



Date: February 13, 2007
To: ERCOT H.R. & Governance Committee
From: Nancy Capezzuti, Vice President Human Resources and Organizational Development
Subject: Amendment to the 401(k) Savings Plan

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: February 20, 2007

Agenda Item No.: 4

Issue:

ERCOT management seeks Board approval to amend the current ERCOT 401(k) Savings Plan (“401(k) Plan”) to allow employees to contribute up to 99% of their earnings (after required deductions), to the 401(k) Plan. This change is to enable our lower compensated employees to contribute the IRS allowable amount and to be consistent with the Fidelity web page and recommendations. We also request that the board approve the amendment of the 401(k) Plan to allow an annual true-up of the match amount. The annual true-up provision was included in the prior plan administrated by MetLife and should have been included in the new plan administered by Fidelity.

Background/History:

Increase in allowable contributions: Since ERCOT offers only one vehicle for retirement planning for our employees, we would like to allow employees to contribute the maximum allowable amount to their 401(k) Plan. Effective 2007, employees will be allowed to contribute up to \$15,500 of their earnings into their retirement plan. The current limit of 20% is insufficient and does not allow our lower compensated employees to contribute all they would like to for their retirement. The 20% limit is also in conflict with the Fidelity website and hence, confusing to employees. The 20% limit requires manual tracking by pay period to ensure compliance. The Fidelity web access allows for up to 99% of pay (after required deductions) and they recommend we amend our plan to match the web portal. This change will not affect the match percentage currently provided by ERCOT (75 cents per \$1 contribution – up to 6 %) or the fixed contribution amount of 10%.

Amendment of plan to allow for annual match true-up: The ERCOT 401(k) Plan has historically allowed for an annual true-up process for all contributions to the 401(k) Plan and employer match. The true-up process allows employees to receive the matching contribution based on annual contribution amounts instead of pay period contributions. Some employees contribute larger amounts in the beginning of the year and reached the IRS maximum contribution level before the end of the year and lose out on employee match for the pay period they are not allowed to contribute. The true up process allows for a consistent match for the entire year, irrespective of the timing of employee contributions.



Key Factors Influencing Issue:

The 20% limitation does not allow lower salaried employees to maximize their contributions to their retirement plan. This provides a discriminatory effect on our lower compensated employees. The Fidelity system is not designed to allow this type of limitation in the plan, so audit issues will also be a problem in the future, if not amended.

Employees were told during the enrollment process and conversion of the 401(k) Plan from MetLife to Fidelity that the annual true-up provision would continue when the plan was moved to Fidelity. This provision should have been included in the original plan document. Fidelity forgot to include this provision. This amendment is required prior to February 15, 2007, to allow for true-up contributions for 2006 plan year.

Alternatives:

1. Approve the recommendation for both amendments;
2. Approve the recommendation for one of the amendments;
3. Reject the amendments;
4. Remand this issue to the Committee with instructions; or
5. Defer action until a later Board meeting.

Conclusion/Recommendation:

Approve amendment of the 401(k) Plan to allow for up to 99% of wage contribution and an annual true-up provision in the current plan.



ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
BOARD OF DIRECTORS RESOLUTION

WHEREAS, the Board of Directors (“Board”) of Electric Reliability Council of Texas, Inc. (“ERCOT”) deems it desirable and in the best interest of ERCOT to approve amendment of the current ERCOT 401(k) Savings Plan (“401(k) Plan”) to allow for up to 99% of wage contribution by employees and an annual true-up provision;

THEREFORE, be it RESOLVED that:

1. The amendment to the 401(k) Plan, to allow for up to 99% of eligible wages to be contributed by employees and an annual true-up of the employer match, is hereby, in all respects, authorized, approved, and confirmed;
2. ERCOT management is hereby authorized and directed to take such actions and/or execute such contracts as may be necessary or desirable to effectuate the foregoing resolution;
3. All actions of ERCOT officers in executing such documents as may be required or desirable in taking such other actions as may be necessary or desirable to effectuate the foregoing resolution, to render said amendments fully effective, and to otherwise maintain the 401(k) Plan in compliance with the IRS Code and other legal requirements be and hereby are, in all respects, authorized, approved, ratified, and confirmed.