a "cafeteria plan" subject to Code Section 125) only provides for pre-tax treatment of employee contributions to flexible spending accounts (health care spending accounts and dependent care spending accounts). Thus, ERCOT must amend the Flexible Benefits Plan to allow for the pre-tax treatment of employee contributions for dependent coverage under the Medical Plan.

Key Factors Influencing Issue:

- 1) Pre-tax treatment of employee contributions for dependent coverage under the Medical Plan has been in effect since July 1, 2004.
- 2) Pre-tax treatment of employee contributions under the Medical Plan is desirable as it helps to reduce the effective cost for employees.
- 3) Code Section 125 requires a written plan document providing for pre-tax treatment of employee contributions under the Medical Plan.
- 4) ERCOT may desire in the future to charge employees for other benefits for which the required contributions could be made on a pre-tax basis in accordance with Code Section 125.



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Alternatives:

- 1) Do not amend the Flexible Benefits Plan and terminate pre-tax treatment of employee contributions under the Medical Plan.
- 2) Amend the Flexible Benefits Plan.

Conclusion/Recommendation:

The H.R. & Governance Committee and ERCOT staff recommend that the Board approve ERCOT's execution of an amended and restated Flexible Benefits Plan that includes a premium conversion feature, which will allow pre-tax treatment of the contributions paid by employees for dependent coverage under the Medical Plan and any other future contributions for benefits that would be eligible for such treatment under Code Section 125. A proposed resolution is provided.



RESOLUTION OF THE ERCOT BOARD OF DIRECTORS

WHEREAS, the Electric Reliability Council of Texas, Inc. (“ERCOT”) maintains the ERCOT Flexible Benefits Plan (the “Plan”), which is a “cafeteria plan” as such term is defined in Section 125 of the Internal Revenue Code of 1986 (the “Code”); and

WHEREAS, pursuant to Section 9.01 of the Plan, ERCOT has the right to amend the Plan; and

WHEREAS, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend and to restate the Plan effective July 1, 2004, to include a premium conversion feature, which will allow pre-tax treatment of the contributions paid by employees for dependent coverage under the Medical Plan and any other future contributions for benefits that would be eligible for such treatment under Code Section 125.

After full discussion and due consideration thereof, it was duly

RESOLVED, that amendment and restatement of the Plan effective July 1, 2004, to include a premium conversion feature be and hereby is, in all respects, authorized, approved, ratified and confirmed; and

FURTHER RESOLVED, that the actions of the officers of ERCOT in executing such documents as may be required or desirable and in taking such other actions as may be necessary or desirable to effectuate the foregoing resolution, to render said amended and restated Plan fully effective, and otherwise to maintain for the Plan compliance with the requirements of the Code and any other applicable legal requirements be and hereby are, in all respects, authorized, approved, ratified and confirmed.