Date: October 10, 2017
To: Board of Directors
From: Chad V. Seely, Vice President, General Counsel and Corporate Secretary
Subject: Determination of Non-Affiliation of Certain ERCOT Members under the ERCOT Bylaws for Purposes of ERCOT Market Segment and Voting

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: October 17, 2017
Item No.: 13

Issue:
Whether certain ERCOT Members should be considered Affiliates of certain other ERCOT Members pursuant to the ERCOT Bylaws, due to a common equity investor, for purposes of ERCOT Member Segment and voting rights.

Background/History:

Requests from Vistra Energy Corp. and Other Entities
On September 5, 2017, Craven Crowell, Chairman of the ERCOT Board of Directors (Board), received a letter from Vistra Energy Corp. (Vistra) requesting that the Board determine that Vistra and its subsidiaries are not Affiliates of any other ERCOT Member by virtue of the ownership of Vistra securities by Vanguard Group Inc. (Vanguard). According to the letter, a copy of which is attached hereto as *Exhibit A-1*, Vistra is the indirect parent company of ERCOT Members Luminant Generation Company LLC (a Corporate Member in the Independent Generator Market Segment) and TXU Retail Energy Company LLC (an Associate Member in the Independent Retail Electric Provider Market Segment). On August 11, 2017, Vanguard filed its Form 13F-HR with the U.S. Securities and Exchange Commission (SEC). Representatives of Vistra conducted a review of the filing and independent research and determined that Vanguard has an ownership interest of at least five percent in several ERCOT Members or their family companies.

In response to the Vistra letter, ERCOT staff inquired among the Members identified therein as to whether they believe they may be Affiliated with one or more other Members in light of the facts set forth in the Vistra letter and whether they intend to submit a similar request to the Board for a determination of non-affiliation. As of October 10, 2017, the Board had received requests for a determination of non-affiliation on behalf of several additional Members (or their family companies) and their subsidiaries in relation to holdings by Vanguard and/or other common equity investors. Several of these requests raised the possibility that additional entities may own five percent or more of the voting securities of two or more Members, and that additional Members beyond those identified in Vistra's letter may be subject to such ownership.

Members Requesting Non-Affiliate Determinations

In addition to Vistra, letters were submitted requesting a determination of non-affiliation on behalf of the following Members (with Vistra, each a Requesting Company) and their subsidiaries, copies of which are attached hereto as Exhibits as noted:

- Calpine Corporation (*Exhibit A-2*).
- CenterPoint Energy, Inc. (*Exhibit A-3*).
- Chevron Corp., Dow Chemical Company, Pioneer Natural Resources Company, Praxair Inc., Texas Instruments, Inc. and Valero Energy Corp. (*Exhibit A-4*).
- Citigroup Energy, Inc. (*Exhibit A-5*).
- Dynegy Inc. (*Exhibit A-6*)
- Exelon Corporation (*Exhibit A-7*).
- First Solar, Inc. (*Exhibit A-8*).
- NRG Energy, Inc. (*Exhibit A-9*).

ERCOT also received an e-mail from NextEra Energy, Inc., (which has ERCOT Member, Lone Star Transmission LLC, as an indirect wholly-owned subsidiary) requesting that it should not be considered an "Affiliate" under the ERCOT Bylaws by virtue of common ownership of the stock of NextEra and other ERCOT Members and that it be included in any determination by the Board of non-affiliation. A copy of this request is not included in the exhibits.

Investing Companies

In addition to Vanguard, the following entities were identified in one or more of the Requesting Company letters as possibly owning five percent or more of the voting securities of two or more Members (with Vanguard, each an Investing Company):

- BlackRock, Inc.
- Capital Research Global Investors (U.S.)
- Fidelity Management & Research Company
- Hotchkis & Wiley Capital Management, LLC
- Oaktree Capital Management, L.P.
- State Street Global Advisors

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.

Applicability of Affiliate Definition

Based upon the facts presented, ERCOT Legal believes that item (iii) of the Affiliate definition likely applies because the language of the definition calls into question each Investing Company's influence or control over multiple Members by the ownership of five percent or more of the voting securities of such Members. While the Bylaws definition does not explicitly provide that an ownership interest of at least five percent is conclusive or even presumptive evidence of influence or control, such an ownership level is one item of evidence that may indicate the existence of influence or control. Where an Investing Company owns at least five percent of the voting securities of multiple Members, there is at least disputable evidence under the definition that such Investing Company may have influence or control over each of those Members. Since there is disputable evidence that each Investing Company has influence or control over multiple Members, the Board may, in its discretion, determine whether or not such Members are Affiliates, based on the actual level of influence or control each such Investing Company has over each Member in which it has an ownership stake of at least five percent. A memorandum containing a more comprehensive analysis of the applicability of the Affiliate definition is attached as *Exhibit B*.

Exclusion of Certain Investment Entities Under PURA Affiliate Definition

Several of the Investing Companies are registered as investment advisers under the Investment Company Act of 1940. The definition of "affiliate" in the Public Utility Regulatory Act (PURA), which is similarly worded to the ERCOT Bylaws definition but is limited to relationships with a "public utility" (as defined in PURA), expressly excludes several entities, including investment advisers registered under the Investment Company Act of 1940 (*see* Tex. Util. Code Ann. §§ 11.003(2) & 11.0042). Paragraph (a) of PURA § 11.0042 provides:

> (a) The term "person" or "corporation" as used in the definition of "affiliate" provided by Section 11.003(2) does not include:

(1) a broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;
(2) a bank or insurance company as defined under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;
(3) an investment adviser registered under state law or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.); or
(4) an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.); or
(5) an employee benefit plan, pension fund, endowment fund, or other similar entity that may, directly or indirectly, own, hold, or control five percent or more of the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:
(A) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or
(B) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

ERCOT Legal believes that in cases where the ownership of voting securities by a company is for investment purposes, so long as the ownership share is less than 20 percent of voting securities, there should be a presumption that the ownership does not result in influence or control, which would negate the possibility of disputing this presumption at any time. Meeting the requirements in PURA § 11.0042(a) constitutes evidence that the ownership of voting securities is for investment purposes only and should trigger the presumption. The 20 percent threshold is consistent with the level of ownership below which the Board is granted discretion for determining whether entities are Affiliates in the case of items (i) or (ii) of the Affiliate definition (i.e., an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity, or an entity in a chain of successive ownership of at least five percent of the voting securities of another entity). The Board approved such 20 percent threshold in 2013 and is being recommended by ERCOT Legal to maintain relative parity within the definition until the Affiliate definition can be further reviewed and clarified.

With regard to this language, it should be noted that the PURA exclusion is limited in scope to investment advisers and public utilities and the current fact patterns extend beyond the definition of investment advisers to a broader group of institutional investors (who may not meet the minimum threshold asset requirements for registration with the SEC) and beyond public utilities, given the broad range of Market Segments at ERCOT. Absent the broadening of this type of exception language, any of the institutional investors who do not fall into the registered investment advisers umbrella would have to be specifically excepted by the Board for any determinations of non-affiliate relationships.

Key Factors Influencing Issue:
Vistra Identified Affiliate Issue in Early September, Leading to Discovery of a Vast

Array of Fact Situations Involving at Least 30 Members in Various Membership Segments

Upon learning of the Affiliate issue raised by Vistra in relation to common equity ownership by Vanguard, ERCOT Legal reviewed the facts and contacted the affected Members for their positions on the issue. ERCOT Legal has learned from the review of information received (from just the few Members who were contacted) that ownership of stock in Members for the purposes of investments like mutual funds is an extensive issue which affects a minimum of 30 Members. ERCOT presently has about 309 Members (285 of whom are Corporate Members); however, ERCOT Legal roughly estimates that about one-third of Members may have the possibility of encountering a situation with a common equity investor, based on their corporate structure. ERCOT Legal anticipates that, after this issue is discussed at the Board meeting, it will likely receive additional disclosures and requests for non-affiliation determinations after Members review their ownership records. Although the facts are similar in terms of common equity ownership by institutional investors, as noted immediately below, the ownership, by investment companies or by mutual funds themselves, varies among the affected Members. In brief, ERCOT Legal believes that this is just the beginning of identifying a longer list of potential Members who may be Affiliates through common equity ownership by a broader list of institutional investors.

Consistent General Fact Situations Among Requests, but with Different Entities

Where one entity (Owning Entity) owns or holds at least five percent, but less than 20 percent, of the voting securities of two or more entities (each an Owned Entity), ERCOT Legal believes that in cases where the following conditions have been satisfied, a prima facie case has been established supporting a determination of non-affiliation for Member Segment and voting rights for such Owned Entities:

- The Owning Entity meets one of the exclusions from the definition of "affiliate" under PURA § 11.0042(a), or has been determined to hold ownership interests in the Owned Entities for investment purposes only.
- No Owned Entities either share a common parent or are under common influence or control of another entity;
- No Owned Entities share a common board member;
- No Owned Entity exercises actual influence or control over any other Owned Entity; and
- Other than the disclosed interests, there are no other known ownership interests or relationships that would create an "Affiliate" relationship under the Bylaws definition between or among any two or more of the Owned Entities.

Although the Requesting Companies' letters indicate ownership by one or more Owning Entities, each letter contains assertions consistent with the bottom four bullets.

Reporting and Monitoring Concerns

ERCOT Legal, after discussions with several Members, has identified reporting and

monitoring concerns with regard to the percentages of equity ownership by institutional investors. Those companies who are registered with the SEC as an investment adviser file their institutional investment management reports on a quarterly basis. Members are required to make disclosures regarding potential Affiliate relationships as needed. In order to avoid making disclosures only on a quarterly basis, Members would need access to services that provide real-time reporting for stock ownership or some other means of obtaining real-time stock ownership information. Some Members have expressed concern about the fluctuation of equity percentages, which could occur on a daily basis, and could create or extinguish Affiliate or potential Affiliate relationships depending on the day, thereby creating questions as to the necessity of constant disclosures. As an added overlay to these concerns, at least one Member has identified that shares of a publicly-traded parent of a Member were held by the individual mutual funds themselves rather than the investment management company (*e.g.,* holdings by a Vanguard mutual fund itself rather than Vanguard Group Inc.).

Current Affiliate Issue Affects Segment Eligibility for 2017 and 2018 Membership

The Board determination of the lack of affiliation among the affected Members is critical for the 2017 and 2018 Membership years. Absent a determination of non-affiliation, some of these affected Members could be ineligible for their current Segments for 2017 and 2018 Membership and voting rights and would have to change Segments. In accordance with routine annual process, ERCOT Legal issued 2018 Membership applications on October 2, 2017, and the Record Date for elections to the Board or the Technical Advisory Committee (TAC) is November 10, 2017 (prior to the next Board meeting on December 12, 2017). Other Members may come forward after the Board meeting to disclose potential Affiliations and seek Board determination of non-affiliation, which would occur after the completion of 2018 Membership elections for Board and TAC seats. ERCOT Legal believes that a "blanket" resolution by the Board as to the non-affiliation relationship under the ERCOT Bylaws for these types of situations will provide much-needed certainty for Members as to eligibility for Segments for the 2017 and 2018 Membership years.

Affiliation Determination under the Bylaws Requires Legal Analysis

Interpretation of the existence of an Affiliate relationship under the Bylaws requires legal analysis. To require the Board to make determinations of non-affiliated relationships for every circumstance involving common equity ownership among Members by an institutional investor may be burdensome to the Board. ERCOT Legal believes that it is permissible for the Board to delegate the determination to the ERCOT General Counsel so long as the Board is informed of the current status of determinations and any potential issues, and any disputes regarding a determination by the ERCOT General Counsel are brought before the Board.

