

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NEXTERA ENERGY CAPITAL
HOLDINGS, INC.,
NEXTERA ENERGY TRANSMISSION,
LLC, NEXTERA ENERGY
TRANSMISSION MIDWEST, LLC,
LONE STAR TRANSMISSION, LLC, and
NEXTERA ENERGY TRANSMISSION
SOUTHWEST, LLC,

Civil No. _____

Plaintiffs,

v.

KEN PAXTON, Attorney General of
the State of Texas, DEANN T. WALKER,
Chairman, Public Utility Commission of Texas,
ARTHUR C. D'ANDREA, Commissioner,
Public Utility Commission of Texas, and
SHELLY BOTKIN, Commissioner, Public
Utility Commission of Texas, each in his or her
official capacity,

Defendants.

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND SUPPORTING
MEMORANDUM OF LAW**

OF COUNSEL:

BOIES SCHILLER FLEXNER LLP

Stuart H. Singer (Florida Bar No. 377325)
(pro hac vice application to be submitted)
Carlos M. Sires (Florida Bar No. 319333)
(pro hac vice application to be submitted)
Evan Ezray (Florida Bar No. 1008228)
(pro hac vice application to be submitted)
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
ssinger@bsfllp.com
csires@bsfllp.com
eezray@bsfllp.com

TILLOTSON LAW

Jeffrey M. Tillotson
(Texas Bar No. 20039200)
1807 Ross Ave., Suite 325
Dallas, Texas 75201
Telephone: (214) 382-3040
jtillotson@tillotsonlaw.com

INTRODUCTION

Texas has just passed legislation, Senate Bill 1938 (the “Bill” or the “Act”), which restricts the building, ownership, and operation of new electric transmission lines to those incumbent utilities with whom the line would connect. The law’s text, purpose, and effect are to protect Texas’ incumbent transmission and distribution utilities from competition in violation of the dormant Commerce Clause. By this preliminary injunction motion, the NextEra plaintiffs¹ seek to preserve the status quo, to avoid the irreparable injury of losing existing projects, and to preserve the ability to compete for future transmission projects.

BACKGROUND

In recent years, the Federal Energy Regulatory Commission (“FERC”) introduced competition into the transmission of electricity. FERC requires that utilities unbundle generation and transmission services and requires the use of regional transmission organizations and independent system operators (“ISOs”). *See S.C. Pub. Serv. Auth. v. F.E.R.C.*, 762 F.3d 41, 50-51 (D.C. Cir. 2014).

Texas is divided into three primary power regions: the Midcontinent Independent System Operator (“MISO”), which spans much of the Midwestern United States and parts of Eastern Texas; the Electric Reliability Council of Texas, Inc. (“ERCOT”), which is wholly within Texas, and the Southwest Power Pool (“SPP”), which runs from Canada into parts of Eastern Texas and the Texas panhandle. Because SPP and MISO span multiple states, in those areas, electricity is

¹ NextEra Energy Transmission, LLC (“NEET”), based in Florida, builds and operates transmission lines throughout the country. NEET subsidiaries NextEra Energy Transmission Midwest, LLC, based in Florida, competes in the MISO territory and won a competitive bid for the Hartburg-Sabine Junction Transmission Project, and NextEra Energy Transmission Southwest, LLC, competes in the SPP Territory and won the right to acquire the Jacksonville-Overton Transmission Line. Lone Star Transmission, LLC, is a Texas-based subsidiary that operates transmission lines. All of these entities are direct or indirect subsidiaries of NextEra Energy Capital Holdings, Inc. *See* Gleason Dec. at ¶¶ 4-7.

concurrently regulated by FERC and the Public Utility Commission of Texas (“PUCT”). In all areas of the state, a person must obtain a Certificate of Convenience and Necessity (“CCN”) from the PUCT prior to providing transmission services.

FERC is not alone in seeking to spur transmission development. In the 2005 Competitive Renewable Energy Zones (“CREZ”) program, Texas turned to competitive transmission to build new transmission lines. There, the PUCT selected Lone Star Transmission (a NextEra subsidiary) and other transmission-only utilities in a competitive process to build CREZ lines. During this time, a challenge was raised to out-of-state transmission services, when a number of cities and the State of Texas claimed that all utilities needed a geographic service area (i.e., all utilities needed to distribute power to end-users). *Pub. Util. Comm’n of Texas v. Cities of Harlingen*, 311 S.W.3d 610, 618 (Tex. App.—Austin 2010, no pet.). The Texas courts rejected those claims, allowing new entrants into Texas to provide only transmission services. *Id.* at 619-20.

In 2011, FERC adopted Order No. 1000. The order made two key reforms: (1) it required ISOs to remove rights of first refusal from their tariffs—that is, ISOs could no longer give incumbent transmission owners the right to construct new transmission lines that interconnected with their lines, and (2) it required ISOs to adopt regional planning, competitive bidding, and cost-sharing mechanisms for new transmission lines. *S.C. Pub. Serv. Auth.*, 762 F.3d at 52-53.

In response to FERC Order No. 1000, MISO and SPP amended their tariffs to remove their rights of first refusal and to implement competitive bidding and cost sharing for certain new transmission projects. MISO, for example, adopted an intricate process governing competitive bids and regional cost allocation. Under the MISO rules, new transmission projects are sorted into buckets. Some buckets are meant to improve existing transmission lines or to have limited geographic effect and are automatically assigned to the incumbent line owner. Other buckets,

however, require competitive bidding and regional cost distribution. SPP adopted similar rules.

In 2018, MISO held its first competitive bid process in Texas—bidding for the construction of a 500 kV Market Efficiency Project known as the Hartburg-Sabine Junction Transmission Project, to be constructed in the Entergy service territory in East Texas. After reviewing the bids, MISO selected NextEra Energy Transmission Midwest (“NEET Midwest”) to build the line, concluding that NEET Midwest’s proposal was the best of twelve submissions. After being selected, NEET Midwest and MISO entered into a contract, the “Selected Developer Agreement.”

In 2017, SPP prepared to hold competitive bids in Texas. One of the projects to be bid on was in Southwestern Public Service Company’s (“SPS”) service area. SPS, the incumbent utility, claimed that it was entitled to build the project as a matter of Texas law. The PUCT disagreed, concluding that SPS did not have such exclusive rights. *Joint Petition of Sw. Pub. Serv. Co. & Sw. Power Pool, Inc. for Declaratory Order*, 341 P.U.R.4th 195 (Oct. 26, 2017).

In July 2017, NextEra Energy Transmission Southwest, LLC (“NEET Southwest”) agreed to acquire a transmission line from Rayburn Country Electric Cooperative, Inc. (the “Jacksonville-Overton Line”) in the SPP region. The purchase and sale agreement required Rayburn to transfer its CCN to NEET Southwest. In October 2018, PUCT staff signed a stipulation approving the transfer, although this application remains pending before the Commission.

In March 2019, at the end of the legislative session, and spurred by Texas’ incumbent utilities, companion bills Senate Bill 1938 and House Bill 3995 were introduced. The bills were designed to limit the persons to whom the PUCT may grant a CCN to build, own, or operate a new electric transmission facility that directly interconnects with an existing electric facility to the owner of that existing facility, and require that a CCN can only be transferred to an entity that already holds a CCN in the given power region. The bills were sped through the legislative process,

with the Senate waiving its normal three-day debate rule, ultimately being signed into law on May 16, 2019.

The Act effectively ousts NextEra’s subsidiaries, NEET Midwest and NEET Southwest—and all other companies seeking to become new entrant transmission-only utilities—from the transmission business in Texas. NextEra will imminently feel the effects of the Act as NEET Midwest and NEET Southwest appear to be precluded from proceeding with the Hartburg-Sabine Junction Transmission Project and the Jacksonville-Overton purchase by the Act.

ARGUMENT

“A plaintiff seeking a preliminary injunction must clearly show: (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 457 (5th Cir. 2017).

I. BECAUSE THE LAW BLATANTLY DISCRIMINATES IN FAVOR OF INCUMBENT TEXAS UTILITIES, NEXTERA IS LIKELY TO PREVAIL ON ITS DORMANT COMMERCE CLAUSE CLAIM

If a state law “[d]iscriminat[es] against interstate commerce in favor of local business or investment,” then the law “is *per se* invalid,” unless the state “can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest.” *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 392 (1994). State laws that either discriminate against out-of-state entities on their face or discriminate in purpose and effect are subject to the virtually *per se* invalidity rule. *See Allstate Ins. Co. v. Abbott*, 495 F.3d 151, 160 (5th Cir. 2007). Even laws that do not directly discriminate are unconstitutional if they impose “a burden on interstate commerce that is ‘clearly excessive in relation to the putative local benefits[.]’” *Carbone*, 511 U.S. at 390 (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

The Act facially discriminates because it singles out in-state entities for preferential treatment. *See Granholm v. Heald*, 544 U.S. 460, 474 (2005); *John Havlir & Assocs., Inc. v. Tacon*, 810 F. Supp. 752, 757-58 (N.D. Tex. 1993) (Texas statute that applied only to “manufacturers without a place of business in Texas” was discriminatory). Under the Act, to build or operate a transmission line in Texas, a company “must” already “have a physical presence in the State,” by owning existing lines. *Granholm*, 544 U.S. at 474. This “in-state presence” requirement “runs contrary” to the Supreme Court’s “admonition that States cannot require an out-of-state firm ‘to become a resident in order to compete on equal terms.’” *Id.* (quoting *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963)); *accord Teladoc, Inc. v. Tex. Med. Bd.*, 1-15-CV-343 RP, 2015 WL 8773509, at *12 (W.D. Tex. Dec. 14, 2015).

In this way, the Act resembles the “flow control” laws that the Supreme Court has struck down for decades. In “flow control” cases, a state or local law requires that all waste in a given region be processed in a single in-state facility. *Carbone*, 511 U.S. at 383. Courts have routinely found these laws facially discriminatory because they allow “only the favored operator to process waste.” *Id.* at 384. But for operation of Texas’ law, an out-of-state transmission company “who wanted access to” the Texas “market might have built a” transmission “facility” within the State. *Id.* at 392. But Texas’ law “squashes competition in” transmission “service altogether, leaving no room for investment from outside.” *Id.*; *see also Six Kingdoms Enters., LLC v. City of El Paso*, EP-10-CV-485-KC, 2011 WL 65864, at *8 (W.D. Tex. Jan. 10, 2011) (“erecting an economic barrier” to protect local industry is barred by Commerce Clause). That is what the Commerce Clause does not allow. *See Cooper v. McBeath*, 11 F.3d 547, 553 (5th Cir. 1994). Indeed, the Texas law is much worse than typical flow control ordinances because it directly regulates an instrumentality of interstate commerce by regulating—and increasing costs across—the interstate

electrical grid in MISO and SPP.

Even if the Act is not facially discriminatory, it still runs afoul of the Commerce Clause because it discriminates in purpose and effect. Four factors govern the inquiry: “(1) whether a clear pattern of discrimination emerges from the effect of the state action; (2) the historical background of the decision . . . ; (3) the specific sequence of events leading up the challenged decision, including departures from normal procedures; and (4) the legislative . . . history of the state action, including contemporary statements by decisionmakers.” *Allstate*, 495 F.3d at 160. All four factors favor finding discriminatory intent here.

First, the effect of the Texas law will be to ban all out-of-state companies from building new transmission lines in Texas. As the Department of Justice (“DOJ”) explained, the effect of the law is to “restrict[] the development of transmission facilities to local incumbents.” DOJ Letter at 6. This is a discriminatory effect. *See Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm’n*, 313 F. Supp. 3d 751, 767 (W.D. Tex. 2018).

Second, the historical background of the Law shows that the purpose was to exclude out-of-state entities. Indeed, what the historical record demonstrates is that the Texas Legislature made a sudden and dramatic change to state law to protect Texas incumbents the moment those incumbents began to face competition. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977). Before the Act was passed, Texas incumbents pressed the same argument—that Texas should not allow out-of-state transmission companies—in both the Texas courts and before the PUCT. Having lost their monopolistic argument there, and in the face of competition such as the Hartburg-Sabine Junction bid, incumbents turned to the legislature. This history was not lost on the legislators whose clear purpose was to exclude the out-of-state entities that the *Harlingen* decision and PUCT declaratory order had let in. (Williams Decl. ¶¶ 5, 7.)

Third, the specific sequence of events leading up to the law demonstrates discriminatory purpose because the Bill was introduced late in the legislative session and then sped through a vote. (Williams Decl. ¶¶11, 13.) *See Vill. of Arlington Heights*, 429 U.S. at 267.

Fourth, statements of lawmakers show the discriminatory purpose of the Texas law. The sponsor of the House bill said he was discriminating against out-of-staters, stating, “transmission operations are best managed by accountable companies with boots on the ground in our communities.” (Williams Decl. ¶ 6.) *See Wal-Mart Stores*, 313 F. Supp. 3d at 768 (discriminatory purpose when bill sponsor said that goal was to keep business in Texas). Beyond that, the stated bases for the Act are “unpersuasive and insufficient.” *Cooper*, 11 F.3d at 554. Claiming the law preserves PUCT jurisdiction is pretext: the PUCT explained days before the legislative hearings that allowing out-of-state transmission-only utilities in Texas does nothing to divest the PUCT of jurisdiction. (Williams Decl. ¶ 10(a).) Nor were the legislature’s purported reliability fears reality based. After all, for a transmission project to be sited in Texas an expert must already find that the service will be reliable: even before any changes to Texas law, the PUCT considered reliability before it awarded a CCN. (Williams Decl. ¶10(b).) In doing so, the PUCT had the power to, and has, required reliability-based concessions. (*Id.*; *see also* Gleason Decl. ¶ 10(b) (noting that PUCT staff negotiated a settlement for the Jacksonville-Overton line that included commitments by NEET Southwest related to reliability)). Moreover, for projects subject to review by an ISO (such as the competitive processes in SPP or MISO), reliability concerns are fully addressed by the ISOs’ oversight and review, which merit deference from the PUCT. 16 Tex. Admin. Code § 25.101(b)(3)(ii). For example in the Hartburg-Sabine Junction competitive process, the ISO made an independent determination of reliability as part of the bid process. (Davis Decl. ¶¶ 19-20.)

Whether the Act facially discriminates or discriminates in purpose or effect, it can survive

only if the state “can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest.” *Carbone*, 511 U.S. at 392. Texas cannot possibly meet this burden. The Law cannot be justified as a means of protecting the PUCT’s jurisdiction because the PUCT itself ruled that its jurisdiction is not threatened by out-of-state transmission-only utilities. Texas also cannot justify the Law as a matter of reliability. Texas has faced no reliability issues from the introduction of out-of-state transmission in the CREZ program, and all transmission owners and transmission operators in the State of Texas are subject to the mandatory reliability standards of the North American Electric Reliability Corporation (“NERC”). Moreover, even if there was some legitimate basis for Texas’ law, there are other means to achieve those ends. For example, even without the Bill, the PUCT must grant a CCN to an out-of-state transmission provider before it can build or operate a line in Texas. In that CCN process, the PUCT could demand concessions to ensure low rates or reliable service.

In any event, the Law still violates the Commerce Clause because it places a “clearly excessive” burden on interstate commerce. *Carbone*, 511 U.S. at 390. A law burdens interstate commerce when it “protect[s] Texas” companies “at the expense of potential out-of-state entrants.” *Wal-Mart*, 313 F. Supp. 3d at 774. That is precisely what Texas’ law does: it gives in-state transmission owners the exclusive right to build new transmission lines to the exclusion of out-of-state entrants. (Gleason Decl. ¶¶ 11-14.) That burden cannot be justified by any local benefit because there is no state interest in Texas’ law and even if there were, substantially less burdensome means exist to protect those ends. *Wal-Mart*, 313 F. Supp. 3d at 774.²

² *General Motors, Inc. v. Tracy*, 519 U.S. 278 (1997) does not exempt state utility regulation from Dormant Commerce Clause scrutiny. *Id.* at 291 n.8. Instead, the question in *Tracy* was whether the state could tax unbundled, bulk gas sales to large consumers by independent marketers differently from natural gas sales by public utilities. The Supreme Court concluded that the state was not required to treat these entities the same way for purposes of taxing their natural gas sales

II. NEXTERA FACES IRREPARABLE INJURY FROM THE LOSS OF EXISTING PROJECTS IT HAS WON AND NEW PROJECTS FOR WHICH IT WOULD COMPETE

If Texas is permitted to enforce the Act, Plaintiffs NEET Midwest and NEET Southwest will lose out on the Hartburg-Sabine and Jacksonville-Overton projects but because of sovereign immunity, Plaintiffs will not be able to obtain monetary compensation for that loss.³ *Talib v. Gilley*, 138 F.3d 211, 213 (5th Cir. 1998). In this situation, Courts have repeatedly found that a plaintiff will suffer irreparable harm. *Teladoc, Inc. v. Tex. Med. Bd.*, 112 F. Supp. 3d 529, 543 (W.D. Texas 2015); *Johnson v. United States*, EP-14-CV-00317-DCG, 2014 WL 12540469, at *7 (W.D. Tex. Sept. 12, 2014); *Tex. Med. Ass’n v. Bowen*, No. A-87-CA-688, 1988 WL 235555, at *5 (W.D. Tex. Jan. 11, 1988).⁴

Even if Plaintiffs could plausibly recover money damages, they have established irreparable harm because “the violation of a constitutional right presents an irreparable harm.” *Crowley v. Keen*, No. 7:18-cv-00032-O, 2018 WL 4178263, at * 3 (N.D. Tex. Aug. 15, 2018). As

because, for the most part, they were not really supplying the same product. *Id.* at 297-99. Whereas the public utilities were required to provide a captive market with a bundled product that included both natural gas and certain mandated benefits and protections, independent marketers simply sold natural gas alone. Here, however Texas is not treating two different kind of sales differently. The Texas law is targeting one product: electric transmission lines. NextEra is just as qualified to build those lines as any Texas company and seeks to compete with other developers on the same terms. For similar reasons, the on-appeal decision in *LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695, 700 (D. Minn. 2018), does not alter the result here. In that case, a district court found that a Minnesota law granting in-state incumbents a right of first refusal to build transmission lines did not offend the Commerce Clause. As the Department of Justice has explained to the Eighth Circuit, the district court’s opinion is flawed in three respects: (1) it adopted an overly narrow view of discrimination, (2) it over-read *Tracy*, and (3) it mistakenly concluded that the federal government approved of state right of first refusal laws. Br. of United States as Amicus Curiae, *LSP Transmission Holdings, LLC v. Lange*, No. 18-2559 (8th Cir.).

³ As an instrumentality of the state, the PUCT “enjoys the same immunity as the sovereign itself.” *Lewis v. Clarke*, 137 S.Ct. 1285, 1290 (2017).

⁴ This principle is consistent with Fifth Circuit authority that if there is a substantial probability that a plaintiff would be unable to collect on a judgment, then the plaintiff has shown irreparable harm. *Aspen Tech., Inc. v. M3 Tech., Inc.*, 569 F. App’x 259, 273 (5th Cir. 2014).

the court in *Six Kingdoms* recognized, this principle is applicable to the Dormant Commerce Clause. 2011 WL 65864, at *9; *see also Healthcare Distrib. All. v. Zucker*, 353 F. Supp. 3d 235. 244-47 (S.D.N.Y. 2018). Finally, because the Act “restricts [NextEra’s] right to fairly compete within the market” of transmission providers for new projects, NextEra will suffer irreparable harm. *Marietta Mem’l Hosp. v. W. Va. Health Care Auth.*, No. 2:16-cv-08603, 2016 WL 7363052, at *8 (S.D. W. Va. Dec. 19, 2016); *Teladoc*, 112 F. Supp. 3d at 541-42.

III. EQUITY FAVORS AN INJUNCTION TO MAINTAIN THE STATUS QUO

The equities clearly favor the issuance of an injunction. While NextEra will suffer great harm if the injunction is not issued, the Defendants will suffer no harm by an injunction that preserves the status quo prior to the recent passage of the Act and “simply puts in-state and out-of-state [transmission providers] back on a level playing field.” *Marietta Mem’l*, 2016 WL 7363052, at *9. Both in state and out of state companies were competing on a level playing field before passage of this Act without any ill effects.

IV. THE PUBLIC INTEREST IS SERVED BY A PRELIMINARY INJUNCTION

Issuance of the injunction is in the public interest because unconstitutional acts are contrary to the public interest. *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) (agreeing “that the public interest would be undermined if the unconstitutional actions of the Board were allowed to stand”); *Kendall-Jackson Winery, Ltd. v. Branson*, 82 F. Supp. 2d 844, 878 (N.D. Ill. 2000) (enforcement of Commerce Clause in public interest). This is especially true here because competitive bidding for transmission is itself net-beneficial. For example, MISO found that NEET Midwest’s bid “convey[ed] substantial benefits to ratepayers over time.”

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter a preliminary injunction, enjoining Defendants enforcement of the Act.

Dated: June 17, 2019

Respectfully submitted,

TILLOTSON LAW

Of Counsel:

BOIES SCHILLER FLEXNER LLP

Stuart H. Singer
(Florida Bar No. 377325) (*pro hac vice*
application to be submitted)
Carlos M. Sires
(Florida Bar No. 319333) (*pro hac vice*
application to be submitted)
Evan Ezray
(Florida Bar No. 1008228) (*pro hac vice*
application to be submitted)
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022
ssinger@bsfllp.com
csires@bsfllp.com
eezray@bsfllp.com

By: /s/ Jeffrey M. Tillotson
Jeffrey M. Tillotson
(Texas Bar No. 20039200)
1807 Ross Ave., Suite 325
Dallas, Texas 75201
Telephone: (214) 382-3040
jtillotson@tillotsonlaw.com

Counsel for Plaintiffs

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Defendants.

**DECLARATION OF JEFFREY TILLOTSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

OF COUNSEL:

BOIES SCHILLER FLEXNER LLP

Stuart H. Singer (Florida Bar No. 377325)
(*pro hac vice application to be submitted*)
Carlos M. Sires (Florida Bar No. 319333)
(*pro hac vice application to be submitted*)
Evan Ezray (Florida Bar No. 1008228)
(*pro hac vice application to be submitted*)
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
ssinger@bsfllp.com
csires@bsfllp.com
eezray@bsfllp.com

TILLOTSON LAW

Jeffrey M. Tillotson
(Texas Bar No. 20039200)
1807 Ross Ave., Suite 325
Dallas, Texas 75201
Telephone: (214) 382-3040
jtillotson@tillotsonlaw.com

I, Jeffrey Tillotson, declare as follows:

1. I am an attorney for Plaintiffs in this matter. I make this declaration in support of Plaintiffs' motion for a preliminary injunction. I have personal knowledge of the matters set forth herein.

2. In this suit, Plaintiffs challenge amendments to the Texas Utilities Code contained in Senate Bill 1938 as violating the Commerce and Contracts Clauses of the United States Constitution.

3. A true and correct version of Senate Bill 1938 as it was signed by the Governor is attached as Exhibit A to this declaration.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: June 17, 2019

By: 

Chapter 44

S.B. No. 1938

AN ACT

relating to certificates of convenience and necessity for the construction of facilities for the transmission of electricity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 37.051(a), Utilities Code, is amended to read as follows:

(a) An electric utility [~~or other person~~] may not directly or indirectly provide service to the public under a franchise or permit unless the utility [~~or other person~~] first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.

SECTION 2. Section 37.053(a), Utilities Code, is amended to read as follows:

(a) An electric utility [~~or other person~~] that wants to obtain or amend a certificate must submit an application to the commission.

SECTION 3. Section 37.055, Utilities Code, is amended to read as follows:

Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) An electric utility [~~or other person~~] that wants to exercise a right or privilege under a franchise or permit that the utility [~~or other person~~] anticipates obtaining but has not been granted may apply to the commission for a preliminary order under this section.

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1 (b) The commission may issue a preliminary order declaring
2 that the commission, on application and under commission rules,
3 will grant the requested certificate on terms the commission
4 designates, after the electric utility [~~or other person~~] obtains
5 the franchise or permit.

6 (c) The commission shall grant the certificate on
7 presentation of evidence satisfactory to the commission that the
8 electric utility [~~or other person~~] has obtained the franchise or
9 permit.

10 SECTION 4. Section 37.056, Utilities Code, is amended by
11 adding Subsections (e), (f), (g), (h), and (i) to read as follows:

12 (e) A certificate to build, own, or operate a new
13 transmission facility that directly interconnects with an existing
14 electric utility facility or municipally owned utility facility may
15 be granted only to the owner of that existing facility. If a new
16 transmission facility will directly interconnect with facilities
17 owned by different electric utilities or municipally owned
18 utilities, each entity shall be certificated to build, own, or
19 operate the new facility in separate and discrete equal parts
20 unless they agree otherwise.

21 (f) Notwithstanding Subsection (e), if a new transmission
22 line, whether single or double circuit, will create the first
23 interconnection between a load-serving station and an existing
24 transmission facility, the entity with a load-serving
25 responsibility or an electric cooperative that has a member with a
26 load-serving responsibility at the load-serving station shall be
27 certificated to build, own, or operate the new transmission line

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1 and the load-serving station. The owner of the existing
2 transmission facility shall be certificated to build, own, or
3 operate the station or tap at the existing transmission facility to
4 provide the interconnection, unless after a reasonable period of
5 time the owner of the existing transmission facility is unwilling
6 to build, and then the entity with the load-serving responsibility
7 or an electric cooperative that has a member with a load-serving
8 responsibility may be certificated to build the interconnection
9 facility.

10 (g) Notwithstanding any other provision of this section, an
11 electric utility or municipally owned utility that is authorized to
12 build, own, or operate a new transmission facility under Subsection
13 (e) or (f) may designate another electric utility that is currently
14 certificated by the commission within the same electric power
15 region, coordinating council, independent system operator, or
16 power pool or a municipally owned utility to build, own, or operate
17 a portion or all of such new transmission facility, subject to any
18 requirements adopted by the commission by rule.

19 (h) The division of any required certification of
20 facilities described in this section shall apply unless each entity
21 agrees otherwise. Nothing in this section is intended to require a
22 certificate for facilities that the commission has determined by
23 rule do not require certification to build, own, or operate.

24 (i) Notwithstanding any other provision of this section, an
25 electric cooperative may be certificated to build, own, or operate
26 a new facility in place of any other electric cooperative if both
27 cooperatives agree.

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SECTION 5. Section 37.057, Utilities Code, is amended to read as follows:

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. ~~[The commission may grant a certificate for a new transmission facility to a qualified applicant that meets the requirements of this subchapter.]~~ The commission must approve or deny an application for a certificate for a new transmission facility not later than the first anniversary of the date the application is filed. If the commission does not approve or deny the application on or before that date, a party may seek a writ of mandamus in a district court of Travis County to compel the commission to decide on the application.

SECTION 6. Section 37.151, Utilities Code, is amended to read as follows:

Sec. 37.151. PROVISION OF SERVICE. Except as provided by Sections ~~[this section, Section]~~ 37.152~~[7]~~ and ~~[Section]~~ 37.153, a certificate holder~~[, other than one granted a certificate under Section 37.051(d)7]~~ shall:

(1) serve every consumer in the utility's certificated area; and

(2) provide continuous and adequate service in that area.

SECTION 7. Section 37.154(a), Utilities Code, is amended to read as follows:

(a) An electric utility or municipally owned utility may sell, assign, or lease a certificate or a right obtained under a certificate if ~~[the commission determines that]~~ the purchaser,

S.B. No. 1938

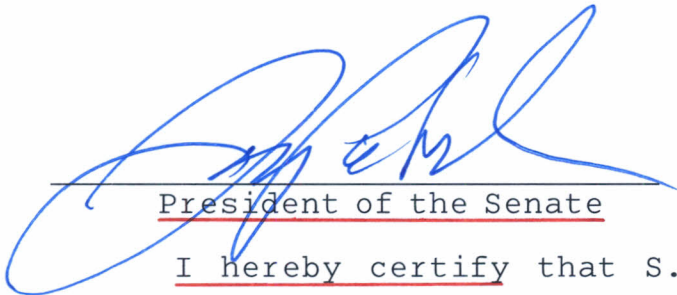
1 assignee, or lessee is already certificated by the commission to
2 provide electric service within the same electric power region,
3 coordinating council, independent system operator, or power pool,
4 or if the purchaser, assignee, or lessee is an electric cooperative
5 or municipally owned utility ~~[can provide adequate service]~~. As
6 part of a transaction subject to Sections 39.262(1)-(o) and 39.915,
7 the commission may approve a sale, assignment, or lease to an entity
8 that has not been previously certificated if the approval will not
9 diminish the retail rate jurisdiction of this state. Any purchase,
10 assignment, or lease under this section requires that the
11 commission determine that the purchaser, assignee, or lessee can
12 provide adequate service.

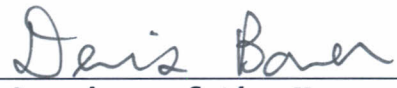
13 SECTION 8. Sections 37.051(d), (e), and (f), Utilities
14 Code, are repealed.

