



Date: July 9, 2013
To: Board of Directors
From: Susan M. Westbrook, Director of Human Resources
Subject: Designation of Additional Members of Benefits Committee and Approval of Charter Amendments

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: July 16, 2013

Item No.: 12

Issues:

Whether to approve the designation of the Vice President and Chief Information Officer and Vice President Grid Planning and Operations as additional members of the Benefits Committee (Committee);

Whether to approve amendment of the Benefits Committee Charter, as reflected in Attachment A hereto, to address the following:

- Reflect the addition of such officers as Committee members and the deletion of the Senior Vice President & Chief Operating Officer;
- Provide for the designation of proxies to other Committee members;
- Eliminate a provision allowing authorization of Committee action upon the unanimous agreement if only two members are present; and
- Correct scrivener's errors.

Background/History:

By resolutions dated October 20, 2009 and December 15, 2011, the ERCOT Board of Directors (Board) designated the following officers as voting members of the Benefits Committee: President and Chief Executive Officer; Vice President and General Counsel; Vice President Human Resources and Chief Compliance Officer; Vice President Finance & Treasury; and Senior Vice President and Chief Operating Officer.

Since the time of these resolutions, the office of Senior Vice President and Chief Operating Officer has been eliminated, leaving only four members of the Benefits Committee.

Staff members ultimately reporting to the Vice President and Chief Information Officer comprise 34% of ERCOT's employee population. Staff members ultimately reporting to the Vice President Grid Planning and Operations comprise 28% of ERCOT's employee population.

The Committee Charter currently makes no provision for the designation of proxies by Committee members. The Charter also authorizes Committee action upon the unanimous agreement of two members if only two are present.

There are certain scrivener's errors present in the Committee Charter that could not previously be corrected without specific authorization from the Board to change the document.



Key Factors Influencing Issue:

Pursuant to the Employee Retirement Income Security Act (ERISA) and pertinent case law, any individual who exercises discretionary control over (i) the management of a covered employee benefit plan or (ii) management or disposition of plan assets, is deemed a fiduciary who must administer the plan prudently for the benefit of participants of such plan. This fiduciary responsibility must be exercised by individuals who have a level of education, knowledge and experience that allows them to make proper decisions for the benefit of plan participants. Individuals who hold the positions of Vice President and Chief Information Officer and Vice President Grid Planning and Operations have been selected for these positions based on significant education, knowledge and experience requirements and are qualified to exercise these responsibilities.

Due to the reduced size of the Committee, the absence of two members results in lack of a quorum and the inability to take prompt action on matters before the Committee. In addition, the Vice President and Chief Information Officer and Vice President Grid Planning and Operations are responsible for the performance and retention of 62% of ERCOT's employee population ERCOT's. Because employee benefits are an important component of the total compensation paid to ERCOT employees, these officers have a significant interest in decisions affecting such benefits.

The Committee Charter currently makes no provision for the designation of proxies by Committee members, giving a member who is unable to attend a meeting no opportunity to exercise his/her right to support or oppose proposed actions of the Committee. Ensuring the opportunity to exercise voting rights should be promoted because the collective knowledge and expertise of the members is desirable when the Committee makes decisions that (i) have substantial impact on the financial affairs of the Company, (ii) are important to the Company's compensation and employee retention strategies, and (iii) may result in the imposition of fiduciary liability to the Corporation and to members of the Committee and the Board.

The Committee Charter currently permits the Committee to take action upon the unanimous agreement of members if only two are present. In recent practice, the Committee has declined to make use of this provision. With a larger number of Committee members and the right to designate proxies, the need for this provision is greatly diminished. In addition, as noted above, the collective knowledge and expertise of the Committee members is a resource that will benefit the Committee's decision-making process.

ERCOT staff should be authorized to correct scrivener's errors, including formatting, spelling, numbering errors, to increase readability and accuracy of the Committee Charter.

Conclusion/Recommendation:

ERCOT staff respectfully recommends that the Board:

1. Approve the designation of the Vice President and Chief Information Officer and Vice President Grid Planning and Operations as additional members of the Committee;
2. Approve amendment of the Benefits Committee Charter to:
 - Reflect the addition of such officers as Committee members and the deletion of the Senior Vice President & Chief Operating Officer;



- Provide for the designation of proxies to other Committee members;
- Eliminate a provision allowing authorization of Committee action upon the unanimous agreement of two members if only two are present; and
- Correct scrivener's errors.



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 ensure that administration of ERCOT's employee benefits plans is performed by individuals having a level of education, knowledge and experience that allows them to make proper decisions for the benefit plan participants; and

WHEREAS, individuals who are qualified to hold the positions of Vice President and Chief Information Officer and Vice President Grid Planning and Operations have the requisite education, knowledge and experience; and

THEREFOR, BE IT RESOLVED, that the ERCOT Board hereby designates as members of the Benefits Committee the Vice President and Chief Information Officer and Vice President Grid Planning and Operations.

