



MEMORANDUM

To: Human Resources and Governance (HR&G) Committee
From: Mara Spak, Vice President, Human Resources
Chad V. Seely, Vice President, General Counsel and Corporate Secretary
Date: August 8, 2022
Re: Item 6 – Review of 401(k) Savings Plan Audit Report

HR&G Committee Charter Requirement to Review the 401(k) Savings Plan Audit Report

Section IV.D.1.a of the HR&G Committee Charter requires that the Committee review the 401(k) Savings Plan audit report annually without the need for recommendation to the Board of Directors (Board), which is made by the Finance and Audit (F&A) Committee, not the HR&G Committee.

F&A Committee Consideration of Recommendation of Acceptance of the 401(k) Savings Plan Audit Report

The proposed final audit report for the ERCOT 401(k) Savings Plan, as of December 31, 2021, as prepared by Baker Tilly US, LP, is expected to be presented to the F&A Committee at its August 15, 2022 meeting. The proposed report reflects no findings indicating material issues with the administration of the 401(k) Savings Plan.

For timely Form 5500 filing, at its August 15, 2022 meeting, the F&A Committee is expected to consider recommending acceptance of the 401(k) Savings Plan audit report to the Board. The Board is expected to hear the F&A Committee's recommendation on this matter as part of the F&A Committee Report at the August 16, 2022 Board meeting.

The Board decision template for this matter is attached for your convenience.



Date: August 9, 2022
To: Board of Directors
From: Bill Flores, Finance and Audit (F&A) Committee Chair
Subject: Acceptance of ERCOT's 401(k) Savings Plan Audit Report

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: August 16, 2022

Item No.: 13.1

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, 2021.

Background/History:

ERCOT maintains a 401(k) retirement savings plan for its employees, qualified under the Employee Retirement Income Security Act (ERISA). Pursuant to ERISA, plan sponsors must annually file Form 5500 with the U.S. Department of Labor. The required filing must include the Plan's audited financial statements.

On December 7, 2020, the Board approved Baker Tilley US, LP (Baker Tilly) to provide 401(k) Plan audit services for calendar years 2021, 2022, 2023, 2024 and 2025, subject to the annual approval of the Board for 2022, 2023, 2024 and 2025. Based on this approval, ERCOT engaged Baker Tilley to provide 401(k) Plan audit services for the calendar year ending December 31, 2021.

It is expected that on August 15, 2022, representatives of Baker Tilley will meet with the F&A Committee to discuss the proposed final audit report for the ERCOT 401(k) Plan, as of December 31, 2021.

The F&A Committee is expected to recommend that the Board accept the 2021 audited financial statements for the ERCOT 401(k) Plan, as of December 31, 2021, as prepared by Baker Tilley, during its meeting.

A draft of the final audit report for the ERCOT 401(k) Plan, as of December 31, 2021, prepared by Baker Tilley, and submitted for the Board's acceptance, is attached hereto as **Exhibit A**.

Key Factors Influencing Issue:

- The ERISA reporting requirements and filing requirements for the annual 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 2020 filing is due no later than October 15, 2022;
- The draft report attached hereto reflects no findings indicating material issues with the administration of the 401(k) Plan, and the expectation that the F&A Committee



will recommend approval of same; and

- The expectation that Baker Tilley will issue a final opinion consistent with the draft version attached hereto as **Exhibit A**.

Conclusion/Recommendation:

The F&A Committee is expected to review the final audited statements for ERCOT's 401(k) Plan prepared by Baker Tilley, as of December 31, 2021, at its meeting on August 15, 2022, and is expected to recommend that the Board accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2021, as presented in draft form by Baker Tilley, attached hereto as **Exhibit A**.