15 SECTION 9. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2019.

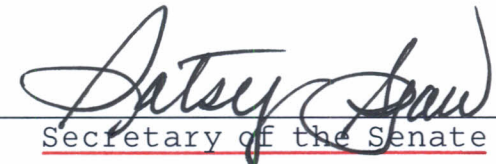
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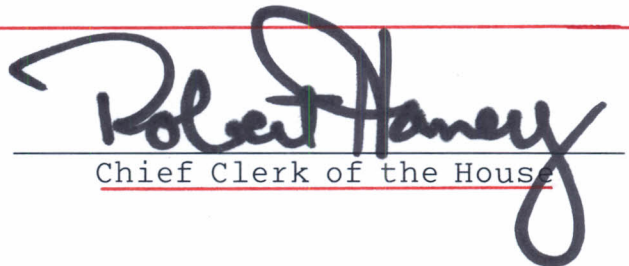

President of the Senate


Speaker of the House

I hereby certify that S.B. No. 1938 passed the Senate on April 17, 2019, by the following vote: Yeas 30, Nays 1. _____

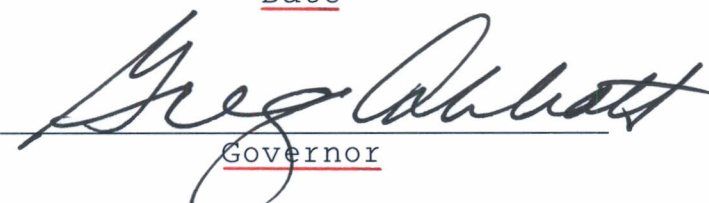

Secretary of the Senate

I hereby certify that S.B. No. 1938 passed the House on May 7, 2019, by the following vote: Yeas 141, Nays 5, one present not voting. _____

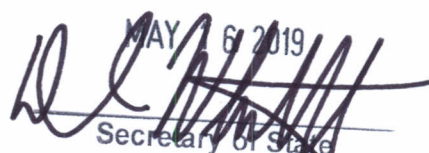

Chief Clerk of the House

Approved:

5-16-2019
Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:35pm O'CLOCK


Secretary of State

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NEXTERA ENERGY CAPITAL
HOLDINGS, INC.,
NEXTERA ENERGY TRANSMISSION,
LLC, NEXTERA ENERGY
TRANSMISSION MIDWEST, LLC,
LONE STAR TRANSMISSION, LLC, and
NEXTERA ENERGY TRANSMISSION
SOUTHWEST, LLC,

Civil No. _____

Plaintiffs,

v.

KEN PAXTON, Attorney General of
the State of Texas, DEANN T. WALKER,
Chairman, Public Utility Commission of Texas,
ARTHUR C. D'ANDREA, Commissioner,
Public Utility Commission of Texas, and
SHELLY BOTKIN, Commissioner, Public
Utility Commission of Texas, each in his or her
official capacity,

Defendants.

**DECLARATION OF AUNDREA WILLIAMS IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

OF COUNSEL:

BOIES SCHILLER FLEXNER LLP

Stuart H. Singer (Florida Bar No. 377325)
(*pro hac vice application to be submitted*)
Carlos M. Sires (Florida Bar No. 319333)
(*pro hac vice application to be submitted*)
Evan Ezray (Florida Bar No. 1008228)
(*pro hac vice application to be submitted*)
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
ssinger@bsfllp.com
csires@bsfllp.com
eezray@bsfllp.com

TILLOTSON LAW

Jeffrey M. Tillotson
(Texas Bar No. 20039200)
1807 Ross Ave., Suite 325
Dallas, Texas 75201
Telephone: (214) 382-3040
jtillotson@tillotsonlaw.com

I, Aundrea Williams, declare as follows:

1. I am employed as President of Lone Star Transmission, LLC (“Lone Star”), the President of NextEra Energy Transmission Southwest, LLC (“NEET Southwest”), and the Assistant Vice President of NextEra Energy Transmission Midwest, LLC (“NEET Midwest”), three of the Plaintiffs in the above-captioned matter. In this capacity, I have the authority to make this Declaration on behalf of Plaintiffs.

2. I have personal knowledge of the facts set forth herein. In certain instances, I have gained the knowledge of these facts by reviewing Lone Star’s business records. Each of these records was made at or near the time of the underlying event; by a person with knowledge of the event; records were kept in the course of Lone Star’s regularly conducted business activities; and the making of such records was and is in the regular practice of Lone Star’s business activities.

3. As an officer of Lone Star, NEET Southwest, and NEET Midwest, I closely followed the legislative process of Senate Bill 1938 and House Bill 3995. In that capacity, I attended and spoke at both the House and Senate hearings on the bills.

4. Both bills were introduced late in the legislative session, in March 2019.

5. Chairman Phelan, the sponsor of the House Bill, explained in the House Committee Hearing, “A coalition that includes the Texas Association of Manufacturers, the Texas Chemical Counsel, and Texas utilities inside and outside of ERCOT contacted Chairman Hancock and myself about this bill.”

6. The case made for the bill was expressly protectionist. Again, as Chairman Phelan explained, he introduced the bill by stating that “transmission operations are best managed by accountable companies with boots on the ground in our communities.”

7. Indeed, the purpose of the legislation was clearly to exclude entities that had previously been let into Texas by the Public Utility Commission of Texas (“PUCT”). As Chariman Phelan said “Truthfully I think that the Texas model works, I think you heard that, and this doors opened by FERC with their order, and uh you know, a decision by the PUC that I didn’t think was correct.”

8. Indeed, in considering the bill, the House was alerted to the troubling aspects of the law. On April 19, 2019, the U.S. Department of Justice’s Antitrust Division wrote to Representative Clardy to express its concerns with House Bill 3995. A copy of the Department’s letter is attached as Exhibit A.

9. As mentioned, I attended the House and Senate Committee hearings on the bill. Legislators appeared to advance two bases for the law: (1) concern that transmission-only utilities operating outside of ERCOT could divest the PUCT of jurisdiction, and (2) reliability concerns about new market entrants.

10. I believe that neither of these concerns is well-founded.

a. Although I am not an attorney, my understanding is that the PUCT would not lose jurisdiction as a result of transmission-only utilities operating outside of ERCOT. Indeed, the PUCT explained as much in a brief filed with a Texas Appellate Court in March 2019. As the PUCT explained:

If an electric utility that will provide only transmission services builds transmission facilities in the non-ERCOT areas of Texas, the vertically-integrated utilities’ rate cases will be handled the same way as they are now. There will continue to be transmission projects constructed by the vertically-integrated electric utilities which will have their allocated construction costs as part of the considered expenses, and there will continue to be payments at the FERC-set rate to other utilities for use of their transmission. The Commission’s Order does not result in a relinquishment of

jurisdiction and will not result in Texas customers incurring any new type of expense.

Indeed, as the PUCT made clear, vertically integrated utilities in Texas are already subject to FERC jurisdiction because they “provide Texas customers electricity using both transmission facilities they own and transmission facilities they do not own” and when those utilities rely on transmission facilities owned by another, even other Texas utilities, they compensate the transmission owners “at the FERC-set rate.” The PUCT’s full brief filed in that case is attached as Exhibit B.

- b. It has been demonstrated that out-of-state transmission companies are fully capable of providing reliable transmission service. All transmission companies, whether based in Texas or out of state, are subject to mandatory reliability standards established by the North American Electric Reliability Corporation and overseen by FERC. Texas’ own experience shows as much. As part of the 2005 Competitive Renewable Energy Zones Program, a number of out-of-state transmission companies, including Lone Star, entered Texas. Those companies have reliably transmitted power in Texas. Moreover, Texas procedure already has ample means to assess and address reliability concerns. Indeed, under current law, the PUCT can consider reliability before it issues a certificate of convenience and necessity to a transmission company, and in doing so, the PUCT can demand concessions to ensure reliability.

11. Despite these purported justifications for Senate Bill 1938 and House Bill 3995, the bills were sped through the legislative process, after having been introduced late in the session.

12. Hearings were held in the House Committee on April 1, 2019 and in the Senate Committee on April 2, 2019. At the hearings, Texas' incumbent utilities spoke in favor of the bills.

13. Senate Bill 1938 was brought up for a vote in the Senate on April 17, 2019.

14. Senate Bill 1938 was then referred to the Texas House on April 18, 2019 and referred to the Committee on State Affairs on April 23, 2019. The House Committee on State Affairs reported Senate Bill 1938 on April 25, 2019 without amendment. Senate Bill 1938 was passed by the House on May 7, 2019. The Governor signed Senate Bill 1938 into law on May 16, 2019.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: June 17, 2019

By:  Cordelia Williams



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20001*

April 19, 2019

The Honorable Travis Clardy
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

Dear Representative Clardy,

The Antitrust Division of the U.S. Department of Justice (the “Division”) appreciates your invitation¹ to comment on Texas House Bill 3995 (“H.B. 3995” or “the Bill”).² The Bill would amend Texas law to restrict which entities are permitted to develop facilities for the transmission of electricity in Texas. The Division is concerned that these restrictions would limit competition, thereby potentially raising prices and lowering the quality of service for electricity consumers.

I. Interest of the Division

Competition is a core organizing principle of the American economy,³ and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality goods and services, increased access to goods and services, and greater innovation.⁴ The Division works to promote

¹ Letter from Travis Clardy, State Rep., Tex. House of Rep., to Daniel Haar, Acting Chief, Competition Pol’y & Advocacy Sec., Antitrust Div., U.S. Dep’t of Justice (Apr. 15, 2019).

² H.B. 3995, 86th Leg., Reg. Sess. (Tex. 2019) (as passed out of Comm. on State Affairs, Apr. 4, 2019); *see also* S.B. 1938, 86th Leg., Reg. Sess. (Tex. 2019) (as passed out of Comm. on Bus. & Com., Apr. 9, 2019).

³ *See, e.g.*, N.C. State Bd. of Dental Exam’rs v. FTC, 135 S. Ct. 1101, 1110 (2015) (referencing “the Nation’s commitment to a policy of robust competition”); *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

⁴ *See, e.g.*, Nat’l Soc’y of Prof’l Eng’rs v. United States, 435 U.S. 679, 695 (1978) (noting that the antitrust laws reflect “a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. . . . The assumption that competition is the best method of allocating resources in

competition through enforcement of the antitrust laws, which prohibit certain transactions and business practices that harm competition and consumers, and through competition advocacy efforts, which urge federal, state, and local government bodies to make decisions that benefit competition and consumers. Those advocacy efforts take the form of written comments on proposed legislation, discussions with regulators, and court filings, among other channels.⁵

Over the years, the Division has developed considerable expertise in examining wholesale electricity markets. For instance, this industry has been the subject of the Division's antitrust enforcement efforts.⁶ In the Division's experience, competition in wholesale electricity markets and in the development of transmission facilities—including competition from independent, transmission-only companies—produces important benefits for wholesale and retail electricity consumers.

Additionally, as part of the Division's competition advocacy mission, the Division has evaluated the effects of government regulations on competition in wholesale electricity markets and transmission development and has publicly advocated for market reforms because of the expected benefits of competition for consumers. For example, in the 1990s, the Division publicly encouraged efforts at the Federal Energy Regulatory Commission ("FERC") to unbundle wholesale generation and transmission services and to develop an architecture to provide for competitive markets in wholesale power.⁷

II. Background on Competition to Develop Transmission Facilities

a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”).

⁵ *Mission*, ANTITRUST DIV., U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/mission> (last updated July 20, 2015).

⁶ *See e.g.*, Competitive Impact Statement, *United States v. Morgan Stanley*, 881 F.Supp.2d 563, (S.D.N.Y. Sept. 30, 2011) (No. 11-cv-6875), <https://www.justice.gov/atr/case-document/file/505056/download>; Competitive Impact Statement, *United States v. Keyspan Corp.*, 763 F.Supp.2d 633 (S.D.N.Y. Feb. 23, 2011) (No. 10-cv-1415), <https://www.justice.gov/atr/case-document/file/500576/download>; Competitive Impact Statement, *United States v. Exelon Corp.*, No. 1:06-cv-1138 (D.D.C. Aug. 10, 2006), <https://www.justice.gov/atr/case-document/file/495451/download>; Competitive Impact Statement, *United States v. Enova Corp.*, 107 F.Supp.2d 10 (D.D.C. June 8, 1998) (No. 98-cv-583), <https://www.justice.gov/atr/case-document/file/495196/download>.

⁷ *See, e.g.*, Comments of the U.S. Dep't of Justice, FERC Docket No. RM99-2-000 (Aug. 23, 1999), <https://www.justice.gov/atr/comments-us-department-justice-0>; Comments of the U.S. Dep't of Justice, FERC Docket Nos. RM95-8-000 & RM94-7-001 (Aug. 7, 1995), <https://www.justice.gov/sites/default/files/atr/legacy/2000/08/03/ferc2.txt>; Reply Comments of the U.S. Dep't of Justice, FERC Docket No. RM94-20-000 (Apr. 3, 1995), <https://www.justice.gov/atr/reply-comments-us-department-justice>.

Since the 1990s, FERC has continued to reform U.S. electricity markets through the greater use of competitive processes. For example, in 2011, FERC issued Order No. 1000 that, among other things, addressed certain federal rights of first refusal (“ROFR”).⁸ Prior to Order No. 1000, FERC granted incumbent electric facility owners (“incumbents”) a ROFR to build new high-voltage transmission lines that connect to the incumbent’s facilities. At the encouragement of the U.S. Federal Trade Commission,⁹ FERC Order No. 1000 eliminated certain federal ROFRs because they restricted competition, were not just and reasonable, and created opportunities for undue discrimination and preferential treatment.¹⁰ As FERC explained:

- “[A]n incumbent transmission provider’s ability to use a right of first refusal to act in its own economic self-interest may discourage new entrants from proposing new transmission projects in the regional transmission planning process.”
- “Federal rights of first refusal exacerbate these problems by . . . creating a barrier to entry that discourages nonincumbent transmission developers from proposing alternative solutions for consideration at the regional level.”
- “[S]ignificant investment is needed to support the development of a successful transmission project, yet there is a disincentive for a nonincumbent transmission developer to commit its resources to a potential transmission project when it runs the risk of an incumbent transmission provider exercising its federal right of first refusal once the benefits of the transmission project are demonstrated.”
- “Greater participation by transmission developers in the transmission planning process may lower the cost of new transmission facilities, enabling more efficient or cost-effective deliveries by load serving entities and increased access to resources.”¹¹

⁸ Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils., 136 FERC ¶ 61,051, at ¶¶ 225-344 (July 21, 2011) [hereinafter FERC Order No. 1000], <https://www.ferc.gov/whats-new/comm-meet/2011/072111/E-6.pdf>.

⁹ Comment of the Fed. Trade Comm’n 2, 7-11, 136 FERC ¶ 61,051 (Sept. 29, 2010) (No. RM10-23-000), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-federal-energy-regulatory-commission-concerning-transmission-planning-and-cost.rm10-23-000/100929transmissionplanning.pdf.

¹⁰ FERC Order No. 1000, *supra* note 8, at ¶¶ 285-86.

¹¹ *Id.* at ¶¶ 256-57, 291.

FERC Order No. 1000 has withstood challenges in two Courts of Appeals.¹² As the D.C. Circuit explained in affirming FERC's order, even if the incumbent prevails in a competitive process, "the threat of competitive entry (e.g., through competitive bidding) will lead [incumbent] firms to lower their costs."¹³ By contrast, ROFRs are "likely to have a direct effect on the costs of transmission facilities because they erect a barrier to entry: namely, non-incumbents are unlikely to participate in the transmission development market because they will rarely be able to enjoy the fruits of their efforts."¹⁴

Since FERC Order No. 1000, several states have implemented state ROFR laws.¹⁵ However, just as a now-eliminated federal ROFR granted by FERC could do, ROFRs granted by state law can restrict entry to develop high-voltage transmission lines, particularly where there would otherwise be a competitive process. Consequently, such laws can similarly reduce competition and thereby harm consumers. State ROFR laws also may interfere with interstate commerce.¹⁶

¹² *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 71-81 (D.C. Cir. 2014); *MISO Transmission Owners v. FERC*, 819 F.3d 329, 333-35 (7th Cir. 2016) (Posner, J.).

¹³ *S.C. Pub. Serv. Auth.*, 762 F.3d at 69.

¹⁴ *Id.* at 74.

¹⁵ See e.g., Minn. Stat. § 216B.246.

¹⁶ Of particular relevance here, the Division submitted filings in a private case challenging Minnesota's "ROFR" law under the dormant Commerce Clause. Brief for the United States of America as Amicus Curiae in Support of Neither Party, Vacatur, and Remand, *LSP Transmission Holdings, LLC v. Lange*, No. 18-2559 (8th Cir. Oct. 24, 2018), <https://www.justice.gov/atr/case-document/file/1102866/download> [hereinafter Amicus Brief]; Statement of Interest on Behalf of the United States, *LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695 (D. Minn. 2018) (No. 17-cv-04490), <https://www.justice.gov/atr/case-document/file/1053256/download> [hereinafter Statement of Interest]. Broadly speaking, the U.S. Supreme Court's dormant Commerce Clause doctrine guards against "economic protectionism" that "benefit[s] in-state economic interests by burdening out-of-state competitors." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337-38 (2008) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269 (1988)).

The Division's filings articulate the view of the United States that state ROFR laws are not protected by a general exception to the dormant Commerce Clause and do not have the approval of the federal government. Amicus Brief *supra* note 16, at 10, 15; Statement of Interest, *supra* note 16, at 16, 25. The Division's filings also call attention to the way that under a state ROFR law, "companies must own a facility in the state to benefit from the state law." Amicus Brief, *supra* note 16, at 8; see also Statement of Interest, *supra* note 16, at 11. "That restrictive in-state presence requirement" is what concerns the dormant Commerce Clause." Amicus Brief, *supra* note 16, at 8 (internal citations omitted) (quoting *Granholm v. Heald*, 544 U.S. 460, 475 (2005)); see also Statement of Interest, *supra* note 16, at 12.

III. The Bill

H.B. 3995 would amend Texas law to restrict which entities are permitted to develop facilities for the transmission of electricity in Texas. In particular, the Bill would restrict construction by entities that do not directly interconnect with the new facilities.¹⁷ The Bill also may limit what type of entity may obtain a required state certificate of convenience and necessity (“CCN”) to construct or extend transmission facilities in Texas.¹⁸ These provisions would prevent non-local utilities and independent transmission-only companies from competing to construct new transmission facilities.

We understand that this is a shift from current practice in Texas: “[T]hroughout Texas today, utilities have transmission facilities that are located, at least in part, in other utilities’ certificated service areas,” and the Texas Public Utility Commission “has certificated transmission lines that run across other utilities’ certificated service areas since the first certificates were issued by the Commission.”¹⁹ Moreover, independent, transmission-only companies have previously developed facilities in Texas.²⁰ In fact, MISO recently awarded a transmission project between Hartburg and Sabine in Texas from among a dozen competing proposals.²¹ MISO’s request for proposals sought proposals that could “enhance cost certainty and convey substantial benefits to ratepayers over

¹⁷ H.B. 3995 § 4(e) (limiting CCNs for a new transmission facility only to those entities whose existing facilities directly interconnect with the new facility); *see also id.* § 4(f) (determining the sequence in which local entities may be granted a CCN to “create the first interconnection between a load-serving station and an existing transmission facility”), *id.* § 4(g) (providing a local entity limited authority to designate another entity to build, own, or operate a new transmission facility).

¹⁸ H.B. 3995 §§ 1-3 (removing “or other person” from the Public Utility Regulatory Act of Texas (“PURA”) in sections that currently include “electric utility or other person”). *But see* Declaratory Order at 4, Joint Petition of Southwestern Public Service Company and Southwest Power Pool, Inc., Docket No. 46901 (Tex. Public Util. Comm’n Oct. 26, 2017), https://interchange.puc.texas.gov/Documents/46901_76_959583.pdf [hereinafter PUC Declaratory Order] (finding that the addition of “or other person” language to PURA in 2009 did not remove preexisting authority of the Texas Public Utility Commission “to grant a CCN to an electric utility or other person that will provide only transmission service outside of ERCOT without a service area”) (citing Public Utility Commission of Texas v. Cities of Harlingen, 311 S.W.3d 610 (Tex. App.—Austin 2010)).

¹⁹ PUC Declaratory Order, *supra* note 18, at 19.

²⁰ *Id.* at 10 (noting that three entities selected for the competitive renewable-energy zones in Texas would provide only transmission service without a service area).

²¹ MIDCONTINENT INDEP. SYS. OPERATOR, INC., SELECTION REPORT: HARTBURG-SABINE JUNCTION 500 KV COMPETITIVE TRANSMISSION PROJECT 30-95 (2018), <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf>.

time.”²² MISO selected the winning project – proposed by a transmission-only company – after determining that its proposal represented “an outstanding combination of low cost and high value” with respect to cost and design, project implementation plans, and plans for operation and maintenance.²³ As we read the bill, H.B. 3995 would prevent this type of competition from occurring in the future.

IV. Discussion

The Division urges Texas to consider whether H.B. 3995 may harm competition and consumers in ways that resemble the harm that can be caused by ROFR laws found in other states.²⁴ In particular, by restricting the development of transmission facilities to local incumbents, H.B. 3995 can harm consumers by reducing or eliminating competition. For example, even if a non-local utility or a transmission-only company was more efficient and could develop higher quality transmission facilities at a lower cost, H.B. 3995 could deny that firm the opportunity to construct that project and likewise deny consumers the benefits of the new competitor’s efforts.²⁵ Consequently, such entities also would not have the incentive to look for and propose such beneficial projects. Even if an incumbent is best-situated to develop a particular project, H.B. 3995 would likely reduce the competitive pressure on such incumbents to develop higher quality, lower cost transmission facilities. Thus, as a result of lost competition, consumers may have higher expenses in the form of greater transmission rates. Furthermore, consumers may face higher electricity rates and less reliable service as H.B. 3995 may limit construction of transmission that would increase the supply of generation available to serve a local territory or area.

Lastly, the Division notes that many state electric markets operate without restrictions like a ROFR law. To the extent legitimate and well-founded safety or public welfare concerns underlie H.B. 3995, the Division urges Texas to consider

²² *Id.* at 6.

²³ *Id.* at 2.

²⁴ In certain ways, H.B. 3995 may be more restrictive than a typical ROFR law. A ROFR law typically affords the incumbent the opportunity to develop a proposed project in lieu of a non-incumbent, if that right is exercised over a certain window of time. *See e.g.*, Minn. Stat. § 216B.246 Subd. 3 (providing an incumbent 90 days to exercise a state ROFR). By contrast, H.B. 3995 restricts the CCNs required to develop a project to local incumbents. H.B. 3995 §§ 4(e)-(f).

²⁵ For example, the benefits MISO expects from competitive processes like the Hartburg-Sabine line might not materialize in Texas under H.B. 3995.

whether it can achieve those considerations through mechanisms that do not restrict unnecessarily competition to develop transmission facilities in Texas.

We appreciate the opportunity to present our views.²⁶

Respectfully submitted,



Daniel E. Haar, Acting Chief
Competition Policy & Advocacy Section
Antitrust Division
U.S. Department of Justice

²⁶ Please feel free to contact the staff if you have questions about these comments or the attached materials, or if new questions arise as Texas considers these issues: Matthew C. Mandelberg (matthew.mandelberg@usdoj.gov), Competition Policy & Advocacy Section, Antitrust Division, U.S. Department of Justice & J. Chandra Mazumdar (chan.mazumdar@usdoj.gov), Transportation, Energy, & Agriculture Section, Antitrust Division, U.S. Department of Justice.

No. 03-18-00666-CV

IN THE
THIRD COURT OF APPEALS
AUSTIN, TEXAS

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
3/28/2019 3:25:48 PM

~~JEFFREY D. KYLE~~
Clerk

ENTERGY TEXAS, INC. *ET AL.*,
Appellants,
v.
PUBLIC UTILITY COMMISSION OF TEXAS,
Appellee.

On appeal from the 459th Judicial District Court
Travis County, Texas

RESPONSE BRIEF OF APPELLEE
PUBLIC UTILITY COMMISSION OF TEXAS

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN MCCARTY
Deputy Attorney General for Civil
Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

JESSICA SOOS
Assistant Attorney General
State Bar No. 24093183
jessica.soos@oag.texas.gov

DANIEL C. WISEMAN
Assistant Attorney General
State Bar No. 24042178
daniel.wiseman@oag.texas.gov

Office of the Attorney General
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
512.463.2012
512.457.4639 (fax)

March 28, 2019

*Counsel for Appellee Public Utility
Commission of Texas*

ORAL ARGUMENT CONDITIONALLY REQUESTED

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GLOSSARY

2009 Amendments	Amendments to the Public Utility Regulatory Act passed in CSHB 3309 relating to CCNs
AR	Administrative Record
CCN	Certificate of Convenience and Necessity
Commission or PUC	Public Utility Commission of Texas
CREZ	Competitive Renewable Energy Zone
Entergy	Entergy Texas, Inc.
ERCOT	Electric Reliability Council of Texas, also used as shorthand for the area of Texas's infrastructure for which the Electric Reliability Council of Texas is the RTO
FERC	Federal Energy Regulatory Commission
MISO	Midcontinent Independent System Operator, Inc., also used as shorthand for the area of infrastructure for which the Midcontinent Independent System Operator is the RTO
PURA	Public Utility Regulatory Act
RTO	Regional Transmission Organization
SPP	Southwest Power Pool, Inc., also used as shorthand for the area of infrastructure for which the Southwest Power Pool is the RTO
SPS	Southwestern Public Service Company

TDU Transmission and Distribution Utility, as defined by PURA
§ 31.002(19)

TIEC Texas Industrial Energy Consumers

STATEMENT OF THE CASE

This is a suit for judicial review of a final order issued by the Public Utility Commission of Texas (PUC or Commission) in response to a joint petition for declaratory order in its Docket Number 46901.¹ In that Order, the Commission construed the Public Utility Regulatory Act (PURA)² and determined that Southwestern Public Service Company (SPS), a vertically-integrated utility located outside of the Electric Reliability Council of Texas (ERCOT) region, did not have either: (i) a right of first refusal or (ii) the exclusive right to construct and operate regional transmission projects within its state-designated service area. In reaching this conclusion the Commission also determined that it could grant CCNs to electric utilities that provide only transmission services outside of ERCOT.

Several parties, including Appellants Entergy Texas, Inc. (Entergy) and Texas Industrial Energy Consumers (TIEC), who were intervenors in the contested case conducted by the Commission, filed motions for rehearing that were overruled by operation of law. These parties, along with SPS, filed suits for judicial review under

¹ Tex. Pub. Util. Comm’n, *Joint Petition of Southwestern Public Service Company and Southwest Power Pool, Inc. for Declaratory Order*, Docket No. 46901 (Oct. 26, 2017) (Order)

Citations to the administrative record will be to “AR Binder_, Item_.” The Order is AR Binder 3, Item 75 and Item A in the Appendix to this Brief.

² Tex. Util. Code §§ 11.001-66.016 (PURA).

the Administrative Procedure Act (APA)³ and PURA § 15.001. The cases were consolidated and heard in the 459th District Court, Honorable Dustin M. Howell presiding. In a final judgment, the district court affirmed the Order in all respects.⁴ This appeal followed.

STATEMENT REGARDING ORAL ARGUMENT

This case is controlled by this Court's decision in *Public Utility Commission of Texas v. Cities of Harlingen*, 311 S.W.3d 610 (Tex. App.—Austin 2010, no pet.), and therefore oral argument is not necessary. If, however, this Court determines it would be aided by argument, the Commission requests to be heard.

ISSUES PRESENTED

Issue 1: Did the Commission reasonably interpret PURA to allow for the issuance of CCNs to transmission-only electric utilities outside of ERCOT?

Issue 2: Did the Commission err in concluding that PURA does not implicitly grant a vertically-integrated electric utility the exclusive right to construct and operate new wholesale transmission facilities in its certificated retail service area?

³ Tex. Gov't Code, ch. 2001.

⁴ *Sw. Pub. Serv. Co. v. Pub. Util. Comm'n of Tex.*, No. D-1-GN-18-000208 (459th Dist. Ct., Travis County, Tex. Sept. 27, 2018).

STATEMENT OF FACTS

In the underlying proceeding, Southwestern Public Service Company (SPS) and Southwest Power Pool, Inc. (SPP) filed a joint petition for a declaratory order asking the Commission to resolve a controversy involving PURA, the regulatory scheme the Legislature has charged the Commission with administering.

The question arose when SPP prepared to institute a competitive bidding process to identify and award new transmission projects. In January 2017, SPS filed suit against SPP in state district court. SPS's suit sought a declaration that Texas law grants SPS a right of first refusal for a project to construct and operate regionally funded transmission facilities in SPS's certificated retail service area. SPP timely removed the suit to the United States District Court for the Northern District of Texas. SPS and SPP then abated the federal court proceeding to petition the Commission for a declaratory order on the question presented.

In that declaratory order, the Commission determined that vertically-integrated electric utilities operating outside of the Electric Reliability Council of Texas (ERCOT)—while retaining their traditional exclusive right to serve retail customers—did not have an exclusive right to construct and operate wholesale transmission facilities within their certificated retail service area. As part of its consideration of the issues presented, the Commission made the determination that it had the authority under PURA—as construed by this Court, and the Commission's

own longstanding precedent—to issue certificates of convenience and necessity (CCNs) to entities that would provide only transmission service in the areas outside of ERCOT. The district court affirmed the Commission’s order in all respects.

I. General Background

Transmission is the transportation of electricity from one area to another, while distribution is the delivery of electricity from the transmission lines to the individual consumers. Transmission-only electric utilities only provide transmission services and do not serve any individual retail “customers,” as that term is defined in PURA § 17.002(4).

The legislature has granted the Commission broad authority to regulate and supervise each utility in Texas as well as Texas’s electrical grid. Tex. Util. Code §§ 14.001, 35.006. The coordination of the generation and transmission of electricity is generally controlled by a regional transmission organization and/or independent system operator. ERCOT is this entity for much of Texas, but small portions of Texas fall within the jurisdiction of two other independent organizations, the Southwest Power Pool (SPP) and the Midcontinent Independent System Operator (MISO). The areas of Texas within SPP or MISO have a transmission system that crosses state lines and are thus subject to concurrent Federal Energy Regulatory Commission (FERC) and Commission jurisdiction.⁵ In the areas outside

⁵ AR Binder 2, Item 45 at 353; AR Binder 3, Item 53 at 1.

of ERCOT a singular bundled entity is the only entity providing retail service in its certificated retail area. In these areas the Commission sets the utility's retail rates. *See* FERC Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), *aff'd* by FERC Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997); *see also New York v. FERC*, 535 U.S. 1, 11-12, 25-28 (2002); Tex. Util. Code § 36.001. However, because the electric grid in these areas outside of ERCOT crosses state lines, FERC has the jurisdiction to regulate wholesale transmission rates. *Entergy La., Inc. v. La. Pub. Serv. Comm'n*, 539 U.S. 39, 41 (2003); 16 U.S.C. § 824 (b). The rates, terms, and conditions for wholesale transmission service in these regions are set out in the FERC-approved open-access transmission tariff for each region. *Id.* ERCOT is entirely within Texas; because of this, ERCOT is deemed to be outside of interstate commerce, and thus outside of the jurisdiction of the FERC. *Pub. Util. Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 312 (Tex. 2001).

