



Date: September 8, 2009
To: ERCOT Board of Directors
From: Clifton Karnei, Finance & Audit Committee Chair
Subject: Acceptance of the 2008 401(k) Audit Report

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: September 15, 2008

Agenda Item No.: 13b

Issue:

Acceptance of the audited financial statements of Electric Reliability Council of Texas, Inc.'s (ERCOT's) 401(k) Savings Plan (401(k) Plan), as of December 31, 2008.

ERCOT must obtain an annual audit of its financial statements pursuant to the Amended and Restated Bylaws of ERCOT (as approved on September 17, 2007), as noted below:

Section 10.6 Audit. At least annually, an audit of the financial statements of ERCOT shall be performed by the Auditor approved by the Board.... The Auditor's opinion and the audited financial statements will be made available to all Members as described in Section 10.5.

Internal Revenue Service (IRS) rules and regulations also require an annual financial statement audit of benefit plans such as ERCOT's 401(k) Plan.

Background/History:

In February 2007, after obtaining approval of ERCOT's Board of Directors (Board), ERCOT engaged the firm of Maxwell, Locke & Ritter, LLP to complete: (a) the final audit of the Money Purchase Plan (MPP) financial statements (after the merger of the MPP into the ERCOT 401(k) Plan effective April 1, 2006); and (b) the audits of the 2006, 2007 and 2008 401(k) Plan financial statements.

It is expected that on September 15, 2009, Maxwell, Locke & Ritter, LLP, will meet with the Finance & Audit Committee (F&A Committee) of the Board to discuss the proposed final audit report for the ERCOT 401(k) Plan, as of December 31, 2008.

The F&A Committee is expected to recommend that the Board accept the 2008 audited financial statements for the 401(k) Plan as presented by Maxwell, Locke & Ritter, LLP, during its meeting.

Key Factors Influencing Issue:

The key factors influencing the decision are ERCOT's bylaw requirement, IRS reporting requirements, and the expectation that Maxwell, Locke & Ritter, LLP, will issue an opinion acceptable to the F&A Committee in connection with its audit of ERCOT's 2008 financial



statements for the 401(k) Plan.

Alternatives:

The Board has two alternatives:

1. Accept the audited financial statements as presented by Maxwell, Locke & Ritter, LLP, which will allow ERCOT to file the Form 5500 timely with the Department of Labor, or
2. Postpone the acceptance of the audited financial statements until a future date following additional investigation or discussion with Maxwell, Locke & Ritter, LLP, or ERCOT management regarding the financial statements.

Conclusion/Recommendation:

It is recommended that the Board accept the final audited financial statements of the 401(k) Plan, as of December 31, 2008, as presented by Maxwell, Locke & Ritter, LLP.



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

WHEREAS, Electric Reliability Council of Texas, Inc. (ERCOT) has provided a 401(k) Savings Plan [the 401(k) Plan] as a benefit for its eligible employees, including during the fiscal year 2008, and continues to so provide;

WHEREAS, ERCOT must obtain an annual audit of its financial statements pursuant to Section 10.6 of its Amended and Restated Bylaws (as approved on September 17, 2007), and the Internal Revenue Service rules and regulations also require an annual financial statement audit of benefit plans such as the 401(k) Plan;

WHEREAS, Maxwell, Locke & Ritter, LLP, whose engagement for such audit was previously approved by the Board in February 2007, has issued an opinion acceptable to this Board in connection with its audit of ERCOT's 2008 financial statements for the 401(k) Plan; and

WHEREAS, the ERCOT Board of Directors (Board) deems it desirable and in ERCOT's best interest to accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2008, as presented by Maxwell, Locke & Ritter, LLP;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby accepts the audited financial statements for ERCOT's 401(k) Plan, as of December 31, 2008, as presented by Maxwell, Locke & Ritter, LLP.

CORPORATE SECRETARY'S CERTIFICATE

I, Michael G. Grable, Corporate Secretary of ERCOT, do hereby certify that, at its September 15, 2009 meeting, the ERCOT Board of Directors passed a motion approving the above Resolution by a vote of _____.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2009.

Michael G. Grable
Corporate Secretary