



**Date:** January 10, 2006  
**To:** Bob Kahn, Chair, H.R. & Governance Committee  
**From:** ERCOT Staff  
**Subject:** Amendments to ERCOT's Money Purchase Plan and 401(k) Savings Plan

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Director Meeting Date:** January 17, 2006

**Agenda Item No.:** 15b

**Issues:**

- 1) Amendment of the Electric Reliability Council of Texas, Inc. ("ERCOT") Money Purchase Plan ("MPP") and amendment of the ERCOT 401(k) Savings Plan (the "Plan"), effective April 1, 2006, to allow the merger of the MPP into the Plan to decrease administrative burden and cost, while retaining the same benefits to the employees.
- 2) Amendment of the Plan to change the provider of the Plan from New England Financial (MetLife) to Fidelity Investments, effective April 1, 2006, in order to provide a broader selection of investment options, lower cost investment options, stronger recordkeeping and administrative capabilities, improved compliance-related assistance and guidance, and improved back office support.
- 3) Amendment of the Plan to remove Thomas F. Schrader and Sammy R. Jones as trustees to the plan and to appoint Fidelity Management Trust Company as the trustee to the Plan effective April 1, 2006.
- 4) Amendment of the Plan to designate ERCOT as the Plan Administrator.
- 5) Amendment of the Plan to add Thomas F. Schrader, Sammy R. Jones and Steve Byone as authorized signatories to direct the trustee and to pay to the trustee of the Plan from time to time such amounts as may be determined appropriate to effectuate the purpose of the Plan effective April 1, 2006.
- 6) Amendment of the Plan to increase the maximum employee contribution level from 15% to 20% in response to employee request effective April 1, 2006.

**Background/History:**

ERCOT appointed a Plan Administrative Committee ("PAC") and an Employee Focus Group to review plan options in 2004. ERCOT contracted with a mutual fund consulting



firm to assist with an RFP process to seek new potential vendors. ERCOT sent the RFP to eleven vendors and received responses from nine. From the information presented, ERCOT created a matrix comparing the nine vendors in key areas. Based on matrix results, ERCOT chose four vendors to present products and services. After seeing the presentations, the PAC narrowed the field to two vendors. The PAC requested that references be checked on the two vendors and that the two vendors return to present educational packages (employee education was a key issue identified by both ERCOT employees and management). Upon completion of these presentations, the PAC and Employee Focus Group developed a second matrix comparing the two vendors. Fidelity Investments rated highest of the two vendors. Fidelity Investments provided a time line of ninety (90) days to complete the move of the Plan, which would allow ERCOT to implement these amendments effective April 1, 2006.

At the last PAC meeting held October 28, 2005, members voted to add Steve Byone as an authorized signatory at the time that Fidelity Investments becomes the Plan provider.

Through electronic approval on November 11, 2005, PAC members approved the merger of the MPP into the Plan and raising the maximum employee contribution to 20%.

**Key Factors Influencing Issue:**

**Amendment 1:**

- 1) Administrative burden and costs for one plan are lower than costs to support two separate plans.
- 2) There are no adverse impacts on the employer to make this change.
- 3) After the merging of the plans, ERCOT could reduce or eliminate the MPP contribution, while the current MPP does not allow for this. Therefore, a potential, limited adverse impact to employees is possible if ERCOT decided not to make contributions to the MPP in the future or to reduce its level of contribution. ERCOT currently has no plans to reduce or eliminate the MPP contribution.
- 4) Fidelity Investments can reflect former MPP contributions on a separate line and new profit sharing contributions on a different, separate line, using the same vesting schedule currently used in the MPP. This will not affect the vesting schedule of the employer matching contributions to the Plan.

**Amendment 2:**

- 1) ERCOT received complaints from employees concerning investment options and the lack of web-based tools for investment education and investment management under MetLife.
- 2) The current Plan sponsor lacks back office support needed for loan administration, distribution issues, audits and compliance.
- 3) Based on employee feedback and management review, ERCOT has a need for a broader range of investment options, available at lower cost, in order to maintain a



competitive program.

- 4) Fidelity Investments has web-based tools to help with investing strategies, automation of loan requests and distributions
- 5) Fidelity Investments ranked in top ten of fund managers and plan administrators for 2005

Amendment 3: Fidelity Investments requires that Fidelity Management Trust Company be the trustee to the Plan.

Amendment 4: Fidelity Investments requires that ERCOT be the Plan Administrator.