In all areas of the state, a person must obtain a CCN from the Commission prior to providing transmission and/or distribution services. Tex. Util. Code § 37.051(a). If the entity is providing distribution services the CCN will designate an area within which the utility will be the sole provider of distribution services and within which the utility is obligated to serve every customer. Tex. Util. Code § 37.151. If a utility will only provide transmission services, the CCN will not have a designated service area as transmission is a point-to-point service that transports

electricity from a generator to another wholesale market participant.⁶ CCNs issued to utilities providing transmission services—either solely or in addition to distribution services—identify specifically approved transmission lines, and the Commission must approve an amendment to the CCN for any new transmission line the utility wants to build.⁷ 16 Tex. Admin. Code § 25.101(b).

II. The Competitive Renewable Energy Zone (CREZ) Projects

The CREZ project sought to expand the ERCOT region’s use of renewable energy and create a transmission system capable of bringing that energy from the areas of west Texas where there was the potential for abundant wind generation to urban areas across the state where the customers were located. The Legislature mandated the CREZ project in 2009 through the enactment of PURA § 39.904. This section contained certain goals for renewable energy and required the Commission to “develop a plan to construct transmission capacity” to bring the renewable energy to customers in a cost-effective manner. Tex. Util. Code § 39.904(g)(2). It directed the Commission to plan the construction of the transmission lines in “a manner that is most beneficial and cost-effective to the customers,” something that could only reasonably be accomplished by selecting new entrants to provide transmission

⁶ The sale of electricity to end-user consumers is broadly referred to as the “retail electric market,” while the “wholesale electric market” encompasses all other steps and transactions, including transmission, generation, and distribution.

⁷ AR Binder 3, Item 75 at 18.

services in addition to the incumbent electric utilities already operating within ERCOT. *See id.* Significantly, the CREZ lines would be located wholly within ERCOT.⁸

Pursuant to PURA § 39.904, the Commission began planning the construction of transmission capacity and was already considering transmission-only electric utilities to build some CREZ lines when the district court decided *Cities of Harlingen v. Public Utility Commission of Texas*, No. D-1-GV-08-000253, 2008 WL 8089334 (345th Dist. Ct., Travis County, Tex. Oct. 8, 2008).⁹

III. *Harlingen* and the 2009 Amendments

In *Harlingen*, a company sought to become a utility in Texas by purchasing only transmission assets from an existing electric utility. *Pub. Util. Comm’n of Tex. v. Cities of Harlingen*, 311 S.W.3d 610, 614 (Tex. App.—Austin 2010, no pet.). As part of this transaction, the company applied for a CCN from the Commission. *Id.* The Commission approved the transfer of the existing transmission CCN to the new electric utility. *Id.* Several parties appealed the Commission’s decision to the Travis County District Court arguing that the Commission did not have authority to grant or transfer CCNs to transmission-only electric utilities. *Id.* On appeal, the district

⁸ AR Binder 3, Item 75 at 10.

⁹ AR Binder 3, Item 75 at 13 (“It is well known that before the district court’s ruling, the Commission had awarded transmission lines to serve the competitive renewable energy zones (CREZ) and that some of the companies would be transmission-only utilities”).

court held that the Commission exceeded its authority by giving a CCN to a utility that would only provide transmission services as that type of utility had no service area with which it could meet the requirements of PURA § 37.151. *Id.* at 614; *Cities of Harlingen v. Pub. Util. Comm'n of Tex.*, D-1-GV-08-000253, 2008 WL 8089334 (345th Dist. Ct., Travis County, Tex. Oct. 8, 2008). At the time of this decision provisions had already begun for transmission-only electric utilities to participate in building out the CREZ lines.¹⁰ The district court's ruling had thrown the status of the CREZ transmission projects into jeopardy.¹¹ In response to the ruling, the Legislature passed CSHB 3309 (the 2009 amendments), which clarified that the Commission could grant CCNs to transmission-only electric utilities within ERCOT, thus securing the status of the CREZ projects.

After the passage of the 2009 amendments, but under the law as it existed before them, this Court decided *Harlingen*. Relying on sections unaffected by the 2009 amendments, this Court held that PURA authorized the Commission to grant or transfer CCNs to electric utilities who would provide only transmission services. *Harlingen*, 311 S.W.3d at 616-621.

¹⁰ AR Binder 3, Item 75 at 13 (“It is well known that before the district court’s ruling, the Commission had awarded transmission lines to serve the competitive renewable energy zones (CREZ) and that some of the companies would be transmission-only utilities”).

¹¹ AR Binder 3, Item 75 at 10.

SUMMARY OF ARGUMENT

This Court should affirm the district court's order because: (i) this issue has already been decided in *Harlingen*, (ii) PURA authorizes the Commission to issue CCNs to transmission-only electric utilities, (iii) the plain language of the statute does not limit the Commission's powers, and (iv) there is no statutory or court-recognized transmission-monopoly granted to vertically-integrated electric utilities outside of ERCOT.

Under the plain language of PURA, utilities who will provide only transmission services may operate in the areas of Texas outside of ERCOT. As this Court held in *Harlingen*, the plain language of PURA §§ 37.056 and 37.154 allows for transmission-only electric utilities. Section 37.056 of PURA authorizes the Commission to approve CCNs for a utility and contains no geographic restriction. Likewise, PURA § 37.154 authorizes the Commission to approve the transfer of CCNs, again without geographic restriction. As the Commission is permitted to both grant and transfer a CCN to any electric utility in any area of the state, it is illogical to conclude that transmission-only electric utilities are limited to operating solely within ERCOT.

STANDARD OF REVIEW

This case is governed by the substantial evidence standard of review. Tex. Util. Code § 15.001; Tex. Gov't Code § 2001.174. "At its core, the substantial

evidence rule is a reasonableness test or a rational basis test.” *City of El Paso v. Pub. Util. Comm’n of Tex.*, 883 S.W.2d 179, 185 (Tex. 1994) (citing *R.R. Comm’n of Tex. v. Pend Oreille Oil & Gas Co.*, 817 S.W.2d 36, 41 (Tex. 1991)).

An agency’s interpretation of a statute it is charged with enforcing is entitled to serious consideration, so long as it is reasonable and does not conflict with the statute’s language. *R.R. Comm’n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624 (Tex. 2011).

ARGUMENT

I. PURA’s plain language grants the Commission the authority to issue CCNs to transmission-only electric utilities providing service outside of ERCOT.

A. This Court’s reasoning and holding in *Harlingen* remains binding precedent.

The issue at hand was decided by this Court in *Public Utility Commission of Texas v. Cities of Harlingen*, which held that the plain language of PURA allows the Commission to issue CCNs to transmission-only electric utilities. The statutory language the Court relied upon in *Harlingen* has not been amended and grants the Commission the power to both issue and transfer CCNs to electric utilities providing only transmission services operating outside of ERCOT.

- i. **Under the plain language of PURA, the Commission may grant a CCN to a transmission-only electric utility outside of ERCOT.**

Harlingen's holding that the plain language of PURA §§ 37.056 and 37.154 allows the Commission to grant and transfer CCNs to transmission-only electric utilities controls in this case.

For a utility to fall within PURA's definitions of "electric utility," the utility may provide transmission or other types of services. Tex. Util. Code § 31.002(6) ("‘Electric utility’ means a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell **or** furnish electricity in this state") (emphasis added). An entity may provide only transmission service and still fall within PURA's definitions of an "electric utility." *Harlingen*, 311 S.W.3d at 617.

An electric utility or other person must obtain a CCN from the Commission to provide transmission service. Tex. Util. Code § 37.051. The Commission generally reviews CCN applications for such service under the standards set out in PURA § 37.056. Importantly, these general provisions expressly apply statewide, and have never been revoked. Additionally, a holder of a CCN may transfer that certificate to another person or entity. Tex. Util. Code § 37.154. The only restriction on a holder of a CCN who wishes to transfer their CCN is that the Commission must determine that the transferee can provide adequate service. *Id.* There is no

geographic limitation on the transfer of CCNs. *Id.* Because of (i) the lack of geographic limitations imposed on both the issuance and transfer of CCNs and (ii) the fact that PURA provides for transmission-only electric utilities in its definition of “electric utility,” this Court concluded that “[b]ased on the plain language of sections 37.056 and 37.154... the Commission has been given the power to approve a CCN for a utility that provides only transmission services.” *Harlingen*, 311 S.W.3d at 617.

This power to issue CCNs to transmission-only electric utilities remains unchanged in the areas of Texas outside ERCOT as the Legislature has not imposed additional requirements on the issuance of such CCNs. *See* Act of May 31, 2009, 81st Leg., R.S., ch 1170 (HB 3309), §§ 1-4, 2009 Tex. Gen. Laws 3702 (codified at Tex. Util. Code §§ 37.0541, .051, .053(a), .055, .057, .151). Nor did the 2009 amendments overrule this Court’s holding that transmission-only electric utilities do not violate the requirement to provide continuous and adequate service to all customers within its service area because it remains the case that transmission providers do not provide service to retail customers. *See Harlingen*, 311 S.W.3d at 618.

The statutes relied on in *Harlingen* remain unchanged, and this Court’s holding in *Harlingen* continues to define the Commission’s jurisdiction to issue CCNs.

ii. Appellants’ attempts to distinguish *Harlingen* are unavailing.

The Appellants dismiss this Court’s holding in *Harlingen* as superseded by legislative amendments made in response to the district court decision that *Harlingen* overturned. But the plain language of these amendments does not revoke any such authority and this Court has already stated that the 2009 amendments merely clarified Commission authority.

The Legislature enacted the 2009 amendments in response to a district court decision that invalidated a Commission order transferring a CCN to a transmission-only electric utility that lacked a service area in the ERCOT power region.¹² In the wake of this case, the Legislature clarified the Commission’s capacity to grant such a certificate by enacting PURA § 37.051(d), which expressly authorized the Commission to certify a utility that only provided transmission services in the ERCOT power region. Nowhere do the 2009 amendments restrict the Commission’s authority to certify a transmission-only electric utility outside of ERCOT, nor do the 2009 Amendments restrict the Commission’s authority under PURA § 37.154 to transfer a CCN for only transmission assets.

¹² AR Binder 2, Item 45 at 346-47 (Joint Appendix) (Tr. of House State of Affairs Committee Meeting); Floor debate on Tex. C.S.H.B. 3309, 81st Leg., R.S. beginning at 12:23:45 (May 27, 2009), available at http://tlcsenate.granicus.com/mediaplayer.php?view_id=14&clip_id=8413 (Sen. Fraser states that his floor amendment “clarifies the ability of the Public Utility Commission to issue a transmission-only CCN for the CREZ build out. ”)

Appellants’ attempts to distinguish *Harlingen* based on the plain language of § 37.051(d) fly in the face of its ordinary meaning. Appellants argue the statute is unambiguous.¹³ “If the statute is clear and unambiguous, [the court] must apply its words according to their common meaning without resort to rules of construction or extrinsic aids.” *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). Appellants point to PURA § 37.051(d)—which expressly allows the Commission to issue such CCNs within ERCOT—as the basis for a prohibition on such utilities outside ERCOT. PURA § 37.051(d) does not contain any limiting language, to interpret it as a restriction on the Commission’s authority goes against the plain language of the text.

In attempting to distinguish *Harlingen* Appellants ignore that this Court stated that the 2009 amendments were passed to clarify the Commission’s authority and not to change it. In *Harlingen* this Court considered that the Legislature had passed the 2009 amendments, even though the amendments were not in effect for that issue, and noted that the “Texas Legislature has *clarified*, therefore, that an electric utility...may obtain a CCN even if the utility will provide only transmission services.” *Harlingen*, 311 S.W.3d at 620 (emphasis added). This Court again stated that the 2009 amendments were a clarification of existing law in the recent case

¹³ SPS Br. at 11; TIEC Br. at 8.

American Multi-Cinema, Inc. v. Hegar.¹⁴ In *American Multi-Cinema* this Court interpreted a section of the Tax Code and considered an amendment to the code that was passed after the tax years at issue. In reaching the holding that the law was unchanged by the subsequent amendments, which only served to clarify the existing law, this Court cited to *Harlingen* and the 2009 amendments as an example of when subsequent legislation clarifies existing law. *Am. Multi-Cinema*, 2017 WL 74416 at *7.

The 2009 amendments do not invalidate the holding in *Harlingen*, but only serve to clarify Commission authority.

iii. Transmission-only electric utilities do not have a service area and therefore the requirement of PURA § 37.151 to serve all customers does not foreclose their existence outside of ERCOT.

The Appellants ignore the mechanics of a CCN for transmission facilities and ignore judicial precedent when they argue that PURA § 37.151—one of the 2009 amendments enacted to overrule the district court’s erroneous *Harlingen* decision—functions to disallow such utilities outside of ERCOT.

Section 37.151 states that a certificate holder, “other than one granted a certificate under Section 37.051(d)” shall “serve every consumer in the utility’s certificated area.” Electric utilities that provide both transmission and distribution

¹⁴ *Am. Multi-Cinema, Inc. v. Hegar*, 03-14-00397-CV, 2017 WL 74416, at *7 (Tex. App.—Austin Jan. 6, 2017, pet. filed).

services have a defined certificated area and those types of electric utilities are obligated to serve every retail customer in their certificated retail area, because distribution—unlike transmission—involves serving a retail “customer.” Tex. Util. Code § 37.151; *Harlingen*, 311 S.W.3d at 618-19. Because electric utilities providing only transmission services only serve wholesale market participants on a point-to-point basis, they are granted a CCN without a certificated area.

Harlingen expressly held that the provisions of PURA § 37.151 requiring a utility to serve every customer in its certificated area are simply inapplicable to transmission-only electric utilities as they do not have a certificated retail area. *Harlingen*, 311 S.W.3d at 618-19. The exception added to § 37.151 for utilities certificated under § 37.051(d) is consistent with *Harlingen*’s conclusion that the 2009 amendments were meant to clarify rather than diminish the Commission’s authority—because the lack of a service area was one of the bases the district court had relied on to reach its erroneous conclusion, the Legislature enacted this exception to address that specific issue so that the ERCOT-based CREZ project could proceed.

Electric utilities providing only transmission services continue to have no certificated service area and continue to have no retail customers to serve. Thus § 37.151(1) continues to have no application to transmission-only electric utilities.

As held in *Harlingen*, the plain language of PURA authorizes the Commission to issue CCNs to electric utilities providing only transmission services. The 2009 amendments do not change the holding in *Harlingen* as those amendments merely clarified the Commission's powers under existing law and the plain language of those amendments does not restrict the Commission's powers.

B. *Expressio unius est exclusio alterius* is inapplicable to PURA § 37.051 and leads to absurd conclusions.

Precedent and PURA's statutory scheme render the application of *expressio unius est exclusio alterius* ("the explicit mention of one thing is the exclusion of another") to PURA § 37.051(d) unsuitable. Further, the application of *expressio unius est exclusio alterius* (*expressio unius*) to this statute leads to absurd results that illustrate its inappropriateness in this case.

It is worth noting that Appellants do not argue that PURA § 37.051(d) is ambiguous.¹⁵ Despite this, they rely heavily on the interpretive aid *expressio unius* to support their argument. It is well-established law that when a statute is clear and unambiguous a court need not resort to the use of rules of construction or extrinsic aids. *Shumake*, 199 S.W.3d at 284. Under the Appellants' own theory, this interpretive aid is inapplicable.

¹⁵ SPS Br. at 11; TIEC Br. at 8.

- i. ***Expressio unius* is an inapplicable aid because PURA § 37.051(d) is not a comprehensive treatment of who may obtain a CCN.**

Even if the Court were to conclude that the same statutes it found plain in *Harlingen* are now ambiguous, the interpretive aid Appellants use is inapplicable. Texas courts, including the Texas Supreme Court, have repeatedly cautioned that “[t]he doctrine of *expressio unius est exclusio alterius* is simply an aid to determine legislative intent, not an absolute rule.” *Mid-Century Ins. Co. v. Kidd*, 997 S.W.2d 265, 274 (Tex. 1999). *Expressio unius* “applies only when the statute under consideration is intended to serve as a comprehensive treatment of a topic.” *State v. Hill*, 499 S.W.3d 853, 866 n.29 (Tex. Crim. App. 2016). It “has force only when the items expressed are members of an associated group or series.” *Sutherland on Statutory Construction* § 47:25 (7th ed. 2018). Here *expressio unius* cannot be logically applied to PURA § 37.051(d) because there is no explicit list of utilities authorized to obtain CCNs.

There is no statute specifically granting electric utilities the authority to construct transmission and distribution or only distribution services within ERCOT. *See Harlingen*, 311 S.W.3d at 618; *see also* Tex. Util. Code §§ 11.001-66.016. When granting CCNs the Commission relies upon sections 37.051(a), 37.053, and 37.056 for the authority to grant such CCNs. *See e.g.* Tex. Pub. Util. Comm’n, *Application of Southwestern Public Service Company to Amend a Certificate of*

Convenience and Necessity for a 345-KV Transmission Line Within Hale, Hockley, Lubbock, Terry and Yoakum Counties (Tuco to Yoakum), Docket No. 46042 (Sept. 21, 2017) (Order at 28). None of these sections contain an explicit grant enabling the Commission to grant electric utilities who provide transmission and distribution services CCNs for transmission lines:

- Section 37.051(a) simply states that an electrical utility or other person may not provide service without a CCN.
- Section 37.053(a) states that an electrical utility or other person that wants to obtain a CCN must submit an application to the Commission.
- Section 37.056 discusses considerations for the Commission when approving or denying an application.

Though PURA provides the full and only guidelines for granting transmission and/or distribution CCNs in Texas, it does not contain an exhaustive list of who may obtain what types of certificates in what areas of the state. *Harlingen*, 311 S.W.3d at 618; see Tex. Util. Code §§ 11.001-66.016. This Court acknowledged this in *Harlingen* when it stated that “[i]f a specific statutory reference to a particular type of utility were necessary to authorize the Commission to issue a CCN, no utility would be statutorily authorized to obtain a CCN because there would be no corresponding statutory reference to the specific type [of utility] that the applying utility happened to be.” *Harlingen*, 311 S.W.3d at 618. While PURA § 37.051(d)

includes a specific provision for transmission-only electric utilities within ERCOT, there are no corresponding provisions for electric utilities in general, transmission and distribution utilities, or vertically-integrated utilities that authorize those types of entities to obtain a CCN. *Id.* Additionally, PURA § 37.051 is not a comprehensive treatment of who may obtain a CCN—PURA § 37.056 also governs the granting of CCNs, and PURA § 37.154 governs the transfer of CCNs. These sections remain unchanged from *Harlingen* and contain no reference to transmission-only electric utilities. Because there is no comprehensive enumeration of entities that may receive a CCN and because PURA § 37.051 is not a comprehensive treatment of who may obtain CCNs, *expressio unius* should not be applied to determine whether CCNs for transmission-only electric utilities are authorized outside of ERCOT.

Simply put, the principle behind *expressio unius* is that if there is a specific and comprehensive list of things that are allowed, it can be inferred that items not on that list are disallowed. PURA contains no such list when it comes to the types of entities that can obtain CCNs. Without a specific and complete list of what people or types of entities may obtain CCNs and where, it is illogical to draw the conclusion that only one subset of several types of utilities not explicitly named in the statute was intended to be excluded.

ii. *Expressio unius*'s application leads to absurd results.

If the principle of *expressio unius* were universally applied every type of utility that was not explicitly named in the statute would be excluded; the result being transmission-only electric utilities alone could build transmission facilities in ERCOT. That is not the reality and could not have been the Legislature's intent.

As stated above, there is no corresponding provision providing for electrical utilities to provide both transmission and distribution services within ERCOT or for vertically integrated utilities to provide transmission services outside of ERCOT. The only statutory authority for electric utilities to construct transmission within ERCOT comes from PURA §§ 37.051(a), 37.053, 37.056, and 31.002(19), (6); sections that contain no explicit grant of authority to TDUs, or other types of electric utilities, and sections that are decidedly broader than the grant to transmission-only electric utilities in § 37.051(d). Thus, under the Appellants' reasoning and application of *expressio unius*, transmission-only electric utilities would be the only entities permitted to provide transmission in ERCOT. This result is obviously absurd.

iii. *Expressio unius* is inappropriate because the reference to ERCOT in the statute is more appropriately explained by the CREZ history.

The legislative history that Appellants so heavily rely on shows yet another reason why *expressio unius* should not be employed. *Expressio unius* "has been held

to be inapplicable if there is some special reason for mentioning one thing and none for mentioning another.” *Williams v. State*, 965 S.W.2d 506, 507 (Tex. Crim. App. 1998). As discussed further below, one of the few things that both chambers of the Texas Legislature agreed upon is that the 2009 amendments were necessary to secure the status of the CREZ projects.¹⁶ The CREZ projects were planned for the ERCOT region of the state and buildout of the lines was scheduled to start in the near future.¹⁷ As such, there was a special reason for mentioning the ERCOT power region—to quickly correct the district court’s error and ensure the timely buildout of CREZ transmission.

There is no need to resort to the use of extrinsic aids as the statute is unambiguous, but even if the Court were to find ambiguity, *expressio unius est exclusio alterius* cannot be appropriately applied here.

C. The legislative history of the 2009 amendments cannot implicitly overrule the Commission’s express authority.

Appellants SPS and TIEC assert that the legislative history of the 2009 amendments “confirms” that the Legislature intended to prohibit the Commission from issuing CCNs to transmission-only electric utilities operating outside of

¹⁶ AR Binder 2, Item No 45 at 346-47 (Joint Appendix) (Tr. of House State of Affairs Committee Meeting); Floor debate on Tex. C.S.H.B. 3309, 81st Leg., R.S. beginning at 12:23:45 (May 27, 2009), available at http://tlcsenate.granicus.com/mediaplayer.php?view_id=14&clip_id=8413 (Sen. Fraser states that his floor amendment “clarifies the ability of the Public Utility Commission to issue a transmission-only CCN for the CREZ build out.”)

¹⁷ AR Binder 3, Item 75 at 10.

ERCOT.¹⁸ According to the Appellants, statements Legislators made during committee hearings and floor debates, along with selected bill analyses, somehow negates the Commission's preexisting authority to issue CCNs to transmission-only electric utilities providing service outside of ERCOT. However, this legislative history does not alter the plain language conferring that authority on the Commission and this Court's decision confirming it.

As noted above, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language of a clear and unambiguous statute. *Shumake*, 199 S.W.3d at 284. As such, courts should not engage in forced or strained construction; instead, they should yield to the plain sense of the words the Legislature chose. *Id.*; *Bryan v. Papalia*, 542 S.W.3d 676, 686 (Tex. App.—Houston [14th Dist.] 2017, pet. filed). Because the express language of § 37.051 is clear and unambiguous, effect must be given to the law as it is written, and Appellants are not saved by any legislative history to the contrary.

That history, as discussed above, began when the Travis County District Court ruling jeopardized the Commission's ability to issue CCNs to transmission-only electric utilities involved in constructing transmission lines in the CREZ project. The ruling was appealed, but before this Court reversed the district court decision in the *Harlingen* opinion, the Legislature passed the 2009 amendments. These

¹⁸ SPS Br. at 22; TIEC Br. at 13.

amendments were floor amendments that were added to CSHB 3309, but they had originated in two other bills: HB 3406 (and its committee substitute CSHB 3406) and SB 1913.

To the extent that any Legislator intended § 37.051(d) to restrict the Commission's authority, that intent was not expressed in the plain language of the statute. While Texas law permits consideration of legislative history in statutory interpretation, "it does not permit elevating legislative debate statements over unambiguous statutory language." *Dow Chem. Co. v. Abutahoun*, 395 S.W.3d 335, 347 (Tex. App.—Dallas 2013, pet. filed) (citing *Hernandez v. Brinker Int'l, Inc.*, 285 S.W.3d 152, 159 (Tex. App.—Houston [14th Dist.] 2009, no pet.)); *see also Canal Ins. Co. v. Hopkins*, 238 S.W.3d 549, 563 (Tex. App.—Tyler 2007, pet. denied) ("[I]solated statements by individual legislators must be weighed against the clear language" of a statute.).

The Texas Supreme Court has opined that "legislative history cannot be used to alter or disregard the express terms of a code provision when its meaning is clear from the code...Nor can the Code Construction Act...be used as a basis to alter the express terms of a code that the Legislature enacts as law." *Fleming Foods of Tex. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999). Appellants would have this Court ignore the plain language of the statute and instead imbue § 37.051 with cherry-picked statements from the statute's legislative history.

Again, although Appellants do not argue that the statutes at issue are ambiguous, they do rely on legislative history to support their interpretation of § 37.051. Specifically, SPS discusses at length the bill history of HB 3406 and glosses over that of SB 1913.¹⁹ While neither one of these bills were ultimately adopted, they did inform the passage of the floor amendments to CSHB 3309, but only in a limited sense.

Appellants err when they treat the legislative history of one bill as more informative than the other. While SPS cites testimony and excerpts from bill analysis favorable to its interpretation, it should be noted that these citations are from the CSHB 3406 bill file and do not necessarily apply to SB 1913. Although the two bills were identical in text, the respective testimony offered during the committee hearings and bill analyses differ. A crucial difference can be found by looking at the bill analyses for CSHB 3406 and SB 1913. SPS quotes a report stating that CSHB 3406 limited the Commission's authority to issue CCNs; but no such limitation is mentioned in the bill analyses for its companion, SB 1913.²⁰

¹⁹ SPS Br. at 26.

²⁰ AR Binder 2, Item 45 at 178 (Joint Appendix) (SB 1913 Bill Analysis at 1) ("S.B. 1913 authorizes a CCN to be granted to an electric utility or other person for a facility used as a part of the transmission system serving the Electric Reliability Council of Texas (ERCOT) power region solely for the transmission of electricity"); *but see* AR Binder 2, Item 45 at 178 (Joint Appendix) (CSHB 3406 Bill Analysis at 1) ("C.S.H.B. 3406 clarifies the PUC's authority to grant a CCN to an electric utility or other person for a facility used as part of the transmission system *but limits it* to a system serving the Electric Reliability Council of Texas (ERCOT) power region... The bill exempts the CCN holder in such cases from requirements to serve every consumer in a certificated area and to provide continuous and adequate service in that area.") (emphasis added)

The fact that the same statutory text can result in two different bill analyses reflects their limited value in discerning legislative intent in this case. In addition to differing bill analyses between HB 3406 and SB 1913, there are differences in the testimony heard on the two different bills. The same discussions that took place in the house on CSHB 3406 did not take place during the senate committee hearing of SB 1913. It would be improper for this Court to find the discussion of CSHB 3406 and its bill analysis to be more instructive than that of SB 1913—crediting one and ignoring the other. We cannot know which interpretation the Legislature meant to enact when it adopted the amendments to CSHB 3309—which is why the language of the statute itself controls.

The only certainty which can be gleaned from a review of the statute’s legislative history is that CSHB 3406, SB 1913, and ultimately the floor amendments to CSHB 3309 were created in direct response to the district court ruling in the *Harlingen* case, which, at the time, jeopardized the build-out of the CREZ.²¹

The language of the statute is clear and for that reason, the Court need not consider the lengthy, and at times, conflicting, recitation of house and senate committee hearing testimony and excerpted senate floor debate to properly interpret

²¹ AR Binder 2, Item No 45 at 346-47 (Joint Appendix) (Tr. of House State of Affairs Committee Meeting); Floor debate on Tex. C.S.H.B. 3309, 81st Leg., R.S. beginning at 12:23:45 (May 27, 2009), available at http://tlcsenate.granicus.com/mediaplayer.php?view_id=14&clip_id=8413 (Sen. Fraser states that his floor amendment “clarifies the ability of the Public Utility Commission to issue a transmission-only CCN for the CREZ build out.”)

the statutes at issue. And if it were considered, that legislative history does not indicate the Legislature's intent to revoke the Commission's pre-existing authority to certificate transmission-only electric utilities throughout the Texas.

D. Appellants misrepresent the effects of a transmission-only electric utility outside of ERCOT—there is no possibility of ceding jurisdiction.

The Commission's Order does not result in ceding jurisdiction to FERC. Instead, Appellants are asking this Court to divert powers properly reserved to the Commission and the regional transmission organization into the hands of the vertically-integrated utilities. This diversion of power would give the vertically-integrated utilities a level of monopoly and control that the Legislature has not granted them and could never intended them to have.

As the Appellants have conceded, FERC currently has jurisdiction over wholesale transmission rates in the areas of Texas outside of ERCOT.²² 16 U.S.C. § 824(a); FERC Order No. 888-A, 62 Fed. Reg. 12,274, 12,304 (Mar. 14, 1997). The Commission has the authority to set retail rates for vertically-integrated electric utilities. Tex. Util. Code § 36.001. If a transmission-only electric utility provides service in the non-ERCOT areas of Texas, FERC will still have jurisdiction over the

²² TIEC Brief at 2; SPS Brief at 4.

wholesale transmission rates and the Commission will continue to set retail rates for these areas; there will be no relinquishment of jurisdiction.²³

At the most basic level, the Commission sets retail rates for vertically-integrated electric utilities through a rate case that determines which costs can be properly attributed to Texas customers. 16 Tex. Admin. Code § 25.231; Tex. Util. Code §§ 36.001-.065. The Commission then allows the utility to recover a specified rate of return on top of its costs. Tex. Util. Code § 36.051; 16 Tex. Admin. Code § 25.231(c). The costs combined with the rate of return are then used to determine the price the utility may charge customers.

