



**Date:** August 10, 2010  
**To:** Board of Directors  
**From:** Bill Magness, Interim Vice President and General Counsel  
**Subject:** Ratification of 2009 Unaffiliated Director Compensation

**Issue for the ERCOT Board of Directors**

**ERCOT Board of Directors Meeting Date:** August 17, 2010

**Agenda Item No.:** 16

**Issue:**

Whether the ERCOT Board of Directors (Board) should ratify the compensation received by the Unaffiliated Directors serving on the 2009 ERCOT Board which was \$31,199.80 in excess of the Unaffiliated Director compensation cap prescribed by the ERCOT Board Policies and Procedures.

**Background/History:**

In August 2008, the Board adopted changes to Section 2.8 of the Board Policies and Procedures to modify compensation payable to Unaffiliated Directors for services to ERCOT and to the Texas Regional Entity (TRE). This modification contained an annual fee cap of \$99,800 for the Board Chair and \$89,800 for Unaffiliated Directors and prohibited payment for more than one Committee meeting per day.

During a recent internal review of ERCOT’s payments to its Unaffiliated Directors, it was discovered that a total of \$31,199.80 in fees had been paid to its five Unaffiliated Directors who served on the ERCOT Board from December 9, 2008 until December 15, 2009 (2009 Board Year), in excess of the cap prescribed by Section 2.8 of the ERCOT Board Policies and Procedures.

The overpayments of fees (exclusive of expense reimbursements) were made as follows:

**Unaffiliated Directors –  
2009 Payments for Fees**

<b>Name</b>	<b>Payments</b>	<b>Permitted Maximum</b>	<b>Overpayment</b>
Jan Newton - Chair	\$101,299.96	\$99,800.00	\$1,499.96
Mark Armentrout	\$101,199.96	\$89,800.00	\$11,399.96
A.D. Patton	\$100,299.96	\$89,800.00	\$10,499.96
Michehl Gent	\$93,099.96	\$89,800.00	\$3,299.96
Miguel Espinosa	\$94,299.96	\$89,800.00	\$4,499.96
<b>Total Overpayments</b>			<b>\$31,199.80</b>



The overpayments were made as a result of the following factors:

- Confusion over the application of payment limits related to TRE Committee meetings;
- The increased number of Board and Board Committee meetings for ERCOT and the Texas Regional Entity attended by the Unaffiliated Directors during the 2009 Board Year beyond the anticipated annual meeting schedule; and
- Unplanned departure of ERCOT administrative staff without transition of responsibility for tracking aggregated payments to Unaffiliated Directors.

With regard to the Unaffiliated Director compensation for the current year, such overpayments are highly unlikely. It should be noted that TRE is no longer a division of ERCOT as of July 1, 2010. Furthermore, ERCOT staff has taken immediate steps to mitigate the possibility of any such overpayments occurring in the future.

ERCOT staff has reported these overpayments promptly to the Human Resources and Governance (HR&G) and Finance and Audit (F&A) Committees. The HR&G and F&A Committees are expected to discuss this matter further during their Committee meetings on August 17, 2010.

**Key Factors Influencing Issue:**

- The Unaffiliated Directors are obligated to attend Board and their respective Board Committee meetings.
- The ERCOT Board Policies and Procedures provide for compensation and expense reimbursement in connection with the Board and Board Committee meetings attended by the Unaffiliated Directors.
- The actual number of Board and Board Committee meetings during the 2009 Board Year exceeded the anticipated annual meeting schedule.
- The Unaffiliated Directors provide services and perform work in connection with their roles on the ERCOT Board beyond the Board and Board Committee meetings for which they are compensated pursuant to the ERCOT Board Policies and Procedures, such as, Sunset Advisory Commission meetings and hearings as well as ad hoc meetings and conversations with other Directors, ERCOT staff, ERCOT consultants, and regulators.

**Alternatives:**

The Board has the following alternatives within its discretion:

- Ratify the overpayments \$31,199.80 in excess of the Unaffiliated Director compensation cap prescribed by the ERCOT Board Policies and Procedures as further detailed in the above-listed chart so that no reimbursement by the Unaffiliated Directors to ERCOT is required for such overpayments; or
- Deny the request for ratification of the overpayments and request reimbursement from each of the Unaffiliated Directors for their share of overpayments as further detailed in the above-listed chart.



**Conclusion/Recommendation:**

ERCOT staff respectfully recommends that the Board take action to address the overpayments of the Unaffiliated Directors related to the 2009 Board Year. A proposed Board Resolution ratifying such overpayments has been attached for the Board's review and consideration.



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

WHEREAS, after due consideration of the alternatives, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in the best interest of ERCOT to ratify the compensation received by the Unaffiliated Directors who served on the ERCOT Board from December 9, 2008 until December 15, 2009 (2009 Board Year), which was \$31,199.80 in excess of the Unaffiliated Director compensation cap prescribed by the ERCOT Board Policies and Procedures;

THEREFORE, BE IT RESOLVED, that the ERCOT Board hereby ratifies the compensation received by the Unaffiliated Directors who served on the ERCOT Board during the 2009 Board Year, which was \$31,199.80 in excess of the Unaffiliated Director compensation cap prescribed by the ERCOT Board Policies and Procedures.

**CORPORATE SECRETARY'S CERTIFICATE**

I, Bill Magness, Interim Corporate Secretary of ERCOT, do hereby certify that, at its August 17, 2010 meeting, the ERCOT Board passed a motion approving the above Resolution by \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of August, 2010.

\_\_\_\_\_  
Bill Magness  
Interim Corporate Secretary