



Calpine Corporation Proposed Amendment

Amend ERCOT Bylaws, Article 2 (Definitions), Subsection 2.1.

Affiliate. This includes an entity (e.g. a person or any type of organization) in any of the following relationships: (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) an entity which shares a common parent with or is under common influence or control with another entity or (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity. Evidence of influence or control shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, whether that power is established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means. **In the case of (i) or (ii) above, where one entity owns or holds at least five percent, but less than 20 percent, of the voting securities of another entity, and the relationships in (iii) and (iv) do not exist, the Board shall have discretion to determine whether or not the entities are Affiliates of one another for the purpose of determining Member segment and voting rights.** Similarly, in cases where the level of control or influence is disputed, the Board shall have discretion to determine whether or not the entities are Affiliates of one another. Membership in ERCOT shall not create an affiliation with ERCOT.

The amendment was proposed by Mr. William J. Taylor, III (Calpine Corporation), who provided the following explanation for the proposal:

Statement of the Issue and Purpose of the Proposed Amendment

The purpose of the current Affiliate provision is to guard against affiliated entities becoming Members of more than one segment, which would increase their voting strength. However, the current provision may designate some entities as Affiliates, which clearly do not operate as affiliated companies, solely because one entity owns at least five percent of the other entity.¹ In the case of an Independent Generator or Independent Power Marketer, if it is affiliated with a Transmission and Distribution Entity, it cannot become a Corporate Member² in any segment regardless of the facts that create the affiliate status under the current Bylaws. While the entity can join as an Associate Member in the same segment as the affiliated entity, it will not enjoy full

¹ Article 2.1(i)-(ii) (“(i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) an entity in a chain of successive”).

ownership of at least five percent of the voting securities of another entity

² Articles 2.14 (Independent Generator) and 2.15 (Independent Power Marketer).



membership rights that it would ordinarily hold as a Corporate Member in the segment that it is qualified to join because of the Affiliate rule.³

The proposed amendment simply provides the Board with the discretionary authority to consider a request by an entity to find that the entity should not be deemed an Affiliate of another entity under the Bylaws. The effect of the proposal is similar to the affiliate provision in the Operating Agreement for PJM Interconnection, L.L.C., which provides that an entity is not an affiliate of another entity if the entity (i) owns the securities of another entity as an investment, (ii) holds less than 10% of the outstanding securities of another entity, (iii) lacks board representation on the other entity or vice-versa and (iv) does not in fact exercise influence over day-to-day management decisions.⁴ However, the PJM Agreement also provides that “unless the contrary is demonstrated to the satisfaction of the Members Committee,” control shall be presumed.⁵

The proposed amendment would provide a similar right to ERCOT entities to make a showing to the ERCOT Board that the entities are not affiliated. The amendment would extend the Board’s discretionary authority to determine who is an Affiliate, provided the entity owns at least five percent (5%) but not more than twenty percent (20%) of the shares of the voting securities of another entity.

The ERCOT Bylaws have a number of Articles that refer to “Affiliate” or otherwise implicate the proposed change. For the purposes of drafting the proposed amendment, in addition to the Affiliate provision, the following provisions were reviewed:

- 2.9 Entity
- 2.14 Independent Generator
- 2.16 Independent REP
- 2.18 Investor Owned Utility
- 2.30 Transmission and Distribution Entity
- 3.1 Membership
- 3.2 Membership Types and Voting Rights
- 3.6 Participation

However, the proposed amendment will not have any unintended consequences on these specific provisions and to best of our knowledge any remaining provisions in the Bylaws.

³ Article 3.2(a)(Corporate Members) (“[S]hall have the rights and obligations as described in these Bylaws including the right to vote any matter submitted to the general Membership (such as election of Directors, election of TAC Representatives and amendment of the Articles of Incorporation and these Bylaws”).

⁴ PJM Operating Agreement, 1.2 Affiliate (Attached).

⁵ Assumes the entity is not an affiliate under any of the other four criteria to determine affiliate status.



ERCOT Staff Analysis

- *Financial/Full-Time Equivalent Impact*
 - **Follow up with Members on Affiliate percentages**
 - **Coordinate Board approval for those Members requesting such approval (and ensure timing of Board approval is coordinated with timing of membership renewals and segment elections)**

- *Changes to Existing ERCOT Processes*
 - **Revisions to voting documentation**
 - **Revisions to Membership application to request identification of Affiliate percentages**
 - **Board approval necessary for Membership determinations that involve affiliate determinations under this revision**
 - **Revisions to Board Policies and Procedures to capture new processes for Board determinations**