**Date:** July 10, 2012
**To:** Board of Directors
**From:** Clifton Karnei, Finance & Audit (F & A) Vice Committee Chair
**Subject:** Acceptance of 2011 401(k) Savings Plan Audit Report

## Issue for the ERCOT Board of Directors

**ERCOT Board of Directors Meeting Date:** July 17, 2012
**Agenda Tab No.:** 9.1

**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, 2011.

**Background/History:**
Internal Revenue Service (IRS) rules and regulations require an annual financial statement audit of the benefit plans such as ERCOT's 401(k) Plan.

In June 2010, 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 July 16, 2012, representatives of Maxwell, Locke & Ritter LLP will meet with the Finance and Audit (F&A) Committee of the Board to discuss the proposed final audit report for the ERCOT 401(k) Plan, as of December 31, 2011. It is expected that Maxwell, Locke & Ritter LLP will issue the final audit report for the ERCOT 401(k) Plan, as of December 31, 2011, with an unqualified opinion and in substantially similar form as the proposed final audit report.

The F&A Committee is expected to recommend that the Board accept the 2011 audited financial statements for the ERCOT 401(k) Plan, as of December 31, 2011, as prepared by Maxwell, Locke & Ritter LLP, during its meeting.

The proposed final audit report for the ERCOT 401(k) Plan, as of December 31, 2011, prepared by Maxwell, Locke & Ritter, LLP, is attached hereto as Exhibit A.

**Key Factors Influencing Issue:**
The key factors influencing the decision are:

- The IRS reporting requirements and filing requirements for the 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 2011 filing is on July 31, 2012.
- The expectation that Maxwell, Locke & Ritter, LLP, will issue an opinion acceptable to the F&A Committee and the Board in connection with its audit of ERCOT's 2011 financial statements for the 401(k) Plan.

**Conclusion/Recommendation:**
The F&A Committee is expected to review the proposed final audited statements for ERCOT's 401(k) Plan prepared by Maxwell, Locke & Ritter, LLP, as of December 31, 2011, at its meeting on July 16, 2011, and is expected to recommended that the Board accept the final audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2011, 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 2011;

WHEREAS, the Internal Revenue Service rules and regulations also require an annual financial statement audit of benefits plans such as the 401(k) Plan;

WHEREAS, Maxwell, Locke & Ritter, LLP, who was engaged by ERCOT for such audit in June 2010, has issued an opinion acceptable to this Board in connection with its audit of ERCOT's 2011 financial statement 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 recommended that the Board accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2011, as presented by Maxwell, Locke & Ritter, LLP, as its meeting of July 16, 2011; 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, 2011, as presented by Maxwell, Locke & Ritter, LLP;

NOW, THERFORE, BE IT RESOLVED, that the Board hereby accepts the audited financial statements for ERCOT's 401(k) Plan, as of December 31, 2011, as presented by Maxwell, Locke & Ritter, LLP.

**CORPORATE SECRETARY'S CERTIFICATE**

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its July 17, 2012 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of July, 2012.

_____
Vickie G. Leady
Assistant Corporate Secretary