**Revised Affiliate Definition for the ERCOT Bylaws**

**Proposed by ERCOT Legal**

**05.18.2018**

# ARTICLE 2

# DEFINITIONS

For purposes of these Bylaws, the following definitions apply:

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 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 electric cooperatives and 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” shall mean 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 result in a rebuttable presumption of no substantial influence or control for purposes of this definition if:

* 1. the holder owns (in its name or via intermediaries) less than 20 percent of the outstanding securities of the person; or
  2. the holder owns (in its name or via intermediaries) 20 percent or more of the outstanding securities of the person, and:
     1. the securities are held as an investment;
     2. the holder does not have representation on the person’s board of directors (or equivalent governing body) or vice versa; and
     3. the holder does not in fact exercise influence over day to day management decisions.

An ownership interest of 20 percent or more without all of the conditions set forth in (b)(i) through (iii) above shall create a rebuttable presumption of substantial influence and 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.

A person wishing to rebut a presumption of substantial influence or control, or lack thereof, may submit to the Board a request to be heard, andthe Board shall have discretion to determine whether or not the persons are Affiliates of one another for the purpose of determining Member Segment and voting rights by reference to the factors set forth in this definition and other persuasive evidence. Members shall notify ERCOT of any change in Affiliates in accordance with Section 3.3(c) of these Bylaws. Membership in ERCOT shall not create an affiliation with ERCOT.