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

WHEREAS, Electric Reliability Council of Texas, Inc. (ERCOT) provided a 401(k) Savings Plan (401(k) Plan) as a benefit for its eligible employees during the fiscal year 2021;

WHEREAS, Employee Retirement Income Security Act rules and regulations also require an annual financial statement audit of benefits plans such as the 401(k) Plan;

WHEREAS, in December 9, 2021, the ERCOT Board of Directors (Board) selected Baker Tilley US, LP (Baker Tilly) to provide 401(k) Plan audit services for the calendar years 2021, 2022, 2023, 2024 and 2025, subject to the annual approval of the Board for 2022, 2023, 2024 and 2025;

WHEREAS, Baker Tilley has issued an opinion acceptable to this Board in connection with its audit of ERCOT's 2021 financial statement for the 401(k) Plan;

WHEREAS, after due consideration of the alternatives, the F&A Committee has considered and recommended that the Board accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2021, as presented by Baker Tilley, at its meeting of August 15, 2022; 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, 2021, as presented by Baker Tilley;

THEREFORE, BE IT RESOLVED, that ERCOT is hereby authorized and approved to accept the audited financial statements of ERCOT's 401(k) Plan, as of December 31, 2021, as presented by Baker Tilley.

CORPORATE SECRETARY'S CERTIFICATE

I, Jonathan M. Levine, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its August 16, 2022 meeting, the Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of August, 2022.

Jonathan M. Levine
Assistant Corporate Secretary

July 29, 2022

Baker Tilly US, LLP
2500 Dallas Parkway
Suite 300
Plano, Texas 75078

Dear Baker Tilly US, LLP:

We are providing this letter in connection with your audit of the financial statements and supplemental schedule of Electric Reliability Council of Texas 401(k) Savings Plan (the "Plan"), which comprise the statements of net assets available for benefits as of December 31, 2021, and the related statement of changes in net assets available for benefits for the year then ended, and the related notes to the financial statements.

As of and for the year ended December 31, 2021, we elected to have the audit of the plan's financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. We acknowledge that the audit did not extend to any statements or information related to assets held for investment of the plan (investment information) by a bank or similar institution or insurance carrier, that is regulated, supervised and subject to periodic examination by a state or federal agency, a qualified institution, that prepared and certified the investment information in accordance with 29 CFR 2520.103-5 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. We have determined that an ERISA Section 103(a)(3)(C) audit is permissible under the circumstances. We have also determined that the investment information is prepared and certified by a qualified institution as described by 29 CFR 2520.103-8, that the certification meets the requirements in 29 CFR 2520.103-5 and, that the certified investment information is appropriately measured, presented, and disclosed in accordance with accounting principles generally accepted in the United States of America.

The purpose of an ERISA Section 103(a)(3)(C) audit is to express an opinion on whether the amounts and disclosures in the financial statements, other than those agreed to or derived from the certified investment information, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America and that the assets held by and certified to by a qualified institution agrees to, or is derived from, in all material respects, the certified investment information.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

We confirm, to the best of our knowledge and belief, as of the date of this letter, the following representations made to you during your audit.

Financial Statements

- 1) We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated December 16, 2021, for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").
- 2) We acknowledge our responsibility for administering the Plan and determining that the Plan's transactions that are presented and disclosed in the ERISA Plan financial statements are in conformity with the Plan's provisions, including maintaining sufficient records with respect to each of the participants to determine the benefits due or which may become due to such participants.
- 3) We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- 4) We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
- 5) All significant assumptions used in making accounting estimates, including those measured at fair value, and material concentrations known to management that are to be disclosed are reasonable and in accordance with U.S. GAAP. We understand that the significant estimates covered by this disclosure are estimates at the date of the statement of net assets available for benefits that are reasonably possible of changing materially within the next year. Concentrations refer to the nature and type of investments held by the Plan, or markets for which events could occur which would significantly disrupt normal finances within the next year.
- 6) Related party relationships and transactions, as defined in ERISA Section 3(14) and regulations thereunder, have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- 7) All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
- 8) We are in agreement with the adjusting journal entries you have proposed, and they have been posted to the Plan's accounts.
- 9) The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
- 10) There are no:
 - a) Other liabilities or gain or loss contingencies that are required to be accrued or disclosed.
 - b) Other matters (e.g., breach of fiduciary responsibilities, nonexempt transactions, loans or leases in default, or events that may jeopardize the tax status) that legal counsel has advised us must be disclosed.
- 11) The supplemental schedule or financial statements disclose the following, if applicable.
 - a) Non-exempt party-in-interest transactions (as defined in ERISA section 3(14) and regulations under the section).