Conclusion/Recommendation:

After legal review and analysis, ERCOT Legal concludes that the letters provided in support of the Requesting Companies' requests are sufficient to determine that each Requesting Company and its subsidiaries are not Affiliates of any other Member of

which one or more Investing Company has an ownership share of voting securities of at least five percent but less than 20 percent, as the term "Affiliate" is defined in Article 2 of the ERCOT Bylaws, for purposes of Member Segment and voting rights. To address the Requesting Companies' requests, as well as the likely existence of additional voting security ownership interests that are greater than five percent but less than 20 percent by other companies similar to the Investing Companies, ERCOT Legal recommends the following:

(1) That the Board declare that, absent a Board declaration to the contrary, no Affiliate relationship is created between two or more entities (each an Owned Entity) where another entity (Owning Entity) owns or holds at least five percent, but less than 20 percent, of the voting securities of each Owned Entity where the following conditions are met:

- The Owning Entity meets one of the exclusions from the definition of "affiliate" under PURA § 11.0042(a), or has been determined to hold ownership interests in the Owned Entities for investment purposes only.
- No Owned Entities either share a common parent or are under common influence or control of another entity;
- No Owned Entities share a common board member;
- No Owned Entity exercises actual influence or control over any other Owned Entity; and
- There are no other known ownership interests or relationships that would create an "Affiliate" relationship under the Bylaws definition between or among any two or more of the Owned Entities.

If, despite the above conditions being satisfied, any person or entity disputes the conclusion that the Owning Entity does not exercise influence or control over an Owned Entity, the disputing entity can request to the Board that a specific determination be made as to the relationship between the Owned Entities.

(2) That the Board direct any Member that becomes aware that an entity other than the Investing Companies may own five percent or greater of the voting securities of two or more Members to notify the Board and the General Counsel as soon as practicable.

(3) That the Board delegate to the ERCOT General Counsel or his designee the authority to determine whether an Owning Entity holds ownership interests in any of its Owned Entities for investment purposes only and therefore qualifies as an Investing Company, and direct the ERCOT General Counsel or his designee to update the list of Investing Companies (*Exhibit C*) as additional entities are identified and to disclose changes to the list, if any, at each Board meeting.

(4) That the Board delegate to the ERCOT General Counsel or his designee the authority to determine whether or not two entities are Affiliates of one another in cases where the ownership interests in question are less than 20 percent of the owned entities' voting securities, and direct the ERCOT General Counsel or his designee to

report any determinations made at each Board meeting.

For the sake of clarity and certainty for the current and future Membership years, ERCOT Legal recommends that the above provisions remain in effect until the Bylaws have been amended to clarify when an Affiliate relationship arises in the case two entities are under common influence or control. ERCOT Legal will start the process for the amendment of the Bylaws at the October 16, 2017 Human Resources and Governance Committee meeting.

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 which shares a common parent with or is under common influence or control with another entity, those entities are Affiliates; and

WHEREAS, the Bylaws further provide that 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, and that in cases where the level of control or influence is disputed, the ERCOT Board of Directors (Board) shall have discretion to determine whether or not the entities are Affiliates of one another; and

WHEREAS, certain entities (each an Owning Entity) own at least five percent but less than 20 percent of the voting securities of two or more ERCOT Members (each an Owned Entity);

THEREFORE, BE IT RESOLVED, that:

(1) Absent a Board declaration to the contrary, no Affiliate relationship exists between or among two or more entities (each an Owned Entity) where another entity (Owning Entity) owns or holds at least five percent, but less than 20 percent, of the voting securities of each Owned Entity where the following conditions are met:

(a) The Owning Entity meets one of the exclusions from the definition of “affiliate” set forth in Public Utility Regulatory Act (PURA) § 11.0042(a), or has been determined to hold ownership interests in the Owned Entities for investment purposes only (each an Investing Company, a list of which is attached hereto as *Exhibit C*);
(b) No Owned Entities either share a common parent or are under common influence or control of another entity;
(c) No Owned Entities share a common board member;
(d) No Owned Entity exercises actual influence or control over any other Owned Entity; and
(e) There are no other known ownership interests or relationships that would create an “Affiliate” relationship under the Bylaws definition between or among any two or more of the Owned Entities.

(2) The Board directs any Member that becomes aware that an entity other than the Investing Companies may own five percent or greater of the voting securities of two or more Members to notify the Board and the General Counsel as soon as practicable.

(3) The Board delegates to the ERCOT General Counsel or his designee the authority to determine whether an Owning Entity holds ownership interests in any of its Owned Entities for investment purposes only and therefore qualifies as an Investing Company, and directs the ERCOT General Counsel or his designee to update the list of Investing Companies (*Exhibit C*) as additional entities are identified and to disclose changes to the list, if any, at each Board meeting.

(4) The Board delegates to the ERCOT General Counsel or his designee the authority to determine whether or not two entities are Affiliates of one another in cases where the ownership interests in question are less than 20 percent of the owned entities' voting securities, and directs the ERCOT General Counsel or his designee to report any determinations made at each Board meeting.

(5) The above resolutions shall remain in effect until the Bylaws have been amended to clarify when an Affiliate relationship arises in the case two entities under common influence or control.

CORPORATE SECRETARY'S CERTIFICATE

I, Vickie G. Leady, Assistant Corporate Secretary of ERCOT, do hereby certify that, at its October 17, 2017 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, 2017.

_____
Vickie G. Leady
Assistant Corporate Secretary

Exhibit A-1

VISTRA ENERGY

Mr. Craven Crowell
Chairman, Board of Directors
ERCOT
7620 Metro Center Drive
Austin, Texas 78744

Attn: Chad Seely

September 5, 2017

Dear Mr. Crowell:

In June, Vanguard Group Inc., a registered investment adviser, initiated holdings in Vistra Energy Corp. (Vistra Energy), purchasing greater than 5% of its shares. Vistra Energy is the indirect parent company of ERCOT members Luminant Generation Company LLC and TXU Energy Retail Company LLC.

Vanguard Group Inc. is one of the world's largest investment companies, with about $4 trillion in global assets under management, according to its website. On August 11, 2017, Vanguard Group Inc. filed its Form 13F-HR with the Securities and Exchange Commission, identifying its holding in Vistra Energy and a number of other companies. Based on my review of that filing, cross referenced with searches on Morningstar's public website, Vanguard Group Inc. also holds greater than 5% of the shares of a number of other ERCOT members (or their family companies), including Calpine Corp., CenterPoint Energy Inc., Citigroup Inc., Chevron Corp., ConocoPhillips, Consolidated Edison, Inc., Dow Chemical Company, Dynegy Inc., Exelon Corporation, First Solar Inc., NextEra Energy Inc., NRG Energy Inc., Nucor Corp., Pioneer Natural Resources Company, Praxair Inc., Texas Instruments Inc., Valero Energy Corp, and Westar Energy Inc.[1] Each of these companies either is itself, or has a family company that is an ERCOT member, in one or more of the Consumers, Independent Generators, Independent Power Marketers, Independent Retail Electric Providers, and Investor-Owned Utilities segments.

Read literally, under ERCOT's Amended and Restated Bylaws approved on August 17, 2015, each of these ERCOT members would be affiliates of Vistra Energy, and of one another, by virtue of being "entit[ies] in a chain of successive ownership of at least five percent of the voting securities of another entity." However, the Board has discretion to determine in situations like this, where one entity holds at least five percent, but less than 20 percent, of the voting securities of another entity, that such entities are not affiliates for purposes of determining Member Segment and voting rights, as long as the entities do not share a common parent, are not under "common influence or control," and do not exercise actual substantial influence or control over the policies and actions of one another. Under the ERCOT Bylaws, evidence of influence and 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."

[1] Vanguard Group Inc. also owns greater than 1%, but less than 5% of several other companies who are themselves, or have family companies that are ERCOT members. Because Vanguard Group Inc. is actively involved in buying and selling shares of publicly traded companies, these investments could grow to greater than 5% ownership at any time. The facts supporting Vistra Energy's representations of non-affiliation in this letter are also true as to those other companies.

In support of this request, Vistra Energy asserts that:

- Neither Vistra Energy nor its subsidiaries share a common parent with or are under common influence or control with any of the other ERCOT members listed above.
- Neither Vistra Energy nor its subsidiaries have a board member who is also a board member of any of the other ERCOT members listed above.
- Neither Vistra Energy nor its subsidiaries exercise actual influence or control over any of the other ERCOT members listed above, and none of those entities exercises actual influence or control over Vistra Energy or its subsidiaries.
- Vistra Energy is not aware of any other ownership interests or relationships that would create an "Affiliate" relationship under the ERCOT Bylaws definition between Vistra Energy or its subsidiaries and any other ERCOT member whose voting shares are owned by Vanguard Group Inc.

In addition, Vistra Energy and its subsidiaries are not affiliates of any of the other ERCOT members listed above under the definition of "Affiliate" as laid out in Chapter 11 of the Public Utility Regulatory Act of Texas.[2]

Accordingly, Vistra Energy requests that the ERCOT Board of Directors determine that it and its subsidiaries are not Affiliates of any other ERCOT member, as the term "Affiliate" is defined in Article 2 of the ERCOT Bylaws for purposes of ERCOT membership or stakeholder participation, by virtue of Vanguard Group Inc.'s ownership of its voting securities. The ERCOT Board of Directors granted similar requests on October 11, 2016, when it determined that TCEH Corp. is not an affiliate of GDF-Suez Energy North America Inc. or Wind Energy Transmission Texas, and on September 17, 2013, when it determined that Calpine Corporation is not an affiliate of Cross Texas Transmission LLC under the ERCOT Bylaws merely because of the existence of an entity holding a common indirect interest in those entities.

Best regards,

Amanda J. Frazier

Amanda J. Frazier
Vice President of Regulatory Policy
Vistra Energy

[2] TEX. UTIL. CODE ANN. §§ 11.001–66.016 (West 2007 & Supp. 2016) (PURA). PURA § 11.0042 excludes from consideration of affiliates certain specified entities, including those registered as investment advisers under the Investment Advisers Act of 1940. Vanguard Group, Inc. is a registered investment adviser: https://www.adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=105958.

717 TEXAS AVENUE, SUITE 1000
HOUSTON, TX 77002

CALPINE CORPORATION

NYSE CPN

Exhibit A-2

September 29, 2017

Mr. Craven Crowell, Chairman
Board of Directors
ERCOT
ATTN: Chad Seely
7620 Metro Center Drive
Austin, Texas 78744

Re: Non-affiliation Request of Calpine Corporation

Dear Mr. Crowell,

At the request of the ERCOT Legal, Calpine Corporation requests a determination of non-affiliate status with respect to two of its shareholders, the Vanguard Group (" Vanguard") as holder of 8.32%, and Hotchkis & Wiley Capital Management, LLC ("Hotchkis & Wiley"), as holder of 13.11% of the outstanding shares of Calpine Corporation. Similar to the position taken by Vistra Energy ("Vistra") in its letter requesting the same relief, both of these entities are investment funds, with holdings in many different companies and industries, but which holdings may also include other members of ERCOT.

As stated also by Vistra in its letter, if read literally, under the Amended and Restated Bylaws of ERCOT approved on August 17, 2015, holdings by each of these funds of other ERCOT members in excess of 5% would render the members affiliates of each other. The ERCOT Board is vested with the discretion to make a determination that the entities are not affiliates for purposes of determining Member Segment and voting rights, as long as the entities do not share a common parent, are not under common influence or control and do not exercise actual substantial influence or control over the policies and actions of one another. Under the ERCOT Bylaws, evidence of influence and 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 support of this request, Calpine Corporation asserts after reasonable review of available information and records that:

Neither Calpine Corporation nor its subsidiaries share a common parent with or are under common influence or control with any other ERCOT members, in which Vanguard or Hotchkis & Wiley have ownership of 5% or more.

Neither Calpine Corporation nor its subsidiaries have a board member who is also a board member of any other ERCOT member, in which Vanguard or Hotchkis & Wiley have ownership of 5% or more.

Neither Calpine Corporation nor its subsidiaries exercise actual influence or control over any other ERCOT member, in which Vanguard or Hotchkis & Wiley have ownership of 5% or more, and no other ERCOT member, in which Vanguard or Hotchkis & Wiley have ownership of 5% or more exercise actual influence or control over Calpine Corporation.

Calpine Corporation is not aware of any other ownership interest or relationship that would create an "Affiliate" relationship under the ERCOT Bylaws definition between Calpine Corporation and its subsidiaries and any other ERCOT member whose voting shares are owned by either Vanguard or Hotchkis & Wiley. In addition, Calpine Corporation and its subsidiaries are not affiliates of any other ERCOT members in which Vanguard or Hotchkis & Wiley have ownership of 5% or more.

