



Date: December 8, 2009
To: ERCOT Board of Directors
From: Nancy Capezzuti, Vice President and Chief Administrative Officer (CAO)
Subject: Ratification of Delegation of Authority to Benefits Committee and Ratification of Plan Amendments

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: December 15, 2009

Agenda Item No.: 18a

Issues:

1. Whether to ratify and/or modify the existing practice of delegating to the Benefits Committee the authority to perform the following actions with respect to ERCOT's employee benefit plans:
 - (a) Add, discontinue, and modify benefits plans; and
 - (b) Perform general administration of plans, including, without limitation, selection and payment of advisors, services providers, auditors and consultants, and determination of appeals of the denial of benefits; and
2. Whether to ratify amendments to the ERCOT Flexible Benefits Plan, ERCOT Dependent Care Account Plan and the ERCOT Health Care Account Plan.

Background/History:

ERCOT maintains various employee benefit plans, including a 401(k) plan, employee medical insurance and a Flexible Benefits Plan (FBP), Dependent Care Account Plan (DCAP) and Health Care Account Plan (HCAP). The Benefits Committee monitors such plans for cost, participation levels, and effectiveness, to determine whether such plans are an appropriate component of compensation for ERCOT employees, and to ensure the plans comply with current law.

Pursuant to the FBP, Participants in the HCAP and the DCAP use pre-tax earnings to pay covered health care and dependent care expenses.

Under Article IX of the HCAP and Article VIII of the DCAP, plan terminations and amendments must be authorized or ratified by the Board of Directors, except administrative changes that have no more than a de minimus detriment to plan participants.

Section 2.14 of the DCAP and Section 2.14 of the HCAP define the Period of Coverage for any Election as the period of time beginning on the effective date of the Election and ending on the earlier of the last day of the Plan Year or the date that such Election terminates. In addition, Section 5.07 of the DCAP provides that the Period of Coverage shall be the Plan Year in the event the Election ends as a result of the Participant's termination of employment.

ERCOT has executed the Second Amendment to the FBP, the Third Amendment to the DCAP,



and the Fourth Amendment to the HCAP, copies of which are attached hereto as *Exhibit 1*. These amendments make certain administrative changes intended to synchronize their Plan Year (currently the calendar year) with the Plan Year for ERCOT's other employee benefit plans (currently July 1 through June 30). In addition, the amendments retroactively amend the definition of Period of Coverage to provide for an earlier end to the Period of Coverage if the Election terminates as the result of either the Participant's revocation upon the occurrence of a Permitted Change Event, or termination of the Participant's employment by ERCOT. In such event, the Period of Coverage ends on the last day of the month in which such revocation or termination takes place.

Although there could be, in theory, a detriment to DCAP participants as a result of the revised description (as the Participant would lose the ability to fund the Dependent Care Account with pre-tax earnings from the date his/her employment terminates until the end of the DCAP Plan Year), no actual detriment would likely ensue because no pre-tax earnings would be available to fund the account following the termination of a Participant's employment.

Both the DCAP and the HCAP permit the Participant to access account contributions through the end of the Plan Year (and associated run-out period) to pay for covered expenses incurred during the Period of Coverage.

The current proposal before the Board is to:

- (i) Ratify and/or modify the existing practice of delegating to the Benefits Committee the authority to add, discontinue and modify employee benefits plans and to perform general administrative services of plans, including, without limitation, selection and payment of advisors, services providers, auditors and consultants, and determination of appeals of the denial of benefits; and
- (ii) Ratify the Second Amendment to the FBP, the Third Amendment to the DCAP, and the Fourth Amendment to the HCAP.

Key Factors Influencing Issue:

Employee benefits are an important component of the total compensation paid to ERCOT employees. ERCOT staff includes human resources professionals who are familiar with the evaluation, selection and administration of employee compensation and benefits plans and who advise the Benefits Committee regarding same. It is desirable to delegate authority for the selection and operation of employee benefit plans to the Benefits Committee to allow the Committee maximum flexibility to select benefit options that will provide competitive compensation and promote employee health and welfare at a reasonable cost.

Alternatives:

- Approve the ratification of the delegation of authority to the Benefits Committee to add, discontinue and modify employee benefits plans and to provide general administrative services (as discussed more in detail above) and the requested ratification of the Second Amendment to the FBP, the Third Amendment to the DCAP, and the Fourth Amendment to the HCAP;



- Modify (restrict or expand) the authority delegated to the Benefits Committee;
- Decline to ratify changes to the FBP, DCAP and/or HCAP; or
- Defer any action.

Conclusion/Recommendation:

ERCOT Staff respectfully recommends that the Board do the following:

- (1) Ratify the delegation of authority to the Benefits Committee to perform the following actions with respect to ERCOT's employee benefit plans:
 - (a) Add, discontinue, and modify benefits plans; and
 - (b) Perform general administration of plans, including, without limitation, selection and payment of advisors, services providers, auditors and consultants, and determination of appeals of the denial of benefits; and
- (2) Ratify the Second Amendment to the FBP, the Third Amendment to the DCAP, and the Fourth Amendment to the HCAP.



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

WHEREAS, Electric Reliability Council of Texas, Inc. (ERCOT) maintains various employee benefit plans, including a 401(k) plan, employee medical insurance and a Flexible Benefits Plan (FBP), Dependent Care Account Plan (DCAP) and Health Care Account Plan (HCAP);

WHEREAS, the ERCOT Benefits Committee monitors such plans for cost, participation levels, and effectiveness, and to determine whether such plans are an appropriate component of compensation for ERCOT employees;

WHEREAS, certain benefit plan documents, including the FBP, the DCAP and the HCAP, require that amendment to such plans be approved or ratified by the ERCOT Board of Directors (Board);

WHEREAS, after due consideration of the alternatives, the ERCOT Board deems it desirable and in the best interest of ERCOT to ratify the existing practice of the delegation of authority for the selection and operation of employee benefit plans to the Benefits Committee to allow the Committee maximum flexibility to select benefit options that will provide competitive compensation, and promote employee health and welfare at a reasonable cost, and ensure compliance with applicable law and to ratify the Second Amendment to the FBP, the Third Amendment to the DCAP, and the Fourth Amendment to the HCAP; and

NOW, THEREFORE, BE IT RESOLVED, that the ERCOT Board hereby:

- (1) Ratifies the delegation of authority to the Benefits Committee to perform the following actions with respect to ERCOT's employee benefit plans:
 - (a) Add, discontinue, and modify benefits plans; and
 - (b) Perform general administration of plans, including, without limitation, selection and payment of advisors, services providers, auditors and consultants, and determination of appeals of the denial of benefits; and
- (2) Ratifies the Second Amendment to the FBP, the Third Amendment to the DCAP, and the Fourth Amendment to the HCAP.

CORPORATE SECRETARY'S CERTIFICATE

I, Michael G. Grable, Corporate Secretary of ERCOT, do hereby certify that, at its December 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 December, 2009.

Michael G. Grable
Corporate Secretary