



## **HR&G Agenda Item 7.2.4.1**

### ***Affiliate Definition Comments***

American Electric Power Service Corporation, CenterPoint Energy Inc., Dynegy Inc., Exelon Corporation, First Solar Inc., Lone Star Transmission, LLC, Luminant Generation Company LLC, Reliant Energy Retail Services LLC, Oncor Electric Delivery Company LLC, and Texas Industrial Energy Consumers appreciate ERCOT Legal's efforts to address the issue of affiliation in ERCOT's Bylaws, and jointly submit the following proposed edits.

The suggested changes attempt to refine upon ERCOT Legal's affiliate definition in four ways: 1) they incorporate exclusions in PURA's definition of affiliate to streamline analysis for certain types of investors, and to align the definition with the governing statute; 2) they make the 10% ownership threshold an independent variable for evaluating control; 3) in cases where the question of affiliation arises because of the common ownership by an upstream investor, they clarify that non-control of either ERCOT member results in no affiliation with respect to the other; 4) they introduce a process for rebutting a presumption of control.

These comments accept ERCOT Legal's proposed changes and show proposed additions with a double underline and proposed deletions with a single strikethrough.

1. **Affiliate.** Affiliate shall mean, with respect to any person, (i) any other person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such person, and (ii) any other person determined by ERCOT, after notice and opportunity ~~for hearing to be heard at a Board meeting,~~ to exercise, directly or indirectly, through one or more intermediaries, ~~substantial influence or~~ control over such person. As used in this definition, (x) "person" shall mean any individual, corporation, limited liability company, partnership, firm, ~~joint venture,~~ association, joint stock company, trust, unincorporated organization, or other entity, but shall exclude all of the entities listed in Section 11.0042(a)(1)-(4) of the Public Utility Regulatory Act ("PURA"), as well as the entities listed in PURA § 11.0042(a)(5) if the conditions in PURA § 11.0042(a)(5)(A) and (B) are satisfied, and (y) "controls", "controlled by", or "under common control with" means the possession by a person, directly or indirectly, through one or more intermediaries, of the power to direct or cause the direction of the management and/or policies and procedures of another person, whether through voting securities, contract or otherwise. Ownership by a person of equity securities (whether publicly traded or not) of another person shall not result in control or affiliation for purposes of this definition if ~~(a) the securities are held as an investment, (b)~~ the holder owns (in its name or via intermediaries) less than 10 percent of the outstanding securities of the person. Ownership by a person of equity securities equal to or greater than 10 percent of the outstanding securities of another person shall not result in control or affiliation for purposes of this definition if (a) the securities are held as an investment, (cb) the holder does not have representation on the person's board of directors (or equivalent governing body) ~~or vice versa~~ and ~~(dc)~~ the holder does not in fact exercise influence over day to day management decisions. A voting interest of ten percent or more by a person whose ownership does not meet the foregoing conditions shall create a rebuttable presumption of control. For purposes of determining whether two otherwise unrelated persons

**are affiliated based on a holder's ownership of equity securities of both persons, the holder's ownership interest shall not result in common control for purposes of this definition if such holder's ownership meets the foregoing conditions for either person. In cases where the level of control or influence is disputed, A person wishing to rebut a presumption of control may submit to the Board a request to be heard, and** the Board shall have discretion to determine whether or not the **entities persons** are Affiliates of one another for the purpose of determining Member Segment and voting rights by reference to the foregoing factors and other persuasive evidence. Membership in ERCOT shall not create an affiliation with ERCOT.