Accordingly, Calpine Corporation requests that the ERCOT Board of Directors determine that it and its subsidiaries are not Affiliates of any other ERCOT member, as the term "Affiliate" is defined in Article 2 of the Bylaws for purposes of ERCOT membership or stakeholder participation, by virtue of Vanguard or Hotchkis & Wiley's ownership of its voting securities. The ERCOT Board of Directors granted similar requests on October 11, 2016, when it determined that TCEH Corp. is not an affiliate of GDF-Suez Energy North America Inc. or Wind Energy Transmission Texas and on September 17, 2013, when it determined that Calpine Corporation is not an affiliate of Cross Texas Transmission LLC merely because of the existence of an entity holding a common indirect interest in those entities.

Your consideration of this issue is appreciated. Please do not hesitate to contact us if you need further information.

Very truly yours,

Diana W. Hammett

Diana Woodman Hammett
VP & Managing Counsel
Calpine Corporation

Exhibit A-3

Patrick H. Peters III
Associate General Counsel and
Director of Regulatory Affairs

1005 Congress Avenue, Suite 650
Austin, Texas 78701
Voice: (512) 397-3032
Fax: (512) 397-3050
patrick.peters@centerpointenergy.com

September 29, 2017

Chad V. Seely
Vice President, General Counsel and
Corporate Secretary
Electric Reliability Council of Texas, Inc.
7620 Metro Center Drive
Austin, Texas 78744

RE: Affiliate Issues Arising Under the ERCOT Bylaws

Dear Mr. Seely:

CenterPoint Energy, Inc. (CenterPoint Energy) hereby submits its response to the September 19, 2017 email from Electric Reliability Council of Texas, Inc. (ERCOT) Staff regarding certain affiliate issues raised in a letter from Vistra Energy Corp. (Vistra Energy) dated September 5, 2017. Specifically, ERCOT Staff has requested that CenterPoint Energy provide its position on the following issues:

(1) Whether CenterPoint Energy believes it is an "affiliate" of any other ERCOT member as that term is used in the ERCOT Bylaws[1]; and

(2) Whether CenterPoint Energy requests a determination from the ERCOT Board of Directors (ERCOT Board) that CenterPoint Energy is not an affiliate of any other ERCOT member.

CenterPoint Energy does not believe it or any of its subsidiaries is an affiliate of any other ERCOT member under the plain language of the ERCOT Bylaws. If the ERCOT Board disagrees, however, CenterPoint Energy requests that the ERCOT Board exercise its discretion under the ERCOT Bylaws to determine that CenterPoint Energy is not an affiliate of any other ERCOT member, as described in more detail below.

1. Ownership of voting securities in two ERCOT members does not create an affiliate relationship between those ERCOT members under the ERCOT Bylaws so long as the owner of voting securities is not the parent of the two ERCOT members and does not exercise common influence or control over the two ERCOT members.

The Vistra Energy letter raises the question of whether Vanguard Group, Inc.'s ownership or holdings of at least five percent of the voting securities of Vistra Energy, CenterPoint Energy, and several other ERCOT members causes those ERCOT members to be affiliates for purposes of the ERCOT Bylaws. For the reasons explained below, CenterPoint Energy does

[1] Except where explicitly stated otherwise, the term "ERCOT Bylaws" refers to the Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc. approved on August 17, 2015.

not believe that such voting security ownership causes CenterPoint Energy to be an affiliate of any other ERCOT member under the ERCOT Bylaws.

The term "affiliate" is defined in the ERCOT Bylaws as follows:

> **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.[2]

Through this definition, the ERCOT Bylaws recognize two types of affiliate relationships: vertical and horizontal. Under Subsections (i) and (ii), a vertical affiliate relationship exists when an upstream entity owns or holds at least five percent of the voting securities of a downstream entity. Under Subsection (iii), a horizontal affiliate relationship exists when two entities share a common parent or are under common influence or control of a third entity. Subsection (iv) can involve both vertical and horizontal affiliate relationships because the determinative factor is whether one entity exercises substantial influence or control over another entity.

Absent from the definition of "affiliate" in the ERCOT Bylaws is a provision that addresses the circumstance in which one entity owns at least five percent of the respective voting securities of two other entities but is not a common parent of those two entities and does not exercise common influence or control of those two entities – i.e., when one entity partially and passively owns two other entities. In contrast, both the Public Utility Regulatory Act (PURA) and the rules of the Public Utility Commission of Texas (PUC) have provisions that would deem this circumstance as creating a horizontal affiliate relationship between the two entities that have a common partial and passive owner. Among the definitions of the term "affiliate" in PURA is:

> (D) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by:
>
> (i) a person who directly or indirectly owns or controls at least five percent of the voting securities of a public utility; or

[2] ERCOT Bylaws, Article 2.

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility[.][3]

Likewise, among the definitions of the term "affiliate" in the PUC rules is:

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0%percent of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility[.][4]

Given the absence of a similar provision in the ERCOT Bylaws, a horizontal affiliate relationship is not created between two ERCOT members when a third entity owns at least five percent of the respective voting securities of the two ERCOT members but is not a common parent of those two ERCOT members and does not exercise common influence or control of those two ERCOT members.

In addition, Subsection (ii) of the affiliate definition in the ERCOT Bylaws does not create a horizontal affiliate relationship between ERCOT members. The phrase "chain of successive ownership" in Subsection (ii) addresses the vertical affiliate relationship created between a downstream entity and any upstream owners in the ownership chain. There are two interpretation problems with using this phrase to create a horizontal affiliate relationship. First, an affiliate relationship is created by the ownership of voting securities. Neither CenterPoint Energy nor its subsidiaries own at least five percent of the voting securities of another ERCOT member, and vice versa. Attributing an unrelated third party's ownership of an ERCOT member to CenterPoint Energy is an unreasonable interpretation of the term "ownership." Second, the term "successive chain" addresses situations where there are multiple chains of ownership within a corporate hierarchy. To interpret "successive chain" as creating a horizontal affiliate relationship would mean that the ownership relationship between CenterPoint Energy and its upstream five percent owner would be inverted – i.e., CenterPoint Energy would be treated as the "owner" - and the upstream five percent owner, which is an unrelated third party, would be treated as CenterPoint Energy's conduit that owns five percent of the voting securities of another ERCOT member. This is an unreasonable interpretation of the term "successive chain."

For these reasons, under the ERCOT Bylaws, the passive and partial ownership of CenterPoint Energy voting securities by a third party does not cause CenterPoint Energy to be an affiliate of any other ERCOT member whose voting securities are also owned by that third party.

[3] Tex. Util. Code § 11.003(2)(D)(i)-(ii).
[4] *See* 16 Tex. Admin. Code § 25.5(3)(D)(i)-(ii).

2. If the ERCOT Board finds that a horizontal affiliate relationship is created through an entity's passive ownership of at least five percent of the voting securities of two ERCOT members, CenterPoint Energy requests that the ERCOT Board exercise its discretion under the ERCOT Bylaws to determine that CenterPoint Energy is not an affiliate of any other ERCOT member.

As discussed above, CenterPoint Energy does not believe it or any of its subsidiaries is an affiliate of any other ERCOT member under the plain language of the ERCOT Bylaws. If the ERCOT Board disagrees, however, CenterPoint Energy requests that the ERCOT Board exercise its discretion under the ERCOT Bylaws to determine that CenterPoint Energy is not an affiliate of any other ERCOT member.

The ERCOT Bylaws authorize the ERCOT Board to determine that two ERCOT members are not affiliates of one another under the following circumstances:

> 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.[5]

Based upon its review of public information, CenterPoint Energy believes the following three investment companies own or hold at least five percent but less than twenty percent of the voting securities of CenterPoint Energy and other ERCOT corporate members (or their family companies) including the following.

- BlackRock, Inc.: American Electric Power Service Corporation; Blue Cube Operations LLC; Chevron Phillips Chemical Company LP; Citigroup Energy, Inc.; CMC Steel Texas; Consolidated Edison Development, Inc.; Dynegy Inc.; Exelon Corporation; First Solar, Inc.; Lone Star Transmission, LLC; Merrill Lynch Commodities, Inc.; Morgan Stanley Capital Group, Inc.; Nucor Corporation; Occidental Chemical Corporation; Pioneer Natural Resources Company; Praxair, Inc.; Reliant Energy Retail Services, LLC; Southern Power Company; Spark Energy LLC; Texas Instruments Incorporated; Texas-New Mexico Power Company; The Dow Chemical Company; Valero Services, Inc.; and Westar Energy, Inc.

- State Street Corporation: Chevron Phillips Chemical Company LP; Consolidated Edison Development, Inc.; Exelon Corporation; Lone Star Transmission, LLC; Morgan Stanley Capital Group, Inc.; Nucor Corporation; Occidental Chemical Corporation; Pioneer Natural Resources Company; and Valero Services, Inc.

- Vanguard Group, Inc: American Electric Power Service Corporation; Calpine Corp.; Citigroup Inc.; Chevron Phillips Chemical Company LP; ConocoPhillips Company; Consolidated Edison Development, Inc.; Dynegy Inc.; Exelon Corporation; First Solar, Inc.; Lone Star Transmission, LLC; Nucor Corporation; Pioneer Natural Resources Company; Praxair, Inc.; Reliant Energy Retail Services, LLC; Texas Instruments Incorporated; The Dow Chemical Company; Valero Services, Inc.; and Westar Energy, Inc.

[5] ERCOT Bylaws, Article 2.

CenterPoint Energy requests that the ERCOT Board exercise its discretion to determine that CenterPoint Energy is not an affiliate of any ERCOT member identified above as a result of the ownership of at least five percent but less than twenty percent of the voting securities of CenterPoint Energy by Vanguard Group Inc., BlackRock, Inc., or State Street Corporation. In support of this request, CenterPoint Energy makes the following representations:

- CenterPoint Energy and its subsidiaries do not share a common parent with any ERCOT member identified above.
- CenterPoint Energy and its subsidiaries are not under common influence or control with any ERCOT member identified above.
- CenterPoint Energy and its subsidiaries do not exercise actual influence or control over any ERCOT member identified above.
- No ERCOT member identified above exercises actual influence or control over CenterPoint Energy or its subsidiaries.

The ERCOT Board recently considered similar factors at the October 11, 2016 board meeting in determining that certain institutional investors' partial, passive ownership of Vistra Energy, Wind Energy Transmission Texas, LLC, and Dynegy, Inc. did not make Vistra and its subsidiaries affiliates of any other ERCOT member.[6] Likewise, the ERCOT Board considered similar factors at the September 17, 2013 board meeting in determining that LS Power Development, LLC's ownership of Cross Texas Transmission LLC and partial, passive ownership of Calpine Corporation did not make Calpine Corporation an affiliate of another ERCOT transmission and distribution entity.[7]

In addition, because the ownership of voting securities of CenterPoint Energy by third parties changes from day to day, CenterPoint Energy further requests that the ERCOT Board determine that CenterPoint Energy will not be considered to be an affiliate of any other ERCOT member where a third party owns less than twenty percent of the voting securities of CenterPoint Energy and any other ERCOT member provided that the four representations listed above are true in that circumstance as well. In support of this request, CenterPoint Energy commits to notify ERCOT within a reasonable time if any of the four representations listed above is not true with respect to any other ERCOT member to the extent that a third party owns or holds at least five percent of the voting securities of CenterPoint Energy and the other ERCOT member. In approving Calpine Corporation's affiliate determination request, the ERCOT Board imposed a similar reporting requirement on Calpine Corporation: "If at any time any entity that directly or indirectly owns five percent or more of the available voting securities of a T&D Entity also directly or indirectly owns twenty percent or more of the available voting securities in Calpine or if at any time any entity that directly or indirectly owns five percent or more of the available voting securities of a T&D Entity and that also directly or indirectly owns at least five percent of Calpine's voting securities begins to exercise substantial influence or control over Calpine's policies or actions." If the ERCOT Board declines to make this additional determination, CenterPoint Energy requests that the ERCOT Board provide clear guidance to

[6] The materials for the October 11, 2016 board meeting are available online at: http://www.ercot.com/calendar/2016/10/11/76339-BOARD.

