

WIRAB Staff Comments on the Peak Reliability's Audit Committee Charter

On September 1, 2016, Peak Reliability's (Peak's) Board of Directors (Board) posted a draft Audit Committee Charter (draft Charter).¹ The final Audit Committee Charter, if approved by the Peak Reliability Board of Directors (Board), will establish an Audit Committee "to assist the Board's oversight of (i) the integrity of Peak's financial statements, (ii) Peak's compliance with legal and regulatory requirements and (iii) the performance of Peak's independent auditors."²

The WIRAB³ staff has reviewed Peak Reliability's draft Charter and provides the following observations and recommendations:

- A. The draft Charter, as written, includes inconsistent terms and phrases. For example, the draft Charter refers to auditors appointed by the Audit Committee (AC) as "auditors," "external auditors," and "independent auditor(s)." Also, the draft Charter refers to both an "audit" and an "external audit," although it appears that these terms are given the same meaning. The WIRAB staff recommends that the Board revise the language of the draft Charter for consistency and clarity throughout, as appropriate.
- B. The PURPOSE section of the draft Charter, as written, sets forth the purpose of the AC and includes an incomplete list/summary of the AC's responsibilities. The WIRAB staff recommends that the Board remove any reference to the AC's responsibilities from the PURPOSE section, as the AC's responsibilities are fully and appropriately addressed in the relevant RESPONSIBILITIES section, below (see RESPONSIBILITIES).
- C. The draft Charter, as written, provides the AC with the *authority*, but not a *responsibility*, to appoint an external auditor and to resolve disagreements between Peak management and the auditor (see AUTHORITY(1)-(2)). However, the draft Charter indicates that the AC has a *responsibility* to "be informed of any significant disagreement between Peak management and the independent auditor" (see RESPONSIBILITIES(1)(c)). Additionally, the draft charter, as written, does not provide the AC with a specific duty to review Peak's performance against an approved Business Plan and Budget (BP&B). The WIRAB staff recommends that the Board revise the draft Charter to specifically include the following AC *responsibilities*: 1) appoint an external auditor; 2) work to resolve disagreements between Peak management and the external auditor; 3) review Peak's approved BP&B; 4) identify any deviations in Peak's performance from the BP&B; and 5) make recommendations to the Board regarding identified deviations from the BP&B.
- D. The draft Charter, as written, specifies that the AC has a responsibility to "[r]eview with Peak management and the external auditors the results of the audit, including any difficulties

¹ *Peak Reliability Audit Committee Charter (Draft)*, September 1, 2016, available at <https://www.peakrc.com/aboutus/Board/Lists/Calendar/Attachments/26/Draft%20Peak%20Audit%20Committee%20Charter%2009%2001%202016%20For%20Posting%20.docx>.

² Under Peak Reliability's Bylaws, the Board is authorized to appoint such Board Committees as the Board finds necessary in order to carry out its business affairs. *Bylaws of Peak Reliability §4.7.2*.

³ WIRAB was created by Western Governors under Section 215 of the Federal Power Act (FPA). Members of WIRAB represent the Governors of 14 western states, the Canadian provinces of Alberta and British Columbia, and Baja Mexico. WIRAB is charged to advise the NERC, the Commission and WECC on whether proposed reliability standards and the governance and budgets of WECC are in the public interest.

encountered” and “[m]ake recommendations to the Peak Board regarding *acceptance of the auditor’s opinion and audit results* (see RESPONSIBILITIES(1)(b)). The WIRAB staff provides the following observations and recommendations regarding RESPONSIBILITIES(1)(b):

- i. The WIRAB staff believes that the provision in RESPONSIBILITIES(1)(b) would be more appropriately placed under section RESPONSIBILITIES(3) – External Audit, and recommends that this section be moved accordingly.
 - ii. The WIRAB staff believes that a similar provision should be included in section RESPONSIBILITIES(2)(b), providing that the AC also has a responsibility to review with Peak management the results of the external auditors’ review of internal control over financial reporting.
 - iii. RESPONSIBILITIES(1)(b) indicates that the AC has a responsibility to “[m]ake recommendations to the Peak Board regarding *acceptance of the auditor’s opinion and audit results.*” The WIRAB staff believes that the language in this section is unclear and recommends that the Board revise this language to more clearly reflect the AC’s responsibility to make recommendations to the Board regarding the *audit results*; not just to make recommendations regarding the Board’s *acceptance* of the *auditor’s opinion*.
- E. The draft Charter, as written, specifies that the AC has a responsibility to “Periodically evaluate the Committee’s effectiveness in carrying out its responsibilities” (see RESPONSIBILITIES(6)(e)). The WIRAB staff recommends that the Board revise this section to provide a specific benchmark for review of the AC’s performance (e.g., annual review).