Currently, vertically-integrated electric utilities provide Texas customers electricity using both transmission facilities they own and transmission facilities they do not own.²⁴ When a vertically-integrated utility builds its own transmission facilities the costs are allocated between Texas customers and non-Texas customers. 16 Tex. Admin. Code § 25.344; Tex. Util. Code § 36.209. The properly incurred cost of transmission that is allocated to Texas customers is an expense that is factored into the utility's overall expenses, which are used to determine the retail rate. Tex. Util. Code § 36.053. When a vertically-integrated utility has electricity delivered to

²³ The Commission will have the authority to set retail rates in these areas until (and if) they are opened up to retail competition.

²⁴ This typically occurs because not all generation used by Texas customers is generated by the vertically-integrated utility in Texas and it must obtain generation across state lines and use transmission owned by another utility when transporting it to Texas.

its customers using transmission lines it does not own, it compensates the utility that owns the transmission at the FERC-set rate. The costs the vertically-integrated utility incurs in compensating the transmission owner become a cost that is considered in their rate case. 16 Tex. Admin. Code § 25.231(b); Tex. Util. Code § 36.053. Because vertically-integrated utilities already use transmission belonging to other utilities, Texas customers already have FERC-set transmission rates factored into their retail rates. *See e.g.* Tex. Pub. Util. Comm’n, *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Order on Rehearing, Findings 146-217 (Feb. 23, 2016) (outlining costs incurred and revenues received from both purchasing and providing transmission services at FERC-set rates).

If an electric utility that will provide only transmission services builds transmission facilities in the non-ERCOT areas of Texas, the vertically-integrated utilities’ rate cases will be handled the same way as they are now. There will continue to be transmission projects constructed by the vertically-integrated electric utilities which will have their allocated construction costs as part of the considered expenses, and there will continue to be payments at the FERC-set rate to other utilities for use of their transmission. The Commission’s Order does not result in a relinquishment of jurisdiction and will not result in Texas customers incurring any new type of expense.

Certificating transmission owned by transmission-only electric utilities outside of ERCOT will result in no change of jurisdiction or change in procedures at the Commission.

II. The Commission properly determined that SPS does not have the exclusive right to construct new transmission projects within its certificated retail service area.

Texas law does not explicitly or implicitly grant vertically-integrated utilities a right of first refusal or the exclusive right to construct transmission lines in their certificated areas. Appellants ask the Court to invent a state-law right to exclude wholesale transmission competitors from bidding on transmission projects within a vertically-integrated electric utility's certificated retail service area. Appellants ignore the plain language of the applicable statutes, the Legislature's stated preference for competitive markets, and the reasonable and long-standing practice in Texas allowing transmission lines to cross another utility's service area.

Appellants cite to no provision of PURA that grants a utility the exclusive right to provide transmission services in any area. To the contrary, PURA explicitly allows for any "person," as opposed to only existing utilities, to file an application for a CCN. Tex. Util. Code § 37.053(a). If only incumbent utilities are eligible to provide transmission services in their certificated area, PURA would limit CCN applications accordingly, rather than allowing for "[a]n electric utility *or other person* that wants to obtain" a CCN to apply. *Id.* (emphasis added).

PURA's plain language provisions reflect the Legislature's preference for competitive electric markets. Here, PURA draws an important distinction between retail markets (which, outside ERCOT, have not yet been opened to competition) and wholesale markets. The sale of electricity to end-user consumers is broadly referred to as the "retail electric market," while the "wholesale electric market" encompasses all other steps and transactions, including transmission. PURA § 31.001(c) states that the "development of a competitive wholesale electric market that allows for increased participation by electric utilities and certain nonutilities is in the public interest." Given this stated preference and the expansive language of PURA § 37.053, Appellants' attempts to infer an exclusive right to prohibit transmission-only electric utilities in the retail service areas of vertically-integrated utilities are without merit.

The monopolies granted to vertically-integrated electric utilities outside of ERCOT are limited to retail competition. When the Legislature declined to expand competition to the areas outside of ERCOT it stated, "the introduction of *retail competition* for such an electric utility is delayed until fair competition" becomes available. Tex. Util. Code § 39.501(b) (emphasis added). The case law—including that which Appellants cite—discusses only a retail, not wholesale, monopoly. See *e.g. Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Tex.*, 104 S.W.3d 225, 227–28 (Tex. App.—Austin 2003, no pet.) (stating that the monopoly is in exchange for

the utility's agreement "to provide service to all requesting customers and charge only the retail rates set by the Commission," and going on to discuss the retail consumer's right to service, while making no mention of transmission factoring into the utilities' monopoly.)

Moreover, Appellants' arguments are belied by longstanding agency practice. Because there are no geographic monopolies for transmission, the Commission has long recognized that utilities may build transmission lines across the certificated service areas of other utilities.²⁵ In reality, retail service areas of utilities can be intermingled or wholly surrounded by the retail service area of another utility. If the Commission were to give only the incumbent utility the right to build transmission, it could result either in transmission projects being routed inefficiently to avoid the service areas of competitors or complicated projects with multiple utilities coordinating to each build the piece across their individual service area. To avoid these problems, and consistent with its statutory authority, the Commission has historically allowed utilities to build their transmission facilities across the certificated area of other utilities.²⁶

Appellants must point to more than a weak statutory implication to overcome the Legislature's stated interest in wholesale competition, and a historical

²⁵ AR Binder 3, Item 75 at 19.

²⁶ AR Binder 3, Item 75 at 19.

understanding that a certificated retail area did not grant a transmission monopoly. The Commission properly and reasonably concluded that SPS does not have an exclusive right to construct transmission within its certificated retail service area.

CONCLUSION AND PRAYER

For these reasons, the Commission respectfully requests that this Court affirm the district court's judgment affirming the Commission's Order in Docket No. 46901 and for all other relief to which it may show itself entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil
Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

/s/ Jessica Soos
JESSICA SOOS
Assistant Attorney General
State Bar No. 24093183
jessica.soos@oag.texas.gov

DANIEL C. WISEMAN
Assistant Attorney General
State Bar No. 24042178
daniel.wiseman@oag.texas.gov

Office of the Attorney General
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
512.463.2012
512.457.4639 (fax)

Attorneys for the Public
Utility Commission of Texas

CERTIFICATE OF COMPLIANCE

I certify that this document contains 7,113 words in the portions of the document that are subject to the word limits of the Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ Jessica Soos
Jessica Soos

CERTIFICATE OF SERVICE

I certify that on March 28, 2019, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court, and that a true and correct copy was served on the following lead counsel or party representative for all parties listed below via electronic service.

/s/ Jessica Soos
Jessica Soos

Ron H. Moss
Leila Melhem
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
rhmos@winstead.com
lmelhem@winstead.com

*Attorneys for Southwestern Public
Service Company*

Myles F. Reynolds
Lauren Freeland
Hunton Andrews Kurth LLP
1445 Ross Ave., Suite 3700
Dallas, Texas 75202
mreynolds@huntonak.com
lfreeland@huntonak.com

Scott Brister
Hunton Andrews Kurth LLP
111 Congress Ave., Suite 510
Austin, Texas 78701
scottbrister@huntonak.com

*Attorneys for Southwest
Transmission, LLC*

Phillip Oldham
Katie Coleman
Michael McMillin
Thompson & Knight LLP
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
Phillip.oldham@tklaw.com
Katie.coleman@tklaw.com
Michael.mcMillin@tklaw.com

*Attorneys for Texas Industrial
Energy Consumers*

Lino Mendiola
Michael Boldt
Eversheds Sutherland (US) LLP
600 Congress Ave., Suite 2000
Austin, Texas 78701
Linomendiola@eversheds-
sutherland.com
Michaelboldt@eversheds-
sutherland.com

Attorneys for Entergy Texas, Inc.

Dennis W. Donley, Jr.
Stephanie S. Potter
Naman, Howell, Smith & Lee, PLLC
8310 N. Capital of Texas Highway,
Suite 490
Austin, Texas 78731
donley@namanhowell.com
spotter@namanhowell.com

Attorneys for GridLiance

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Tab A

AR Binder 3, Item No. 75, Declaratory Order of the PUC

PUC DOCKET NO. 46901

**JOINT PETITION OF
SOUTHWESTERN PUBLIC SERVICE
COMPANY AND SOUTHWEST
POWER POOL, INC. FOR
DECLARATORY ORDER**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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DECLARATORY ORDER

This order addresses the petition for a declaratory order filed jointly by the Southwestern Public Service Company (SPS) and the Southwest Power Pool, Inc. (SPP). The petitioners requested that the Commission determine whether SPS has the exclusive right to construct and operate new, regionally-funded transmission facilities in areas of Texas that lie within SPS's certificated service area.¹ After examining this matter, the Commission concluded that other issues should also be addressed in this docket and requested briefing on all relevant issues.²

For the reasons discussed in this order, the Commission concludes that SPS does not possess an exclusive right to construct and operate transmission facilities, including new regionally-funded transmission facilities, within its service area. The Commission further concludes that transmission facilities that will serve the public cannot be constructed in Texas without first obtaining from the Commission a certificate of convenience and necessity. The Commission also decides that it has the authority to grant a certificate to an entity that will provide only transmission service outside of the Electric Reliability Council of Texas.

I. Background and Procedural History

SPP is a not-for-profit regional transmission organization that operates the region's electric power grid to ensure reliable service; it does not build or own transmission facilities. SPS is a bundled utility that serves approximately 378,000 retail electric customers in Texas. It is a member of SPP and, therefore, is located outside of the Electric Reliability Council of Texas (ERCOT). SPS is responsible for the day-to-day operation and maintenance of its transmission system.

¹ Petition (Feb. 28, 2017).

² Briefing Order (May 19, 2017).

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However, SPP directs the operation of SPS's transmission facilities in accordance with SPP's membership agreement and its open-access transmission tariff (OATT). The OATT, which is approved by the Federal Energy Regulatory Commission (FERC), sets forth the rates, terms, and conditions for wholesale-transmission-service rates in the various zones of SPP's region, including SPS's zone.

Under the Federal Power Act,³ the FERC regulates regional transmission organizations' OATTs. In 2011, the FERC adopted Order No. 1000,⁴ which, among other things, requires that each public-utility transmission provider, such as SPP, remove from its OATT all federal rights of first refusal to construct transmission facilities selected in a regional transmission plan for cost allocation. SPP has complied with Order No. 1000 and has devised a competitive bidding process for transmission projects that are no longer subject to a federal right of first refusal. In this process, SPP allows all who meet certain qualifications to submit bids to build transmission facilities. Ultimately, SPP's board of directors selects a bidder to build the facilities.

Nevertheless, Order No. 1000 removes only federal rights of first refusal. Order No. 1000 clarifies that it is not "intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities."⁵ Thus, if Texas state law provides an incumbent transmission owner (like SPS) with the right to construct transmission facilities, or a right of first refusal, in its certificated service area, Order No. 1000 does not remove those rights. However, if Texas state law does not provide incumbent transmission owners outside of ERCOT with such rights, FERC Order No. 1000 controls, and projects must be competitively bid and awarded under SPP's OATT.⁶

In this docket, SPS contends that under Texas law it has a right to construct transmission facilities, or a right of first refusal, in its certificated service area. SPP does not believe that any provision of PURA would be violated by use of the SPP competitive process and, therefore, under

³ 16 U.S.C. §§ 79–828(c) (2017).

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, (Docket No. RM10-23-000) (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁵ *Id.*, Order No. 1000, 136 FERC ¶ 61,051, at P 253, n.231.

⁶ For the preceding three paragraphs, *see* Petition at 5–8.

FERC Order No. 1000, SPP may solicit and designate utilities, including transmission-only utilities, to construct and operate new transmission facilities within SPS's service area under the competitive bidding process set forth in SPP's OATT.

SPS and SPP filed their joint petition on February 28, 2017. Various entities sought intervention and filed lists of issues, and after reviewing the parties' pleadings, the Commission issued a briefing order on May 17, 2017 in which it posed the three briefing questions described below. The following parties submitted briefing in response to the Commission's briefing order: Commission Staff, Golden Spread Electrical Cooperative, LLC, Southwestern Electrical Power Company, the Office of Public Utility Counsel (OPUC), Southwest Transmission, LLC, Texas Industrial Energy Customers (TIEC), South Central MCN, LLC and Midcontinent MCN LLC, SPS, SPP, and Entergy Texas, Inc.

II. Discussion

In addition to the issue on which the joint applicants seek a declaration by the Commission, the Commission addresses two other issues that it deems relevant to this matter.

A. Requirement to Obtain a CCN

May an electric utility as defined in PURA § 37.001 or other person construct transmission facilities in the State of Texas to provide service to the public without first obtaining from the Commission a certificate of convenience and necessity (CCN) under chapter 37 of PURA?⁷

An electric utility or other person may not construct transmission facilities in Texas to provide service to the public without first obtaining a CCN from the Commission.

"An electric utility or other person may not directly or indirectly provide service to the public . . . unless the utility or other person first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation or extension of service."⁸ "*Service* has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under this title to its patrons, employees, other public utilities,

⁷ Briefing Order, Issue No. 1.

⁸ PURA § 37.051(a).

an electric cooperative, and the public.”⁹ Further, *transmission service*, “which is a subset of service,”¹⁰ is defined to include “the construction or enlargement of facilities.”¹¹ The Commission recently stated that transmission service includes the construction of a transmission substation and that construction includes the siting of the substation.¹² This conclusion necessarily applies to all facilities that provide transmission service.

Therefore, because a CCN is required to provide service to the public, and the construction of transmission facilities is included in the broad definitions of service and transmission service, an electric utility or other person must obtain a CCN from the Commission to construct transmission facilities in Texas to provide service to the public.

B. Transmission-Only Utilities Outside of ERCOT

Does the Commission have authority under Chapter 37 of PURA to grant a certificate of convenience and necessity to an electric utility as defined in PURA § 37.001 or other person that will provide only transmission service outside the Electric Reliability Council of Texas? In answering this question, please address the conclusion of the court in *Public Utility Commission of Texas v. Cities of Harlingen* that “[t]he PURA authorizes the Commission to grant a CCN to an electric utility that provides only transmission services and does not have a certificated area in which such services will be provided.” 311 S.W.3d 610, 621 (Tex. App.—Austin 2010, no pet.) *citing* PURA §§ 31.002(6), 37.056(a), 37.154(a).¹³

The Commission has authority to grant a CCN to an electric utility or other person that will provide only transmission service outside of ERCOT without a service area. This authority exists under PURA §§ 37.056 and 37.154 as decided by the *Harlingen* court, is longstanding, and was unaffected by the 2009 amendments to chapter 37 of PURA.¹⁴

⁹ PURA § 11.003(19).

¹⁰ *Appeal of Brazos Electric Power Cooperative, Inc. and Denton County Electric Cooperative, Inc. D/B/A CoServ Electric from an Ordinance of the Colony, Texas, and, in the Alternative, Application for a Declaratory Order*, Docket No. 45175, Order on Rehearing at 14 (June 29, 2017).

¹¹ PURA § 31.002(20); *see also id.* § 35.005(b) (“The commission may require transmission service at wholesale, including the construction or enlargement of a facility.”).

¹² Docket No. 45175, Order on Rehearing at 14; *id.*, Conclusion of Law No. 11B.

¹³ Briefing Order, Issue No. 2.

¹⁴ Act of May 31, 2009, 81st Leg., R.S., ch. 1170 (HB 3309), §§ 1–4, 2009 Tex. Gen. Laws 3700 (codified at Tex. Util. Code §§ 37.0541, .051, .053, .055, .057, .151).

1. Authority under PURA §§ 37.056 and 37.154

The Commission implicitly decided that it has authority to issue a CCN to a new utility that would provide only transmission service by certificating such an entity in Docket No. 33734.¹⁵ In that docket, Electric Transmission Texas (ETT), a newly formed company that was a new entrant to the electric market in Texas, sought a CCN from the Commission.¹⁶ ETT would own only transmission facilities and would provide only transmission service in ERCOT, and would not have a service area. The Commission concluded “that PURA clearly contemplates a utility providing transmission services only”¹⁷ The Commission based its decision simply on the definition of electric utility in PURA § 31.002(6), which includes a person that owns or operates for compensation in Texas equipment or facilities to transmit electricity,¹⁸ and the prohibition that an electric utility cannot provide service without obtaining a CCN from the Commission.¹⁹ The Commission further concluded that it was “appropriate to grant a CCN to an entity that, although not yet a utility, will become a utility upon completion of a proposed plan to own and operate utility facilities.”²⁰

Neither the definition of electric utility nor the definition of person is limited to a specific power region or to membership in a regional transmission organization and the requirement to obtain a CCN is applicable statewide. While the Commission’s decision in that docket applied to an electric utility in ERCOT, its analysis and conclusions were not limited to a specific power region or membership in a regional transmission organization. Thus, its decision that it had authority to grant a CCN to an electric utility without a service area that provided only transmission service is applicable to any area of the state.

On appeal, the Commission’s decision in Docket No. 33734 that a transmission-only utility was eligible for certification was overturned by a district court in Travis County, which held that

¹⁵ *Application of Electric Transmission Texas, LLC for a Certificate of Convenience and Necessity, for Regulatory Approvals, and Initial Rates*, Docket No. 33734, Order on Rehearing (Dec. 21, 2007).

¹⁶ *Id.*

¹⁷ Docket No. 33734, Order at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 3–4.

the Commission lacked the authority to make such a certification.²¹ On further appeal, the Third Court of Appeals reversed the district court, finding that PURA authorizes the Commission to grant a CCN to a transmission-only utility without a service area.²²

The *Harlingen* court also looked at the definition of electric utility and stated that “[t]his definition does not require that an electric utility provide a service in addition to transmission.”²³ It came to the same conclusion after looking at the definition for a transmission and distribution utility.²⁴ That court also rejected arguments that the Commission was without authority to issue a CCN because it would be inconsistent with PURA §§ 37.056 and 37.151. In addressing both sections, the court recognized the different character of transmission service, that such service was not limited to an isolated, or particular, geographic area,²⁵ and that the service obligation in section 37.151 only applied to a utility with a service area and did not mandate that every utility have a service area.²⁶ The court also rejected the argument that section 37.056 precludes a transmission-only utility from being certificated if it does not have a service area.²⁷ The court acknowledged the Legislature’s 2009 amendments to PURA § 37.051, but only for the purpose of disposing of certain policy arguments.²⁸

Nowhere in the *Harlingen* decision does the court limit the scope of the Commission’s authority to only those utilities operating in ERCOT. All of the statutory provisions on which it relied have statewide application. Consequently, under the decision of the *Harlingen* court, the Commission has authority to grant a CCN under PURA § 37.056 or to approve the transfer of certificate rights under PURA § 37.154 to a transmission-only utility without a service area outside of ERCOT.

²¹ *Cities of Harlingen v. Pub. Util. Comm’n*, No. D-1-GV-08-000253, 2008 WL 809334 (345th Dist. Ct., Travis Co., Tex., Oct. 8, 2008).

²² *Pub. Util. Comm’n v. Cities of Harlingen*, 311 S.W.3d 610, 619–21 (Tex. App.—Austin 2010, no pet.).

²³ *Id.* at 617.

²⁴ *Id.*

²⁵ *Id.* at 619.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 620.

2. 2009 Amendments to chapter 37 of PURA

After the district court reversed the Commission's order, but before the *Harlingen* court reversed the district court, the Legislature in 2009 amended the utility certification provisions in PURA in part by adding subsections (d), (e), and (f) to § 37.051.²⁹

Subsection (d) states that

[a] certificate may be granted to an electric utility or other person under this section for a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity.

Subsection (e) allows the Commission to consider an application by a person not currently holding a CCN for a CCN to construct transmission facilities in ERCOT and mandates the findings that the Commission must make before it can issue a certificate under § 37.051.³⁰ Subsection (f) requires that the Commission deem the requirements of subsection (e) are met by an entity selected by the Commission to construct transmission lines to serve a competitive renewable energy zone when certain other requirements are met.

Several of the parties in this docket argue that the 2009 amendments of PURA § 37.051 created an exclusive source of authority that allows the Commission to issue a CCN for transmission-only service to a transmission-only utility but only in the ERCOT power region.³¹ Or to restate this argument, no other provision of PURA authorizes the Commission to issue a CCN to a transmission-only utility. While none of the parties state their assertion in these words, they are asserting that the 2009 amendments amended by implication the authority of the Commission to issue CCNs under PURA §§ 37.056 and 36.154 as found by the *Harlingen* court. The Commission disagrees that the 2009 amendments amended these sections by implication or otherwise limited its authority to issue CCNs to transmission-only utilities only in the ERCOT power region.

²⁹ Act of May 31, 2009, 81st Leg., R.S., ch. 1170 (HB 3309), §§ 1-4, 2009 Tex. Gen. Laws 3700 (codified at Tex. Util. Code §§ 37.0541, .051(e)-(g), 053(a), .055, .057, .151).

³⁰ Subsection (e) mandates that the Commission find that the applicant has the technical and financial ability and the resources to properly operate and maintain reliable transmission facilities in conformance with Commission rules, ERCOT requirements, and National Electric Reliability Council requirements.

³¹ OPUC's Initial Brief at 2-6 (Jun. 21, 2017); Texas Industrial Energy Consumer's Initial Brief at 4-7 (Jun. 21, 2017) (TIEC's Brief).

a. The words chosen by the Legislature

This argument presents a question of statutory construction. In construing a statute, the goal is to ascertain and give effect to the Legislature's intent.³² When construing a statute, the Texas Supreme Court has recognized that "the words [the Legislature] chooses should be the surest guide to legislative intent."³³ This general rule applies unless enforcing the plain language of the statute as written would produce absurd results.³⁴ Only when those words are ambiguous do we "resort to rules of construction or extrinsic aids."³⁵ Thus, the Commission first examines the words in these subsections.

Under subsection (d), the Commission may grant a CCN "to an electric utility or other person." Contrary to numerous assertions in the briefs submitted in this matter, subsection (d) is not limited to *transmission-only utilities*, a term that is not defined in PURA. But both *electric utility* and *person* are defined in PURA, and, "because the Legislature has supplied its own definition, which we are bound to follow."³⁶ Neither the definition of electric utility³⁷ nor the definition of person³⁸ can reasonably be construed to mean someone that only provides transmission service. An electric utility can produce, generate, transmit, distribute, sell, or furnish electricity,³⁹ or any combination of these activities, and is not limited to just transmission service. A person is defined to include individuals, partnerships, a mutual or cooperative association (but not an electric cooperative) without any limitation as to the activities in which such entities may be involved: they are without question not limited to only providing transmission service. To limit the Commission's authority in the manner suggested, one would have to add language to the end of subsection (d) like the following: *but only if the electric utility is certificated to provide only*

³² *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009), citing *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 683 (Tex. 2007).

³³ *Id.*, quoting *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999).

³⁴ *Id.*, citing *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999).

³⁵ *Id.*, citing *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007).

³⁶ *Entergy Gulf States v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009).

³⁷ PURA § 31.002(6). Electric utility means a person that owns or operates facilities to produce, generate, transmit, distribute, sell, or furnish electricity.

³⁸ PURA § 11.003(14). Person includes an individual, a partnership, a mutual or cooperative association (not including an electric cooperative), and a corporation, but is not limited by its activities.

³⁹ PURA § 31.002(6).

transmission service. This Commission may not add words to a statute. The Commission's authority under these subsections is not limited to a transmission-only utility.

The express language of these provisions shows that the 2009 amendments were meant to authorize the Commission to issue a CCN in particular circumstances: for transmission facilities located in and used to transmit electricity in the ERCOT system. Thus, the 2009 amendments do not authorize the Commission to issue a CCN outside of ERCOT. However, there is no language in these subsections that expressly limits the authority of the Commission to issue CCNs outside of ERCOT under other provisions of PURA, particularly PURA §§ 37.056 and 37.154.

b. History of the times: CREZ and transmission-only entities

Justice Hecht cautioned that, when construing statutory language, one “cannot ignore a statute’s context that may illumine its meaning.”⁴⁰ He then quoted Special Chief Justice Samuels who stated “that in determining the meaning, intent, and purpose of a law or constitutional provision, the history of the times out of which it grew, and to which it may be rationally supported to bear some direct relationship, the evils intended to be remedied, and the good to be accomplished, are proper subjects of inquiry.”⁴¹

As discussed above, the 2009 amendments were enacted in response to the Travis County District Court ruling that the Commission had no authority to issue a CCN to an electric utility that provided only transmission service without a service area. Before that court’s decision in October 2008, the Legislature had in 2005 significantly increased the state’s renewable-energy goal and directed the Commission to designate competitive renewable-energy zones throughout this state and to develop a plan to construct transmission capacity necessary to deliver to electric customers the electric energy from renewable-energy sources constructed in the competitive renewable-energy zones.⁴²

⁴⁰ *Entergy*, 282 S.W.3d at 447 (Hecht, J. concurring).

⁴¹ *Id.*, quoting *Wortham v. Walker*, 128 S.W.2d 1138, 1150 (1939); *see also*, Tex. Gov’t Code § 311.023 (“In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: (1) object sought to be attained; (2) circumstances under which the statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title (caption), preamble, and emergency provision.”).

⁴² Act of July 14, 2005, 79th Leg., 1st C.S., ch. 1 (SB 20), § 3, 2005 Tex. Gen. Laws 1, 1–2 (codified at PURA § 39.904(g)–(n)).

The Commission established those zones and a transmission plan in 2008⁴³ (its initial decision was made several months before the district court's decision), and designated the entities that were to build the transmission lines to deliver renewable energy throughout ERCOT in 2009.⁴⁴ The Commission made its initial decision selecting the entities at the January 29, 2009 open meeting.⁴⁵ It made its final decision at the March 11 open meeting⁴⁶ and issued its order on March 30.⁴⁷ It issued an order on rehearing on May 15.⁴⁸ Coincident with the Commission's initial decision, three bills were filed at the Legislature to address the Commission's certification authority, two on March 11 and one on March 12.⁴⁹ That timing was not coincidental.

All of the zones and the transmission lines were located in ERCOT, and three of the entities selected by the Commission were new entrants that would own only transmission facilities and would provide only transmission service without a service area. The district court's decision that a transmission-only utility without a service area could not be certificated severely affected the Commission's CREZ plan—it undermined the Commission's authority to issue CCNs to three of the entities that it had selected to build CREZ transmission lines. Thus, without legislative action, the CREZ plan, and the state's renewable energy goal, were in jeopardy. This is the history out of which grew the 2009 amendments. The need for legislation was to ensure that the Commission had authority to issue CCNs to utilities that would provide only transmission service without a service area to construct the CREZ transmission lines to service the CREZ, which were all located in ERCOT.

c. Legislative history

Three different bills were proposed in the 81st Legislature to amend chapter 37 of PURA, two in the House (HB 3309 and HB 3406) and one in the Senate (SB 1913). The House State

⁴³ *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008).

⁴⁴ *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, Order on Rehearing (May 15, 2009).

⁴⁵ Open Meeting Tr. at 71 (Jan. 29, 2009).

⁴⁶ Open Meeting Tr. at 49 (Mar. 11, 2009).

⁴⁷ Docket No. 35665, Order (March 30, 2009).

⁴⁸ *Id.*, Order on Rehearing (May 15, 2009).

⁴⁹ See *infra* Section II.B.4.

Affairs Committee reported a committee substitute of House Bill (HB) 3406 favorably to the House, but the bill never reached second reading. The Senate passed a committee substitute of Senate Bill (SB) 1913⁵⁰ and the House State Affairs Committee reported favorably on this bill without amendment, but it also never reached second reading in the House. As filed, HB 3309 would have only added a new section to chapter 37 to require the Commission to consolidate two CCN applications if they had a common point of interconnection.⁵¹ The bill passed out of the House, and on second reading in the Senate, the bill was amended to add the language referenced in this order as the 2009 amendments.⁵² The House refused to concur in the Senate's amendments and asked for a conference committee.⁵³ The Senate granted the request of a conference committee, and that committee reported out a bill that was passed by both chambers. The conference report accepted all of the Senate's amendments related to chapter 37 of PURA with the exception of a minor word change to section 37.151, and was adopted by both chambers.

The committee substitute of HB 3406, the committee substitute of SB 1913, and HB 3309 as amended by the Senate and finally adopted after conference all contain identical language in relation to the changes to chapter 37 of PURA. The Commission looks at the legislative history of all three bills as having the same relevance.

The Texas Supreme Court has often said that where the language of a statute is clear and unambiguous, the words of the statute should be applied without resort to rules of construction or extrinsic aids such as an act's legislative history.⁵⁴ The plain language of the 2009 amendments is clear: section 37.051 is *limited to ensuring* the Commission's authority to grant a CCN for transmission facilities that are to be part of the ERCOT system. The 2009 amendments do not mention, much less amend, the Commission's authority under sections 37.056 and 37.154 to issue a CCN to a utility that provides only transmission service without a service area outside of ERCOT as determined by the *Harlingen* court. Whether the 2009 amendments affect the Commission's

⁵⁰ S.J. of Tex. 81st Leg. R.S. 1904 (reported passed) (2009).

⁵¹ Tex. H.B. 3309, 81st Leg. R.S. (2009) (as filed).

⁵² See *supra* n.29.

⁵³ H.J. of Tex., 81st Leg. R.S. 5754 (2009).

⁵⁴ *Entergy*, 282 S.W.3d at 442, quoting *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007) and *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 652, n.4 (Tex. 2006).

authority under sections 37.056 or 37.154 to issue a CCN to such an entity within ERCOT need not be addressed to answer the question presented and is not addressed in this Order.

Even if one assumed that the language of the 2009 amendments is ambiguous, the legislative history supports the Commission's conclusion that its authority under sections 37.056 and 37.154 was not affected by the 2009 amendments. In adopting these changes to chapter 37 of PURA, the Legislature was reacting to the district court's judgment that limited the certification authority of the Commission. At the time this legislation was considered, as adjudged by the district court, the Commission had no authority to issue a CCN under section 37.056 and 37.151 to a utility that would provide only transmission service without a service area without regard to location.⁵⁵ The purpose of the 2009 amendments was to confirm the authority of the Commission to issue CCNs to carry out the CREZ plan adopted by the Commission. Thus, the amendments were limited to transmission facilities located in ERCOT.