[7] The materials for the September 17, 2013 board meeting are available online at: http://www.ercot.com/calendar/2013/9/17/32791-BOARD.

ERCOT members regarding how day to day changes in voting security ownership of ERCOT members should be addressed going forward. The absence of clear direction from the ERCOT Board on this issue may create significant uncertainty within the ERCOT stakeholder process regarding representation and voting rights of ERCOT members.

In conclusion, CenterPoint Energy does not believe it or any of its subsidiaries is an affiliate of any other ERCOT member under the plain language of the ERCOT Bylaws. If the ERCOT Board disagrees, however, CenterPoint Energy requests that the ERCOT Board exercise its discretion under the ERCOT Bylaws to determine that CenterPoint Energy is not an affiliate of any other ERCOT member.

CenterPoint Energy appreciates the ERCOT Board's consideration of this letter. Please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely,

DocuSigned by:
Patrick Peters
D463B1472AE24A2...

Patrick Peters

cc: Vickie Leady
Jon Levine

Exhibit A-4

THOMPSON & KNIGHT LLP

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September 29, 2017

VIA E-MAIL

Craven Crowell
Chairman, Board of Directors
ATTN: Chad Seely, General Counsel
ERCOT
7620 Metro Center Drive
Austin, TX 78744

Re: Vanguard Group, Inc. Affiliate Issue

Dear Mr. Crowell:

I am submitting this letter on behalf of the following ERCOT corporate members from the Industrial Consumer Segment (the "Participating Companies"):

Chevron Corp.
Pioneer Natural Resources Company
Praxair, Inc.
Texas Instruments, Inc.
Valero Energy Corp.
Dow Chemical Company

I have provided each of these companies with a copy of the letter from Vistra Energy Corp. (Vistra Energy), dated September 5, 2017, notifying the Board that Vanguard Group, Inc. (Vanguard) had purchased greater than 5% of the shares of Vistra Energy and appears to also hold greater than a 5% share in various other corporate members of ERCOT, including the Participating Companies. The Participating Companies support Vistra Energy's request for a determination that they are not affiliates of Vistra Energy or any other corporate member as a result of Vanguard's interest. The Participating Companies have not independently verified whether Vanguard does, in fact, own 5% or more of their shares, and this request should not be construed as an admission of that fact. However, assuming that Vistra Energy's information is correct, the Participating Companies request a determination of non-affiliation.

As noted in Vistra Energy's letter the Board has discretion to determine that companies are not affiliates if the common ownership is less than 20% and the entities do not share a

common parent, are not under "common influence and control," and do not exercise actual substantial influence or control over the policies and actions of one another. In support of their request for a determination of non-affiliation, the Participating Companies each represent the following:

- Vanguard does not own more than 20% of the shares of any of the Participating Companies;

- None of the Participating Companies or their subsidiaries share a common parent, or are under common influence or control, with Vistra Energy or any of the other ERCOT corporate members that Vistra Energy identified as being at least 5% owned by Vanguard;

- None of the Participating Companies or their subsidiaries have a board member that is also a board member of Vistra Energy or any of the other ERCOT corporate members that Vistra Energy identified as being at least 5% owned by Vanguard;

- None of the Participating Companies or their subsidiaries exercise actual influence or control over Vistra Energy or any of the other companies identified as being at least 5% owned by Vanguard, and neither Vistra Energy nor any of the other companies any of the other ERCOT corporate members that Vistra Energy identified as being at least 5% owned by Vanguard exercises actual influence or control over any of the Participating Companies or their subsidiaries;

- None of the Participating Companies are aware of any other ownership interests or relationship that would create an "Affiliate" relationship under the ERCOT Bylaws between the Participating Companies and Vistra Energy or any of the other ERCOT corporate members that Vistra Energy identified as being at least 5% owned by Vanguard;

- The Participating Companies are not affiliates of Vistra Energy or any of the other ERCOT corporate members that Vistra Energy identified as being at least 5% owned by Vanguard under the definition provided in Chapter 11 of the Public Utility Regulatory Act.[1]

In light of these representations, the Participating Companies request a determination that Vanguard's interest does not make them affiliates of Vistra Energy, each other, or any of the other corporate members in which Vanguard owns at least a 5% share.

[1] As noted by Vistra Energy, the definition of "affiliate" excludes registered investment advisers such as Vanguard. *See* Vistra Energy Letter at n. 2.

Very truly yours,

/s/ Katie Coleman
Thompson & Knight, LLP

cc: Vickie Leady
Jonathan Levine

October 2, 2017

Mr. Craven Crowell
Chairman, Board of Directors
ERCOT
7620 Metro Center Drive
Austin, Texas 78744

Attn: Chad Seely, General Counsel for the ERCOT Board of Directors

Dear Mr. Crowell:

This letter is to provide the ERCOT Board of Directors ("Board") additional information on the affiliate issues presented in Vistra Energy's letter to the Board, dated September 5, 2017. In that letter, Vistra Energy informed the Board that Vanguard Group Inc. ("Vanguard"), an investment adviser that serves as the adviser to a number of mutual funds, holds greater than 5% of the shares of Vistra Energy, Citigroup Inc. ("Citigroup"), the indirect parent company of Citigroup Energy, Inc. ("CEI"), and several other companies that are either ERCOT members or have subsidiaries that are ERCOT members.[1] Vistra Energy states in its letter that "[r]ead literally, under ERCOT's Amended and Restated Bylaws approved on August 17, 2015, each of these ERCOT members would be affiliates of Vistra Energy, and of one another, by virtue of being 'entit[ies] in a chain of successive ownership of at least five percent of the voting securities of another entity.'"[2]

CEI appreciates Vistra Energy bringing attention to this issue, which needs to be addressed more generally through an amendment to the ERCOT Bylaws. In

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[1] Vistra Energy relied on information gathered from Morningstar. Vistra Energy's Letter to Mr. Craven Crowell at 1 (Sept. 5, 2017)("Vistra Letter"). The other companies include: Calpine Corp.; CenterPoint Energy Inc.; Chevron Corp.; ConocoPhillips; Consolidated Edison, Inc.; Dow Chemical Company; Dynegy Inc.; Exelon Corporation; First Solar Inc.; NextEra Energy Inc.; NRG Energy Inc.; Nucor Corp.; Pioneer Natural Resources Company; Praxair Inc.; Texas Instruments Inc.; Valero Energy Corp.; and Westar Energy Inc. CEI does not know if this list reflects holdings from one Vanguard fund, aggregated from all Vanguard funds or just some.

[2] Vistra Letter (quoting Amended and Restated Bylaws of ERCOT at § 2.1 (approved Aug. 17, 2015)). ERCOT's Amended and Restated Bylaws ("Bylaws") define "Affiliate" as an entity that: (i) directly or indirectly owns or holds at least five percent of the voting securities of another entity, (ii) is in a chain of successive ownership of at least five percent of the voting securities of another entity, (iii) shares a common parent with or is under common influence or control with another entity, or (iv) actually exercises substantial influence or control over the policies and actions of another entity. Amended and Restated Bylaws of ERCOT at § 2.1.

addition, CEI is supportive of efforts being led by Dynegy to clarify that ERCOT's affiliate requirements are not triggered by investment holdings of the shares of ERCOT entities or their parent companies. At a minimum, the definition of "Affiliate" in Section 2.1 of the ERCOT Protocols and Article 2 of the Bylaws should be harmonized with the definition provided in Sections 11.003(2) and 11.0042 of the Public Utility Regulatory Act, which excludes investment companies, funds, and similar entities, as Dynegy proposes in the pending Nodal Protocol Revision Request 823. Until the Protocol and Bylaws can be amended, the Vistra letter raises a more immediate need for Board action.

More specifically, upon further investigation of Vanguard and its funds, CEI believes the Morningstar and other underlying data Vistra Energy cites indicates, and the ERCOT Board should find, that CEI is not an affiliate of Vistra Energy or the other companies identified in Vistra Energy's letter by virtue of the Citigroup shares in each Vanguard fund.

Vanguard Fund Ownership

As noted above, Vanguard serves as the investment adviser to a number of mutual funds. CEI has a good faith belief based on publicly available information that the following factors apply to the Vanguard holdings underlying Vistra Energy's letter: (1) each Vanguard fund operates as a separate mutual fund, with its own assets and liabilities, (2) each Vanguard fund has its own investors, (3) the investors in each Vanguard fund likely differ across funds so there is not common ownership attributed to each fund, (4) the investment strategy and the portfolio managers likely vary across funds, (5) the holdings in any Vanguard fund can vary at any time, (6) it is each individual mutual fund and not its investment adviser that is the legal and beneficial owner of the shares of Vistra Energy, and (7) no Vanguard entity is an ERCOT member. While there may be commonality of voting the proxies of shares owned by each of the funds, this voting is for purposes of protecting the investment and not for exercising control over any of the entities in whom the investment company holds shares and certainly not for influencing or advising on matters related to ERCOT. Thus, CEI believes these seven factors dictate that the holdings of each Vanguard fund must be assessed separately from any other Vanguard fund.

Under this standard, according to the Morningstar funds chart for Citigroup replicated below in Table A, the single largest fund owner of Citigroup shares is the Vanguard Total Stock Mkt Idx fund with 2.39% of total shares held in Citigroup as of August 31, 2017.[3] This is under the 5% threshold that would

[3] CEI notes that other investment advisors have funds with positions in Citigroup that may hold shares of other ERCOT members. For example, based on information from Blackrock Inc.'s Form 13-F, CEI believes BlackRock Institutional Trust Company, N.A. (a fund) held 4.3% of Citigroup as of June 30, 2017, with all of the Blackrock funds holding an aggregate of 7% of Citigroup and no Blackrock funds holding more that 5%. The factors discussed in this letter that support a finding that the Vanguard fund holdings do not give rise to ERCOT affiliation apply to Blackrock and other comparable firms.

warrant searching for Citigroup's affiliation with any other ERCOT member based on shares that might also be in the Vanguard Total Stock Mkt Idx.

TABLE A

Equity Ownership: C[4]

Funds

Name	Ownership Trend Previous 8 Qtrs	Shares	Change	% Total Shares Held	% Total Assets	Date
Vanguard Total Stock Mkt Idx	Premium	65,032,644	840,044	2.39	0.73	08/31/2017
Vanguard 500 Index Inv	Premium	44,174,934	344,032	1.62	0.88	08/31/2017
SPDR® S&P 500 ETF	Premium	31,064,824	-226,798	1.20	0.90	09/22/2017
Fidelity® Contrafund®	Premium	30,879,246	278,900	1.13	1.83	07/31/2017
Vanguard Institutional Index I	Premium	29,491,739	-316,710	1.08	0.88	08/31/2017
Financial Select Sector SPDR® ETF	Premium	23,178,595	33,480	0.89	6.24	09/22/2017
Vanguard Windsor™ II Inv	Premium	20,856,874	2,257,238	0.77	2.85	06/30/2017
Fidelity Spartan® 500 Index Inv	Premium	15,961,916	99,778	0.59	0.89	07/31/2017
MFS Value A	Premium	14,851,283	862,610	0.55	2.30	07/31/2017
Vanguard Value Index Inv	Premium	14,053,461	83,999	0.52	1.64	08/31/2017
Total: Top 10 funds	**Premium**	**289,545,516**	**4,256,573**	**10.74**		

It is correct to note that a group of Vanguard funds own an aggregate of 6.73% of Citigroup as of June 30, 2017, as indicated under the Investor tab in the Morningstar ownership chart replicated below as Table B.

[4] Based on September 25, 2017 search of Citigroup stock symbol "C".