The WIRAB staff finds that the formation of a Peak Reliability Audit Committee is within the Board’s authority under Peak’s Bylaws and would serve the purposes stated by the Board in the Audit Committee Charter, to assist the Board’s oversight of the integrity of Peak’s financial statements; Peak’s compliance with legal and regulatory requirements; and the performance of Peak’s external auditors. Accordingly, the WIRAB staff supports the Board’s proposed Audit Committee Charter.

PEAK RELIABILITY

Document name	Audit Committee Charter
Category	<input type="checkbox"/> Regional Reliability Standard <input type="checkbox"/> Regional Criteria <input type="checkbox"/> Policy <input type="checkbox"/> Guideline <input type="checkbox"/> Report or other <input checked="" type="checkbox"/> Charter
Document date	September 1, 2016
Adopted/approved by	
Date adopted/approved	
Custodian (entity responsible for maintenance and upkeep)	Corporate Secretary
Stored/filed	Physical location: Web URL:
Previous name/number	(if any)
Status	<input type="checkbox"/> in effect <input type="checkbox"/> usable, minor formatting/editing required <input type="checkbox"/> modification needed <input type="checkbox"/> superseded by _____ <input type="checkbox"/> other _____ <input type="checkbox"/> obsolete/archived

CHARTER AUDIT COMMITTEE

The Audit Committee (also referred to as “Committee”) is established by the Peak Reliability (“Peak”) Board of Directors (“Board”) as a Board committee.

AUTHORITY

The Audit Committee has authority to conduct or authorize investigations into any matters within its scope of responsibility. It is empowered to:

1. Appoint, compensate, and oversee attestation work of any registered public accounting firm (external auditor) employed by Peak.
2. Resolve any disagreements between Peak management and the external auditor regarding financial reporting.
3. Retain independent counsel, accountants, or others to advise the Committee or assist in the conduct of an investigation.
4. Seek information it requires from employees (all of whom are directed to cooperate with the Committee's requests) or external parties.
5. Meet with company officers, external auditors, or outside counsel, as necessary.

PURPOSE

The purpose of the Audit Committee is to assist the Board’s oversight of (i) the integrity of Peak’s financial statements, (ii) Peak’s compliance with legal and regulatory requirements and (iii) the performance of Peak’s independent external auditors. ~~The Committee is responsible for reviewing Peak’s financial reporting process and internal controls and assuring a culture of compliance. In addition, although this Charter specifies certain areas of responsibility for the Committee, some of those responsibilities may be fulfilled in conjunction with activities by the full Board of Directors, including, for example, meeting with the General Counsel to review legal and regulatory matters.~~

COMMITTEE COMPOSITION AND GOVERNANCE

1. Membership

The Audit Committee will consist of three (3) members of the Board. The Board Chair will appoint Committee members. Each Committee member will be both

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independent and financially literate, as that qualification is interpreted by the Board in its business judgment, or become financially literate within a reasonable period of time after his or her appointment to the Committee.

Each member of the Audit Committee shall serve until a successor is appointed, unless the member resigns or is removed by the Board. If a vacancy occurs at any time, it may be filled by the Board Chair.

2. Leadership

The Committee members will make a recommendation regarding, and the Board Chair will select, a Committee Chair. The Audit Committee Chair shall oversee the Audit Committee and its meetings and ensure that meeting minutes for all noticed meetings are prepared for the Committee's timely approval.

MEETINGS

1. Meetings

- a. The Committee shall determine the time and place of its meetings, provided that it shall meet at least two (2) times per year.
- b. The Committee may determine the procedures for its meetings, except:
 - i. A quorum for meetings shall be a majority of the number of members of the Committee.
 - ii. Action taken by the Committee shall require a majority vote of those members present.
 - iii. Meetings of the Committee may be in person or by conference call, as designated by the Committee Chair.
- c. The Committee may meet in closed session. Closed sessions shall only be attended by members of the Committee and by any other person invited by the Committee Chair. The Committee may call for a closed session when necessary to protect the confidentiality of proprietary information, to meet with external auditors or to receive attorney-client communications. The Chair will appoint a closed session attendee to prepare confidential minutes of the closed session.

2. Notice and open meeting requirements

The Audit Committee shall comply with the notice and open meeting requirements applicable to the Board (section 4.5 and 4.6 of the Peak Bylaws), except for meetings where the Chair of the Audit Committee determines that the Committee will meet solely in closed session, in which case notice shall be provided to Committee

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members at least 24 hours in advance and notice posted on the Peak website as soon as practicable.