Some of the parties assert that the fact that the Commission's authority was limited to transmission facilities in ERCOT during the legislative process of adopting the 2009 amendments indicates a legislative intent to remove authority the Commission has under other sections of PURA.⁵⁶ As the Commission stated earlier in this order, the 2009 amendments addressed only the Commission's authority to authorize CCNs for transmission facilities that are part of the ERCOT system: CCNs outside of ERCOT were not addressed by the amendments. And as discussed above, there was no need to address facilities outside of ERCOT because the focus of the concern was the construction of the CREZ transmission lines, which required a CCN from the Commission, and the CREZ transmission lines were all to be connected in ERCOT. Because some of the awarded CREZ lines could not be completed under the ruling by the district court, the proper focus of the 2009 amendments was transmission facilities located in ERCOT. That was the Legislature's intent in adopting the 2009 amendments: confirming the authority of the Commission to issue CCNs to entities that it had selected to build some of the CREZ lines, entities that would provide only transmission service without a service area within ERCOT.

⁵⁵ *Cities of Harlingen v. Pub. Util. Comm'n*, No. D-1-GV-08-000253, 2008 WL 8089334 (345th Dist. Ct., Travis Co., Tex., Oct. 8, 2008).

⁵⁶ See, e.g., SPS's Brief at 14.

There was no legislative intent to limit the certification authority of the Commission to issue a CCN under sections 37.056 and 37.151 to an electric utility that would provide only transmission service without a service area because there was no need to do so. The district court had already ruled the Commission had no such authority anywhere in the state. There also is no legislative history, either express or implied, that indicates that the Legislature intended to limit the Commission's authority under sections 37.056 and 37.154. The fact that the Legislature limited its changes to section 37.051 to clarify the Commission's authority to issue CCNs for transmission facilities in ERCOT provides no support for the theory that the Legislature intended to confirm the district court's judgment that the Commission did not have authority under sections 37.056 and 37.154 to issue CCNs to transmission utilities.

The Commission finds that the legislative history of the 2009 amendments demonstrates that the Legislature's intent was to confirm the Commission's authority to issue CCNs as needed to implement the CREZ plan. Thus the amendments were limited to transmission facilities located in ERCOT. It is well known that before the district court's ruling, the Commission had awarded transmission lines to serve the competitive renewable energy zones (CREZ) and that some of the companies would be transmission-only utilities without a service area. Thus, the Legislature was concerned that the implementation of CREZ was imperiled by the district court's decision and sought to clarify the authority of the Commission to issue CCNs to transmission-only utilities without a service area.⁵⁷ The language of the amendments is consistent with this intent to clarify the Commission's authority to issue CCNs for transmission-only utilities without a service area to serve the CREZ within ERCOT. And the legislative history also demonstrates that there was concern about whether there were appropriate standards to apply to new entrants. Subsection (e) addressed those concerns.

There is no disagreement that the 2009 amendments to add PURA § 37.051(d) and (e) apply only to ERCOT. Given the narrow focus of the 2009 amendments, one can only conclude that the Legislature focused on ERCOT both because the immediate situation at issue in Docket No. 33734 took place in ERCOT, and because the Legislature sought to avoid impeding the CREZ buildout that was happening at that time, also in ERCOT.

⁵⁷ Senate Comm. on State Affairs, Bill Analysis, Tex. S.B. 1913, 81st Leg., R.S. (2009); Hearings on Tex. S.B. 1913 before the Senate Comm. on State Affairs, 81st Leg., R.S. 2–3 (Mar. 31, 2009) (statement of Rep. Swinford). (S.B. 1913 contained language nearly identical to the language ultimately adopted).

3. Other arguments regarding the 2009 amendments

The parties presented a number of arguments that the Commission addresses here.

a. Pre-2009 authority

SPS questions whether the law before the 2009 amendments authorized the Commission to grant CCNs to transmission-only utilities without a service area anywhere in Texas.⁵⁸ And OPUC argues that, because section 37.051 includes an express provision for when a transmission-only CCN can be granted, other sections of PURA (and other subsections of PURA § 37.051) should not be interpreted as granting the Commission authority to issue a CCN for transmission-only service.⁵⁹ The *Harlingen* court has already decided differently, and this Commission is bound by that decision:

We conclude that the district court erred in holding that the Commission exceeded its statutory authority in granting a CCN to “a transmission-only utility without a service area.” The PURA authorizes the Commission to grant a CCN to an electric utility that provides only transmission services and that does not have a certificated area in which such services will be provided.⁶⁰

b. *Expressio unius est exclusio alterius*

TIEC argues that “[u]nder the well-known principle of *expressio unius est exclusio alterius*, the Legislature’s decision to limit the authorization for new transmission-only utilities to those serving the ERCOT power region creates a negative implication that transmission-only utilities are not authorized in the non-ERCOT areas.”⁶¹ SPS makes the same argument,⁶² and then argues subsections (e) and (f), and section 37.151, which was also amended in 2009, support this reading of the statute.⁶³

The Commission disagrees. A proper application of the well-known legal principle, “express mention or enumeration of one thing, consequence or class is equal to the express

⁵⁸ *Harlingen*, 311 S.W.3d at 619–20 (The court’s analysis did not depend on the transmission facility being located in ERCOT.).

⁵⁹ OPUC Brief at 3.

⁶⁰ *Harlingen*, 311 S.W.3d at 620–21, citing PURA §§ 31.002(6), 37.056(a), 37.154(a).

⁶¹ TIEC’s Brief at 5, citing *In re Clark*, 977 S.W.2d 152, 156 (Tex. App.—Houston [14th Dist.], 1998) (orig. proceeding).

⁶² SPS’s Initial Brief at 10 (Jun. 21, 2017).

⁶³ *Id.* at 10–11.

exclusion of all others,”⁶⁴ provides no support for TIEC’s position. The one thing subsection (d) does is to *grant authority* to the Commission to grant a CCN under section 37.051 for a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity.

The 2009 amendments are silent as to the Commission’s authority under other relevant and applicable sections of PURA. What was not included in the 2009 amendments was the *denial of authority* or the *removal of authority* for the Commission to act under any other provision of PURA. That is, subsection (d) deals only with the authority of the Commission to grant a CCN under section 37.051. That provision has no effect on the Commission’s authority under sections 37.056 or 37.154, which, as discussed previously, includes the authority to issue a CCN or approve the transfer of rights to an electric utility or other person that will provide only transmission service outside of ERCOT.

c. Failed legislation

Entergy notes that a bill to amend section 37.051 “to include transmission-only utilities located ‘wholly or in part within Texas’ was considered in 2017” by the Legislature,⁶⁵ but the bill failed to clear the committee in the House. Entergy argues that this failure “is indicative of the Texas Legislature’s desire to limit the initial granting of CCNs to transmission-only utilities solely to those within the ERCOT region.”⁶⁶ This failure does not indicate any such desire. As the Texas Supreme Court has stated: “[W]e attach no controlling significance to the Legislature’s failure to enact [legislation],”⁶⁷ and “discerning legislative intent from failed bills would be mere ‘inference’ that ‘would involve little more than conjecture.’”⁶⁸

d. Specific over general

Contrary to assertions made by SPS, a specific provision controls over a general provision only to the extent the two provisions are irreconcilably in conflict.⁶⁹ PURA § 37.051(d) is not

⁶⁴ *In re Clark*, 977 S.W.2d at 156.

⁶⁵ Entergy’s Brief at 6, citing to H.B. 4080, 85th Leg., R.S. (2017).

⁶⁶ *Id.*

⁶⁷ *Texas Employment Comm’n v. Hoberg*, 440 S.W.2d 38, 42 (Tex. 1969).

⁶⁸ *Entergy*, 282 S.W.3d at 443, quoting *Dutcher v. Owens*, 647 S.W.2d 948, 950 (Tex. 1983).

⁶⁹ *Texas Indus. Energy Consumers v. CenterPoint Energy Houston Elec., LLC*, 324 S.W.3d 95, 107 (Tex. 2010).

irreconcilable with either section 37.056 or section 37.164 within the scope of the issue addressed here: the Commission's authority to grant CCNs for transmission facilities outside of ERCOT. Section 37.051(d) simply does not address the Commission's authority to grant CCNs outside of ERCOT; it only addresses authority to issue CCNs for transmission facilities located in ERCOT. Thus, it is easy to give effect to both provisions.

e. Service-area requirement

SPS also misconstrues the amendment to section 37.151, which excepted a utility granted a certificate under Section 37.051(d) from having to serve every customer in its certificated service area and to provide continuous and adequate service in that area. SPS first argues that the *Harlingen* court's decision that section 37.151 only applies to utilities that have a service area⁷⁰ was defective because "it ignore[d] the 2009 amendment to PURA."⁷¹ SPS claimed that if the *Harlingen* court was correct, then "it would have been unnecessary for the Legislature to add the [language exempting certificate holders under section 37.051(d)] from serving every customer in its service area."⁷² So the *Harlingen* court had to be wrong, argues SPS, because the Legislature is never presumed to do a useless act.⁷³

However, it is SPS's analysis on this issue that is defective. As SPS itself points out earlier in its brief, the *Harlingen* court's decision "was decided based on chapter 37 as it existed *before* the 2009 amendments to PURA"⁷⁴ Therefore, the court's analysis cannot be defective because it ignored the 2009 amendments; the court's analysis would have been defective if it had considered the 2009 amendments in construing the pre-2009 law. Further, the addition of this language in section 37.151 properly reflected the addition of section 37.051(d) by the same act. The 2009 amendments also were necessary to overcome the district court's decision that the Commission did not have authority to issue a CCN to a transmission-only utility without a certificated service area. The district court's decision was based in part on the argument that the

⁷⁰ *Harlingen*, 311 S.W.3d at 619.

⁷¹ SPS's Initial Brief at 17.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ SPS's Initial Brief at 16 (emphasis in original), citing to *Harlingen*, 311 S.W.3d at 615, n.2 (where the court states it is reviewing "the pre-2009 versions.").

pre-2009 version of section 37.151 required every utility that obtained a certificate to have a certificated service area. Adding the language to section 37.151 was not a useless act.

As explained earlier, the 2009 amendments occurred after the district court's decision significantly affected the CREZ plan because the Commission had selected entities that would provide only transmission service without a certificated service area in ERCOT. Adding this language to section 37.151 ensured that the renewable energy goals established by the Legislature could be accomplished, notwithstanding the district court's decision. That is, the Commission could issue a CCN for transmission facilities in ERCOT under section 37.051(d) to a utility that would not have a service area.

4. Conclusion

The Commission has authority under PURA § 37.056 to issue CCNs to transmission-only utilities without a certificated service area outside of ERCOT, and it has authority under PURA § 37.154 to transfer certificate rights to a transmission-only utility without a certificated service area outside of ERCOT. By adopting the 2009 amendments to chapter 37, the Legislature did not intend to limit the Commission's pre-existing authority to issue CCNs outside of ERCOT.

C. Exclusive Right of Construction

Does Southwest Public Service Company (SPS) have the exclusive right to construct transmission facilities within its certificated service area and, if so, may it decline to exercise that right?⁷⁵

SPS does not have the exclusive right to construct transmission facilities within its certificated service area. Such a right would be inconsistent with the Commission's authority to issue CCNs for transmission facilities, which is not limited to only utilities that have a certificated service area in which the facilities would be located. Because the Commission so decides, it does not address whether or not SPS may decline to exercise such a right.

Nowhere does PURA explicitly grant utilities an exclusive right to provide transmission-only service—including the right to construct transmission facilities—within their

⁷⁵ Briefing Order, Issue No. 3.

certificated service areas. Indeed, such an exclusive right would be inconsistent with the Commission's certification authority in PURA.⁷⁶

As discussed in the answer to issue 1,⁷⁷ no one may construct transmission facilities in this state to serve the public without first obtaining from the Commission a CCN. Thus, it is the Commission that decides who may construct transmission facilities and where those facilities may be built in this state through the granting of a CCN.

PURA does not limit an applicant for a transmission CCN to only a utility in whose service area the transmission facilities will be located: any utility or other person may file an application.⁷⁸ In addition, the standards that the Commission must apply when deciding to grant a CCN are listed in PURA § 37.056, or PURA § 37.051(e) for certain entities and facilities. There is no restriction on the Commission's authority in either provision to grant CCNs to only certificated utilities for transmission facilities located within their certificated service area, or to even consider in which service areas the facilities will be located in making its decision. The only provision in PURA that prescribes the entity to which the Commission must grant a CCN is for transmission facilities that are not located within that utility's service area.⁷⁹

As discussed before, the owners of transmission facilities are not limited to providing transmission service in any particular area.⁸⁰ And the Commission recently stated that “[t]he nature and purpose of transmission facilities are to form an integrated, interconnected system designed to transmit power regionally for the state's electric markets to ensure safe, adequate, and reliable service.”⁸¹ Thus, a CCN that is granted for a transmission line is for specific facilities, not

⁷⁶ PURA § 37.151. Indeed, such an exclusive right raises a question as to whether it would violate the Texas Constitution's prohibition on the creation of monopolies. Tex. Const. art I., § 26; *see also City of Garland v. Texas Power & Light*, 295 S.W.2d 925, 928-30 (Tex. Civ. App.—Dallas 1956, no writ) (discussing whether an exclusive franchise to provide electric service was an impermissible establishment of a monopoly and examining *Brenham v. Brenham Water Co.*, 67 Tex. 542, 4 S.W. 143 (1987) and *Ennis Waterworks v. City of Ennis*, 105 Tex. 63, 144 S.W. 930 (1912)).

⁷⁷ *See supra* Section II.A.

⁷⁸ PURA § 37.053.

⁷⁹ PURA § 37.051(c-2); *see also Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345-kV Transmission Line in Rusk and Panola Counties*, Docket No. 45624, Order on Rehearing at 2 (May 23, 2017).

⁸⁰ *Hammack v. Pub. Util. Comm'n*, 131 S.W.3d 713, 722 (Tex. App.—Austin 2004, pet. denied).

⁸¹ *Appeal of CenterPoint Energy Houston Electric, LLC from an Ordinance of the City of League City, Texas and Application for a Declaratory Order*, Docket No. 45259, Order at 9 (Sept. 29, 2017).

for a specific service area. Thus, certificated service areas and CCNs for transmission facilities are distinct, and it is possible for a utility to have a CCN for transmission facilities that are located, wholly or partially, in another utility's certificated service area. In fact, throughout Texas today, utilities have transmission facilities that are located, at least in part, in other utilities' certificated service areas. Some of those transmission facilities are part of the Competitive Renewable Energy Zones (CREZ) projects, but others are not.

Further, the 2009 amendments added language in sections 37.051(a), 37.053(a), and 37.055(a)–(c), changing the entity from *electric utility* to *electric utility or other person* with regard to obtaining or amending a CCN. The inclusion of the term *other person* indicates the Legislature's intent that someone other than incumbent utilities could obtain a CCN for transmission facilities and that incumbent utilities do not enjoy an exclusive right to construct transmission facilities within their certificated service areas. If only incumbent utilities could construct transmission facilities within their certificated service areas, PURA would not permit any person other than an incumbent electric utility to obtain or amend a CCN for transmission facilities.

In addition, PURA § 35.005(b) authorizes the Commission to order transmission service, including the construction of transmission facilities. The authority of the Commission is not constrained in exercising this authority to specific utilities, specific service areas, or otherwise. Further, this authority extends to both municipally owned utilities and electric cooperatives.⁸²

Finally, it is known throughout the electric industry in Texas that the Commission has certificated transmission lines that run across other utilities' certificated service areas since the first certificates were issued by the Commission. And some certificated service areas are served by a utility that does not provide transmission service and does not have the capability to do so.

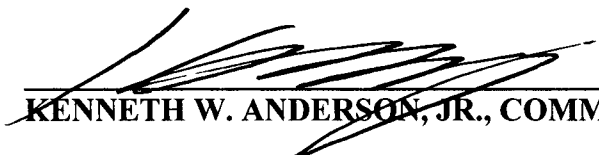
PURA does not expressly grant SPS an exclusive right to build transmission facilities within its certificated service area, and because such a right is contrary to the express authority of the Commission to issue certificates and to order transmission service, the Commission determines

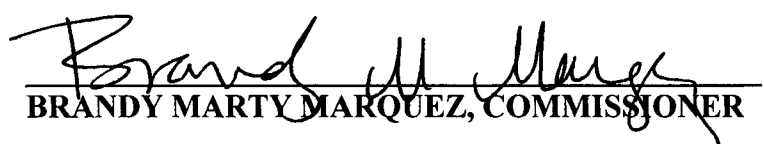
⁸² See PURA § 35.005 ("In this subchapter, 'electric utility' includes a municipally owned utility and an electric cooperative.").

that SPS does not have such a right. Because the Commission so decides, it does not address whether or not SPS may decline to exercise such a right.

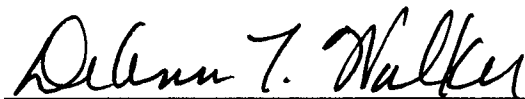
Signed at Austin, Texas the 20th day of October 2017.

PUBLIC UTILITY COMMISSION OF TEXAS


KENNETH W. ANDERSON, JR., COMMISSIONER


BRANDY MARTY MARQUEZ, COMMISSIONER

I respectfully abstain.


DEANN T. WALKER, CHAIRMAN

Tab B

D-1-GN-18-000208 Final Judgment



Filed in The District Court
of Travis County, Texas

NO. D-1-GN-18-000208
(consolidated)

SEP 27 2018 JC
At 3:13 P.M.
Velva L. Price, District Clerk

SOUTHWESTERN PUBLIC SERVICE COMPANY, PLAINTIFF, v. PUBLIC UTILITY COMMISSION OF TEXAS, DEFENDANT.	§ § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 459th JUDICIAL DISTRICT

FINAL JUDGMENT

On August 13, 2018, the above-styled consolidated cause came on to the Court for hearing on the merits. All parties appeared through counsel. The Court, having reviewed the pleadings, the administrative record, the briefs of the parties and the amici curiae, and considered the argument of counsel, finds that the agency order under review in this case should be in all things affirmed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Order on Rehearing of the Public Utility Commission in Docket 46901 is **AFFIRMED**.

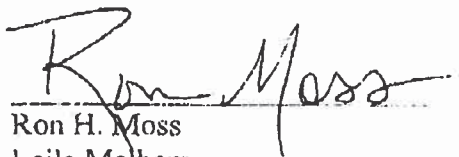
IT IS FURTHER ORDERED that Plaintiffs take nothing by their suits and that costs are assessed against the parties who incurred them.

All relief not expressly granted herein is **DENIED**. This is a final judgment disposing of all claims and parties and is appealable.

Signed this 27th day of September, 2018.

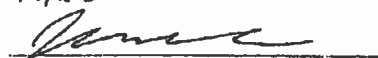
Dustin M. Howell, Judge Presiding

APPROVED AS TO FORM:



Ron H. Moss
Leila Melhem
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
rhmos@winstead.com
lmelhem@winstead.com

*Attorneys for Southwestern Public Service
Company*
Myles F. Reynolds with permission



Myles F. Reynolds
Hunton Andrews Kurth LLP
1445 Ross Ave., Suite 3700
Dallas, Texas 75202
mreynolds@huntonak.com

Attorney for Southwest Transmission, LLC
Michael McMillin with permission



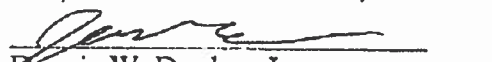
Phillip Oldham
Katie Coleman
Michael McMillin
Thompson & Knight LLP
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
Phillip.oldham@tklaw.com
Katie.coleman@tklaw.com
Michael.McMillin@tklaw.com

*Attorneys for Texas Industrial Energy
Consumers*



Lino Mendiola
Michael Boldt
Eversheds Sutherland (US) LLP
600 Congress Ave., Suite 2000
Austin, Texas 78701
Linomendiola@eversheds-sutherland.com
Michaelboldt@eversheds-sutherland.com

Attorneys for Entergy Texas, Inc.
Stephanie Potter with permission



Dennis W. Donley, Jr.
Stephanie S. Potter
Naman, Howell, Smith & Lee, PLLC
8310 N. Capital of Texas Highway,
Suite 490
Austin, Texas 78731
donley@namanhowell.com
spotter@namanhowell.com

Attorneys for Gridliance



Jessica Soos
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Jessica.soos@oag.texas.gov

*Attorneys for Public Utility Commission of
Texas*

APPROVED AS TO FORM:

Ron H. Moss
Leila Melhem
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
rhmosse@winstead.com
lmelhem@winstead.com

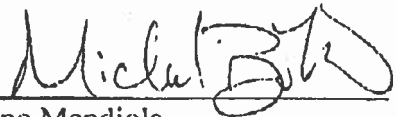
*Attorneys for Southwestern Public Service
Company*

Myles F. Reynolds
Hunton Andrews Kurth LLP
1445 Ross Ave., Suite 3700
Dallas, Texas 75202
mreynolds@huntonak.com

Attorney for Southwest Transmission, LLC

Phillip Oldham
Katie Coleman
Michael McMillin
Thompson & Knight LLP
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
Phillip.oldham@tklaw.com
Katie.coleman@tklaw.com
Michael.McMillin@tklaw.com

*Attorneys for Texas Industrial Energy
Consumers*



Lino Mendiola
Michael Boldt
Eversheds Sutherland (US) LLP
600 Congress Ave., Suite 2000
Austin, Texas 78701
Linomendiola@eversheds-sutherland.com
Michaelboldt@eversheds-sutherland.com

Attorneys for Entergy Texas, Inc.

Dennis W. Donley, Jr.
Stephanie S. Potter
Naman, Howell, Smith & Lee, PLLC
8310 N. Capital of Texas Highway,
Suite 490
Austin, Texas 78731
donley@namanhowell.com
spotter@namanhowell.com

Attorneys for Gridliance

Jessica Soos
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Jessica.soos@oag.texas.gov

*Attorneys for Public Utility Commission of
Texas*

Tab C

PURA § 37.051

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Utilities Code (Refs & Annos)
Title 2. Public Utility Regulatory Act (Refs & Annos)
Subtitle B. Electric Utilities (Refs & Annos)
Chapter 37. Certificates of Convenience and Necessity (Refs & Annos)
Subchapter B. Certificate of Convenience and Necessity

V.T.C.A., Utilities Code § 37.051

§ 37.051. Certificate Required

Effective: September 1, 2015
[Currentness](#)

(a) An electric utility or other person may not directly or indirectly provide service to the public under a franchise or permit unless the utility or other person first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.

(b) Except as otherwise provided by this chapter, a retail electric utility may not furnish or make available retail electric utility service to an area in which retail electric utility service is being lawfully furnished by another retail electric utility unless the utility first obtains a certificate that includes the area in which the consuming facility is located.

(c) Notwithstanding any other provision of this chapter, including Subsection (a), an electric cooperative is not required to obtain a certificate of public convenience and necessity for the construction, installation, operation, or extension of any generating facilities or necessary interconnection facilities.

(c-1) Notwithstanding any other provision of this title except [Section 11.009](#), and except as provided by Subsection (c-2), a person, including an electric utility or municipally owned utility, may not interconnect a facility to the ERCOT transmission grid that enables additional power to be imported into or exported out of the ERCOT power grid unless the person obtains a certificate from the commission stating that public convenience and necessity requires or will require the interconnection. The person must apply for the certificate not later than the 180th day before the date the person seeks any order from the Federal Energy Regulatory Commission related to the interconnection. The commission shall apply [Section 37.056](#) in considering an application under this subsection. In addition, the commission must determine that the application is consistent with the public interest before granting the certificate. The commission may adopt rules necessary to implement this subsection. This subsection does not apply to a facility that is in service on December 31, 2014.

(c-2) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (c-1) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act ([16 U.S.C. Sections 824i, 824j, and 824k](#)). In approving the

application, the commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

(c-3) Nothing in Subsection (c-1) or (c-2) is intended to restrict the authority of the commission or the independent organization certified under [Section 39.151](#) for the ERCOT power region to adopt rules or protocols of general applicability.

(d) A certificate may be granted to an electric utility or other person under this section for a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity.

(e) The commission may consider an application filed by a person not currently certificated as an electric utility for a certificate of convenience and necessity to construct transmission capacity that serves the ERCOT power region. Before granting a certificate under this section, the commission must find, after notice and hearing, that:

(1) the applicant has the technical ability, financial ability, and sufficient resources in this state to own, operate, and maintain reliable transmission facilities;

(2) the applicant has the resources and ability to comply with commission rules, requirements of the independent organization certified under [Section 39.151](#) for the ERCOT power region, and requirements of the National Electric Reliability Council applicable to the provisions of transmission service; and

(3) for an application filed by a person that is not an electric utility, granting the application will not adversely affect wholesale transmission rates, as compared to the rates projected to be charged if an existing electric utility were to build the transmission facility.

(f) The commission shall consider the requirements of Subsection (e) to have been met by an electric utility or other person that:

(1) is selected by the commission as a transmission provider under a plan adopted by the commission under [Section 39.904](#) not later than September 1, 2009; and

(2) before the certificate is issued, provides to the commission a detailed plan regarding the offices, personnel, and other resources the electric utility or other person will have in this state to ensure provision of continuous and adequate transmission service.

(g) A municipally owned utility or a municipal power agency created under Chapter 163 may not directly or indirectly construct, install, or extend a transmission facility outside of the municipal boundaries of the municipality that owns the municipally owned utility, or the power agency's boundaries, which for the purposes of this subsection consist of the municipal boundaries of the participating public entities, unless the municipally owned utility or power agency first obtains from the commission, through the application process provided by [Section 37.053](#), a certificate that states that the public convenience and necessity requires or will require the transmission facility. [Section 37.056](#) applies to an application under this subsection. This subsection does not apply to a transmission facility placed in service after September 1, 2015,

that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, a municipally owned utility was contractually obligated to purchase at least 190 megawatts of capacity.

(h) The commission shall adopt rules as necessary to provide exemptions to the application of Subsection (g) that are similar to the exemptions to the application of this section to an electric utility, including exemptions for:

(1) upgrades to an existing transmission line that do not require any additional land, right-of-way, easement, or other property not owned by the municipally owned utility; and

(2) the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021.

(i) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (g) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act ([16 U.S.C. Sections 824i, 824j, and 824k](#)). In approving the application, the commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

Credits

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, § 30, eff. Sept. 1, 1999; Acts 2009, 81st Leg., ch. 1170, § 2, eff. June 19, 2009; Acts 2015, 84th Leg., ch. 1162 (S.B. 776), § 1, eff. Sept. 1, 2015; Acts 2015, 84th Leg., ch. 1275 (S.B. 933), § 1, eff. Sept. 1, 2015.

[Notes of Decisions \(45\)](#)

V. T. C. A., Utilities Code § 37.051, TX UTIL § 37.051

Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

Tab D

PURA § 37.151



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Utilities Code (Refs & Annos)
Title 2. Public Utility Regulatory Act (Refs & Annos)
Subtitle B. Electric Utilities (Refs & Annos)
Chapter 37. Certificates of Convenience and Necessity (Refs & Annos)
Subchapter D. Regulation of Services, Areas, and Facilities

V.T.C.A., Utilities Code § 37.151

§ 37.151. Provision of Service

Effective: June 19, 2009

[Currentness](#)

Except as provided by this section, [Section 37.152](#), and [Section 37.153](#), a certificate holder, other than one granted a certificate under [Section 37.051\(d\)](#), shall:

- (1) serve every consumer in the utility's certificated area; and
- (2) provide continuous and adequate service in that area.

Credits

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., ch. 1170, § 4, eff. June 19, 2009.

[Notes of Decisions \(2\)](#)

V. T. C. A., Utilities Code § 37.151, TX UTIL § 37.151

Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

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Tab E

PURA § 37.056

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Utilities Code (Refs & Annos)
Title 2. Public Utility Regulatory Act (Refs & Annos)
Subtitle B. Electric Utilities (Refs & Annos)
Chapter 37. Certificates of Convenience and Necessity (Refs & Annos)
Subchapter B. Certificate of Convenience and Necessity

V.T.C.A., Utilities Code § 37.056

§ 37.056. Grant or Denial of Certificate

Effective: June 17, 2011

[Currentness](#)

(a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

(1) grant the certificate as requested;

(2) grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or

(3) refuse to grant the certificate.

(c) The commission shall grant each certificate on a nondiscriminatory basis after considering:

(1) the adequacy of existing service;

(2) the need for additional service;

(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4) other factors, such as:

(A) community values;

(B) recreational and park areas;

(C) historical and aesthetic values;

(D) environmental integrity;

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and

(F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by [Section 39.904\(a\)](#) of this title.

(d) The commission by rule shall establish criteria, in addition to the criteria described by Subsection (c), for granting a certificate for a transmission project that serves the ERCOT power region, that is not necessary to meet state or federal reliability standards, and that does not serve a competitive renewable energy zone. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project. The commission shall include with its decision on an application for a certificate to which this subsection applies findings on the criteria.

Credits

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 295, § 2, eff. June 18, 2003; Acts 2011, 82nd Leg., ch. 949 (H.B. 971), § 2(a), eff. June 17, 2011.

[Notes of Decisions \(30\)](#)

V. T. C. A., Utilities Code § 37.056, TX UTIL § 37.056

Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

Tab F

PURA § 37.154



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Utilities Code (Refs & Annos)
Title 2. Public Utility Regulatory Act (Refs & Annos)
Subtitle B. Electric Utilities (Refs & Annos)
Chapter 37. Certificates of Convenience and Necessity (Refs & Annos)
Subchapter D. Regulation of Services, Areas, and Facilities

V.T.C.A., Utilities Code § 37.154

§ 37.154. Transfer of Certificate

Currentness

(a) An electric utility may sell, assign, or lease a certificate or a right obtained under a certificate if the commission determines that the purchaser, assignee, or lessee can provide adequate service.

(b) A sale, assignment, or lease of a certificate or a right is subject to conditions the commission prescribes.

Credits

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997.

