1. **Affiliate**. Affiliate shall mean, with respect to any person, any other person who, directly or indirectly, through one or more intermediaries: (i) controls, is controlled by, or is under common control with such person, as set forth in Subsection (B) below; or (ii) exercises substantial influence over such person, is substantially influenced by such person, or is under common substantial influence with such person, as set forth in Subsection (C) below. Membership in ERCOT shall not create an affiliation with ERCOT.

(A) *Construction*

As used in this definition:

(x) “party” shall mean any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, or other entity;

(y) “person” shall mean any party, 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

(z) “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.

(B) *Affiliation Through Control*

Ownership by a person of equity securities (whether publicly traded or not) of another person shall result in a presumption of no 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 Subsection (2)(a) through (c) above shall create a presumption of control that may be challenged pursuant to Subsection (D) below.

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.

(C) *Affiliation Through Substantial Influence*

A person who is not controlling, controlled by or under common control with another person as described in Subsection (B) above, may nonetheless be determined by the Board, pursuant to Subsection (D) below, to be an Affiliate of another person, if allegations brought before the Board are substantiated that such person, directly or indirectly, through one or more intermediaries, exercises substantial influence over such person, is substantially influenced by such person, or is under common substantial influence with such person. Such a determination may be made by the Board only after notice and an opportunity for hearing at an ERCOT Board meeting as set forth in Subsection (D).

(D) *Procedure for Board Determinations Regarding Affiliation*

* + 1. Any party may challenge the presumption of control pursuant to Subsection (B) above, or allege substantial influence pursuant to Subsection (C) above, to the Board pursuant to the procedure set forth in this Subsection (D).
    2. The challenging party shall submit written notice of the challenge to ERCOT’s General Counsel. Such written notice shall identify any persons that are the subject of the challenge and shall include a detailed summary of the facts supporting the challenge. ERCOT’s General Counsel will provide a recommendation to the Board on the challenge.
    3. The Board will hear such matter at the next regularly-scheduled Board meeting that is at least ten (10) Business Days after the date the written notice of challenge is received by ERCOT. Notice of the Board’s consideration of the challenge shall be given pursuant to Section 4.6(b) of these Bylaws.
    4. The Board shall have discretion to determine whether the persons who are the subject of the challenge are Affiliates of one another for purposes of these Bylaws by reference to the factors set forth in this definition and other persuasive evidence. The challenging party shall bear the burden of proof.

(E) *Changes in Affiliates*

Members shall notify ERCOT of any change in Affiliates in accordance with Section 3.3(c) of these Bylaws.