



Date: October 7, 2016
To: Board of Directors
From: Chad Seely, Vice President, General Counsel and Corporate Secretary
Subject: Member-Affiliate Determination related to New EFH Restructuring Entity – REVISED for clarification of corporate entity

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: October 11, 2016

Item No.: 12

Issue:

Whether TCEH Corp. (TCEH) and its subsidiaries should be considered Affiliates of any other ERCOT Member for purposes of ERCOT Member Segment and voting rights.

Background/History:

Current ERCOT Membership of Luminant and TXU Energy

Luminant Holding Company LLC (Luminant) and TXU Energy Retail Company LLC dba TXU Energy (TXU Energy) are ERCOT Associate Members who have, for the last several years, participated in the Investor-Owned Utility (IOU) Segment as required by the ERCOT Amended and Restated Bylaws (ERCOT Bylaws) based on their common ownership with Oncor Electric Delivery Company (Oncor), a Transmission and Distribution Entity and ERCOT Corporate Member in the IOU Segment, by EFH Corp. (EFH).

New TCEH Structure After EFH Bankruptcy

On April 29, 2014, EFH and certain of its subsidiaries commenced voluntary cases under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* in the United States Bankruptcy Court for the District of Delaware. On August 29, 2016, the Court approved EFH Corp.'s Third Amended Joint Plan of Reorganization, which provided the path for the successor companies of Texas Competitive Electric Holdings LLC and its subsidiaries, including Luminant and TXU Energy, to emerge from bankruptcy in a tax-free spin-off from EFH. On October 3, 2016, the emergence process was completed through a series of corporate transactions whereby the existing competitive subsidiaries, including Luminant and TXU Energy, were contributed to a new parent company, TCEH, which is not affiliated with EFH or Oncor. See the letter dated October 4, 2016, from TCEH Corp. Executive Vice President and General Counsel Stephanie Zapata Moore to ERCOT Board Chairman Craven Crowell (provided with this Agenda Item), for further detail.

Definition of "Affiliate" in the ERCOT Bylaws

Article 2 of the ERCOT Bylaws defines "Affiliate" as follows (emphasis added):

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 the 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.

TCEH Request for Member-Affiliate Determination by ERCOT Board

TCEH has requested that the ERCOT Board of Directors (Board) find that TCEH and its subsidiaries are not Affiliates of any other ERCOT Member for purposes of ERCOT Member Segment and voting rights. The basis for TCEH's request is that certain entities that own or control more than five percent, but less than 20 percent, of the voting securities of TCEH either directly or indirectly own or control or have affiliates that directly or indirectly own or control voting securities in other ERCOT Members. Should the Board determine that TCEH and its subsidiaries are not Affiliates of any other ERCOT Member, TCEH intends to obtain a Corporate Membership in the Independent Generator Segment and an Associate Membership in the Independent Retail Electric Provider (IREP) Segment to replace its prior memberships in the IOU Segment.

Key Factors Influencing Issue:

In support of its request, TCEH has provided a verified letter that meets the minimum requirements for a Board determination of non-affiliation. In particular, TCEH has asserted the following:

Wind Energy Transmission Texas, LLC (WETT)

Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P. (Brookfield), is the investment manager for certain affiliated and unaffiliated funds or entities that beneficially own in the aggregate approximately 15 percent of TCEH. Brookfield is indirectly controlled by Brookfield Asset Management Inc. (BAM). BAM

also indirectly controls Brookfield-CREZ SPV LLC, which owns a fifty percent interest in WETT Holdings LLC, the parent of WETT, a Corporate Member of ERCOT in the IOU Segment.

- TCEH does not share a common parent with WETT.
- TCEH is not under common influence or control with WETT.
- TCEH will not have a board member that is also a board member of WETT.
- TCEH does not exercise actual influence or control over WETT, nor does WETT exercise actual influence or control over TCEH.