V. T. C. A., Utilities Code § 37.154, TX UTIL § 37.154

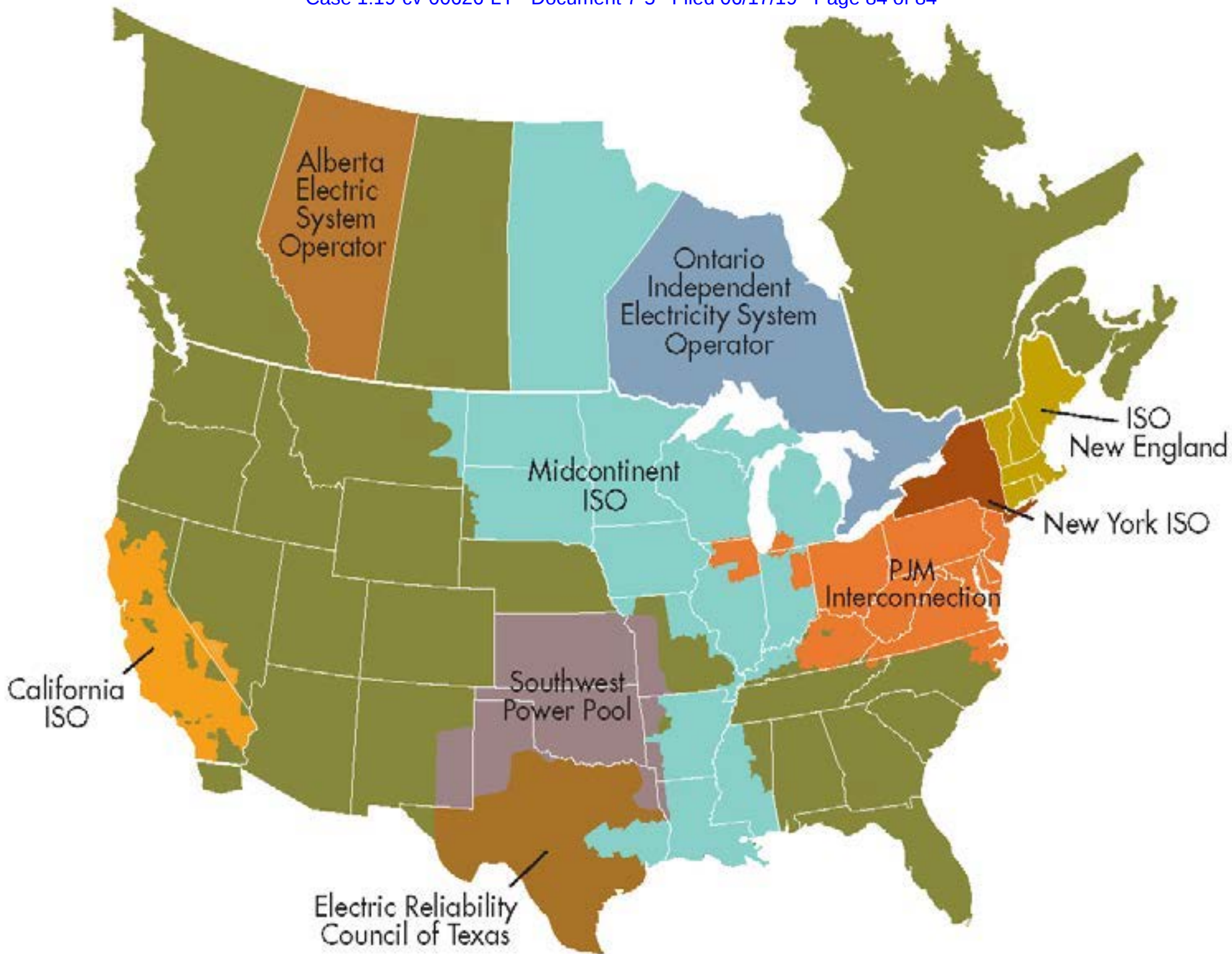
Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

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Tab G

Map of RTOs



**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NEXTERA ENERGY CAPITAL
HOLDINGS, INC.,
NEXTERA ENERGY TRANSMISSION,
LLC, NEXTERA ENERGY
TRANSMISSION MIDWEST, LLC,
LONE STAR TRANSMISSION, LLC, and
NEXTERA ENERGY TRANSMISSION
SOUTHWEST, LLC,

Civil No. _____

Plaintiffs,

v.

KEN PAXTON, Attorney General of
the State of Texas, DEANN T. WALKER,
Chairman, Public Utility Commission of Texas,
ARTHUR C. D'ANDREA, Commissioner,
Public Utility Commission of Texas, and
SHELLY BOTKIN, Commissioner, Public
Utility Commission of Texas, each in his or her
official capacity,

Defendants.

**DECLARATION OF ERIC GLEASON IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

OF COUNSEL:

BOIES SCHILLER FLEXNER LLP

Stuart H. Singer (Florida Bar No. 377325)
(pro hac vice application to be submitted)
Carlos M. Sires (Florida Bar No. 319333)
(pro hac vice application to be submitted)
Evan Ezray (Florida Bar No. 1008228)
(pro hac vice application to be submitted)
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
ssinger@bsfllp.com
csires@bsfllp.com
eezray@bsfllp.com

TILLOTSON LAW

Jeffrey M. Tillotson
(Texas Bar No. 20039200)
1807 Ross Ave., Suite 325
Dallas, Texas 75201
Telephone: (214) 382-3040
jtillotson@tillotsonlaw.com

I, Eric Gleason, declare as follows:

1. I am employed as President of NextEra Energy Transmission, LLC (“NEET”), one of the Plaintiffs in the above-captioned matter. In this capacity, I have the authority to make this Declaration on behalf of Plaintiffs.

2. I have personal knowledge of the facts set forth herein. In certain instances, I have gained the knowledge of these facts by reviewing NEET’s business records. Each of these records was made at or near the time of the underlying event, by a person with knowledge of the event; records were kept in the course of NEET’s regularly conducted business activities; and the making of such records was and is in the regular practice of NEET’s business activities.

3. As President of NEET, I oversee not only the day-to-day management of NEET, but I also am involved in strategic decisions of NEET’s subsidiaries. In that role, I am involved in strategic planning for NextEra Energy Transmission Midwest, LLC (“NEET Midwest”), Lone Star Transmission, LLC (“Lone Star”), and NextEra Energy Transmission Southwest, LLC (“NEET Southwest”).

4. NEET is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Juno Beach, Florida. It is an indirect subsidiary of NextEra, and is engaged in the business of building and operating transmission lines in North America.

5. NEET Midwest is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Juno Beach, Florida. It is an indirect subsidiary of NextEra, and is engaged in the business of building and operating transmission lines in the Midcontinent Independent System Operator, Inc. (“MISO”) region of the United States. NEET Midwest is a public utility regulated by the Federal Energy Regulatory

Commission (“FERC”). In November 2018, as a result of its competitive transmission planning process, MISO designated NEET Midwest to construct, own, and operate new 500 kilovolt (“kV”) transmission line and substation facilities in Orange and Newton Counties in East Texas (the “Hartburg-Sabine Transmission Project”).

6. Lone Star is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Austin, Texas. It is an indirect subsidiary of NextEra, and is engaged in the business of building, owning, and operating transmission lines in the Electric Reliability Council of Texas, Inc. (“ERCOT”) region of Texas and, as an investor-owned public utility, is regulated by the Public Utility Commission of Texas (“PUCT”) for purposes of rates and reliability. Lone Star Transmission was designated by the PUCT to construct 330 miles of 345 kV transmission lines and five 345 kV substations as part of the state’s 2005 competitive renewable energy zone (“CREZ”) transmission buildout, which facilities were completed in 2013. Lone Star Transmission has thus operated as a transmission-only utility in ERCOT since then.

7. NEET Southwest is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Juno Beach, Florida. It is an indirect subsidiary of NextEra, and is engaged in the business of building and operating transmission lines in the Southwest Power Pool, Inc. (“SPP”) region of the United States. NEET Southwest is a public utility regulated by FERC. In 2017, NEET Southwest entered into an asset purchase agreement to acquire 30 miles of 138 kV transmission line facilities from Rayburn Country Electric Cooperative, Inc. (the “Jacksonville-Overton Line”) in the SPP region of East Texas for approximately \$2.1 million.

8. NEET and its subsidiaries have a significant track record of successfully building and operating transmission lines across the country.

9. NEET and its subsidiaries have made a strategic decision to enter the Texas transmission market, and growing NEET's business in Texas is critical to its expansion.

10. Thus far, NEET has made three forays into Texas:

- a. *First*, as part of the 2005 Competitive Renewable Energy Zones, Lone Star was selected by the PUCT to build and run approximately 330 miles of high-voltage transmission lines, stretching from Scurry County to Navarro County. Lone Star completed its line construction on time and under budget. Lone Star's lines were energized in 2013, and have been reliably run since.
- b. *Second*, on June 7, 2017, NEET Southwest agreed to purchase the Jacksonville to Overton power line from Rayburn County Electric Cooperative ("Rayburn") in the Southwest Power Pool power region for approximately \$2.1 million. The contract between NEET Southwest and Rayburn is attached as Exhibit A. The agreement requires Rayburn to transfer its Certificate of Convenience and Necessity ("CCN") to NEET Southwest, which requires PUCT approval. On October 1, 2018, NEET Southwest and the PUCT's staff entered a stipulated agreement contemplating that the CCN would be transferred. As part of the stipulation, NEET Southwest agreed to provide a comparable level of service and reliability as Rayburn did, including establishing a service center close to the line. NEET Southwest also agreed to seek a FERC rate

that was based on the rates the PUCT approved for transmission-only utilities operating in ERCOT. The stipulation is attached as Exhibit B. Although the PUCT's staff stipulated to the transfer, the application remains pending before the Commission.

- c. *Third*, on November 27, 2018, NEET Midwest was selected by MISO to build a 500 kV line running from Hartburg to the new Stonewood Substation (referred to as the "Hartburg-Sabine Junction Transmission Project"). NEET Midwest's bid was selected from twelve bids from nine other companies, including a number of Texas incumbent transmission companies. MISO selected NEET Midwest because its proposal "offer[ed] an outstanding combination of low cost and high value, with best-in-class cost and design, best-in-class project implementation plans, and top-tier plans for operations and maintenance." The Selection Report detailing MISO's decision is attached as Exhibit C. On January 25, 2019, NEET Midwest entered into Selected Developer Agreement with MISO to build the line—the agreement contemplates that NEET Midwest will secure a CCN from the PUCT. The agreement is attached as Exhibit D.

11. I closely followed the floor debates and legislative process on Senate Bill 1938 and House Bill 3995 because the bills will have significant adverse effects on NEET and its subsidiaries.

12. Specifically, the Act appears to prevent NEET Southwest from completing its acquisition of the Jacksonville-Overton line and appears to prevent NEET Midwest from building and operating the Hartburg-Sabine Junction Transmission Project.

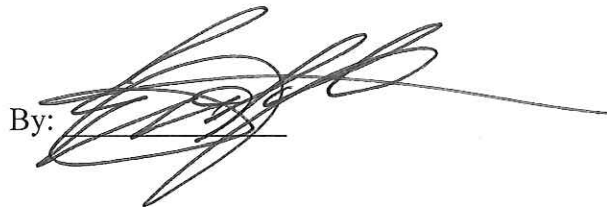
13. These losses will have significant compounding effects on NEET and its affiliates. For example, NEET plans to expand its operations by winning competitive bids across the country. When NEET or its affiliates submit a bid for transmission projects, one of the key aspects the project evaluators look for is a track record of successful development. Because of the Act, NEET will not be able to point to the Jacksonville-Overton line or the Hartburg-Sabine Junction Transmission Project in future bids.

14. Additionally, the Act disrupts NEET's growth plans in Texas because NEET cannot acquire new transmission lines or win new bids for transmission projects unless it already has a physical presence in the State.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: June 17, 2019

By:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Execution Version

ASSET PURCHASE AGREEMENT

Between

Rayburn Country Electric Cooperative, Inc.

As Seller

And

NextEra Energy Transmission Southwest, LLC

As Purchaser

Dated as of

June 7, 2017

*Execution Version***TABLE OF CONTENTS**

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EXHIBITS

Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Form of Bill of Sale
Exhibit C	Descriptions of Jacksonville-Overton 138 kV Transmission Line
Exhibit D	Form of Land Contract Assignment
Exhibit 2.1b	Description of Land Contracts

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (together with the Schedules and Exhibits referenced herein and attached hereto, this “Agreement”), dated as of June 7, 2017 (the “Execution Date”), is by and between NextEra Energy Transmission Southwest, LLC, a Delaware limited liability company (“Purchaser”), and Rayburn Country Electric Cooperative, Inc., a Texas electric cooperative corporation (“Seller”).

WITNESSETH:

WHEREAS, Seller wishes to sell and assign to Purchaser and Purchaser wishes to purchase and assume from Seller, certain assets and certain liabilities of Seller described herein, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Certain Definitions. As used herein, the following terms have the meaning set forth below:

“Acquired Assets” has the meaning set forth in Section 2.1.

“Affiliate” (and, with a correlative meaning, “affiliated”) means, with respect to any Person, any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person, including any Subsidiary of such Person. As used in this definition, “control” (and, with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interests, by contract or otherwise).

“Agreement” shall have the meaning as defined in the preamble to this Agreement.

“Allocation Schedule” shall have the meaning as defined in Section 3.6.

“Asset Material Adverse Effect” means any change, effect, event or condition, individually or in the aggregate, that has had, or, with the passage of time, would reasonably be expected to have a material adverse effect on the ownership, condition, or operation of the Acquired Assets as they are operated in the Ordinary Course of Business.

“Assignment and Assumption Agreement” means the assignment and assumption agreement substantially in the form of Exhibit A.

“Bill of Sale” means the bill of sale transferring to Purchaser the Acquired Assets (excluding the Real Property) in the form of Exhibit B.

“Business Day” means any day, excluding: (i) Saturday; (ii) Sunday; and (iii) any day on which banks in Austin, Texas, are authorized or required by law or other governmental action to close.

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“CCN” shall have the meaning set forth in Section 6.3d.

“Claim Deadline Date” shall have the meaning set forth in Section 10.1.

“Claim Reduction Payment” shall have the meaning set forth in Section 10.3d.

“Closing” shall have the meaning as defined in Section 8.1.

“Closing Date” shall have the meaning as defined in Section 8.1.

“Closing Encumbrance” shall have the meaning as defined in Section 6.9b.

“Closing Payment” shall have the meaning as defined in Section 3.2.

“Closing Payment Certificate” shall have the meaning as defined in Section 3.2.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. Section references to the Code are to the Code as in effect (and as amended) as of the Execution Date.

“Commercially Reasonable Efforts” shall mean efforts that a reasonable person would use to fulfill the applicable covenant contained herein or satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement.

“Consent” means any approval, consent, ratification, waiver, clearance or other authorization from any Person other than a Party.

“Contract” means any written or oral contract, agreement, indenture, note, bond instrument, lease (including any real property lease), license or other document or arrangement, undertaking, practice or authorization that is binding on any Person or property under applicable Law, including the Land Contracts.

“Cure Notice” shall have the meaning as defined in Section 6.9c.

“Damages” means the amount of any actual liability, loss, cost, expense, claim, award or judgment incurred or suffered by any Indemnified Party arising out of or resulting from the indemnified matter, whether attributable to personal injury or death, property damage, contract claims, torts or otherwise, including reasonable fees and expenses of attorneys, consultants, accountants or other agents and experts reasonably incident to matters indemnified against, and the costs of investigation and/or monitoring of such matters, and the costs of enforcement of the indemnity.

“Disclosure Schedules” means the Disclosure Schedules attached to this Agreement and dated as of the Execution Date hereof, consisting of the Purchaser’s Disclosure Schedules, the Seller’s Disclosure Schedules, and any other lists, descriptions, or other information and materials included in Purchaser’s Disclosure Schedules or Seller’s Disclosure Schedules.

“Encumbrances” means charge, liens, mortgages, security interests, pledges, proxies, shareholder agreements, voting agreements or trusts, options, rights of first refusal, easements, mortgages, deeds of trust, rights-of-way, restrictions, encroachments, licenses, leases, purchase right or options, or any other encumbrances, claims and other restrictions or limitations of any kind.

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"Entitled Real Property" shall have the meaning as defined in Section 2.1c.

"Environment" or "Environmental" shall have the meanings set forth in 42 U.S.C. §9601(8)(1988).

"Environmental Laws" means all federal, state, and local laws, rules, regulations, ordinances, orders, decisions, and other requirements, including common law theories, now or hereafter in effect and relating to, or in connection with (a) the Environment, human health or safety, or to emissions, discharges or releases of Hazardous Materials into the Environment; (b) pollution, contamination, injury, destruction, loss, protection, cleanup, reclamation or restoration of the Environment; (c) Hazardous Materials generation, treatment, processing, recycling, reclamation, cleanup, storage, disposal or transportation; (d) exposure to pollutants, contaminants, Hazardous Materials; (e) the safety or health of employees; or (f) the manufacture, processing, handling, transportation, distribution in commerce, use, storage or disposal of Hazardous Materials.

"Environmental Liability Notice" means Purchaser's Notice to Seller setting forth in reasonable detail, including, if applicable, copies of any support documentation or Third Party Claim(s), any claim related to the Retained Environmental Liabilities.

"Excluded Assets" shall have the meaning as defined in Section 2.2.

"Execution Date" shall have the meaning as defined in the preamble to this Agreement.

"Expert Accountant" shall have the meaning as defined in Section 3.4.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"FERC Approval" shall have the meaning as defined in Section 6.3c.

"Final Purchase Price" shall have the meaning as defined in Section 3.3.

"GAAP" means United States generally accepted accounting principles (as such term is used in the American Institute of Certified Public Accountants Professional Standards) as of the date of any applicable financial statement or calculation, as applied on a consistent basis.

"Governmental Body" means any: (i) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign, or other government; (iii) governmental or quasi-Governmental Body of any nature (including any government agency, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

"Governmental Order" means any Law, order, judgment, injunction, decree, stipulation or determination issued, promulgated or entered by or with any Governmental Body of competent jurisdiction, or by any arbitrator, in each case, whether preliminary or final.

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"Hazardous Materials" means any hazardous waste as defined by 42 U.S.C. §6903(5), any hazardous substance as defined by 42 U.S.C. §9601(14), any pollutant or contaminant as defined by 42 U.S.C. §9601(33) or any toxic substance, oil or hazardous material (including friable asbestos, urea formaldehyde insulation or polychlorinated biphenyls), in each case regulated by any Environmental Laws.

"IA Consent" means a Consent, in form and substance reasonably acceptable to the Parties, of each of Southwestern Electric Power Company, East Texas Electric Cooperative, Inc. and Southwest Power Pool, Inc. to the assignment in part by Seller to Purchaser of the rights and obligations of Seller under the Interconnection Agreement, to the extent relating to the Transmission Line, and assumption by Purchaser of such rights and obligations from and after the Closing, pursuant to this Agreement.

"Indemnified Party" means a Seller Indemnified Person or a Purchaser Indemnified Person.

"Interconnection Agreement" means that certain Amended and Restated Interconnection Agreement, Southwest Power Pool Original Service Agreement No. 2965, dated January 7, 2015, by and among Seller, Southwestern Electric Power Company, East Texas Electric Cooperative, Inc. and Southwest Power Pool, Inc.

"Jacksonville-Overton 138 kV Transmission Line" means Seller's approximately 30 mile long 138 kV transmission line between Seller's transmission structure #91 just outside Southwestern Electric Power Company's 138 kV Jacksonville substation and Seller's transmission structure #3688 just outside Southwestern Electric Power Company's Overton substation, as further described or depicted in Exhibit C.

"Land Contracts" shall have the meaning as defined in Section 2.1b.

"Land Contract Assignment" shall have the meaning as defined in Section 8.2b.

"Law" means any law, statute, rule, regulation, ordinance and other pronouncement having the effect of laws of the United States of America, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Body.

"Net Book Value" shall have the meaning as defined in Section 3.1a.

"Notice" shall have the meaning as defined in Section 11.1.

"Objection Notice" shall have the meaning as defined in Section 3.3b.

"Ordinary Course of Business" means the ordinary course of business of Seller (including the operation and maintenance of the Transmission Line) consistent with past custom and practice (including with respect to quantity and frequency).

"Party" means Seller or Purchaser and "Parties" means, collectively, Seller and Purchaser.

"Permits" means any permits, licenses, franchises, approvals, certificates, certifications, consents, emissions allowances, waivers, concessions, registrations or other authorizations required by any Governmental Body or Law.

"Permit Violation Liabilities" shall have the meaning as defined in Section 2.4b.

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"Permitted Encumbrances" means: (i) Encumbrances for Taxes not yet due or which are being contested in good faith by appropriate proceedings, provided that adequate reserves, with respect to Taxes which are being contested are maintained on the books of Seller in conformity with GAAP; (ii) with respect to the Real Property, any imperfections of title or Encumbrances that could be identified by either or both a commitment for title insurance or a survey of the Real Property in question (provided that, if, pursuant to Section 6.9c, Purchaser identifies any such imperfection of title or Encumbrance identified in this clause (ii) as a Closing Encumbrance, then such Closing Encumbrance will thereafter no longer constitute a Permitted Encumbrance for purposes of this Agreement, unless waived pursuant to Section 6.9e); (iii) with respect to the Real Property, any Encumbrances to which such Real Property is subject that do not currently materially interfere with the operation of that portion of the Acquired Assets currently conducted in the Ordinary Course of Business; and (iv) easements, rights-of-way, restrictions and other similar Encumbrances which, in the aggregate, do not materially interfere with the Ordinary Course of Business of the Transmission Line.

"Person" means any individual, joint venture, corporation, general partnership, limited partnership, limited liability company, trust, unincorporated organization, Governmental Body or any other legally recognized entity.

"Power Sale Agreement" means that certain Restated and Amended Power Sale Agreement, dated as of June 15, 2000, by and between Southwestern Electric Power Company and Seller.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administered or inferred), commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"PUCT Approval" shall have the meaning as defined in Section 6.3d.

"PUCT" means the Public Utility Commission of Texas or any successor agency thereto.

"PURA" means the Public Utility Regulatory Act of the State of Texas (Title II of the Texas Utilities Code).

"Purchase Price" shall have the meaning as defined in Section 3.1.

"Purchaser" shall have the meaning as defined in the preamble to this Agreement.

"Purchaser Indemnified Person" shall have the meaning as defined in Section 10.2a.

"Purchaser Material Adverse Effect" means any change, effect, event or condition, individually or in the aggregate, that has had, or, with the passage of time, would reasonably be expected to have, a material adverse effect on the business, assets, properties, condition (financial or otherwise), results of operations, prospects or customer, supplier or employee relationships of Purchaser, taken as a whole.

"Purchaser Required Consents" shall have the meaning as defined in Section 5.3.

"Purchaser Required Regulatory Approvals" shall have the meaning as defined in Section 5.4.

"Purchaser's Disclosure Schedules" means the sections of the Disclosure Schedules corresponding to sections of Article 5 of this Agreement.

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"Purchaser's Knowledge" means (a) as of the Execution Date, the actual knowledge of Michael Grable, a Vice President of Purchaser, Jason Murray, Transmission Field Operations Manager of an Affiliate of Purchaser, Larry Clendennen, Director, Community Relations and Land Strategy of an Affiliate of Purchaser, and Kimberly Wells, Environmental Services Project Manager of an Affiliate of Purchaser, and any knowledge that would have been acquired by any such Persons upon reasonable inquiry, and (b) as of the Closing Date, the actual knowledge of any such Person who then remains an employee of Purchaser or an Affiliate of Purchaser and of the successor(s) to the responsibilities as an employee of Purchaser or an Affiliate of Purchaser of any such Person who then no longer remains an employee of Purchaser or an Affiliate of Purchaser, and any knowledge that would have been acquired by any such Persons upon reasonable inquiry.

"Real Property" shall have the meaning as defined in Section 2.1e.

"Required Consents" shall have the meaning as defined in Section 6.3d.

"Retained Environmental Liabilities" shall have the meaning as defined in Section 2.4c.

"Retained Liabilities" shall have the meaning as defined in Section 2.4.

"Seller" shall have the meaning as defined in the preamble to this Agreement.

"Seller Indemnified Person" shall have the meaning as defined in Section 10.5a.

"Seller Material Adverse Effect" means any change, effect, event or condition, individually or in the aggregate, that has had, or, with the passage of time, would reasonably be expected to have, a material adverse effect on the business, assets, properties, condition (financial or otherwise), results of operations, prospects or customer, supplier or employee relationships of Seller, taken as a whole.

"Seller Required Consents" shall have the meaning as defined in Section 4.3.

"Seller Required Regulatory Approvals" shall have the meaning as defined in Section 4.4.

"Seller's Disclosure Schedules" means the sections of the Disclosure Schedules corresponding to specified sections of Article 4 of this Agreement.

"Seller's Knowledge" means (a) as of the Execution Date, the actual knowledge of John Kirkland, General Manager of Seller, David Naylor, Executive Vice President of Seller, Eddy Reece, Vice President of Transmission of Seller, and any knowledge that would have been acquired by any such Persons upon reasonable inquiry, and (b) as of the Closing Date, the actual knowledge of any such Person who then remains an employee of Seller or an Affiliate of Seller and of the successor(s) to the responsibilities as an employee of Seller or an Affiliate of Seller of any such Person who then no longer remains an employee of Seller or an Affiliate of Seller, and any knowledge that would have been acquired by any such Persons upon reasonable inquiry.

"Seller's Purchase Price Calculation" shall have the meaning as defined in Section 3.3a.

"Specified Retained Environmental Liabilities" means any Retained Environmental Liabilities in respect of which Purchaser has received a claim made in writing from a bona fide third party that is not directly or indirectly related to or affiliated with Purchaser in any manner and Purchaser delivers an

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Environmental Liability Notice to Seller which includes such claim on or before the fifth (5th) anniversary of the Closing Date. Specified Retained Environmental Liabilities are strictly limited to the claim of the third party as stated in the claim.

“Subsidiary” means with respect to any Person, any corporation, limited liability company, or other Person of which securities or other interests having the power to elect a majority of that corporation’s or other Person’s board of directors or similar governing body, otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred) are held by the Person or one or more of its Subsidiaries.

“Tax” or “Taxes” (and with correlative meanings “Taxable” or “Taxing”) means with respect to any Person, all U.S. federal state, local, provincial, foreign or other income, gross receipts, sales, use, franchise, payroll (including federal and state income tax withholding, backup withholding, FICA, FUTA or other payroll taxes), environmental, excise, property, value-added, net worth, or any other material taxes and any interest, penalties and additions imposed with respect to such amounts, which shall include, without limitation, any transferee liability for any of the foregoing types of taxes.

“Taxing Authority” means any government or subdivision, agency, commission or authority thereof, or any quasi-governmental or private body having jurisdiction over the assessment, determination or collection or other imposition of Taxes.

“Tax Return” means all U.S. federal, state, local, provincial and foreign returns, declarations, claims for refunds, forms, statements, reports, schedules, information returns or similar statements or documents, and any amendments thereof (including, without limitation, any related or supporting information or schedule attached thereto) required to be filed with any Taxing Authority in connection with the determination, assignment or collection of any Tax or Taxes.

“Texas Courts” shall have the meaning as defined in Section 11.4.

“Third Party Claim” shall have the meaning as defined in Section 10.4a.

“Threshold Amount” shall have the meaning set forth in Section 10.3a.

“Transaction Documents” means: (a) this Agreement; (b) the Bill of Sale; (c) the Assignment and Assumption Agreements; (d) the Land Contract Assignments; and (e) all other agreements, instruments and documents to be executed by the Parties in connection with this Agreement.

“Transactions” means the transactions contemplated by this Agreement and all of the Transaction Documents.

“Transfer Fees” shall have the meaning as defined in Section 2.6.

“Transmission Line” shall have the meaning as defined in Section 2.1a.

Section 1.2 Other Definitional Provisions.

a. The terms defined in the neuter or masculine gender shall include the feminine, neuter and masculine genders, unless the context clearly indicates otherwise.

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b. The calculation of time within which or following which any act is to be done or step is to be taken pursuant to this Agreement excludes the date that is the reference day in calculating such period.

c. Unless specified otherwise, whenever anything is required to be done or any action is required to be taken hereunder on or by a day that is not a Business Day, then such thing may be validly done and such action may be validly taken on or by the next succeeding day that is a Business Day.

d. Accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP. Wherever in this Agreement reference is made to a calculation to be made in accordance with GAAP, such reference shall be deemed to be to GAAP from time to time applicable as at the date on which such calculation is made or required to be made in accordance with GAAP.

e. As used in this Agreement, reference to dollar amounts, unless otherwise specifically indicated, means the lawful money of the United States of America.

f. The terms "include," "includes" and "including" mean including without limiting the generality of any description preceding such term, and, for purposes of this Agreement, the rule of ejusdem generis shall not be applicable to limit a general statement that follows an enumeration of specific matters, to matters similar to the matters specifically enumerated.

g. All references to Articles, Sections, Subsections, appendices, exhibits or schedules in this Agreement are to Articles, Sections, Subsections, appendices, exhibits or schedules of or to this Agreement unless otherwise specified.

ARTICLE 2

PURCHASE AND SALE OF ACQUIRED ASSETS

Section 2.1 Purchase of the Acquired Assets. Upon the terms and subject to the conditions of this Agreement, at and as of the Closing, Seller shall sell, transfer, convey, assign and deliver to Purchaser and Purchaser shall purchase and accept from Seller, all right, title and interest of Seller in, to and under the Acquired Assets (i) free and clear of any Encumbrances, other than Permitted Encumbrances, and (ii) in their present condition, "AS IS" and "WHERE IS," with all faults and without warranty, whether express, implied, statutory or otherwise, except as provided in this Agreement, including the representations and warranties contained in Article 4 (including the related portions of the Disclosure Schedule hereto).