FURTHER RESOLVED, that the ERCOT Board hereby approves amendments to the Benefits Committee Charter to:

- Reflect the addition of the Vice President and Chief Information Officer and Vice President Grid Planning and Operations as Committee members and the deletion of the Senior Vice President & Chief Operating Officer;
- Provide for the designation of proxies to other Committee members;
- Eliminate a provision allowing authorization of Committee action upon the unanimous agreement of only two members if only two are present; and
- Correct scrivener's errors.

CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its July 16, 2013, meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2013.

Vickie G. Leady
Assistant Corporate Secretary

Attachment A

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
AMENDED AND RESTATED CHARTER FOR BENEFITS COMMITTEE
EFFECTIVE _____, 2013**

I. Purpose

The Electric Reliability Council of Texas, Inc. ("ERCOT") has established the Benefits Committee (the "Committee") to assist ERCOT with its responsibilities for ERCOT's employee benefit plans and programs (individually, a "Benefit Plan" and, collectively, the "Benefit Plans"). By resolution dated October 20, 2009, the ERCOT Board of Directors ("Board") delegated to the Committee the authority to select benefits plan administrators and advisors, select savings plan investment options, and monitor the cost and performance of savings plan options.

By resolution dated December 15, 2009, the Board delegated to the Committee the authority to:

- (a) add, discontinue, and modify benefits plans;
- (b) perform general administration of plans, including, without limitation, selection and payment of advisors, services providers, auditors and consultants; and
- (c) determine appeals of the denial of benefits.,

This Charter: (i) governs the procedures and actions of the Committee, and (ii) establishes the Committee's authority and responsibilities. ERCOT may, at any time, revise this Charter, revoke this Charter or disband the Committee in writing.

Notwithstanding any provision of this Charter, the Committee will assist and advise ERCOT but will not act for ERCOT unless ERCOT otherwise expressly determines. With particular respect to any of ERCOT's fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 ("ERISA") or any other applicable law, the Committee's role is ministerial and the Committee will not act, and will not be deemed to have acted, as a fiduciary unless ERCOT otherwise expressly determines or applicable law otherwise directly requires.

II. Organization and Procedures

A. *Members.* The Committee will be comprised of:

- 1. The President and Chief Executive Officer;
- ~~2. The Senior Vice President and Chief Operating Officer;~~
- ~~3. 2.~~ The Vice President and General Counsel;
- ~~4. 3.~~ The Vice President - Human Resources and Chief Compliance Officer;
- 4. The Vice President - Finance and Treasury;

5. The Vice President and Chief Information Officer;

~~5.6.~~ The Vice President Grid Planning and Operations; and

~~6.7.~~ Any other officer of ERCOT who may be appointed to the Committee by the Board from time to time.

ERCOT may, at any time, remove any member of the Committee in writing, whether or not that removal takes the form of an amendment to this Charter.

B. *Chairperson.* The Committee will appoint, from among its members, a Chairperson to serve for such terms as the Committee will determine. The Chairperson will have the responsibilities and authority prescribed in this Charter and as the Committee may assign from time to time. The Committee may remove the Chairperson at any time and the Chairperson may resign at any time upon fifteen days' prior written notice.

C. *Secretary.* The Committee will appoint, from among its members or ERCOT employees, a Secretary to serve for such term as the Committee will determine. The Secretary will have will have the responsibilities and authority prescribed in this Charter and as the Committee may assign from time to time. The Committee may remove the Secretary at any time and the Secretary may resign at any time upon fifteen days' prior written notice.

D. *Meetings; Quorum; Proxies.* The Committee will meet as often, at such times and places, and by such means (such as telephone conference call) as the Chairperson may determine. A majority of the members of the Committee will constitute a quorum at a Committee meeting. The Chairperson will preside at Committee meetings and the Secretary will be responsible for keeping a record of Committee meetings. Committee meetings will not be open to non-members, except that the Committee may invite non-members to attend a meeting and participate in the meeting to the extent requested by the Committee. Any Committee member may assign his/her vote to another member of the Committee by written designation delivered to the Chairperson prior to the delegate's vote on Committee business.

E. *Action by Committee.* The Committee will take an action:

- Upon the agreement of a majority of the Committee members present at a meeting at which there is a quorum (~~or by unanimous agreement if only two Committee members are present~~); or
- By written consent executed by a majority of all members of the Committee.

E. *Meeting Agenda and Minutes.* For each Committee meeting, the Secretary will prepare the agenda after consultation with the Chairperson and other Committee members and then distribute the agenda and any related materials to the Committee members prior to or at the beginning of the meeting. Following each meeting, the Secretary will prepare minutes of the meeting and will circulate the minutes in draft form to all Committee members. At one or more subsequent Committee meetings, the Committee members will review the draft minutes and propose any corrections to the minutes, and the Committee will approve the final version of the minutes. The Secretary will maintain each set of minutes with any related materials in the Committee's files.