TABLE B

Equity Ownership: C[5]

Institutions

Name	Ownership Trend Previous 8 Qtrs	Shares	Change	% Total Shares Held	% Total Assets	Date
Vanguard Group Inc	Premium	183,306,563	107,622	6.73	0.60	06/30/2017
State Street Corp	Premium	123,763,057	-3,966,124	4.54	0.73	06/30/2017
Fidelity Management and Research Company	Premium	104,864,727	3,797,375	3.85	0.94	06/30/2017
Wellington Management Company LLP	Premium	48,841,212	25,638,860	1.79	0.77	06/30/2017
BlackRock Fund Advisors	Premium	38,927,807	9,217	1.50	1.15	09/22/2017
Harris Associates L.P.	Premium	41,350,951	221,171	1.52	4.98	06/30/2017
T. Rowe Price Associates, Inc.	Premium	40,657,851	7,054,296	1.49	0.49	06/30/2017
Invesco Advisers, Inc.	Premium	38,276,251	-1,660,312	1.40	1.69	06/30/2017
J.P. Morgan Investment Management Inc.	Premium	34,524,443	1,646,200	1.27	0.98	06/30/2017
Northern Trust Investments N A	Premium	34,097,795	1,011,532	1.25	0.63	06/30/2017
Total: Top 10 institutions	**Premium**	**688,610,657**	**33,859,837**	**25.34**		

However, the investor tab does not tell us which or how many of those same funds also own Vistra Energy or any other ERCOT member shares nor does it account for the fact that the funds are not identical for the reasons noted as factors (1) through (7) above. It is an apples-to-oranges comparison. Instead, the apple-to-apple comparison as applied to Citigroup begins with the question: does Vanguard Total Stock Mkt Idx own more than 5% of any ERCOT member? Only if the answer were yes would there be a need to look for other ERCOT members over 5% in the Vanguard Total Stock Mkt Idx fund to see if the affiliation criteria are met. Based on the Morningstar data, there is no Vanguard fund that owns more than 2.39% of Citigroup so that should end the analysis as to CEI.

CEI also wants to emphasize that its position would be different if an ERCOT member or its holding company were to come to own more than 5% of the shares of another ERCOT member or its holding company. Thus, if another ERCOT member or its holding company parent were to buy 5% of Citigroup, it would be appropriate for the ERCOT Board to make a determination as to whether to treat the two companies as Affiliates when establishing ERCOT Member Segments

[5] Based on September 25, 2017 search of Citigroup stock symbol "C".

and voting rights because of the risk of common control being exercised by Vistra over CEI. In contrast, Vanguard Group Inc. and other similar firms are third-parties with no relationship to ERCOT and should not be considered to be part of a chain of ownership of any ERCOT member when assessing affiliation. If the ERCOT Board wishes to consider investment holdings, in light of the seven factors noted above, the chain of ownership stops at each fund.

Alternative Request for Relief

If the Board disagrees with CEI and believes that its rules require aggregation across funds and that ERCOT members are technically affiliated if those aggregated fund holdings exceed 5%, CEI respectfully requests that the Board exercise its discretion and determine that there is no affiliation as a result of holdings by investors, as there are no indicia that the investment holdings are an attempt to control or create an ability to control ERCOT members or their market activities.[6]

Citigroup shares are publicly traded in the secondary stock markets. On any given day, investors could buy or sell Citigroup shares. Citigroup does not control who buys its shares, how long such investors hold its shares, or when an investor elects to sell such shares. The same is likely true for the publicly traded shares of other ERCOT members or their parent companies. Such holdings also can be transient—meaning that the number of shares held can vary from day to day.

In order to avoid the burden on the Board and ERCOT members that would be created with tracking and reporting such holdings, CEI requests that the Board make a determination that an ERCOT affiliation does not arise when an entity, such as an investment advisor or company, directly or indirectly owns voting securities between five percent and twenty percent of an ERCOT member or a company in the chain of ownership of the ERCOT member (*i.e.*, its ultimate parent) where the members covered by such an investment do not share a common parent, are not under "common influence or control," and do not exercise actual substantial influence or control over the policies and actions of one another. This determination would apply to holdings that would qualify for disclosure under SEC Schedule 13G where the person has purchased the securities in the ordinary course of business rather than to change or influence control over the issuer.[7]

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[6] As Vistra Energy discusses in its letter, the Bylaws provide that in cases where the affiliation arises due to an entity directly or indirectly owning between five percent and twenty percent of the voting securities of more than one ERCOT member (or a parent), the Board may determine whether the commonly owned entities are "Affiliates" for purposes of establishing ERCOT Member Segment and voting rights, provided the entities do not share a common parent, are not under "common influence or control," and do not exercise actual substantial influence or control over the policies and actions of one another. Amended and Restated Bylaws of ERCOT at § 2.1.

[7] *See* Securities Exchange Act of 1934, 17 CFR § 240.13d-1(b)(1)(i) ("Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect

CEI is happy to answer any questions the Board might have concerning this letter. I can be reached at 512-632-7013.

Respectfully,

Citigroup Energy Inc.

Eric Goff
Director

Cc: Tisa Wilkins, ERCOT
Chad Seely, ERCOT
Victoria Sharp, CEI
Tim McKone, CEI

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of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect…").

Exhibit A-6

Dynegy Inc.
601 Travis Street, Suite 1400
Houston, Texas 77002
Phone 713.507.6400
www.dynegy.com

Mr. Craven Crowell
Chairman, Board of Directors
ERCOT
7620 Metro Center Drive
Austin, TX 87844

Via email
Attention: Chad Seeley

October 6, 2017

Re: Dynegy Request for Board Determination of Non-Affiliation

Dear Mr. Crowell:

As requested by Vickie Leady, Assistant General Counsel & Assistant Corporate Secretary of ERCOT, Dynegy Inc. ("Dynegy") submits the instant request that the ERCOT Board of Directors find that Dynegy is not affiliated with any other ERCOT Members via a common passive equity investor. First, Dynegy understands that ERCOT Legal will recommend that the ERCOT Board adopt a "blanket" resolution to address passive holdings by investment companies to provide certainty for 2017 and 2018. ERCOT Legal will also provide the opportunity for entities to submit proposals that would amend the definition of "Affiliate" in the Bylaws, which could be acted upon in order to permanently resolve this issue. Dynegy fully supports this recommendation. Based on recent SEC filings, Dynegy understands that there are 7 investment companies with passive holdings of greater than 5% in its voting securities (for ease, referred to as Passive Investment Holders).[1]

In the absence of a blanket resolution or amended Bylaws as described above, Dynegy respectfully requests that the ERCOT Board issue a determination that Dynegy is not affiliated with any other ERCOT Members due to purchases of Dynegy shares in the open

[1] These Passive Investment Holders are the Vanguard Group, Inc., Oaktree Capital Management, L.P., Carlson Capital, L.P., Avenue Capital Group, MFS Investment Management, BlackRock Inc., and Fidelity Management & Research Company. Additionally, Terawatt Holdings, LP ("Terawatt"), an indirect and wholly-controlled subsidiary of ECP Controlco, LLC ("ECP"), currently owns approximately 14.88% of the total outstanding shares of Dynegy's common stock. ECP has announced a transaction whereby Calpine Corporation ("Calpine") will become a wholly controlled subsidiary of ECP (the "Proposed Calpine Transaction") and has sought the required regulatory approvals in connection with this proposed transaction. In these regulatory filings, ECP has committed that prior to the closing of the Proposed Calpine Transaction, ECP will cause Terawatt to reduce the number of its shares of Dynegy's common stock so that it will own less than 10% of the outstanding shares of Dynegy's common stock. Furthermore, as of closing of the Proposed Transaction, Tyler Reeder will have resigned from Dynegy's board of directors and none of Terawatt or any other ECP affiliate will have the right to appoint a director to Dynegy's board of directors. *See* Application for Authorization Under Section 203 of the Federal Power Act, FERC Docket No. EC17-182-000 (September 2017).

market by the Passive Investment Holders. Dynegy agrees with the arguments advanced by Vistra Energy in the September 5, 2017 letter of Amanda Frazier to the ERCOT Board of Directors regarding the Vanguard Group, Inc. ("Vanguard"). As noted by Ms. Frazier, Vanguard and a number of other investment companies are actively involved in buying and selling shares of publicly traded companies on the open market. Under a strict reading of ERCOT's Bylaws, approved on August 17, 2015, each of Dynegy's Passive Investment Holders would cause Dynegy to be an affiliate of other ERCOT market participants, by virtue of being "entit[ies] in a chain of successive ownership of at least five percent of the voting securities of another entity." Dynegy urges the ERCOT Board to conclude that an affiliate relationship does not exist among entities that have a common Passive Investment Holder. Specifically, in support of this request, Dynegy states that:

1) Neither Dynegy nor its subsidiaries share a common parent with, or are under common influence or control with any other ERCOT member by virtue of passive holdings of voting securities by investment companies;
2) Neither Dynegy nor its subsidiaries have a board member who is also a board member of any other ERCOT member with shares held by one of Dynegy's Passive Investment Holders;
3) Neither Dynegy nor its subsidiaries exercise actual influence or control over any other ERCOT member, and no other ERCOT member exercises actual influence or control over Dynegy or its subsidiaries;
4) Dynegy is not aware of any other ownership interests or relationships that would create an "Affiliate" relationship under the definition found in the ERCOT bylaws between Dynegy and its subsidiaries and any other ERCOT member whose voting shares are owned by one of Dynegy's Passive Investment Holders.

Dynegy therefore requests that the ERCOT Board of Directors find that it and its subsidiaries are not affiliates of any other ERCOT member, as the term "Affiliate" is defined in Article 2 of the ERCOT Bylaws for purposes of ERCOT membership and stakeholder activities, by virtue of the Passive Investment Holders' ownership of voting securities.

Respectfully Submitted,
/s/ Michelle D. Grant
Michelle D. Grant
Managing Director & Corporate Counsel, Regulatory
Dynegy Inc.

Exhibit A-7

Noel H. Trask
Assistant General Counsel
Constellation, an Exelon company

1310 Point Street, 8th Floor
Baltimore, MD 21231
(410) 470-4370
noel.trask@constellation.com

Mr. Craven Crowell
Chairman, Board of Directors
ERCOT
7620 Metro Center Drive
Austin, Texas 78744

October 5. 2017

Re: Request for Determination that Exelon Corporation ("Exelon") and its affiliates are not "Affiliates," as defined in the ERCOT Bylaws, of Certain Entities

Dear Mr. Crowell:

Exelon is a Corporate Member of ERCOT in ERCOT's Independent Generator sector. Currently, there are four investment companies that own 5% or more of Exelon's outstanding securities (together referred to as the "Investment Companies").[1] Based on data Exelon has obtained from IPREO,[2] the Investment Companies also own more than 5% of many other ERCOT members or their family companies (hereinafter, "Other ERCOT Members"), as follows:[3]

BlackRock

AEP	6.77%
Air Products and Chemicals, Inc	7.01%
Bank of America	6.33%
Citigroup Inc	7.04%
CMC Steel Texas	12.44%
CenterPoint Energy Inc	8.63%
ConocoPhillips	7.06%
Chevron Corp	6.58%

[1] The Investment Companies are Blackrock, Inc. ("BlackRock"), Vanguard, Inc. ("Vanguard"), State Street Global Advisors ("State Street"), and Fidelity Management & Research Company ("Fidelity"). BlackRock affiliates own 7.68%, Vanguard affiliates own 7.24%, State Street affiliates own 5.98%, and Fidelity affiliates own 5.61%

[2] See https://ipreo.com/bd-corporate/

[3] Note that there are several other entities the shares of which one or more of the Investment Companies own more than 1% but less than 5%. Accordingly, it is possible that the Investment Companies' ownership shares could grow and exceed 5% at any time. In addition, notwithstanding Exelon's extensive research using Ipreo, it is possible that Exelon has not identified all ERCOT members that are 5% or more owned by one or more of the Investment Companies. Notwithstanding, Exelon is confident that the representations it makes herein regarding no influence nor control would apply equally to any such entities.