"Acquired Assets" means the following tangible and intangible rights, properties and assets (including, but not limited to all rights, title and interest associated therewith) of Seller as the same may exist at the Closing Date, but excluding the Excluded Assets:

a. All poles, lines, conductors, arms, braces, insulators, structures, facilities or improvements, fixtures, equipment and other items of tangible personal property comprising the Jacksonville-Overton 138 kV Transmission Line (collectively, the "Transmission Line");

b. The easements and rights of way listed on Exhibit 2.1b (collectively, the "Land Contracts");

c. The property licenses, and other real property entitlements benefiting the Transmission Line or the Land Contracts (the "Entitled Real Property" and, together with the Land Contracts, the "Real Property");

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d. Originals or true and complete copies of all technical, maintenance, and accounting books and records of Seller or in Seller's possession or control, to the extent relating to the Transmission Line or the Real Property;

e. Any and all rights under any express or implied warranties provided by third parties relating to the Transmission Line or any part or component thereof;

f. All Permits (to the extent transferable, giving effect to the parties' obligations hereunder as to the Required Consents) held by Seller or any of its Affiliates that exclusively relate to the Acquired Assets (including the Permits listed on Schedule 4.7 of the Disclosure Schedules); and

g. To the extent, and only to the extent, directly relating to the Transmission Line, the rights of Seller under the Interconnection Agreement.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, all assets of Seller other than the Acquired Assets shall be retained by Seller and shall be excluded from the sale and purchase of assets hereunder, and shall remain the assets and properties of Seller at, as of and immediately after the Closing (collectively, the "Excluded Assets"). The Excluded Assets shall include without limitation (i) the Power Sale Agreement; (ii) the 138kV Breaker located at the Jacksonville Switching Station, as owned by Seller; and (iii) the rights of Seller under the Interconnection Agreement to the extent not directly relating to the Transmission Line.

Section 2.3 Assumed Liabilities. At and as of the Closing, Purchaser shall assume all liabilities and obligations, of every kind and nature, relating to or arising from the ownership and operation from and after the Closing of the Acquired Assets other than the Retained Liabilities (collectively, the "Assumed Liabilities"). The Assumed Liabilities shall include the following:

a. Any liabilities or obligations under any of the Land Contracts to the extent arising on or after Closing;

b. To the extent, and only to the extent, directly relating to the Transmission Line, the liabilities and obligations of Seller under the Interconnection Agreement, to the extent arising from and after the Closing; and

c. All liabilities and obligations arising from or relating to any of the Acquired Assets other than the Retained Liabilities.

Section 2.4 Retained Liabilities. Purchaser shall not assume, and Seller shall retain and pay, perform and discharge when due, (i) all liabilities and obligations, of every kind and nature, of Seller other than Assumed Liabilities, including liabilities and obligations relating to or arising from ownership and operation of the Acquired Assets prior to the Closing; (ii) all liabilities and obligations relating to Taxes (other than as provided in Sections 2.5 and 6.7) arising as a result of Seller's operation or ownership of the Acquired Assets prior to the Closing; and (iii) Seller's liabilities and obligations pursuant to the Transaction Documents, (collectively, the "Retained Liabilities"). The Retained Liabilities shall include the following:

a. Any liabilities or obligations under any of the Land Contracts to the extent arising on or prior to the Closing Date or to the extent arising from or relating to any breach by Seller of or default by Seller under any of the Land Contracts;

b. Any liabilities or obligations for violation of Laws, including Environmental

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Laws, including liabilities for fines or penalties, relating to or arising from any claim by a Governmental Body of an omission occurring on or prior to the Closing Date to obtain or maintain any Permit required for the ownership or operation of any of the Acquired Assets, or any violation occurring on or prior to the Closing Date of any terms or conditions of or relating to any such Permit (collectively, "Permit Violation Liabilities");

c. All liabilities and obligations under or related to Environmental Laws with respect to the Acquired Assets to the extent relating to or arising from any event, condition, circumstance, act or omission occurring on or prior to the Closing Date, including relating to or arising from the presence or Release of Hazardous Materials at, on, in, under, adjacent to or migrating from any of the Real Property or other Acquired Assets on or prior to the Closing Date but excluding any Permit Violation Liabilities ("Retained Environmental Liabilities"); provided, however, that Seller's obligation under the Transaction Documents to retain, pay, perform and discharge when due any of the Retained Environmental Liabilities, other than any Specified Retained Environmental Liabilities, shall survive the Closing for a period beginning on the Closing Date and ending at 12:01 a.m. Central Time on the next day following the fifth (5th) anniversary of the Closing Date, such obligation shall be deemed to have terminated and expired, and Purchaser shall be deemed to have assumed such Retained Environmental Liabilities and such Retained Environmental Liabilities shall thereupon be deemed to have become Assumed Liabilities, as of 12:01 a.m. Central Time on the next day following the fifth (5th) anniversary of the Closing Date; provided, further, however, that, notwithstanding the foregoing or anything else herein to the contrary, any Specified Retained Environmental Liabilities shall not be deemed assumed by Purchaser at any time and shall instead at all times remain Retained Liabilities, in respect of which such obligation of Seller shall survive the Closing indefinitely under Section 10.1;

d. Any liabilities or obligations under the Interconnection Agreement to the extent not relating directly to the Transmission Line or to the extent arising on or prior to the Closing Date or to the extent arising from or relating to any breach by Seller of or default by Seller under the Interconnection Agreement; and

e. All liabilities and obligations arising from or relating to any of the Excluded Assets.

Section 2.5 Simultaneous Deliveries and Actions. All deliveries to be made or other actions to be taken at the Closing shall be deemed to occur simultaneously, and no such delivery or action shall be deemed complete until all such deliveries and actions have been completed or waived by the relevant Party(ies) in accordance with this Agreement.

Section 2.6 Transfer Fees. Purchaser shall be liable for any transfer, documentary, registration, stamp, and other similar fee and sales Tax, if any, payable to the State of Texas or any of its political subdivisions in connection with the transfer of the Real Property (collectively, the "Transfer Fees"). In the event that Seller intends to file any Tax Return or any other report with a Governmental Body related to any such Taxes under this Section that Purchaser is obligated to pay, or intends to pay any such Taxes and seek reimbursement from Purchaser, Seller shall not make any such filing or payment without the prior review and written consent of Purchaser (not to be unreasonably withheld or delayed). Seller shall be responsible for payment of all other Taxes applicable as a result of the Transactions, including but not limited to Transfer Fees or Taxes payable in any jurisdiction other than the State of Texas or any of its political subdivisions in connection with the transfer of the Acquired Assets or the Transactions.

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ARTICLE 3 PAYMENT OF CONSIDERATION

Section 3.1 Purchase Price. In consideration for the transfer of the Acquired Assets, Purchaser shall assume the Assumed Liabilities and Purchaser shall pay to Seller an amount equal to product of (a) the "Net Book Value" (as defined in Section 3.1.a) of the Acquired Assets as of the Closing Date (the "Purchase Price") and (b) one and twenty-five one hundredths (1.25). As a reference for the computation of the amount of the Purchase Price, the Parties agree that the Net Book Value of the Acquired Assets as of December 31, 2015, was Two Million, One Hundred Sixty-Two Thousand, Thirty-Six and Fifty-Seven One-Hundredths Dollars (\$2,162,036.57), which amount shall be adjusted, in accordance with GAAP consistently applied, to the Net Book Value of the Acquired Assets as of the actual Closing Date in order to compute the amount of the Purchase Price.

a. For the purposes of this Agreement, "Net Book Value" shall mean the difference between the amount properly recorded on the books at cost as incurred by the owning utility, excluding any contributions received by the utility in acquiring that property, and the amount properly recorded for accumulated depreciation, amortization or other purposes as allowed by FERC.

b. If, upon inspection or other discovery prior to Closing, Purchaser ascertains that any item of personal property upon which the Net Book Value of the Acquired Assets as of December 31, 2015 was based is not present or in service as part of the Acquired Assets, the Purchase Price shall be adjusted accordingly, unless such item of personal property has been removed and replaced or altered in conjunction with the reconstruction of the Acquired Assets.

Section 3.2 Closing Payment Certificate. Not less than five (5) Business Days prior to the Closing Date, Seller will prepare and deliver to Purchaser a certificate (the "Closing Payment Certificate") of an authorized officer of Seller setting forth Seller's good faith estimate of the amount of the Purchase Price calculated in accordance with Section 3.1 (such estimate of the amount of the Purchase Price being referred to as the "Closing Payment"). Following the delivery of the Closing Payment Certificate until the Closing, Purchaser will be permitted to review Seller's related work papers and other related supporting documentation, and will be given reasonable access to the persons who were involved in preparing the Closing Purchase Price Certificate, for the purposes of understanding and evaluating Seller's calculation of the Closing Payment.

Section 3.3 Post-Closing True-up of Purchase Price.

a. As soon as practicable after the Closing, but no later than thirty (30) days after the Closing Date, Seller shall determine the actual amount of the Purchase Price in accordance with Section 3.1. Seller shall provide Purchaser with written notice of such determination within such thirty-day period, along with reasonable supporting documentation (the "Seller's Purchase Price Calculation").

b. If Purchaser does not object to the Seller's Purchase Price Calculation within thirty (30) days after Purchaser's receipt thereof by delivery to Seller of an Objection Notice, the Seller's Purchase Price Calculation shall be deemed final and conclusive and shall be binding on Purchaser and Seller. If Purchaser reasonably believes that the Seller's Purchase Price Calculation was not calculated in accordance with the terms of this Agreement or that there was any mathematical error in the Seller's Purchase Price Calculation, then Purchaser shall deliver to Seller, within thirty (30) days after receiving the Seller's Purchase Price Calculation, a written notice (an "Objection Notice") setting forth Purchaser's proposed calculation of the Purchase Price with particularity and the specific changes or adjustments that Purchaser claims are required to be made thereto in order to conform the same to the terms of this Agreement or to correct any mathematical error, along with reasonable supporting documentation. The fees and

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disbursements of Seller's independent advisors incurred in connection with Seller's preparation of the Seller's Purchase Price Calculation and the determination of the Final Purchase Price shall be borne by Seller, and the fees and disbursements of Purchaser's independent advisors in connection with the preparation of the Objection Notice and the determination of the Final Purchase Price shall be borne by Purchaser. Any objections not specified in an Objection Notice timely delivered in accordance with this Agreement shall be deemed waived. Purchaser and Seller will use their respective Commercially Reasonable Efforts to resolve any objections specified in any Objection Notice delivered in accordance with this Agreement, but if the Parties are unable to agree on the disputed amounts within sixty (60) days after Purchaser receives the Seller's Purchase Price Calculation, the Parties shall refer such dispute to the Expert Accountant pursuant to Section 3.4.

c. If the actual Purchase Price as agreed by the Parties in accordance with Section 3.3.b or as determined by the Expert Accountant in accordance with Section 3.4, as the case may be (the "Final Purchase Price"), is greater than the amount of the Closing Payment, then Purchaser shall pay Seller, within ten (10) Business Days after the Final Purchase Price is so agreed or so determined, by wire transfer of immediately available funds, the positive difference between (i) the Final Purchase Price and (ii) the Closing Payment.

d. If the Final Purchase Price is less than the amount of the Closing Payment, then Seller shall pay Purchaser, within ten (10) Business Days after the Final Purchase Price is agreed by the Parties in accordance with Section 3.3.b or is determined by the Expert Accountant in accordance with Section 3.4, as the case may be, by wire transfer of immediately available funds, the positive difference between (i) the Closing Payment and (ii) the Final Purchase Price.

e. In the event a payment will become due under either Section 3.3.c or 3.3.d, the Party to whom such payment will become due shall designate the account to which such payment is to be made and wire transfer instructions for payment to such account by notice to the other Party at least three (3) Business Days prior to the date such payment is due.

Section 3.4 Expert Determination of Final Purchase Price. In the event that the Parties cannot agree upon the Final Purchase Price pursuant to Section 3.3 within the sixty (60)-day period specified therein, the amount in dispute shall thereafter be referred for resolution to a firm of recognized independent certified public accountants agreed upon by the Parties within ten (10) Business Days after the expiration of such sixty (60)-day period; provided, however, if Purchaser and Seller are unable to so agree within ten (10) days after the expiration of such sixty (60)-day period, then Purchaser shall select one recognized independent certified public accounting firm and Seller shall select another recognized independent certified public accounting firm, and the representatives of such accounting firms shall select a third recognized independent certified public accounting firm other than KPMG LLP, as KPMG LLP may not, and the Parties shall not permit KPMG LLP to, serve or be selected to serve as the Expert Accountant pursuant to this Section 3.4 (any such accounting firm agreed upon or selected pursuant to these terms being referred to as the "Expert Accountant"). Purchaser and Seller shall enter into reasonable and customary arrangements for the services to be rendered by the Expert Accountant pursuant to this Section 3.4. Purchaser and Seller shall direct the Expert Accountant to render a determination within thirty (30) days after its retention, and Purchaser and Seller will cooperate with the Expert Accountant during its engagement. The Expert Accountant will consider only those items and amounts set forth in the Objection Notice that Purchaser and Seller are unable to resolve. In making its determination, the Expert Accountant shall (a) be bound by the terms and conditions of this Agreement and (b) not assign any value with respect to a disputed amount that is greater than the highest value of such amount claimed by either Purchaser or Seller or that is less than the lowest value for such amount claimed by either Purchaser or Seller. The determination of the

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Expert Accountant shall be final and conclusive and shall be binding on Purchaser and Seller. Purchaser and Seller shall each pay one-half of the fees and expenses of the Expert Accountant.

Section 3.5 Access to Records. Seller and Purchaser shall cooperate and provide each other and the Expert Accountant access to such of their respective books and records as may be reasonably requested by the Expert Accountant in connection with the matters addressed in Sections 3.3 and 3.4.

Section 3.6 Allocation of Final Purchase Price. Within sixty (60) days after the Closing Date, Purchaser shall deliver to Seller a schedule allocating the Purchase Price (including any Assumed Liabilities treated as consideration for Tax purposes) to and among the Acquired Assets (the "Allocation Schedule"). Seller shall provide in a timely manner any information that Purchaser reasonably requests to prepare the Allocation Schedule. The Allocation Schedule shall be prepared in accordance with Section 1060 of the Code. The Allocation Schedule prepared by Purchaser shall be deemed final unless Seller notifies Purchaser in writing that Seller objects to one or more items reflected in the Allocation Schedule within fifteen (15) days after delivery of the Allocation Schedule to Seller. In the event of any such objection, Purchaser and Seller shall negotiate in good faith to resolve such dispute; *provided, however*, that if Purchaser and Seller are unable to resolve any dispute with respect to the Allocation Schedule within fifteen (15) days after the delivery of the Allocation Schedule to Seller, Purchaser and Seller shall each be permitted to file any returns reflecting an allocation of the Purchase Price as each shall independently determine.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth on the Seller's Disclosure Schedules, the section numbers of which are numbered to correspond to the section numbers of Article 4 of this Agreement to which they refer, Seller hereby represents and warrants to Purchaser, as of the Execution Date and as of the Closing Date, as follows in this Article 4:

Section 4.1 Organization, Power, Standing. Seller is an electric cooperative corporation duly formed, validly existing and in good standing under the Laws of the State of Texas. Seller has all requisite power and authority, as the case may be, to own, operate or lease the Acquired Assets as presently operated and, as applicable, to enter into the Transaction Documents and to consummate the Transactions. Seller is duly authorized to conduct business and is in good standing in each jurisdiction where such authorization is required to conduct its business as currently conducted by it, except where the failure to so qualify or be in good standing would not reasonably be expected to have a Seller Material Adverse Effect.

Section 4.2 Valid and Binding Agreement. The execution, delivery and performance of Transaction Documents by Seller have been duly and validly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, fraudulent conveyance, moratorium or other similar laws of general applicability relating to or affecting the rights and remedies of creditors generally or general principles of equity. Each Transaction Document, to which Seller will become a party, when executed and delivered by Seller, will constitute the valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, fraudulent conveyance, moratorium or other similar laws of general applicability relating to or affecting the rights and remedies of creditors generally or (ii) general principles of equity.

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Section 4.3 No Conflict; Third Party Consents. Subject to the receipt by Seller of the Consents listed on Schedule 4.3 of the Seller's Disclosure Schedules (collectively, the "Seller Required Consents"), the execution and delivery of this Agreement does not, and the execution and delivery of the other Transaction Documents will not, and the consummation of the Transactions will not: (a) violate or conflict with the provisions of the organizational documents of Seller; (b) result in the imposition of any Encumbrance (other than a Permitted Encumbrance) upon any of the properties or assets of Seller; (c) cause the acceleration or material modification of any obligation under, create in any Person who is not a Party the right to terminate, constitute a material default or material breach of, or violate or conflict, in any material respect, with the terms, conditions or provisions of, any material note, bond, mortgage, including deed of trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which Seller is a party or by which Seller or any of its Affiliates is bound (whether with notice, lapse of time or both); or (d) result in a breach or violation by Seller of any of the terms, conditions or provisions of any Law or Governmental Order.

Section 4.4 Government Authority. Subject to the receipt by Seller of the Governmental Orders listed in Schedule 4.4 to the Seller's Disclosure Schedules (collectively, the "Seller Required Regulatory Approvals") and except as otherwise set forth in such Schedule 4.4, the execution, delivery and performance of this Agreement and the other Transaction Documents by Seller, and the consummation of the Transactions will not require on the part of Seller obtaining or filing any Governmental Order or any other filing with or notification to any Governmental Body.

Section 4.5 Real Property, Tangible Personal Property, Land Contracts.

a. Schedule 4.5a of the Seller's Disclosure Schedules sets forth a list, as of the date reflected thereon, of the tangible personal property owned by Seller located at the Real Property as of the Closing Date. Seller has good and marketable title to all tangible and intangible personal property that make up the Acquired Assets, including the Transmission Line, free and clear of all Encumbrances except (i) Encumbrances described in Schedule 4.5a and (ii) Permitted Encumbrances.

b. Each Land Contract is legal, valid, binding in full force and effect and assignable to Purchaser without the prior consent of any Person. Seller has provided Purchaser with a true, correct and complete copy of each Land Contract (including all amendments and modifications thereof) in Seller's possession. Exhibit 2.1b lists all of the Land Contracts. There have been no written or oral amendments or agreements with respect to the Land Contracts except as disclosed in Exhibit 2.1b.

c. Seller is not in breach or default under any Land Contract and, to Seller's Knowledge, no other party to any Land Contract is in breach or default (nor has any event occurred which, with notice or the passage of time, or both, would constitute such breach or default under any Land Contract), except to the extent any such breach would not constitute an Asset Material Adverse Effect. Seller enjoys peaceful and undisturbed possession under all Real Property.

d. All of the rights, title and interest in the Acquired Assets constitute all of the property, assets and real property entitlements, and all right, title and interests related thereto, owned by Seller or its Affiliates exclusively related to the Real Property or the Jacksonville-Overton 138 kV Transmission Line, other than the Excluded Assets.

e. Except as set forth on Schedule 4.5e, Seller has not received written notice from any Person within the three (3) years preceding the Execution Date of this Agreement asserting that Seller does not have the right, as a result of title defects or title failures, to use or occupy any portion of the Real

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Property.

f. To Seller's Knowledge, the Real Property and any improvements located thereon comply with all existing subdivision, land use and zoning ordinances, regulations and restrictions.

g. There are no rents, royalties, fees or other amounts, including surface damages currently due or payable by Seller in connection with the Real Property.

h. The Real Property includes all the real property rights necessary to operate the Jacksonville-Overton 138 kV Transmission Line and no other real property rights are required.

Section 4.6 Litigation. There is no pending or, to Seller's Knowledge, threatened Proceeding to which Seller or any of its Affiliates is a party that challenges, that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, or would reasonably be expected to have any of the foregoing effects on, any of the Transactions or that has had or could reasonably be expected to have a Seller Material Adverse Effect or an Asset Material Adverse Effect. Except as set forth on Schedule 4.6 of the Seller's Disclosure Schedules, Seller is not a party to any agreement settling or compromising any condemnation proceedings with respect to any of the Acquired Assets and there has not been, in the past twelve (12) months, any pending or, to Seller's Knowledge, threatened Proceeding to which Seller or any of its Affiliates was a party that, if such Proceeding were pending or threatened as of the Execution Date, such Proceeding could reasonably be expected to have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Transactions or could reasonably be expected to have a Seller Material Adverse Effect or an Asset Material Adverse Effect.

Section 4.7 Compliance with Law and Permits. Seller has operated, and is operating as of the date hereof, the Acquired Assets in compliance in all material respects with the Laws generally applicable to the Acquired Assets, except where such non-compliance could not reasonably be expected to have an Asset Material Adverse Effect. Seller has not received any written or, to Seller's Knowledge, other, notice from any Governmental Body of any audit, review or investigation of Seller or the Acquired Assets or alleging any material violation of Law by Seller, in each case, with respect to the Acquired Assets. Schedule 4.7 lists all of the Permits held by Seller and its Affiliates exclusively related to the ownership and operation of the Acquired Assets.

Section 4.8 Environmental.

a. To Seller's Knowledge, Seller is, and at all times in the past has been, in compliance with all Environmental Laws to the extent applicable to the construction, ownership or operation of any of the Acquired Assets.

b. To Seller's Knowledge there are no (i) facts, circumstances, conditions or occurrences relating to any of the Acquired Assets that could reasonably be expected to form the basis of a claim under any Environmental Law or (ii) past, pending or threatened claims under any Environmental Law relating to any of the Acquired Assets.

c. To Seller's Knowledge there are no Hazardous Materials present on or under any of the Real Property, and neither Seller nor any of its predecessors in title have disposed of, spilled, discharged, released or otherwise placed any Hazardous Materials, on, at, in or under any of the Real Property.

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d. Seller has not assumed, either contractually, or by operation of law, any liability of any Person under any Environmental Law relating or applicable to any of the Acquired Assets.

e. Seller has provided to Purchaser complete and correct copies of all environmental studies, reports, surveys and other data (including, but not limited to, reports relating to wetlands, wildlife, avian, bat, noise, and cultural resource surveys) that are or, to Seller's Knowledge, have been in Seller's possession or control and that relate to environmental conditions related to any of the Real Property or Transmission Line.

Section 4.9 Brokers. No broker or finder has acted for or on behalf of Seller or any Affiliate of Seller in connection with this Agreement or the Transactions contemplated by the Transaction Documents. No broker or finder is entitled to any brokerage or finder's fee, or to any commission, or to any other compensation based in any way on agreements, arrangements or understandings made by or on behalf of Seller or any Affiliate of Seller for which Purchaser has or will have any liability or obligation (contingent or otherwise).

Section 4.10 Taxes.

a. Seller has (a) filed, or caused to be filed, all Tax Returns that it was required to file on or prior to the date hereof and (b) paid or caused to be paid all Taxes due and payable with respect to the Acquired Assets. All such Tax Returns filed were correct and complete in all material respects.

b. There are no Liens for Taxes on any of the Acquired Assets other than Permitted Encumbrances.

c. There are no outstanding agreements or waivers extending the statutory period of limitations applicable to the assessment of any Tax related to the Acquired Assets (other than automatic extensions arising from an extension of the due date for filing a Tax Return).

d. There are no Taxes being contested other than those listed on Schedule 4.10 of the Seller's Disclosure Schedules.

Section 4.11 No Additional Representations and Warranties. **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 4 (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE HERETO), NEITHER SELLER NOR ANY OF ITS REPRESENTATIVES HAS MADE OR MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER WRITTEN OR ORAL, ON BEHALF OF SELLER, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING SELLER FURNISHED OR MADE AVAILABLE TO PURCHASER AND ITS REPRESENTATIVES, OR ANY REPRESENTATION OR WARRANTY ARISING FROM STATUTE OR OTHERWISE IN LAW. THE ACQUIRED ASSETS ARE BEING CONVEYED AND SOLD TO PURCHASER IN THEIR PRESENT CONDITION, "AS IS," "WHERE IS" AND WITH ANY FAULTS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 4 (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE HERETO). THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ACQUIRED**

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ASSETS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 4 (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE HERETO), SELLER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, QUALITY, DESIGN, CONDITION, SUITABILITY, MERCHANTABILITY, PERFORMANCE OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY OF THE PERSONAL PROPERTY INCLUDED IN THE ACQUIRED ASSETS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 4 (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE HERETO), ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY SELLER, AND SUCH DISCLAIMER IS SPECIFICALLY AGREED TO AND ACCEPTED BY PURCHASER.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth on the Purchaser's Disclosure Schedules, the section numbers of which are numbered to correspond to the section numbers of Article 5 of this Agreement to which they refer, Purchaser hereby represents and warrants to Seller, as of the Execution Date and as of the Closing Date, as follows in this Article 5:

Section 5.1 Organization, Power, Standing. Purchaser is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware. Purchaser is duly authorized to conduct business and is in good standing in each jurisdiction where such authorization is required to conduct its business as currently conducted by it, except where the failure to so qualify or be in good standing would not reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.2 Valid and Binding Agreement. The execution, delivery and performance of the Transaction Documents by Purchaser have been duly and validly authorized by all necessary company action. This Agreement has been duly executed and delivered by Purchaser and constitutes the valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, fraudulent conveyance, moratorium or other similar laws of general applicability relating to or affecting the rights and remedies of creditors generally or general principles of equity. Each Transaction Document, to which Purchaser will become a party, when executed and delivered by Purchaser, will constitute the valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, fraudulent conveyance, moratorium or other similar laws of general applicability relating to or affecting the rights and remedies of creditors generally or (ii) general principles of equity.

Section 5.3 No Conflict; Third Party Consents. Subject to the receipt by Purchaser of the Consents listed on Schedule 5.3 of the Purchaser's Disclosure Schedules and the Consents or Governmental Orders listed on Schedule 5.4 of the Purchaser's Disclosure Schedules (collectively, the "Purchaser Required Consents"), the execution and delivery of this Agreement does not, and the execution and delivery of the other Transaction Documents will not, and the consummation of the Transactions will not: (a) violate or conflict with the provisions of the organizational documents of Purchaser; (b) result in the imposition of any Encumbrance (other than a Permitted Encumbrance) upon any of the properties or assets of Purchaser; (c) cause the acceleration or material modification of any obligation under, create in any Person the right to terminate, constitute a material default or material breach of, or violate or conflict, in any material respect, with the terms, conditions or provisions of, any material note, bond, mortgage, including deed of trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which

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Purchaser is a party or by which Purchaser is bound (whether with notice, lapse of time or both); or (d) result in a breach or violation by Purchaser of any of the terms, conditions or provisions of any Law or Governmental Order.

Section 5.4 Government Authority. Subject to the receipt by Purchaser of the FERC Approval, the PUCT Approval, and any other Governmental Orders listed in Schedule 5.4 to the Purchaser Disclosure Schedules (collectively, the Purchaser Required Regulatory Approvals) and except as otherwise set forth in such Schedule 5.4, the execution, delivery and performance of this Agreement and the other Transaction Documents by Purchaser, and the consummation of the Transactions will not require on the part of Purchaser any Governmental Order or any filing with or notification to any Governmental Body.

Section 5.5 Litigation. There is no pending or, to Purchaser's Knowledge, threatened Proceeding to which Purchaser or any of its Affiliates is a party that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, or that would reasonably be expected to have any of the foregoing effects on, any of the Transactions, or that has had or could reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.6 Sufficiency of Funds. Purchaser will have available on the Closing Date sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price to Seller and consummate the Transactions.

Section 5.7 Brokers. No broker or finder has acted for or on behalf of Purchaser or any Affiliate of Purchaser in connection with this Agreement or the Transactions contemplated by the Transaction Documents. No broker or finder is entitled to any brokerage or finder's fee, or to any commission, or to any other compensation based in any way on agreements, arrangements or understandings made by or on behalf of Purchaser or any Affiliate of Purchaser for which Seller has or will have any liability or obligation (contingent or otherwise).

Section 5.8 Due Diligence and Independent Investigation. Purchaser is knowledgeable about the electric transmission and distribution utility business and of the usual and customary practices of companies engaged in the electric transmission and distribution utility business. Purchaser has had access to the Acquired Assets and sufficient opportunities to discuss relevant information regarding the Acquired Assets with Seller's appropriate employees, agents, representatives and Affiliates. Purchaser has conducted its own independent investigation of the Acquired Assets and is relying, in its decision to enter into this Agreement and consummate the Transactions, exclusively on (a) such investigation, including Purchaser's independent investigation of the Acquired Assets to be conducted after the Execution Date and prior to the Closing Date pursuant to Section 6.2, and (b) the representations and warranties made in Article 4 (including the related portions of the Disclosure Schedules hereto).

Section 5.9 No Additional Representations and Warranties. Purchaser acknowledges that, except for the representations and warranties contained in Article 4 (including the related portions of the Disclosure Schedules hereto), (a) the Acquired Assets are being conveyed and sold to, and accepted by, Purchaser in their present condition, "AS IS," "WHERE IS" and with any faults, except as otherwise expressly provided in this Agreement and (b) neither Seller nor any of its representatives has made or makes hereby any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty arising from statute or otherwise in Law. Purchaser further acknowledges that none of Seller, any Affiliate of Seller or any other Person has, directly or indirectly, made any representations or warranties regarding any pro-forma financial information, financial projections or other forward-looking statements with respect to the Acquired Assets. **EXCEPT FOR THE**

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REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 5 (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE HERETO), NEITHER PURCHASER NOR ANY OF ITS REPRESENTATIVES HAS MADE OR MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER WRITTEN OR ORAL, ON BEHALF OF PURCHASER, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING PURCHASER OR THE POTENTIAL IMPACTS ON ANY THIRD PARTIES OR THE OPERATIONS OF THE TRANSMISSION GRID OF THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS FURNISHED OR MADE AVAILABLE BY OR ON BEHALF OF PURCHASER TO SELLER OR ANY OF ITS REPRESENTATIVES, OR ANY REPRESENTATION OR WARRANTY ARISING FROM STATUTE OR OTHERWISE IN LAW. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 5 (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE HERETO), ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY PURCHASER, AND SUCH DISCLAIMER IS SPECIFICALLY AGREED TO AND ACCEPTED BY SELLER.