F. *Delegation.* The Committee may, from time to time, form one or more subcommittees comprised of two or more members of the Committee. The Committee may determine that any such subcommittee will act on an ad hoc or standing basis, and the Committee may delegate to the subcommittee any of the Committee's responsibilities and authority, provided that the Committee will retain authority to oversee the activities of the subcommittee and to disband it at any time.

G. *Use of and Reliance on Professional Advisers.* The Committee may use the services of and rely on the advice of any of ERCOT's professional advisors, including legal counsel, accountants, employee benefit consultants, and investment advisors, in the performance of the Committee's duties.

III. Responsibilities and Authority

The Committee will have the responsibilities and authority described below:

A. *Employee Benefits Philosophy.* The Committee will assist ERCOT in the development and implementation of ERCOT's employee benefits philosophy as part of the larger compensation philosophy.

B. *Evaluation of Benefit Plan Design.* Periodically and upon ERCOT's request, the Committee will review and will evaluate the Benefit Plans, individually and as a group, on the basis of such factors as the Committee may deem relevant, but including, as appropriate: (1) promotion of ERCOT's employee benefits philosophy; (2) utilization of current design features; (3) cost-effectiveness; (4) efficiency in delivery of benefits and services; (4) achievement of employee satisfaction objectives; and (6) compliance with applicable laws.

C. *Benefit Plan Operations and Administration.* In coordination and consultation with the Human Resources Department, the Committee will have overall responsibility for the operations and administration of the Benefit Plans. In carrying out such responsibility, the Committee will, at a minimum, undertake the following duties:

- Oversight and verification of the financial operations of the various Benefit Plans and ERCOT's funding of benefits under the various Benefit Plans;
- Appointment, replacement, or termination of any fiduciary or non-fiduciary service provider of a Benefit Plan, including any trustee of the Qualified Plan, insurer, investment fund provider, third-party administrator, or insurance broker.
- Oversight and verification of the administrative activities of the service providers for the various Benefit Plans;
- Oversight and verification of the activities and decisions of ERCOT personnel related to operation and administration of the Benefit Plans, including assessment of compliance with established administrative procedures and applicable legal requirements;
- Determination of issues and questions arising in the administration, interpretation, and application of the Benefit Plans in consultation with appropriate ERCOT departments, such as Legal, Human Resources, or Finance; and
- Monitoring of legal and regulatory developments and emerging trends impacting the Benefit Plans.

D. *Benefit Plan Design and Implementation.* As a result of an evaluation of one or more Benefit Plans undertaken by the Committee (as provided in Item B above) or arising out the Committee's responsibility for the operations and administration of the Benefit Plans (as provided in Item C above), the Committee may, as it deems warranted:

- Establish a new Benefit Plan; or
- The enhancement, modification, or termination of a Benefit Plan or the consolidation of two or more Benefit Plans;

E. *Benefit Determinations.* The Committee will be responsible for making any benefit determination for which ERCOT is responsible under any Benefit Plan, including investigating the facts and circumstances relevant to the benefit determination, and complying with any appeal procedures applicable to the relevant Benefit Plan.

F. *Rules and Procedures.* The Committee will have the authority to formulate and adopt any rules and procedures as the Committee may deem necessary or desirable to effectuate the terms of this Charter or to facilitate the proper administration of the Benefit Plans; provided, however, that the Committee may not adopt a rule or procedure that would conflict with any Benefit Plan document or any related agreement or that would interfere with any fiduciary responsibilities of ERCOT or the trustees of the Qualified Plans.

G. *Other Responsibilities and Authority.* The Committee will have such other responsibilities as ERCOT may delegate to it from time to time whether or not those responsibilities are reflected in an amendment to this Charter. In addition, the Committee will have any other incidental authority necessary to the performance of the Committee's duties.

H. *Reports and Recommendations to ERCOT and the Board of Directors.* The Committee will report its activities to the Board at least annually. The Committee will report to and make recommendations to ERCOT and/or the Board upon request and in accordance with any procedures established therefor by ERCOT and/or the Board from time to time.



Item 12: Designation of Additional Members of the Benefits Committee and Approval of Charter Amendments

**Susan M. Westbrook
Director, Human Resources**

**Board of Directors Meeting
ERCOT Public
July 16, 2013**

Composition of Benefits Committee

Current Composition:

- President & CEO
- Vice President and General Counsel
- Vice President Human Resources & COO
- Vice President Finance & Treasury

Proposed Additions:

- Vice President & CIO
- Vice President Grid Planning & Operations

Benefits:

- Provide more flexibility to achieve a quorum
- Closer connection to 62% of workforce

Benefits Committee Charter Amendments

Proposed Amendments:

- **Add two officers**
- **Delete Senior VP & COO**
- **Authorize use of proxies**
- **Eliminate Committee action by only two members**
- **Correct scrivener's errors**

Benefits:

- **Draw on collective knowledge and expertise of additional officers**
- **Maximize participation by Committee members**