- b) Investments or loans in default or considered to be uncollectible.
 - c) Reportable transactions (as defined in ERISA section 103(b)(3)(H) and regulations under that section).
- 12) Amendments to the plan instrument, if any, have been properly recorded or disclosed in the financial statements.
- 13) The Plan adopted a volume submitter plan offered by Fidelity Management and Research Company. The volume submitter plan received an advisory letter dated March 31, 2014, that the Plan, and related trust are designed in accordance with the applicable sections of the IRC. The plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC and therefore believes that the Plan is qualified and the related trust is tax exempt.
- 14) We acknowledge our responsibility for the presentation of the ERISA-required supplemental schedule in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. We believe that the ERISA-required supplemental schedules, including their form and content, are presented in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

Information Provided

- 15) We have provided you with:
- a) Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;
 - b) Additional information that you have requested from us for the purpose of the audit;
 - c) Minutes of the meetings of the Electric Reliability Council of Texas 401(k) Savings Plan Committee for the period from January 1, 2021, to the date of this letter or summaries of actions of recent meetings for which minutes have not yet been prepared.
 - d) The most current plan instrument for the audit period, including all plan amendments, trust agreements, insurance contracts, or investment contracts and amendments to such documents entered into during the year, including amendments to comply with applicable laws.; and
 - e) Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- 16) The Plan (and the trust established under the Plan) is qualified under the appropriate section of the IRC and intends to continue as a qualified Plan (and trust). The Plan's sponsors have operated the Plan (and trust) or insurance contract in a manner that did not jeopardize this tax status. Required nondiscrimination testing, as applicable, has been completed for the Plan, and any excess deferrals or contributions have been disposed of in accordance with regulations.
- 17) All material transactions have been recorded in the accounting records and are reflected in the financial statements.
- 18) All required amendments to and filings of the documents with the appropriate agencies have been made.
- 19) We intend to formally amend the Plan to incorporate provisions under which the Plan is currently operating, that were adopted to comply with new laws or regulations, if any.

- 20) The methods and significant assumptions used to estimate fair values of financial instruments are as disclosed in Note 3 to the financial statements and are considered appropriate for the Plan's investments. The methods and significant assumptions used result in a measure of fair value appropriate for financial measurement and disclosure purposes. The fair value disclosures are considered complete and accurate.
- 21) We have no:
 - a) Plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
 - b) Intentions to terminate the Plan.
- 22) We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- 23) The Plan has satisfactory title to all owned assets, which are recorded at fair value, and there are no liens or encumbrances on such assets nor has any asset been pledged.
- 24) We have no knowledge of any fraud or suspected fraud that affects the Plan and involves:
 - a) Management;
 - b) Employees who have significant roles in internal control; or
 - c) Others when the fraud could have a material effect on the financial statements
- 25) We have no knowledge of any allegations of fraud, or suspected fraud, affecting the Plan's financial statements communicated by employees, former employees, participants, regulators, beneficiaries, service providers, third party administrators, or others.
- 26) There have been no communications from regulatory agencies concerning noncompliance or suspected noncompliance with laws and regulations (including ERISA, DOL and IRS regulations) whose effects should be considered when preparing financial statements, or deficiencies in financial reporting practices, that could have a material effect on the financial statements in the event of noncompliance.
- 27) The Plan has complied with the DOL's regulations concerning the timely remittance of participant contributions to trusts containing assets for the Plan. Remittances outside of our normal pattern, if any, have been reviewed by management and deemed to be timely.
- 28) The Plan has complied with the fidelity bonding requirements of ERISA.
- 29) We have apprised you of all communications, whether written or oral, with regulatory agencies concerning the operation of the Plan.
- 30) There are no unasserted claims or assessments that are probable of assertion and must be disclosed in accordance with accounting for contingencies under U.S. GAAP.
- 31) We have disclosed to you the identity of all the Plan's related parties and all the related party relationships and transactions of which we are aware.
- 32) We have no knowledge of any litigation, claims, and assessments whose effects should be considered when preparing the financial statements and we have not consulted legal counsel concerning litigation, claims, or assessments.