Dynegy Inc	8.69%
Consolidated Edison, Inc	7.92%
First Solar Inc	6.60%
Morgan Stanley Capital Group Inc	5.56%
NextEra Energy Inc	8.11%
NRG Energy Inc	6.03%
Nucor Corp	6.60%
Occidental Corporation	7.62%
PNM Resources, Inc	10.52%
Praxair Inc	6.12%
Pioneer Natural Resources Company	6.81%
Southern Power Company	6.11%
Spark Energy, Inc	6.87%
Texas Instruments Inc	11.00%
Valero Energy Corp	8.90%
Westar Energy lnc	11.67%

Vanguard

AEP	7.18%
Air Products and Chemicals, Inc	8.08%
Bank of America	6.32%
Citigroup Inc	6.79%
CMC Steel Texas	11.09%
CenterPoint Energy Inc	11.45%
ConocoPhillips	7.50%
Calpine Corp	8.33%
Chevron Corp	7.43%
Dynegy Inc	7.52%
Consolidated Edison, Inc	7.11%
First Solar Inc	6.27%
Morgan Stanley Capital Group Inc	5.13%
NextEra Energy Inc	7.36%
NRG Energy Inc	10.30%
Nucor Corp	8.06%
Occidental Corporation	7.28%
PNM Resources, Inc	10.14%
Praxair Inc	7.33%
Pioneer Natural Resources Company	7.18%
Southern Power Company	7.19%
Spark Energy, Inc	9.90%
United States Gypsum Company	5.05%
Valero Energy Corp	7.79%
Vistra Energy	5.33%
Westar Energy Inc	8.94%

State Street

AEP	5.15%
Air Products and Chemicals, Inc	5.11%
CenterPoint Energy Inc	5.65%
ConocoPhillips	5.41%
Chevron Corp	6.44%
Consolidated Edison, Inc	6.56%
Morgan Stanley Capital Group Inc	8.49%
NextEra Energy Inc	5.35%
Nucor Corp	5.99%
Occidental Corporation	5.31%
Pioneer Natural Resources Company	5.66%
Texas Instruments Inc	5.00%
Valero Energy Corp	5.89%

Fidelity

ConocoPhillips	5.02%
Dynegy Inc	5.35%

Under ERCOT's Amended and Restated Bylaws most recently approved on August 17, 2015, each of the Other ERCOT Members would be affiliates of Exelon, and of one another, by virtue of being "entit[ies] in a chain of successive ownership of at least five percent of the voting securities of another entity."[4] The purpose of this letter is to request that the ERCOT Board determine that, notwithstanding the Investment Companies' ownership shares of Exelon and the Other ERCOT Members, Exelon is not an affiliate of any of the Other ERCOT Members for purposes of determining member segment and voting rights.

The Board has discretion to make this determination when the entities do not share a common parent, are not under "common influence or control," and do not exercise actual substantial influence or control over the policies and actions of one another.[5] Under the ERCOT Bylaws, evidence of influence and 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" by any direct or indirect means.[6]

Exelon does not share a common parent with any of the Other ERCOT Members. Exelon also does not have a board member who is also a board member of any of the Other ERCOT Members. In addition, notwithstanding the Investment Companies' ownership of shares of Exelon and of the Other ERCOT Members, Exelon and the Other ERCOT Members are not under common control. The Investment Companies' interests are, on information and belief,

[4] See ERCOT Bylaws, Article 2, Section 1.
[5] *Id.*
[6] *Id.*

nothing more than passive in nature.[7] None of the Investment Companies exercise any kind of active control in the management or operations of Exelon. In addition, Exelon exercises no actual influence or control over any of the Other ERCOT Members, nor do any of them exercise any actual influence or control over Exelon.

Accordingly, Exelon requests that the ERCOT Board of Directors determine that Exelon and its affiliates are not Affiliates of any of the Other ERCOT Members, as the term "Affiliate" is defined in Article 2 of the ERCOT Bylaws for purposes of ERCOT membership or stakeholder participation, by virtue of the Investment Companies' ownership of Exelon's stock. The ERCOT Board of Directors granted similar requests on October 11, 2016, when it determined that TCEH Corp. is not an affiliate of GDF-Suez Energy North America Inc. or Wind Energy Transmission Texas, and on September 17, 2013, when it determined that Calpine Corporation is not an affiliate of Cross Texas Transmission LLC under the ERCOT Bylaws merely because of the existence of an entity holding an indirect interest in those entities.

Very truly yours,

Noel H. Trask
Assistant General Counsel
Constellation, an Exelon company

Cc: Chad Seely, General Counsel, ERCOT
Vickie Leady, Assistant General Counsel, ERCOT
Jonathan Levine, Senior Corporate Counsel, ERCOT
Marka Shaw, Director, Wholesale Market Development, Exelon Corporation
Carrie Allen, Associate General Counsel, Exelon Corporation

[7] Exelon notes that Exelon and several of the other entities listed above are components of the Dow Jones Industrial, S&P 500, and/or the Russell 2000/3000 stock indices, and that the Investment Companies all manage mutual funds based on these indices, which means that they must purchase shares in Exelon and many of the other ERCOT Members. In addition, the numerator used to calculate the percentages set out above is total shares held, which is not necessarily the same as total shares the Investment Companies have the power to vote. Determining the exact number of shares each of the Investment Companies has the power to vote of other ERCOT Members is very difficult. As a result, Exelon has made the conservative assumption that the number of shares held is equivalent to the number of shares the Investment Companies have the power to vote. In all likelihood, the number of shares that the Investment Companies can vote is lower.

September 29, 2017

Mr. Craven Crowell, Chairman
ERCOT Board of Directors
7620 Metro Center Drive
Austin, Texas 78744

Re: Request Determination of Non-Affiliation per ERCOT Bylaw Article 2

Dear Mr. Crowell:

First Solar, Inc. ("First Solar") respectfully requests the ERCOT Board of Directors ("Board") determines that First Solar and its subsidiaries are not an "Affiliate" as defined by ERCOT Bylaws of any other ERCOT member.[1] First Solar makes this request for the purposes of ERCOT Member Segment and voting rights, in light of ownership of First Solar stock by Vanguard Group Inc. ("Vanguard"). Such a ruling would be consistent with both ERCOT Bylaws and Board precedent.

As stated in its most recent public SEC filing, Vanguard holds 6,545,727 of First Solar shares, representing approximately 6.27% of the company's shares.[2] Vanguard also holds more than 5% of shares in at least 18 other ERCOT members.[3]

ERCOT Bylaws Article 2 defines an Affiliate to include entities that are part of a relationship in which (i) "an entity 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 control over the policies and actions of another entity."

The Board has the discretion to make a determination of non-affiliation for an entity in the case of (i) or (ii) above where the relationships outlined in (iii) and (iv) do not exist, so long as the entity in question owns at least 5% but less than 20% of the voting securities of the entity in question, as is the case for First Solar. First Solar meets the threshold that relationships in (iii) and (iv) above do not exist. Specifically, First Solar does not share a common parent with any other ERCOT member, nor would Vanguard be considered a parent given its ownership of 6.27% of First Solar Stock. Further, First Solar is not under common influence or control of any ERCOT member and other no other ERCOT member exercises substantial influence or control over First Solar policies or actions.

[1] ERCOT Amended and Restated Bylaws, Art. 2, Sec. 1 (Aug. 17, 2015).
[2] Vanguard Group Inc., Form 13F-HR/A, SEC Accession No. 950123-17-008227 (Aug. 24, 2017).
[3] *See* Letter from Ms. Amanda J. Frazier (Vistra Energy) to Chairman Craven Crowell (ERCOT) (Aug. 23, 2017).

With regard to assessing common influence or control, ERCOT Bylaws provide guidance that "[e]vidence of influence or control shall include management and/or policies and procedures of another whether that power is established through ownership or voting …or by other direct or indirect means."

As evidence of influence or control, 99.2% of Vanguard's shareholder voting rights are for "routine matters," such as selection of accountants, uncontested elections of directors, and annual report approval.[4] "Routine matters" do not include "non-routine" matters (e.g. contested election of directors, merger, sales of substantial assets, changes to incorporation effecting shareholders, or change in fundamental investment policy).[5] As such, Vanguard does not exert any actual influence or control over First Solar management or policies, except to the extent of routine matters outlined above. Further, First Solar asserts that neither First solar, or its subsidiaries, are under the common or substantial influence, are under the control of, or have in common any board members with any other ERCOT member. As such, no other ERCOT member exerts any influence or control over First Solar management or policies – either indirectly through Vanguard's stockholder status or directly. First Solar is also not aware of any other ownership interests or relationships that would create an Affiliate relationship with any other ERCOT members.

Such a determination of non-affiliation is not without recent precedent before the Board. The Board made similar determinations of non-affiliation for TCEH Corp. on October 11, 2016 and for Calpine Corp. on October 17, 2013.

Given the reasons stated above, First Solar respectfully requests the Board make a determination that First Solar is not an Affiliate of any other ERCOT member due to ownership of First Solar stock by Vanguard.

Sincerely,

Colin Meehan
Director Government and Public Affairs
First Solar, Inc.

Cc: Chad Seely (via email)

[4] Vanguard Group Inc., Form 13F-HR/A.
[5] *See* Division of Investment Management: Frequently Asked Questions about Form 13F, (March 15, 2017) https://www.sec.gov/divisions/investment/13ffaq.htm.

Exhibit A-9

NRG Energy, Inc.
1303 San Antonio Street,
Suite 700
Austin, TX 78701

October 2, 2017

VIA EMAIL AND FIRST CLASS MAIL

Mr. Craven Crowell
Chairman, Board of Directors
ERCOT
7620 Metro Center Drive
Austin, Texas 78744

Re: Investor holdings in ERCOT members and affiliates; Request for determinations regarding affiliation of members with NRG Energy, Inc.

Attn: Mr. Chad Seely, General Counsel, and Vickie Leady, Assistant General Counsel

Dear Mr. Crowell:

NRG Energy, Inc. (NRG) is in receipt of the letter Ms. Amanda Frazier of Vistra Energy Corp. sent to you dated September 5th regarding the holdings of Vanguard Group Inc. in a number of ERCOT market participants. Reliant Energy Retail Services LLC and NRG Texas Power LLC, wholly owned subsidiaries of NRG Energy, Inc., are ERCOT members. In her letter, Ms. Frazier identified Vanguard Group as owning greater than 5% of the shares of the following ERCOT members (or their family companies): Calpine Corp., CenterPoint Energy Inc., Citigroup Inc., Chevron Corp., ConocoPhillips, Consolidated Edison Inc., Dow Chemical Company, Dynegy Inc., Exelon Corporation, First Solar Inc., NextEra Energy Inc., NRG Energy Inc., Nucor Corp., Pioneer Natural Resources Company, Praxair Inc., Texas Instruments Inc., Valero Energy Corp., Vistra Energy Corp., and Westar Energy Inc.

NRG has conducted additional analysis and has identified additional institutional investors that own more than 5% of the stock of both NRG Energy and other ERCOT members (or family companies): Air Liquide Large Industries US LP, BP Energy Company, Direct Energy LP (Centrica), E.ON North America LLC, Freeport LNG Development LP, Occidental Chemical Corporation, Shell Energy North America (US) LP, and Southern Power Company. Please see Attachment 1 for a complete list of these investors and companies.

NRG concurs with the analysis of Ms. Frazier that as the current ERCOT Bylaws are written and read literally, the companies above could be construed to be "Affiliates" simply by virtue of being "entit[ies] in a chain of successive ownership of five percent of the voting securities of

another entity. . . ." Notwithstanding, this definition is inconsistent with state law applicable to ERCOT market participants. NRG intends to support ERCOT Bylaws amendments to align the Bylaws and other ERCOT procedures with more appropriate state law standards. Until then, NRG believes it is appropriate for the ERCOT Board to make a determination, as the Board is empowered to grant pursuant to Article 2, Section 1, of the Bylaws, that the companies above do not operate as Affiliates – that is, the fact of these common, indirect interests of institutional investors do not empower these members to "direct or cause the direction of the management and/or policies and procedures" of the other members.

In keeping with the format of the Vistra request of the ERCOT Board, NRG Energy asserts the following:

- Neither NRG nor any of its subsidiaries share a common parent with or are under the common influence or control of any of all the other ERCOT members listed above.
- Neither NRG nor any of its subsidiaries have a board member or any of the other ERCOT members listed above.
- Neither NRG nor any of its subsidiaries exercise actual influence or control over any of the other ERCOT members listed above, and none of those entities exercises actual influence or control over NRG or its subsidiaries.
- NRG is not aware of any ownership interests or relationships that would create an "Affiliate" relationship under the ERCOT Bylaws definition between NRG or its subsidiaries and any other ERCOT member whose voting shares are owned by common institutional investors.

NRG hereby requests that the ERCOT Board of Directors determine that NRG and its subsidiaries are not Affiliates of any other ERCOT member as identified above nor any other ERCOT members, should the Board choose to make a broader determination, as the term "Affiliate" is defined in Article 2 of the ERCOT Bylaws, for purposes of ERCOT membership or stakeholder participation by virtue of institutional investors' ownership of its voting securities.

