



Date: September 14, 2010
To: Board of Directors
From: Clifton Karnei, Finance & Audit (F&A) Committee Chair
Subject: Acceptance of 2009 401(k) Audit Report

Issue for the ERCOT Board of Directors

ERCOT Board of Director Meeting Date: September 21, 2010

Agenda Item No.: 11

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, 2009.

Background/History:

ERCOT must obtain an annual audit of its financial statements pursuant to the Amended and Restated Bylaws of ERCOT (as approved on April 16, 2010), 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.

In June, 2010, after obtaining approval of ERCOT's Board of Directors (Board), ERCOT engaged the firm of Maxwell, Locke & Ritter, LLP to complete: audits of the 401(k) Plan financial statements for 2009, 2010 and 2011.

It is expected that on September 21, 2010, Maxwell, Locke & Ritter, LLP, will meet with the F&A Committee of the Board to discuss the proposed final audit report for the ERCOT 401(k) Plan, as of December 31, 2009.

The F&A Committee is expected to recommend that the Board accept the 2009 audited financial statements for the 401(k) Plan as presented by Maxwell, Locke & Ritter, LLP, during its meeting.

Once the final audit report for the ERCOT 401(k) Plan, as of December 31, 2009, prepared by Maxwell, Locke & Ritter, LLP, is received by ERCOT staff, a copy of such report will be provided to the Board members.

Key Factors Influencing Issue:

The key factors influencing the decision are ERCOT's Bylaws 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 2009 financial statements for the 401(k) Plan. ERCOT is required to file an annual IRS Form 5500 for ERCOT's 401(k) Plan. The 401(k) Plan's books and records must be audited by an independent auditor, and a copy of the audit report supplied with Form 5500. The 2009 filing is due on October 15, 2010.

Alternatives:

The Board has two alternatives within its discretion:

1. Accept the audited financial statements for ERCOT's 401(k) Plan as presented by Maxwell, Locke & Ritter, LLP, which will allow ERCOT to file the Form 5500 timely with the U.S. Department of Labor; or
2. Postpone the acceptance of the audited financial statements for ERCOT's 401(k) Plan until a future date following additional investigation or discussion with Maxwell, Locke & Ritter, LLP, or ERCOT management regarding the financial statements.

Conclusion/Recommendation:

The F&A Committee is expected to review the final audited statements for ERCOT's 401(k) Plan as presented by Maxwell, Locke & Ritter, LLP, as of December 31, 2009, at its meeting on September 21, 2010, and is expected to recommend that the Board accept the final audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2009, 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) provided a 401(k) Savings Plan [the 401(k) Plan] as a benefit for its eligible employees during the fiscal year 2009, 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 April 16, 2010), 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 2009 financial statements for the 401(k) Plan;

WHEREAS, after due consideration of the alternatives, the Finance and Audit (F&A) Committee of the ERCOT Board of Directors (Board) has considered and has recommended that the Board accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2009, as presented by Maxwell, Locke & Ritter, LLP, at its meeting on September 21, 2010; and

WHEREAS, the Board deems it desirable and in the best interest of ERCOT to accept the F&A Committee's recommendation to accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2009, 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, 2009, as presented by Maxwell, Locke & Ritter, LLP.

CORPORATE SECRETARY'S CERTIFICATE

I, Bill Magness, Interim Corporate Secretary of ERCOT, do hereby certify that, at its September 21, 2010 meeting, the ERCOT Board of Directors passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of September, 2010.

Bill Magness
Interim Corporate Secretary