- 33) We have obtained a copy of the relevant System and Organization Controls (“SOC”) 1 reports that cover the year under audit, related to significant processes and transactions that have been outsourced to those service organizations. In connection with those SOC 1 reports, we have read the reports, evaluated the impact of the exceptions to relevant tests, identified the complementary controls listed under the user controls section of the reports, and have determined that those user controls have been designed appropriately and have been implemented.
- 34) We believe the Schedule H, Line 4(i) – Schedule of Assets (Held at End of Year), including its form and content, is fairly presented in conformity with U.S. GAAP and with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. The methods of measurement and presentation of the Schedule H, Line 4(i) – Schedule of Assets (Held at End of Year) have not changed from those used in the prior period, and we have disclosed to you any significant assumptions or interpretations underlying the measurement and presentation of the supplementary information.
- 35) We have obtained the appropriate fee disclosures from covered service providers and have concluded the fees are reasonable. The Plan is in compliance with DOL regulations regarding ERISA Section 408(b)(2).

General

- 36) There are no estimates that may be subject to a material change in the near term that have not been properly disclosed in the financial statements. We understand that near term means the period within one year of the date of the financial statements.

Assets

- 37) Financial instruments with off-balance-sheet risk and financial instruments with concentrations of credit risk have been properly recorded or disclosed in the financial statements.

Liabilities

- 38) There are no guarantees, whether written or oral, under which the Plan is contingently liable.

Other

- 39) We have made all management decisions and performed all management functions in relation to the nonattest services provided by Baker Tilly US, LLP. We have designated Dawn Herms, an employee with suitable skill, knowledge, and/or experience to oversee the services received. Furthermore, we have established and maintained internal controls, including monitoring activities related to the nonattest services provided by Baker Tilly US, LLP, and we have evaluated and accept responsibility for the adequacy and results of the nonattest services received.

The nonattest services provided by Baker Tilly US, LLP are identified in the engagement letter.

Mara Spak
VP Human Resources
Electric Reliability Council of Texas

Journal Entries

Electric Reliability Council of Texas 401(k) Savings Plan

Year End: December 31, 2021

Reclassifying adjusting journal entries

- By account

Date: 1/1/2021 To 12/31/2021

320

Completed by	Reviewed by	Director
JH20618 7/20/2022		
Partner Review	IR	
IS20505 7/22/2022		

Number	Date	Name	Account No	Reference	Annotation	Debit	Credit	Recurrence
1	12/31/2021	Interest and Dividends	4100				1,101,786.00	
1	12/31/2021	Realized (Gain)/Loss	4200				704,826.00	
1	12/31/2021	Adjustment	4400			1,806,612.00		
		To reclassify SBD investment income.						
						1,806,612.00	1,806,612.00	

Electric Reliability Council of Texas 401(k) Savings Plan

Year End: December 31, 2021

Normal adjusting journal entries

Date: 1/1/2021 To 12/31/2021

310

Completed by	Reviewed by	Director
JH20618 7/20/2022		
Partner Review	IR	
IS20505 7/22/2022		

Number	Date	Name	Account No	Reference	Annotation	Debit	Credit	Recurrence
2	12/31/2021	Other Income	4252	G.110			42,396.18	
2	12/31/2021	Administrative Fees	5100	G.110		42,396.18		
		To properly state admin expenses.						
						42,396.18	42,396.18	