RESPONSIBILITIES

The Committee will carry out the following responsibilities:

1. Financial Statements

- a. Review significant accounting and reporting issues, including complex or unusual transactions and highly judgmental areas, and recent professional and regulatory pronouncements, and understand their impact of these issues on ~~the Peak's~~ financial statements.
- b. Review Peak's approved Business Plan and Budget (BP&B), identify any deviations between Peak's performance and the BP&B. Make recommendations to the Board addressing issues identified. Review with Peak management and the external auditors the results of the audit, including any difficulties encountered. Make recommendations to the Peak Board regarding acceptance of the auditor's opinion and audit results.
- c. Review ~~the Peak's~~ annual financial statements and be informed of any significant disagreement between Peak management and the independent external auditor that arose in connection with the external audit of those statements, and consider whether they statements are complete, consistent with information known to Committee members, and reflect appropriate accounting principles.
- d. Review with Peak management and the external auditors all matters required to be communicated to the Committee under Generally Accepted Auditing Standards.

2. Internal Control

- a. Review the effectiveness of ~~the~~ Peak's internal control system, including:
 - i. information technology security and control-
 - ii. Calculation of corporate performance metrics
 - iii. Processes for insuring the quality of data used in the performance of reliability functions
- b. Review the proposed scope of the external auditors' review of internal control over financial reporting, ~~and~~

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- c. ~~obtain~~ Review with Peak management the external auditor's reports on significant findings and recommendations, together with Peak management's responses.
- d. Monitor the implementation of the audit recommendations by Peak management, as directed by the Audit Committee in response to any external audit findings and/or recommendations.
- ee. Review, in the Committee's discretion, material written communication between Peak management and ~~independent~~the external auditors addressing improvement in Peak's financial processes and related internal controls.

3. External Audit

- a. Appoint an external auditor to conduct an audit of Peak's annual financial statements and review internal control over financial reporting.
- b. Review the external auditors' proposed audit scope and approach, including coordination of the external audit effort.
- cb. Review with Peak management and the external auditor the results of the external audit, including any difficulties encountered. Make recommendations to the Peak Board regarding acceptance of the external auditor's opinion and opportunities to address issues identified in the external audit results.
- d. Be informed of and work to resolve any significant disagreement between Peak management and the external auditor that arose in connection with the external audit of Peak's annual financial statements.
- e. Review the performance of the external auditors, and exercise final approval on the appointment or discharge of ~~the~~ auditors.
- fe. Review and confirm the independence of the external auditors by discussing and obtaining statements from the auditors on relationships between the auditors and Peak, including non-audit services, ~~and discussing the relationships with the auditors.~~
- gd. On a regular basis, meet separately with the external auditors to discuss any matters ~~that~~ the Committee or auditors believes should be discussed privately.

Comment [HT1]:

If appointing an independent/external auditor is not discretionary, doing so should be included in the list of the AC's responsibilities.

This responsibility may be better addressed in a separate section (preceeding the Financial Statements section) addressing the appointment, compensation and oversight of external auditors; considering the external auditor has a role to play in several sections provided here.

4. Compliance

- a. Review with Peak management, the ~~independent~~external auditor and legal counsel: Peak's procedures to ensure compliance with applicable laws and regulations; and any significant litigation, claim or other contingency (including tax assessments) that would have a material effect on the financial position or operating results of Peak.

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- b. Review the effectiveness of ~~the Peak's~~ system for monitoring compliance with laws and regulations and the results of management's investigation and follow-up (including mitigation actions) of any instances of noncompliance.
 - c. Review the findings of any examinations by regulatory/compliance agencies, and any auditor observations.
 - d. Obtain regular updates from Peak management and Peak legal counsel regarding compliance matters.
5. Reporting Responsibilities
- a. Regularly report to the Board about Committee activities, issues, and related recommendations.
 - b. Provide an open avenue of communication between the external auditors, and the Board.
 - c. Report annually to the Board, describing the Committee's composition, responsibilities and how they Committee's responsibilities were discharged.
 - d. Review any other reports Peak issues ~~that relating~~ to Committee responsibilities.
6. Other Responsibilities
- a. Perform other activities related to this Charter as requested by the Board.
 - b. Institute and oversee special investigations as needed.
 - c. Review and assess the adequacy of the Committee Charter periodically, requesting Board approval for proposed changes, and ensure appropriate disclosure as may be required by law or regulation.
 - d. Confirm annually that all responsibilities outlined in this Charter have been carried out.
 - e. ~~Periodically e~~Evaluate the Committee's effectiveness in carrying out its responsibilities on an annual basis.

Approved by the Board of Directors: Date

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