Amendment 5:

- 1) Now that ERCOT has filled the position of Chief Financial Officer (Steve Byone), the PAC concludes that it is advisable to add Steve Byone as an authorized signatory. Adding Steve Byone as an authorized signatory and changing the current trustees to authorized signatories when moving the Plan to a new provider is the most efficient method for effecting this change in terms of amending the Plan document.
- 2) ERCOT believes it is prudent to have three (3) authorized signatories, in order to avoid the possibility of “tie” votes regarding authorized decisions surrounding the Plan.

Amendment 6:

- 1) Federal tax law concerning employee plan contributions allows employers to allow employees to contribute more than 15% within normal maximum 401(k) dollars allowed and maximum compensation limits.
- 2) ERCOT employees have requested that ERCOT consider allowing greater participation levels, allowing employees to contribute more money to their ERCOT 401(k) savings plan accounts. Allowing additional contributions from non-highly compensated employees could also improve non-discrimination testing, potentially reducing the possibility of refunds to highly compensated employees. The pool of employees that could maximize their contributions up to the annual limits, under this amendment, would increase substantially; including employees that earn \$75,000 or more in a year rather than only those earning \$100,000 or more in a year.

**Alternatives:**

Amendment 1: Leave the MPP as is. ERCOT will to continue bearing the costs associated with administering two retirement plans rather than one, file two Form 5500s each year instead of one and contract external auditors to audit two plans instead of one combined plan.



Amendment 2: Stay with New England Financial (MetLife) and have less attractive investment options and less back office, recordkeeping, and compliance support. By staying with New England Financial, ERCOT also believes the current level of employee dissatisfaction would potentially increase.

Amendment 3: Do not select Fidelity Investments as provider if ERCOT does not want Fidelity Management Trust Company to assume trustee duties.

Amendment 4: Do not move to Fidelity Investments if ERCOT does not want to have the authority to administer the Plan.

Amendment 5:

- 1) Reject Steve Byone as an authorized signatory
- 2) Consider Steve Byone as an authorized signatory at a future date.
- 3) Choose other ERCOT employees as authorized signatories.

NOTE: ERCOT must make Fidelity Investment the trustee and must have at least one employee as an authorized signatory.

Amendment 6:

- 1) Increase maximum contribution level to some other percentage beyond 15%, up to 90%. If the contribution level goes beyond 20%, other regulatory issues could occur.
- 2) Leave maximum contribution level at 15%.
- 3) Decrease maximum contribution level to below 15%.

**Conclusion/Recommendation:**

ERCOT staff recommends to the H.R. & Governance Committee that the Board approve ERCOT's execution of these amendments to the Plan to be effective April 1, 2006 as provided in the attached resolution.



## **RESOLUTION OF THE ERCOT BOARD OF DIRECTORS**

**WHEREAS**, the Electric Reliability Council of Texas, Inc. (“ERCOT”) maintains the Electric Reliability Council of Texas, Inc. 401(k) Savings Plan (the “Plan”) and the ERCOT Money Purchase Plan (“MPP”), which are plans providing for retirement savings; and

**WHEREAS**, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend and restate the Plan and the MPP to allow the MPP to be merged into the Plan effective April 1, 2006; and

**WHEREAS**, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend and restate the Plan to change the provider of the plan from New England Financial to Fidelity Investments within the terms set forth in the Advisor Retirement Connection ®-401(k) Premium Service Program Basic Plan and Adoption Agreement effective April 1, 2006; and

**WHEREAS**, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend the Plan to remove Thomas F. Schrader, Chief Executive Officer and Sammy R. Jones, Chief Operating Officer as trustees to the plan and appoint Fidelity Management Trust Company as the successor trustee to the Plan effective April 1, 2006; and

**WHEREAS**, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to hereby designate ERCOT as Plan Administrator of the Plan; and

**WHEREAS**, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend the Plan to add Thomas F. Schrader, Chief Executive Officer, Sammy R. Jones, Chief Operating Officer, and Steve Byone, Chief Financial Officer as authorized signatories to the Plan to direct the trustee and to pay to the trustee of said Plan from time to time such amounts as may be determined appropriate to effectuate the purposes of the Plan; and

**WHEREAS**, ERCOT’s Board of Directors deems it desirable and in the best interests of ERCOT to amend the Plan to increase the maximum employee contribution level from 15% to 20% effective April 1, 2006.

After full discussion and due consideration thereof, it was duly

**RESOLVED**, that these amendments of the Plan as described above to be and hereby are, in all respects, authorized, approved, ratified and confirmed; and

**RESOLVED**, that authorized signatories of the Corporation are hereby authorized and directed to take such actions as may be necessary or desirable to effectuate the foregoing resolutions and



to obtain a favorable determination letter from the Internal Revenue Service stating that such Plan satisfies the applicable requirement of the Code for qualified plans; 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 amendments 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.