



**To:** ERCOT Board of Directors (Board)  
**From:** Chad V. Seely, ERCOT Vice President and General Counsel  
**Date:** December 4, 2018  
**Re:** Item 12 – Notice of ERCOT General Counsel Determination of Affiliate Status Pursuant to October 17, 2017 Board Resolution

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## **Background**

At its meeting on October 17, 2017, the Board adopted a Resolution in response to requests by several ERCOT Members that the Board determine such Members and their subsidiaries are not Affiliates of any other Member of which one or more Investing Company (as defined in the Resolution) has an ownership share of voting securities of at least five percent but less than 20 percent, as the term “Affiliate” is defined in the ERCOT Bylaws (Bylaws), for purposes of Member Segment and voting rights. To address other possible similar Affiliate status situations that might arise before the adoption of an amendment to the Affiliate definition in the Bylaws as a permanent solution,<sup>1</sup> the Resolution declared, in part:

(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.

The Resolution and additional background information are available with the October 17, 2017 Board meeting materials at [www.ercot.com/calendar/2017/10/17/103997-BOARD](http://www.ercot.com/calendar/2017/10/17/103997-BOARD) (Agenda Item 13).

## **Wind Energy Transmission Texas LLC (WETT) Request and Determination by ERCOT General Counsel**

On November 16, 2018, WETT submitted a letter to the Board and ERCOT General Counsel requesting a determination that WETT and Pattern Energy Group Inc. (PEGI) are not Affiliates as defined by the Bylaws due to the fact that Public Sector Pension Investment Board, an indirect 50% owner of WETT, also owns 9.52% of PEGI. A copy of WETT’s November 16, 2018 letter is attached hereto as **Attachment A**. In support of its request, WETT’s letter includes the following representations:

- WETT does not share a common parent with PEGI;

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<sup>1</sup> Subsequent to passing the October 17, 2018 Resolution, the ERCOT Board and Membership approved an amendment to the Bylaws that substantially revises the definition of Affiliate to eliminate the need for the Board to make individual determinations regarding Affiliate status under fact patterns similar to those underlying the October 17, 2018 Resolution and the WETT request described herein. The amendment is pending final approval by the Public Utility Commission of Texas (PUCT), after which it will become effective and the Resolution will expire. PUCT final approval is anticipated before the end of 2018.



- WETT is not under common influence or control with PEGI;
- WETT and PEGI share no board members;
- PEGI does not exercise substantial influence or control over WETT policies or actions; and
- WETT does not exercise substantial influence or control over PEGI policies or actions.

Based on a review of WETT's letter and the above representations, which are consistent with those made by Members involved in prior Board determinations of no Affiliate relationship, I have determined that WETT and PEGI are not Affiliates as defined in the Bylaws.



November 16, 2018

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

**Via email**

Attention: Chad Seely, ERCOT Vice President, General Counsel and Corporate Secretary

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

Dear Mr. Crowell:

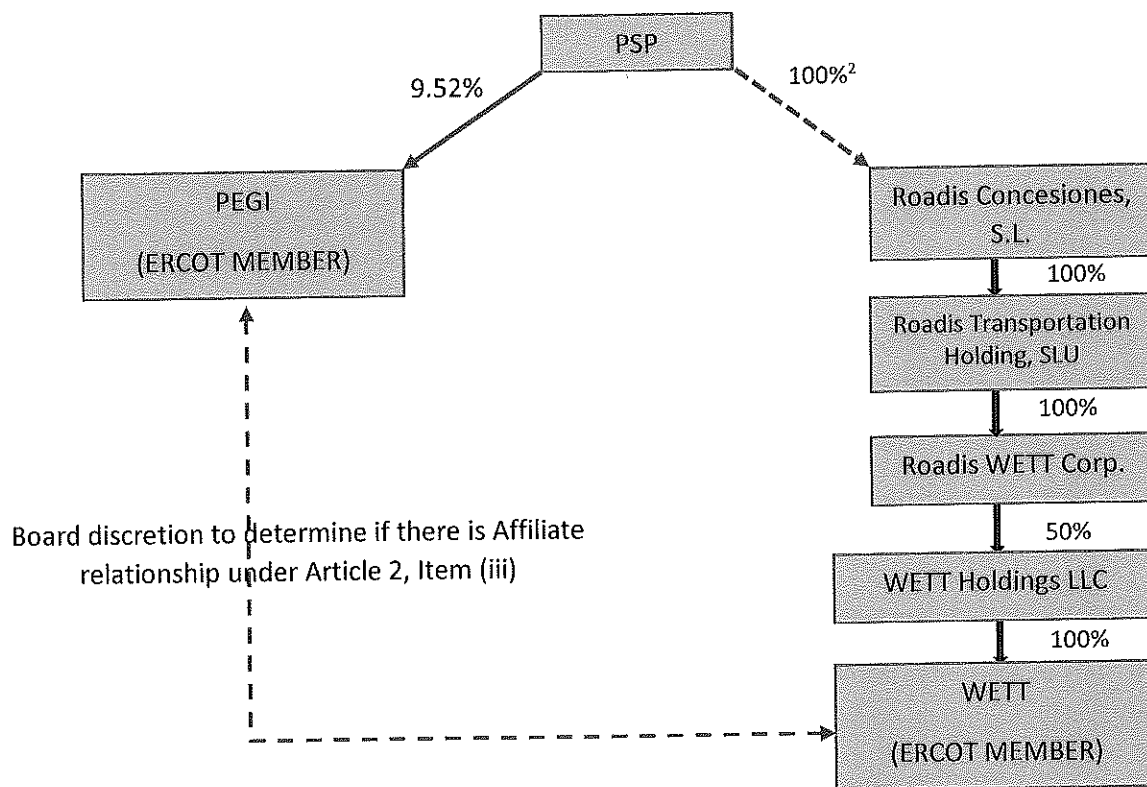
Wind Energy Transmission Texas LLC (“WETT”) respectfully requests the ERCOT Board of Directors (“Board”) determine that WETT and Pattern Energy Group Inc. (“PEGI”) are not “Affiliates” as defined by ERCOT Bylaws. WETT makes this request for the purposes of ERCOT Member Segment and voting rights, in light of the fact that Public Sector Pension Investment Board (“PSP”)<sup>1</sup>, one of WETT’s indirect 50% owners, also owns 9.52% of PEGI. Such a ruling would be consistent with both ERCOT Bylaws and Board precedent.

As stated in its recent public regulatory filings, PSP ultimately owns 50% of WETT, and approximately 9.52% of PEGI. This relationship is diagrammed below.

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<sup>1</sup> PSP is one of Canada’s largest pension investment managers, with \$139.2 billion of assets under management in 2017. PSP invests funds for the pension plans of the Public Service, the Canadian Forces, the Royal Canadian Mounted Police and the Reserve Force.



ERCOT Bylaws Article 2 defines an Affiliate to include, among other things, entities that are part of a relationship in which “... (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.”

However, the Board has the discretion to make a determination of non-affiliation for an entity in the case of (ii) above where the relationships outlined in (iii) and (iv) do not exist, so long as the entity in question owns less than 20% of the voting securities of the entity in question, as is the case for PEGI. 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.”

WETT and PEGI meet the threshold that the relationships in (iii) and (iv) above do not exist. Specifically,

- WETT does not share a common parent with PEGI, as PSP would not be considered a parent of PEGI given its ownership of only 9.52% of PEGI.
- WETT is not under common influence or control of PEGI, as PSP does not control PEGI.
- WETT and PEGI share no common board members.
- PEGI does not exercise substantial influence or control over WETT policies or actions.

<sup>2</sup> Please note this is an overall, simplified depiction of WETT’s relevant external organizational structure.

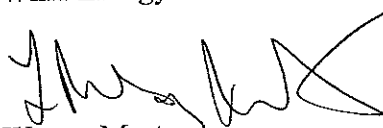
- WETT does not exercise substantial influence or control over PEGI policies or actions.

Such a determination of non-affiliation conforms to precedent before the Board. The Board made similar determinations of non-affiliation for TCEH Corp. and WETT on October 11, 2016 (in which there was a similar pattern of common ultimate – though minority – ownership, albeit in that instance involving investments connected with WETT’s other indirect 50% parent company, Brookfield-CREZ SPV LLC).

For the reasons stated above, WETT respectfully requests the Board make a determination that WETT is not an Affiliate of PEGI notwithstanding that PSP’s indirect partial ownership interests in both.

Respectfully,

Wind Energy Transmission Texas, LLC



Wayne Morton  
Chief Executive Officer

Cc: Chad Seely  
Jonathan Levine  
Vickie Leady