



Date: March 8, 2005
To: Bob Kahn, Chair, H.R. & Governance Committee
From: ERCOT Staff
Subject: Amendment to Benefit Plan Definitions

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: March 15, 2005

Agenda Item No.: 9a

Issue:

Amendment of the Electric Reliability Council of Texas, Inc. (“ERCOT”) Core Benefit Plan (the “Plan”) to update its definition of “dependent” in accordance with changes to the Internal Revenue Code of 1986 (the “Code”) made by the Working Families Tax Relief Act of 2004 (“WFTRA”) and to provide for a uniform definition among the coverages provided under the Plan.

Background/History:

Code Sections 105 and 106 govern the taxability of benefits and coverage, respectively, provided under a group health plan. Under Code Sections 105 and 106 and the implementing regulations, the benefits and coverage provided to an employee’s dependent will be taxable unless the plan’s definition of “dependent” fits within the definition of “dependent” in Code Section 152. Effective for taxable years beginning on and after January 1, 2005, WFTRA amended Code Section 152 resulting in a revised definition of “dependent” for general Code purposes as well as special definitions for purposes of particular Code sections, including Code Section 105. In addition, the IRS announced (in Notice 2004-79) that it would revise the Code Section 106 regulations to conform the definition of “dependent” applicable under those regulations to the definition applicable under WFTRA for purposes of Code Section 105.

Currently, the definition of “dependent” used under the Plan complies with Code Sections 105 and 106 as in effect *prior to* WFTRA’s enactment. In addition, minor but substantive differences have evolved over the years between the definition of “dependent” used for purposes of the medical, prescription drug, and vision coverages provided under the Plan and the definition of “dependent” used for purposes of the dental coverage provided under the Plan, basically due to inadvertent changes made as different third-party administrators were retained to handle the different coverages.

Key Factors Influencing Issue:

- 1) Tax-free treatment of coverage and benefits under the Plan avoids out-of-pocket expense to employees and is desirable for administrative simplicity.



- 2) Use of the same definition of “dependent” for purposes of all coverages provided under the Plan is desirable for administrative simplicity; the same employees are eligible for all coverages and ERCOT does not desire to maintain or to explain to employees multiple sets of eligibility rules for the Plan merely because more than one third-party administrator is involved.

Alternatives:

- 1) Amend the Plan to update the definition of “dependent” in accordance with changes to the Code made by WFTRA and to provide for a uniform definition among the coverages provided under the Plan.
- 2) Amend the Plan to update the definition of “dependent” in accordance with changes to the Code made by WFTRA, but not in any other respect.
- 3) Do not amend the Plan and establish procedures to provide for after-tax treatment of coverage and benefits provided to dependents, as necessary.

Conclusion/Recommendation:

ERCOT staff recommends to the H.R. & Governance Committee that the Board approve ERCOT’s execution of an amendment to the Plan to update the definition of “dependent” in accordance with changes to the Code made by WFTRA and to provide for a uniform definition among the coverages provided under the Plan.



RESOLUTION OF THE ERCOT BOARD OF DIRECTORS

WHEREAS, the Electric Reliability Council of Texas, Inc. (“ERCOT”) maintains the Electric Reliability Council of Texas, Inc. Core Benefit Plan (the “Plan”), which is a group health plan providing for medical, dental, prescription drug, and vision coverages; and

WHEREAS, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend the Plan to update the definition of “dependent” in accordance with changes to the Internal Revenue Code of 1986 (the “Code”) made by the Working Families Tax Relief Act of 2004 and to provide for a uniform definition among the coverages provided under the Plan.

After full discussion and due consideration thereof, it was duly

RESOLVED, that amendment of the Plan as described above to 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 amendment 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.