Respectfully submitted,

Mark A. Walker
Vice President, Regulatory Affairs
NRG Energy, Inc.
Counsel for NRG Companies
1303 San Antonio Street, Suite 700
Austin, TX 78701
Telephone: (512) 585-0450
Facsimile: (512) 691-6353
Email: mark.walker@nrg.com

NRG Energy Inc.

Attachment 1 to Letter to Chairman Crowell

September 2017

Institutions With Over 5% Ownership[1] in Multiple ERCOT Members 2Q17

	The Vanguard Group, Inc.[2]	BlackRock[2]	State Street Global Advisors (SSgA)[2]	Oaktree Capital Management, L.P.	Fidelity Management & Research Company	Capital Research Global Investors (U.S.)
Air Liquide S.A. (AI_EPA)						
BP p.l.c. (BP._LON)		X				
Calpine (CNP)	X	X				
CenterPoint (CPN)	X	X	X			
Centrica plc (CNA_LON)		X				
CitiGroup (C)	X	X				
Chevron (CVX)	X	X	X			
ConcoPhillips (COP)	X	X	X			
Consolidated Edison (ED)	X	X	X			
DowDupont (DWDP)	X	X				
Dynegy (DYN)	X	X		X	X	
E.ON SE (EOAN_FRA)						
Exelon (EXC)	X	X	X		X	
First Solar (FSLR)	X	X				
Freeport-McMoRan Inc. CL B (FCX)	X	X				X
Nextera Energy (NEE)	X	X	X			
NRG (NRG)	X	X				
Nucor (NUE)	X	X	X			
Occidental Petroleum Corporation (OXY)	X	X	X			
Pioneer Natural Resources (PXD)	X	X	X			
Praxair (PX)	X	X	X			
Royal Dutch Shell PLC (RDSB_LON)		X				
The Southern Company (SO)	X	X				
Texas Instruments (TXN)	X	X				X
Valero (VLO)	X	X	X			
Vistra (VST)	X			X		
Westar (WR)	X	X				

[1] All information as of 9/26/2017. Outstanding shares per Factset. Institutional holders per BD Corporate; [2] Consolidated ownership

Exhibit B

MEMORANDUM

To: Chad V. Seely, Vice President, General Counsel and Corporate Secretary

From: Jonathan Levine, Senior Corporate Counsel
Vickie Leady, Assistant General Counsel and Assistant Corporate Secretary

Date: October 10, 2017

Re: Determination of Affiliate Relationship among ERCOT Members with a Common Equity Investor Pursuant to ERCOT Bylaws

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Issue

Whether a relationship as Affiliates, as defined in ERCOT's Amended and Restated Bylaws (effective August 17, 2015) (Bylaws), exists between Company A and Company B, which are both ERCOT Members, if a third entity, Investment Company, which is not an ERCOT Member, owns or holds at least five percent of the voting securities of each of Company A and Company B, but does not hold enough equity to be the parent of either company.

Brief Answer

Whether Company A and Company B are Affiliates must be considered pursuant to the "Affiliate" definition in the ERCOT Bylaws and, as such under the only applicable item of the definition [that is, in this case, Item (iii)], depends on whether Investment Company exercises influence or control over both Company A and Company B since Investment Company owns at least five percent of their voting securities. The definition provides that the Board of Directors (Board) has discretion to determine whether Company A and Company B are Affiliates, based on the level of influence or control that Investment Company has over Company A and Company B, when the equity investment level is five percent or more.

Facts

Investment Company is a large investment company that is not an ERCOT Member. Company A and Company B are each ERCOT Members in different Market Segments. Investment Company recently disclosed in a public filing that it owns greater than five percent of the voting securities of each of Company A and Company B. However, Investment Company is not the parent of either Company A or Company B.

Company A contacted ERCOT Legal to express concern that Company A and Company B may be considered to be Affiliates under the Bylaws based on these ownership interests by Investment Company. If determined to be Affiliates, one or both of Company A and Company B would be required to change their current Market Segments.

Bylaws Affiliate Definition

Current Definition
Article 2 [Definitions] of the Bylaws, item 1, defines the term "Affiliate" as follows:

> **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.
>
> (*Emphasis added and spacing modified for ease of review*.)

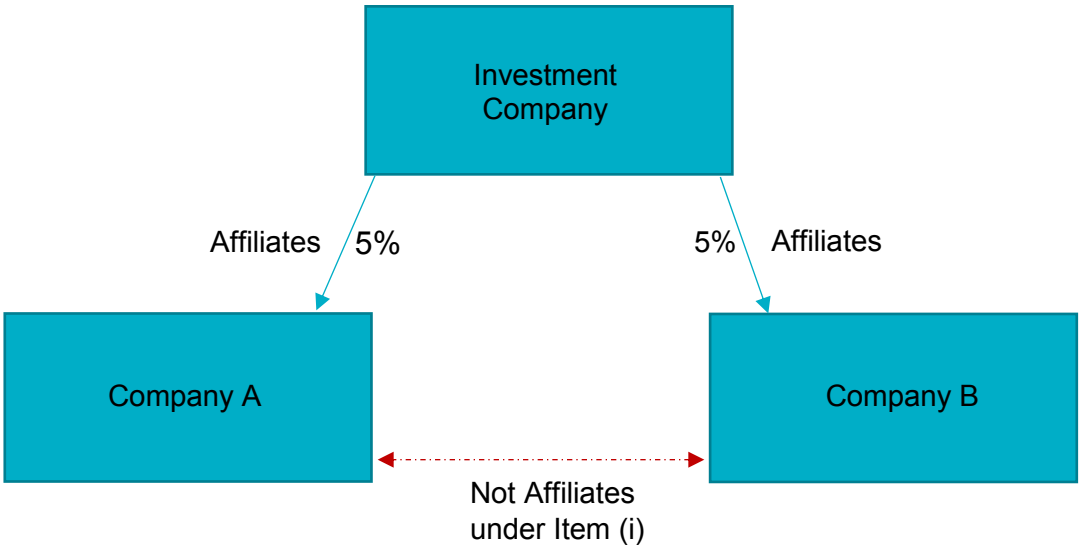
History of Affiliate Definition Amendments
The first two and last two sentences of the definition have been part of the Affiliate definition in the Bylaws since at least 2002. On October 7, 2013, an amendment became effective that added the third sentence, which grants the Board discretion to determine whether or not two entities are Affiliates in cases 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. Aside from this amendment, the Affiliate definition has remained materially unchanged since 2002.

Analysis
There are four types of relationships that may result in entities being considered Affiliates under the Bylaws definition.

Analysis of Bylaws Affiliate Definition Items (i) Through (iv)

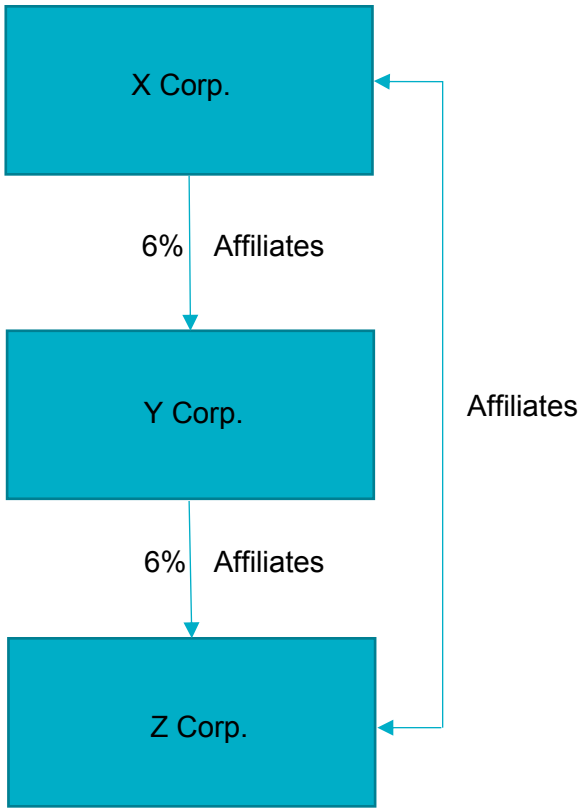
Item (i) an entity that directly or indirectly owns or holds at least five percent of the voting securities of another entity

The definition for Item (i) does not apply in this case. In order to determine whether an Affiliated relationship exists between Company A and Company B under this definition, the issue is whether Company A owns or holds at least five percent of the voting securities of Company B, or vice versa. While Investment Company owns at least five percent of the voting securities of each of Company A and Company B, the facts do not state that Company A owns at least five percent of the voting securities of Company B or that Company B owns at least five percent of the voting securities of Company A. Under the facts, Company A and Investment Company are Affiliates of each other, and Company B and Investment Company are Affiliates of each other (absent a Board determination to the contrary), but Company A and Company B are not Affiliates under Item (i) of the Bylaws definition.



Item (ii) an entity in a chain of successive ownership of at least five percent of the voting securities of another entity

The definition for Item (ii) also does not apply in this case. In order to determine whether an Affiliated relationship exists between Company A and Company B, the issue with respect to Item (ii) is whether Company A or Company B is in a chain of successive ownership of at least five percent of the voting securities of the other. The term “chain of successive ownership” is not defined in the Bylaws, but the most reasonable interpretation is a vertical series of ownership interests among companies, each of which is five percent or more, thus linking the top level of ownership with the bottom level (e.g., X Corp. owns six percent of Y Corp., which owns six percent of Z Corp., rendering X Corp. “in a chain of successive ownership of at least five percent of the voting securities of” Z Corp.).



Here, as noted above under Item (i) and the associated illustration, the facts do not state that Company A has an ownership interest of five percent or more of Company B or any companies that have an ownership interest in Company B at any level, or vice versa. The facts do not support any evidence of successive ownership of stock of Company A and Company B. Because of Investment Company's ownership stakes are direct and independent in Company A and Company B, any companies that are owned (five percent or greater) by Company A or Company B would be Affiliates of Investment Company, and any companies with an ownership interest (five percent or greater) of Investment Company would be Affiliates of each of Company A and Company B, absent a Board determination of non-affiliation, but that is not the issue in the instant case.

> **Item (iii) an entity which shares a common parent with or is under common influence or control with another entity**

Item (iii) is applicable in the determination of an Affiliate relationship between Company A and Company B. Since Investment Company does not hold a significant amount of equity in either company (typically at least fifty percent of voting stock), Investment Company would not be considered the parent of either Company A or Company B. Despite the lack of common parent in this situation, Item (iii) is applicable because the language of the definition calls into question the Investment Company's influence or control over Company A and Company B by the ownership of five percent or more of both companies. Regarding the meaning of "influence or control," the Bylaws definition of Affiliate states:

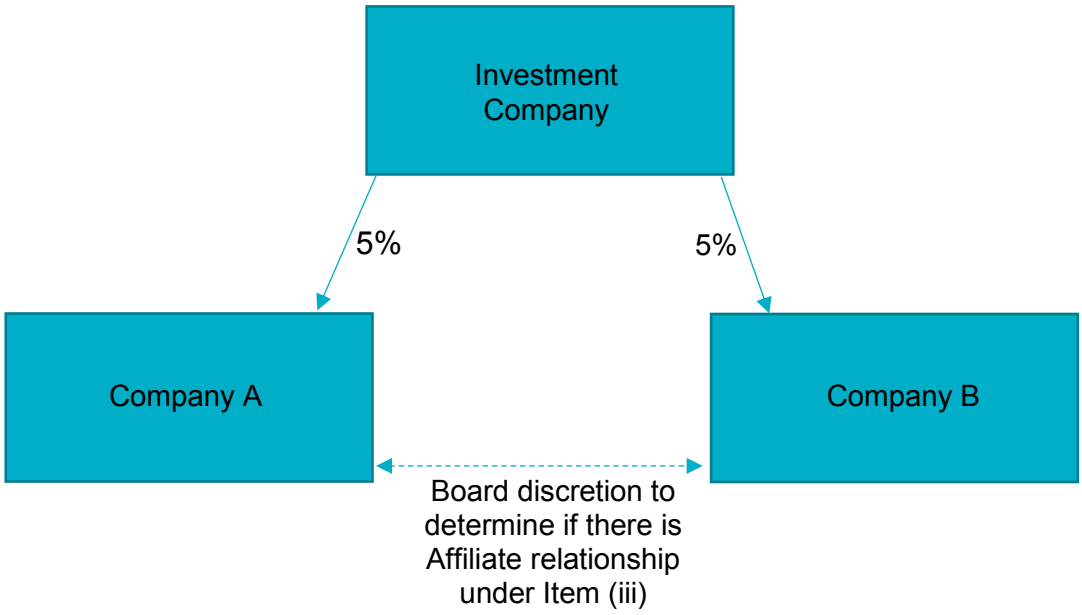
> **Evidence of influence or control** shall include the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies and procedures of another, **whether that power is**

established through ownership or voting of at least five percent of the voting securities or by any other direct or indirect means.