GDF Suez Energy Marketing North America Inc. (GDF-Suez)

Oaktree Capital Management, L.P. (Oaktree) is the investment manager for certain affiliated funds or entities that beneficially own in the aggregate approximately 12 percent of TCEH. Oaktree Capital Group, LLC, the upstream parent of Oaktree, together with its affiliated entities (including Oaktree) and funds, beneficially owns approximately seven percent of Dynegy Inc., which has entered into a stock purchase agreement that, if consummated, will result in Dynegy Inc. becoming the indirect parent of GDF-Suez. At that time, Dynegy Marketing and Trade LLC, a subsidiary of Dynegy Inc., will become a Corporate Member of ERCOT in the Independent Generator Segment.¹

- TCEH does not share a common parent with GDF-Suez, nor will it share a common parent with GDF-Suez after the transaction closes by which Dynegy Inc. succeeds to indirect ownership of the assets of GDF-Suez.
- TCEH is not under common influence or control with GDF-Suez, nor will it be under common influence or control with GDF-Suez after the transaction closes by which Dynegy Inc. succeeds to indirect ownership of the assets of GDF Suez.
- TCEH will not have a board member that is also a board member of GDF-Suez or Dynegy, Inc.
- TCEH does not exercise actual influence or control over GDF-Suez, nor does GDF-Suez exercise actual influence or control over TCEH. Neither TCEH nor GDF-Suez will exercise actual influence or control over the other after the transaction closes by which Dynegy Inc. succeeds to indirect ownership of the assets of GDF-Suez.

TCEH also asserts that it is not aware of any other ownership interests or relationships that would create an Affiliate relationship with any other ERCOT Members under the ERCOT Bylaws definition.

¹ GDF Suez Energy Marketing North America, Inc. is a current ERCOT member in the Independent Generator segment; however, that entity will no longer be an affiliate of GDF-Suez after the transaction closes by which Dynegy Inc. succeeds to the indirect ownership of the assets of GDF-Suez.



ERCOT Legal believes this information establishes a prima facie case supporting TCEH's request for a determination of non-affiliation for Member Segment and voting rights. ERCOT Legal is not aware of any information that would raise any question as to the validity of these assertions.

Conclusion/Recommendation:

ERCOT Legal concludes that the verified letter provided in support of TCEH's request is sufficient to determine that TCEH and its subsidiaries are not Affiliates of any other ERCOT Members, as the term "Affiliate" is defined in Article 2 of the ERCOT Bylaws, for purposes of Member Segment and voting rights, and recommends approving the request.

Additionally, ERCOT Legal advises that TCEH should be required to notify the ERCOT General Counsel in writing immediately if any of the facts underlying TCEH's verified assertions should change so that it could be reasonably determined that TCEH and its subsidiaries are Affiliates of any other ERCOT Members pursuant to the "Affiliate" definition in Article 2 of the ERCOT Bylaws for purposes of Member Segment and voting rights.



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

WHEREAS, the Bylaws of Electric Reliability Council of Texas, Inc. (ERCOT) provide that where an entity directly or indirectly owns or holds at least five percent but less than twenty percent of the voting securities of another entity, or an entity is in a chain of successive ownership of at least five percent of the voting securities of another entity, and the entities do not share a common parent and are not under the common influence or control with another entity, and one entity does not exercise substantial influence or control over the policies and actions of the other entity, the ERCOT Board of Directors (Board) has the discretion to determine whether or not the entities are Affiliates of one another for the purpose of determining Member Segment and voting rights; and

WHEREAS, TCEH Corp. (TCEH) has provided evidence that meets the minimum criteria for a Board determination that TCEH and its subsidiaries are not Affiliates of any other ERCOT Member;

THEREFORE, BE IT RESOLVED, that TCEH shall not be considered an Affiliate of any current ERCOT Member under the Bylaws for the purpose of determining Member Segment and voting rights, and that TCEH shall be required to notify the ERCOT General Counsel in writing immediately if any of the facts underlying TCEH's verified assertions should change so that it could be reasonably determined that TCEH and its subsidiaries are Affiliates of any other ERCOT Members pursuant to the "Affiliate" definition in Article 2 of the ERCOT Bylaws for purposes of Member Segment and voting rights.



CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its October 11, 2016 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of October, 2016.

Vickie G. Leady
Assistant Corporate Secretary