(Emphasis added.)

While this language does not mean that an ownership interest of at least five percent is conclusive or even presumptive evidence of influence or control, it at least implies that such an ownership level is one item of evidence that may indicate the existence of influence or control. Since Investment Company owns at least five percent of the voting securities of Company A and Company B, there is at least disputable evidence under the definition that Investment Company may have influence or control over each of Company A and Company B (*i.e.*, that Investment Company possesses, directly or indirectly, the power to direct or cause the direction of the management and/or policies and procedures of Company A and Company B).

The Bylaws definition of Affiliate further provides that "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." Accordingly, in the case of Company A and Company B, since there is disputable evidence that Investment Company has influence or control over each, the Board may, in its discretion, determine whether or not Company A and Company B are Affiliates, based on the actual level of influence or control Investment Company has over each of Company A and Company B.



Item (iv) an entity that actually exercises substantial influence or control over the policies and actions of another entity

The definition for Item (iv) does not apply in this case. In order to determine whether an Affiliated relationship exists between Company A and Company B, the issue is whether Company A actually exercises substantial influence or control over the policies and actions of Company B, or vice versa. As noted with the application of Item (iii) above there is no presumptive evidence to indicate that Company A and Company B have any influence or

control over one another, particularly given the low levels of equity ownership and no other known factors affecting the direction of management or policies of either company, let alone substantial influence or control.

Past Affiliate Determinations

The conclusion that Item (iii) applies in this case is consistent with two recent prior Board determinations regarding possible Affiliate relationships among ERCOT Members. There have only been two Board determinations before the Board since the Affiliate definition was modified in 2013 – one involving TCEH Corp. (TCEH) most recently, and the other involving Calpine Corporation (Calpine).

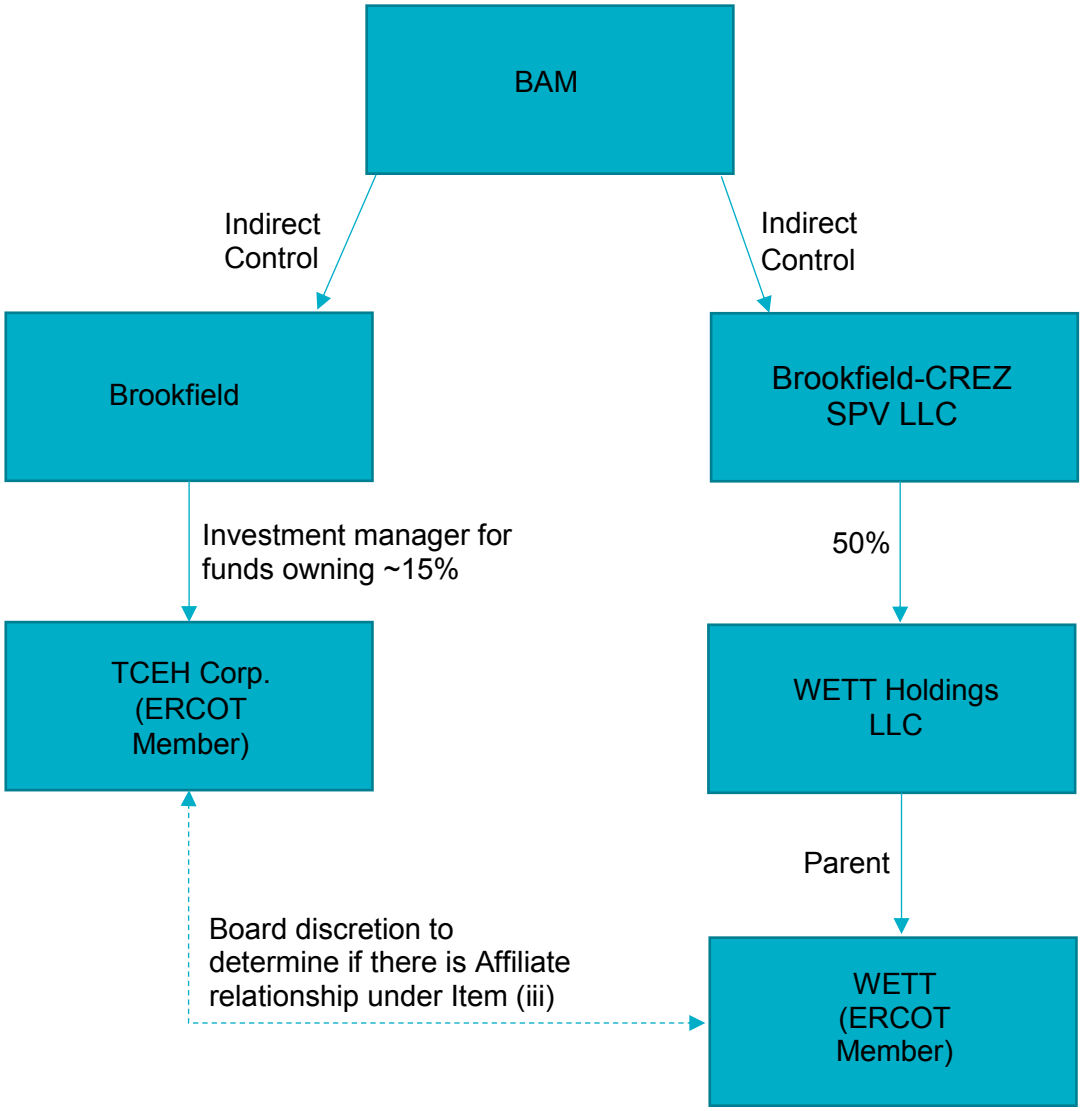
TCEH Request for Determination of Non-Affiliation in 2016

Most recently, in October 2016, Brookfield Asset Management Private Institutional Capital Advisor (Canada), L.P. (Brookfield), was the investment manager for funds or entities that beneficially owned, in aggregate, approximately fifteen percent of TCEH, an ERCOT Member. Brookfield was indirectly controlled by Brookfield Asset Management Inc. (BAM), which also indirectly controlled Brookfield-CREZ SPV LLC, which owned a fifty percent interest in WETT Holdings LLC, the parent of WETT, which was also an ERCOT Member.

In light of these ownership interests of at least five percent, TCEH requested that the Board determine, in its discretion, whether TCEH and WETT should be considered Affiliates.[1] The Board determined that TCEH and WETT should not be considered Affiliates under the Bylaws for purposes of determining Member Segment and voting rights based on the representations that:

(1) TCEH did not share a common parent with WETT;
(2) TCEH was not under common influence or control with WETT;
(3) TCEH will not have a board member that is also a board member of WETT; and
(4) TCEH did not exercise actual influence or control over WETT and WETT did not exercise actual influence or control over TCEH.

[1] The request also covered a similar factual scenario involving TCEH and GDF Suez Energy North American Inc. (GDF Suez). In the interest of simplicity, since the set of facts is substantially similar to the set of facts between TCEH and WETT, this memorandum does not include a separate analysis of the TCEH-GDF Suez scenario.

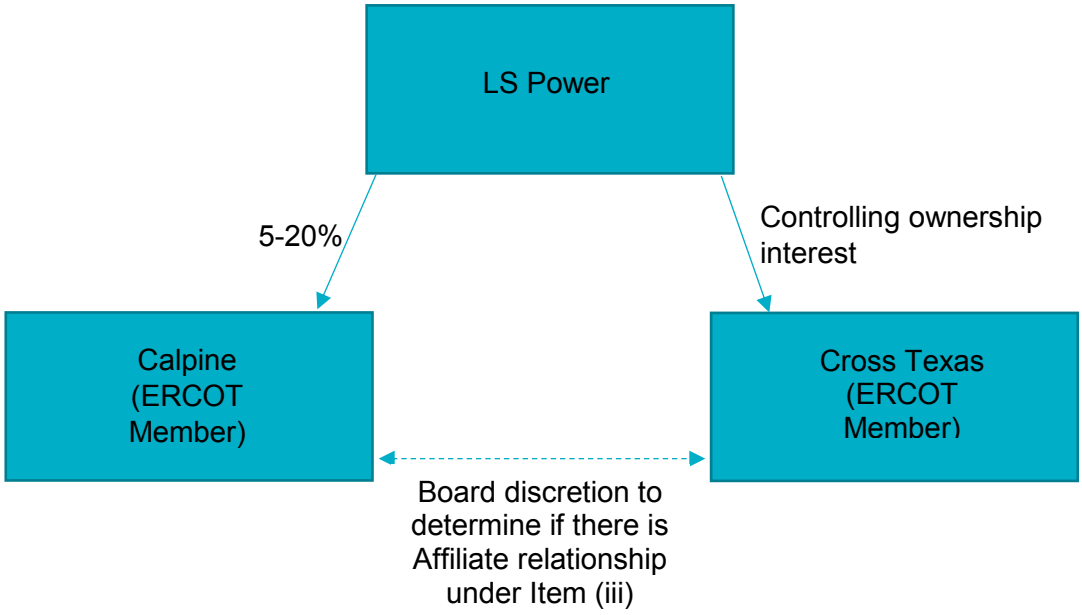


Calpine Request for Determination of Non-Affiliation in 2013

Similarly, in September 2013, the Board was asked to determine whether an Affiliate relationship existed between Calpine Corp. (Calpine) and Cross Texas Transmission LLC (Cross Texas), two ERCOT Members. LS Power Development LLC (LS Power) possessed an ownership interest of between five and twenty percent of Calpine and a controlling ownership interest in Cross Texas. In light of these ownership interests of at least five percent, Calpine requested that the Board determine, in its discretion, whether Calpine and Cross Texas should be considered Affiliates. The Board determined that Calpine and Cross Texas should not be considered Affiliates under the Bylaws for purposes of determining Member Segment and voting rights based on the representations that:

(1) Calpine did not share a common parent with Cross Texas;
(2) Calpine was not under common influence or control with Cross Texas; and

(3) Calpine was not subject to substantial influence or control by LS Power.



In both the TCEH and Calpine cases, the Board exercised its discretion based on the common ownership interests of greater than five percent held by a single entity. Similarly, in the instant case, because of Investment Company's ownership interests of greater than five percent in both Company A and Company B, the Board may exercise its discretion to determine whether Company A and Company B should be considered Affiliates under the Bylaws.

Conclusion

While Items (i), (ii) and (iv) of the Affiliate definition do not apply to the present facts, Item (iii) applies due to Investment Company's ownership of greater than five percent of the voting securities of each of Company A and Company B. Based on this level of ownership, there is, at least arguably, a disputable level of influence or control by Investment Company over Company A and Company B. Accordingly, the Board has the discretion to determine whether Company A and Company B should be considered Affiliates under the Bylaws for purposes of determining Member Segment and voting rights.

List of Investing Companies[1]

BlackRock, Inc.
Capital Research Global Investors (U.S.)
Fidelity Management & Research Company
Hotchkis & Wiley Capital Management, LLC
Oaktree Capital Management, L.P.
State Street Global Advisors
Vanguard Group Inc.

[1] The initial List of Investing Companies is based on the information disclosed in the Requesting Companies' letters. ERCOT has not independently determined which of these entities are registered with the SEC under the Investment Company Act of 1940. Due to time limitations and in an abundance of caution, ERCOT has listed all of the Investing Companies identified in the Requesting Companies' letters even though some may be registered Investment Advisers.