ARTICLE 6
COVENANTS AND AGREEMENTS OF SELLER AND PURCHASER

Section 6.1 Conduct of the Business. From the Execution Date until the Closing Date, except with the written consent of Purchaser:

a. Seller will conduct its business with respect to the Acquired Assets only in, and will not take any action except in, the Ordinary Course of Business and in accordance in all material respects with applicable Law and Governmental Orders, and maintain the Acquired Assets consistent with the Ordinary Course of Business, including any regularly scheduled maintenance (reasonable wear and tear excepted);

b. Seller shall not create, incur, assume or suffer to exist any Encumbrance (other than Permitted Encumbrances) upon any Acquired Asset;

c. Seller shall not enter into, assign, amend, relinquish or waive any material rights under, or renew, extend or terminate any Land Contracts, provided that, such consent shall not be unreasonably withheld or delayed;

d. Seller shall continue to pay all fees, expenses and any other amounts payable or due in respect of any Real Property, whether public or private, or any Permit in respect of the Acquired Assets or under any Land Contract;

e. Other than in the Ordinary Course of Business, Seller shall not amend in any material respect, breach in any material respect, terminate or allow to lapse, become subject to default in any material respect or fail to apply for any renewal of, any Permit material to the Acquired Assets, other than as required by Law;

f. Seller will not cancel or terminate its current insurance policies relating to the Acquired Assets or allow any of the coverage thereunder to lapse, unless simultaneously with such termination, cancellation or lapse, Seller obtains and maintains replacement policies providing coverage equal to or greater than the coverage under the canceled, terminated or lapsed policies for substantially

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similar premiums as such policies currently in effect;

g. Seller shall not take any action or engage in any transaction that would cause any of the representations or warranties of Seller set forth in ARTICLE 4 hereof to be untrue as of the Closing Date or make any commitment to take any of the actions prohibited by this Section 6.1.

Section 6.2 Notice of Developments and Access to Acquired Assets and Records.

a. Each Party will promptly upon discovery thereof notify the other Party of any emergency or other material change with respect to the status of the Acquired Assets or the Transactions or the commencement or threat of any Proceeding that could have a Seller Material Adverse Effect, a Purchaser Material Adverse Effect or an Asset Material Adverse Effect. Each Party will promptly notify the other Party in writing if such notifying Party should discover that any representation or warranty made by it in this Agreement was at the time of making, has subsequently become or will be on the Closing Date, untrue in any respect or the occurrence of any event that would prevent the satisfaction of any conditions to Closing set forth in Article 7. No disclosure pursuant to this Section 6.2 will be deemed to amend or supplement the Purchaser's Disclosure Schedules or Seller's Disclosure Schedules or to prevent or cure any inaccuracy, misrepresentation, breach of warranty or breach of agreement.

b. Without limiting the generality of Section 6.3g, Seller shall provide Purchaser access to the Real Property and other Acquired Assets in order for Purchaser or a third party representative to conduct a baseline assessment of the Transmission Line and Land Contracts.

c. From and after the Execution Date and until the Closing Date, Seller shall permit Purchaser and its representatives to have, on reasonable notice and at reasonable times, (i) reasonable access to the Real Property and other Acquired Assets and all employees, and books, papers and records of Seller to the extent that they reasonably relate to the operation, maintenance, obligations, liabilities relating to and validity of Seller's ownership of and interests in the Acquired Assets, (ii) permit Purchaser to make reasonable inspections thereof as Purchaser may reasonably request, and (iii) furnish Purchaser with such operating data and other information with respect to the Acquired Assets as Purchaser may from time to time reasonably request; *provided, however*, that (x) such access shall not unreasonably interfere with the operation of Seller's business, (y) Seller shall not be required to take any action which would constitute or result in a waiver of the attorney-client privilege and (z) Seller shall not be required to supply Purchaser with any information which Seller is under a legal obligation not to supply. All documents or information furnished by Seller or obtained by Purchaser hereunder shall be subject to Section 6.4.

Section 6.3 Consents and Authorizations, Regulatory Filings; Commercially Reasonable Efforts to Fulfill Conditions Precedent.

a. Seller shall use its Commercially Reasonable Efforts, at its expense, to (i), other than as described in Section 6.3c and d below, to obtain all Seller Required Consents and Seller Required Regulatory Approvals within a reasonable period of time after the Execution Date; and (ii) use Commercially Reasonable Efforts to cooperate with Purchaser with respect to the taking of all necessary steps to transfer title of the Acquired Assets that require a specific act or document to transfer title to Purchaser at the Closing (or to evidence any such transfer). Purchaser shall reasonably cooperate with Seller to the extent necessary or as reasonably requested by Seller to obtain the Seller Required Consents and Seller Required Regulatory Approvals. Seller shall keep Purchaser reasonably advised of the status of obtaining the Seller Required Consents and the Seller Required Regulatory Approvals.

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b. Purchaser shall use its Commercially Reasonable Efforts to obtain, within a reasonable period of time after the Execution Date, all Purchaser Required Consents and Purchaser Required Regulatory Approvals. Seller shall reasonably cooperate with Purchaser to the extent necessary or as reasonably requested by Purchaser to obtain the Purchaser Required Consents and Purchaser Required Regulatory Approvals. Purchaser shall keep Seller reasonably advised of the status of obtaining the Purchaser Required Consents and Purchaser Required Regulatory Approvals.

c. Within thirty (30) days after the Execution Date, Purchaser will submit, or cause to be submitted, to FERC an application pursuant to Sections 203 and 205 of the Federal Power Act seeking authorization as necessary for the Transactions and, upon consummation of the Transactions, the transfer of operational control over the Transmission Line to Southwest Power Pool, Inc. and associated cost recovery (collectively, the "FERC Approval"). Seller shall cooperate with Purchaser in the preparation and filing of such application, and Purchaser shall consider all reasonable comments, if any, submitted by Seller with respect thereto. The Parties shall respond promptly to any requests for additional information made by FERC, and Purchaser shall use its Commercially Reasonable Efforts to cause regulatory approval to be obtained at the earliest reasonable date after the date of filing. Each Party will bear its own costs of the preparation and prosecution of any such filing.

d. Within ninety (90) days after the Execution Date, Purchaser will submit, or cause to be submitted, the applications, forms or reports required by the Public Utility Commission of Texas (the "PUCT") with respect to the Transactions, which applications, forms or reports shall request approval from the PUCT of the transfer of Seller's Certificate of Convenience and Necessity ("CCN") for the Transmission Line to Purchaser in accordance with Section 37.154 of PURA, and any other aspects of the Transaction which must be expressly approved by the PUCT. The approvals by the PUCT of the matters set forth in the preceding sentence, which must be to Seller's and Purchaser's reasonable satisfaction, are referred to herein as the "PUCT Approval" and, together with the Seller Required Consents, the Seller Required Regulatory Approvals, the Purchaser Required Consents, the Purchaser Required Regulatory Approval, and the FERC Approval, the "Required Consents and Approvals". The Parties shall reasonably cooperate and each shall use its Commercially Reasonable Efforts in connection with obtaining the Required Consents and Approvals.

e. In the event that any of the Required Consents and Approvals are not obtained and the Closing proceeds without such Required Consents and Approvals having been obtained, the Party responsible for any such Required Consents and Approvals shall, or shall cause its agents to, use all Commercially Reasonable Efforts to assist the other Party in obtaining or making any such Required Consents and Approvals after the Closing Date until such time as such Required Consents and Approvals have been obtained.

f. Within thirty (30) Business Days following the Closing Date, each Party shall file any notices required to be filed by such Party with any Governmental Body required in connection with the Transactions. Each Party shall cooperate and take all reasonable actions necessary to permit the other Party to file any such required notices.

g. At all times prior to the Closing, the Parties shall cooperate and coordinate with each other, as appropriate, with respect to filings and notifications to Governmental Bodies in connection with obtaining or making the Required Consents and Approvals. In particular, representatives of Purchaser and Seller will confer with each other on a regular basis to report matters relating to the status of all filings and notices made with or to Governmental Bodies hereunder. Each Party shall use Commercially Reasonable Efforts to cause to be fulfilled the conditions precedent in its favor to its obligation to consummate the

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Transactions, provided that the foregoing shall not be construed to impose any duty on such Party to waive fulfillment of any such condition precedent. Each Party shall reasonably cooperate with the other Party's Commercially Reasonable Efforts pursuant to the preceding sentence.

Section 6.4 Confidentiality. Each Party shall hold, and shall cause its Affiliates and its and their respective officers, directors, employees, representatives and agents to hold, in strict confidence from any Person all documents and information concerning the other Party or any of its Affiliates furnished to it by the other Party or such other Party's officers, directors, employees, representatives and agents in connection with this Agreement or the Transactions, except any disclosure of any such documents or information: (a) compelled by judicial or administrative process (including in connection with obtaining the necessary approvals of this Agreement and the Transactions from relevant Governmental Bodies) or by other requirements of Law, (b) to Governmental Bodies when such disclosure is deemed reasonably necessary by Seller or Purchaser, as applicable, in connection with obtaining any of the Required Consents and Approvals and provided that the disclosing Party notifies the non-disclosing Party a reasonable period of time in advance of any such disclosure and uses reasonable efforts, to the extent reasonably requested by the non-disclosing Party, to seek confidential treatment of or limit disclosure of information subject to the disclosure restrictions of this Section 6.4, (c) in a Proceeding brought by a Party in pursuit of its rights or in the exercise of its remedies under or in connection with this Agreement, or (d) approved in writing in advance by the opposite Party or to which both Parties have agreed in advance. The restrictions on disclosure under the preceding sentence shall not apply to such documents or information the extent that the same can be shown to have been (i) in the public domain (either prior to or after the furnishing of such documents or information hereby) through no fault of such receiving party or (ii) previously known by the receiving party or later acquired by the receiving party from another source, in each case, if the receiving party is not aware that such source is under an obligation to the other Party to keep such documents and information confidential. In the event the Transactions are not consummated, upon the request of the other Party, each Party shall, and shall cause its Affiliates to, promptly (and in no event later than thirty (30) days after such request) redeliver or cause to be redelivered all copies of documents and information furnished by the other Party in connection with this Agreement or the Transactions and destroy or cause to be destroyed all notes, memoranda, summaries, analyses, compilations and other writings related thereto or based thereon prepared by the Party that furnished such documents and information or its officers, directors and agents.

Section 6.5 Public Announcements. Neither Seller nor Purchaser shall, without prior written consent of the other Party, issue any press release or make any public statement with respect to this Agreement and the Transactions, except (i) as required to disclose by judicial or administrative process (including in connection with obtaining the necessary approvals of this Agreement and the Transactions from relevant Governmental Bodies); (ii) required by applicable Law or (iii) required under any listing agreement with a national securities exchange or quotation system; *provided, however*, prior to any such compelled statement, the compelled Party will consult with and provide the other Party a reasonable opportunity to review and make reasonable comment upon such press release or public statement.

Section 6.6 Payment of All Taxes Resulting From Sale of Assets by Seller. Other than as provided in the first sentence of Section 2.6, concerning Transfer Fees and sales tax, and Section 6.7, concerning pro rated items, Seller will pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Acquired Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Law. Seller shall be responsible for any and all Taxes related in any manner to the Acquired Assets for periods ending on or prior to the Closing Date. Seller shall indemnify Purchaser from and against and in respect of any and all Damages incurred by Purchaser related to any of the Taxes which Seller has agreed to be responsible under this Agreement (including Damages related to any Taxes that create a Permitted Encumbrance). The indemnity obligation set forth in this Section 6.6 shall survive

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the Closing indefinitely and shall not be subject to any restrictions or limitations. Seller and Purchaser shall (a) each provide the other with such assistance as may reasonably be requested by any of them in connection with the preparation of any Return, audit or other examination by any taxing authority or judicial or administrative proceedings relating to liability for Taxes, (b) each retain and provide the other with any records or other information that may be relevant to such Return, audit or examination, proceeding or determination, and (c) each provide the other with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any Return of the other for any period.

Section 6.7 Pro Rated Items. All property and ad valorem Taxes, leasehold rentals and other customarily proratable items relating to the Real Property and the Acquired Assets payable or accrued prior to or subsequent to the Closing Date and relating to a period of time both prior to and subsequent to the Closing Date will be prorated as of the Closing between Seller and Purchaser, such that Seller is responsible for any such payments that are payable or relate to a period prior to the Closing Date and Purchaser is responsible for any such payment that is payable or relates to a period beginning on the Closing Date and thereafter. Seller shall deliver a statement to Purchaser at or before the Closing stating Seller's prorated portion to the extent not previously paid. If the actual amount of any such item is not known as of the Closing Date, such proration will be based on the previous year's assessment of such item and the Parties will adjust such proration and pay any underpayment or reimburse for any overpayment within thirty (30) days after the actual amount becomes known. Seller shall pay, on or before the Closing Date, all assessments for public improvements levied, pending or deferred against the Real Property as of the Closing Date. Purchaser shall pay and be liable for all assessments imposed or levied on the Real Property after the Closing, provided that, if any such assessment resulted from conditions, events or activities that arose prior to the Closing Date, such assessment shall be borne by Seller.

Section 6.8 Access to Tax Information after the Closing Date. Purchaser, on the one hand, and Seller, on the other hand, will make available to the other, as reasonably requested, all information, records or documents relating to the Taxes of the Acquired Assets for periods ending on or prior to the Closing Date and will otherwise reasonably cooperate with respect to Tax matters, including with respect to audits, inquiries, assessments, or similar proceedings. Until the expiration of one hundred twenty (120) days after the applicable statute of limitations period (including extensions thereof), Purchaser and Seller shall retain all pertinent Tax and accounting records necessary or useful for determining the Tax liability of the Acquired Assets for periods prior to and through the Closing Date.

Section 6.9 Title Search.

a. Purchaser may, at its sole cost and expenses, not later than ninety (90) days following the Execution Date, conduct a title search on the easements and rights of way covered by the Land Contracts and present to Seller, within twenty (20) days of Purchaser's receipt thereof, a list of exceptions to the title related thereto.

b. Any objections or exceptions relating to the Land Contracts that are identified by Purchaser pursuant to the foregoing provisions of this Section 6.9 constitute a "Closing Encumbrance" for purposes hereof.

c. Seller shall have thirty (30) days after receipt of notice of any Closing Encumbrances identified by Purchaser to deliver notice to Purchaser (the "Cure Notice") identifying the Closing Encumbrances, if any, Seller intends to cure, at its discretion, which such cure shall be effected at Seller's sole cost and expense prior to the Closing; provided, however, (i) Seller shall have no obligation with respect to any Closing Encumbrances not contained in the Cure Notice and (ii) failure to cure any

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Closing Encumbrance not listed in the Cure Notice shall constitute neither (a) a breach of any of Seller's covenants contained herein, including the covenant contained in Section 6.1, nor (b) a failure by Seller to comply with its obligations under this Agreement with respect to Section 9.1b(ii).

d. If any Closing Encumbrances are not cured prior to the Closing, Purchaser will have the option (which shall be its sole remedy with respect thereto) to (i) terminate this Agreement or (ii) waive such objections and proceed to consummate the Closing; provided, however, if Purchaser proceeds to consummate the Closing, any Closing Encumbrances not cured shall be deemed Permitted Encumbrances for the purposes of this Agreement.

Section 6.10 Risk of Loss. Subject to and without limiting the effect of Section 3.1, the risk of any loss, damage, impairment, confiscation or condemnation of any of the Acquired Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing, and by Purchaser at all times thereafter. If any such loss, damage, impairment, confiscation or condemnation occurs prior to Closing, Seller shall promptly notify Purchaser of any such event, and Seller and Purchaser shall discuss and mutually agree on a course of action to repair, replace or restore such Acquired Assets. In the event ("Casualty Event") of any damage or destruction to the Acquired Assets which would result in the non-satisfaction of a condition precedent to Purchaser's obligation to consummate the Transactions, Purchaser, at its option, may proceed to close the Transactions on the Closing Date, in which event Seller shall pay or assign to Purchaser any proceeds from any insurance policies covering Acquired Assets subject to the Casualty Event to the extent such proceeds are actually received by Seller and have not been used in or committed to the restoration or replacement of Acquired Assets subject to the Casualty Event as of the Closing Date.

Section 6.11 Supplements to Disclosure Schedule. From time to time prior to the Closing Date each Party may, and at least once not more than twenty (20) Business Days or less than three (3) Business Days prior to the Closing Date, each Party shall, by written notice to the other Party, supplement or amend the notifying Party's Disclosure Schedules to this Agreement, (any such supplement or amendment to the Seller's Disclosure Schedules or Purchaser's Disclosure Schedules, as the case may be, a "Supplement") to supplement or correct the description of, or disclose, matters (a) that, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the notifying Party's Disclosure Schedule or is necessary to correct any information in the notifying Party's Disclosure Schedule that shall have been rendered inaccurate by an event occurring after the Execution Date that, if existing or known on the Execution Date, would have been required to be set forth or described in the notifying Party's Disclosure Schedules, or (b) that, absent such supplement, correction or disclosure, would constitute or result in a breach of any representation or warranty of the notifying Party contained herein. All such Supplements shall be disregarded and deemed not to be included in the Disclosure Schedules for the purposes of determining whether the condition in Sections 7.2b and 7.3b shall have been satisfied, provided that, notwithstanding anything to the contrary in this Agreement, if the Closing shall occur, the Seller's Disclosure Schedules and the Purchaser's Disclosure Schedules shall be deemed for all purposes to include and reflect, as of the Closing Date, all Supplements timely delivered prior to the Closing Date in accordance with this Section 6.11. No Supplement of the Disclosure Schedules made pursuant to this Section 6.11 shall be deemed to cure any breach of any representation or warranty made as of the Execution Date in this Agreement. However, if the Closing occurs, a Supplement to the Disclosure Schedules that is timely delivered not less than three (3) Business Days prior to the Closing Date in accordance with the foregoing provisions of this Section 6.11 shall relate back to the Execution Date.

Section 6.12 Further Assurances. At any time or from time to time after the Closing Date, Seller shall, at the request of Purchaser and at the expense of Purchaser, as applicable, execute and deliver any

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further instruments or documents and take all such further action as Purchaser may reasonably request in order to consummate and make effective the Transactions contemplated by this Agreement.

ARTICLE 7 CONDITIONS TO CLOSING

Section 7.1 Conditions to Each Party's Obligations. The respective obligations of each Party to consummate the Transactions shall be subject to the conditions that, at the Closing (unless waived in writing by each Party):

a. No Injunction. There shall be no Governmental Order or Action pending by or before any Governmental Body to obtain a Governmental Order, to the effect that the Transactions may not be consummated as herein provided or otherwise seeking to prohibit or restrict the consummation of the Transactions.

b. No Threat of Injunction. No Party shall have received a written notice of a Governmental Order from any Governmental Body indicating an intent to restrain, prevent, materially delay or restructure the Transactions.

c. FERC and PUCT Approvals. Each of the FERC Approval and the PUCT Approval shall have been obtained, in a form that is acceptable to Seller and Purchaser in their reasonable judgment, and be in full force and effect.

d. IA Consent. The IA Consent shall have been obtained, in a form that is acceptable to Seller and Purchaser in their reasonable judgment.

Section 7.2 Conditions to Obligations of Seller. The obligation of Seller to consummate the Transactions shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions (unless waived in writing by Seller, in its absolute and sole discretion):

a. Closing Deliveries. Purchaser shall have tendered or delivered to Seller the items listed in Section 8.3.

b. Representations and Warranties of Purchaser.

(i) Each of the representations and warranties of Purchaser set forth in Article 5 that are not qualified by materiality or Purchaser Material Adverse Effect (or similar qualifications) shall be true and correct in all material respects as of the Execution Date, and shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though newly made as of that date.

(ii) Each of the representations and warranties of Purchaser set forth in Article 5 that are qualified by materiality or Purchaser Material Adverse Effect (or similar qualifications) shall be true and correct as of the Execution Date, and shall be true and correct at and as of the Closing Date with the same force and effect as though newly made as of that date.

c. Covenants of Purchaser. Purchaser shall have performed in all material respects all of its obligations under this Agreement that by the terms of such obligations are to be performed on or before the Closing Date.

d. Purchaser Material Adverse Effect. No Purchaser Material Adverse Effect shall have occurred and not be cured within thirty (30) days following such occurrence.

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e. Officer's Certificate.

(i) Seller shall have received a certificate duly executed by a senior officer of Purchaser, in a form reasonably satisfactory to Seller, to the effect that each of the conditions specified in Sections 7.2b and 7.2c have been satisfied.

(ii) Seller shall have received a certificate duly executed by an authorized officer of Purchaser to which is attached: (a) true, correct and complete copies of the organizational documents of Purchaser; (b) true, correct and complete copies of the resolutions of Purchaser respecting the transactions contemplated by this Agreement and the other Transaction Documents; and (c) a schedule respecting the incumbency and true signatures of the officers of Purchaser who execute this Agreement and the other Transaction Documents on behalf of Purchaser. The certificate required pursuant to this Section 7.2 e(ii) shall certify that the documents referred to in (a) and (b) above and attached thereto are true, correct and complete copies, have been duly and validly adopted and have not been amended or altered except as reflected therein.

f. Required Consents and Approvals. Each Seller Required Consent, Seller Required Regulatory Approval and each Purchaser Required Consent shall have been obtained and be in full force and effect and be in a form approved as satisfactory to Seller (which approval of Seller shall not be unreasonably withheld, conditioned or delayed).

Section 7.3 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the Transactions shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions (unless waived in writing by Purchaser in its absolute and sole discretion):

a. Closing Deliveries. On or prior to the Closing Date, Seller shall have delivered to Purchaser the items set forth in Section 8.2.

b. Representations and Warranties of Seller.

(i) Each of the representations and warranties of Seller set forth in Article 4 that are not qualified by materiality, Asset Material Adverse Effect or Seller Material Adverse Effect (or similar qualifications) shall be true and correct in all material respects as of the Execution Date, and shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though newly made as of that date.

(ii) Each of the representations and warranties of Seller set forth in Article 4 that are qualified by materiality, Asset Material Adverse Effect or Seller Material Adverse Effect (or similar qualifications) shall be true and correct as of the Execution Date, and shall be true and correct at and as of the Closing Date with the same force and effect as though newly made as of that date.

c. Covenants of Seller. Seller shall have performed all of its obligations under this Agreement that by the terms of such obligations are to be performed on or before the Closing Date.

d. Good Standing. Purchaser will have received certificates dated as of a date not earlier than the seventh Business Day prior to the Closing as to the good standing of Seller and payment of all applicable state Taxes by Seller, executed by the appropriate officials of the State of Texas and each jurisdiction in which Seller is licensed or qualified to do business.

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e. Releases. Purchaser will have received releases of all Encumbrances (other than Permitted Encumbrances) as required to be provided in Section 8.2f.

f. Officer's Certificates.

(i) Purchaser shall have received a certificate duly executed by Seller, in a form reasonably satisfactory to Purchaser, to the effect that each of the conditions specified in Section 7.3b, Section 7.3c and Section 7.3e have been satisfied.

(ii) Purchaser shall have received a certificate duly executed by an authorized officer of Seller to which is attached: (a) true, correct and complete copies of the organizational documents of Seller; (b) true, correct and complete copies of the resolutions of Seller respecting the transactions contemplated by this Agreement and the other Transaction Documents; and (c) a schedule respecting the incumbency and true signatures of the officers of Seller who execute this Agreement and the other Transaction Documents on behalf of Seller. The certificate required pursuant to this Section 7.3f(ii) shall certify that the documents referred to in (a) and (b) above and attached thereto are true, correct and complete copies, have been duly and validly adopted and have not been amended or altered except as reflected therein.

g. Required Consents and Approvals. Each Purchaser Required Consent, Purchaser Required Regulatory Approval and each Seller Required Consent shall have been obtained, be in full force and effect and be in a form approved as satisfactory to Purchaser (which approval of Purchaser shall not be unreasonably withheld, conditioned or delayed).

h. Material Adverse Effect. Neither (i) a Seller Material Adverse Effect or (ii) an Asset Material Adverse Effect shall have occurred and not be cured within thirty (30) days following such occurrence.

ARTICLE 8 CLOSING

Section 8.1 Closing. The consummation of the Transactions (the "Closing") shall take place at such date and location as may be mutually agreed upon by Purchaser and Seller (the "Closing Date"). The Closing will be effective as of 12:01 a.m. on the Closing Date.

Section 8.2 Seller's Deliveries. At or prior to the Closing, Seller shall deliver to Purchaser the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), and the following:

a. Bill of Sale. The Bill of Sale duly executed by Seller.

b. Real Property. For each Land Contract, a recordable assignment and assumption, subject to the Permitted Encumbrances (the "Land Contract Assignment"), substantially in the form of Exhibit D, executed by Seller, with all appropriate notarizations and certifications as required by the applicable Governmental Body.

c. Assignment and Assumption Agreement of Leased Property. Assignments and assumptions or other appropriate documents for any Acquired Assets under lease accompanied by estoppel certificates in form and substance acceptable to Purchaser, duly executed by Seller and any other

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appropriate parties.

d. Assignment of Acquired Assets. Assignments of the Acquired Assets, duly executed by Seller, together with other agreements, instruments, certificates and other documents necessary to assign all of Seller's rights and interests in and to the Acquired Assets to Purchaser

e. FIRPTA. A non-foreign affidavit of Seller (and/or its tax-paying parent if Seller is a disregarded entity under the Code) dated as of the Closing Date in form and substance as required under the Treasury regulations issued pursuant to Section 1445 of the Code.

f. Release of Encumbrances. Duly executed copies of all agreements, instruments, certificates and other documents necessary or appropriate, to release any and all Encumbrances against the Acquired Assets, other than Permitted Encumbrances.

g. Other Instruments. To Purchaser, such other endorsements, assignments, certificates, documents and instruments as may be reasonably requested by Purchaser to consummate the Transactions, each in form and substance reasonably satisfactory to Purchaser.

Section 8.3 Purchaser's Deliveries. At or prior to the Closing, Purchaser shall deliver to Seller or such other Persons as set forth below:

a. Closing Payment. To Seller, the Closing Payment by immediately available funds via wire transfer pursuant to instructions provided by Purchaser prior to the Closing Date.

b. Assignment and Assumption Agreement and Land Contract Assignment. To Seller, Assignment and Assumption Agreements pertaining to the Assumed Liabilities and the Land Contract Assignments, in each case duly executed by Purchaser.

c. Other Documents and Instruments. To Seller, such other endorsements, assignments, assumptions, certificates, instruments and documents as may be reasonably requested by Seller to consummate the Transactions, each in form and substance reasonably satisfactory to Seller.

ARTICLE 9 TERMINATION AND AMENDMENT

Section 9.1 Termination. This Agreement may be terminated at any time prior to Closing:

a. by the mutual written consent of Seller and Purchaser;

b. by Seller in the event:

(i) Purchaser breaches any representation, warranty or agreement contained in this Agreement, which breach has not been cured within sixty (60) days after receiving written notice from Seller;

(ii) the Transactions will not have been consummated on or before October 1, 2019 (the "Termination Date"), effective immediately upon notice to Purchaser, which notice may be served at Seller's election, in its sole discretion and without further explanation; *provided, however*, that (A) Seller will not be entitled to terminate this Agreement pursuant to this Section 9.1b(ii) if Seller's failure to comply fully with its obligations under this Agreement has prevented the consummation of the

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Transactions, and (B) if the FERC Approval and PUCT Approval have been received on or before the Termination Date and remain in full force and effect, Purchaser may, on one or more occasions by notice to Seller prior to the Termination Date or, if later, the extended Termination Date then in effect, extend the Termination Date by an additional number of days, no later than the expiration of the FERC Approval or PUCT Approval and not more than three hundred sixty-five (365) days in the aggregate; or

(iii) a Law or Governmental Order will have been enacted, entered, enforced, promulgated, issued or deemed applicable to the Transactions by any Governmental Body that prohibits the Closing.

c. by Purchaser in the event:

(i) Seller breaches any representation, warranty or agreement contained in this Agreement, which breach has not been cured within thirty (30) days after receiving written notice from Purchaser;

(ii) the Transactions will not have been consummated on or before the Termination Date, effective immediately upon receipt of notice to Seller, which notice may be served at Purchaser's election, in its sole discretion and without further explanation; *provided, however*, that (A) Purchaser will not be entitled to terminate this Agreement pursuant to this Section 9.1c(ii) if Purchaser's failure to comply fully with its obligations under this Agreement has prevented the consummation of the Transactions, and (B) if the FERC Approval and PUCT Approval have been received on or before the Termination Date and remain in full force and effect, Seller may, on one or more occasions by notice to Purchaser prior to the Termination Date or, if later, the extended Termination Date then in effect, extend the Termination Date by an additional number of days, no later than the expiration of the FERC Approval or PUCT Approval and not more than three hundred sixty-five (365) days in the aggregate; or

(iii) a Law or Governmental Order will have been enacted, entered, enforced, promulgated, issued or deemed applicable to the Transactions by any Governmental Body that prohibits the Closing.

Section 9.2 Effect of Termination. If this Agreement is terminated pursuant to Section 9.1, this Agreement shall become void and of no further force or effect (except for the provisions of Section 6.4, Article 9, Article 10 and Article 11, all of which shall continue in full force and effect).

ARTICLE 10 SURVIVAL AND INDEMNIFICATION

Section 10.1 Survival of Representations, Warranties and Covenants. The representations and warranties of the Parties in this Agreement shall survive the Closing for a period beginning on the Closing Date and ending on the date that is eighteen (18) months after the Closing Date (such period or such longer period as set forth in the following sentence, as applicable, the "Claim Deadline Date"). Notwithstanding the preceding sentence, (a) the representations and warranties contained in Sections 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 5.3 and 5.4, (b) any indemnification claims based on fraud or intentional misrepresentation, (c) except as otherwise provided in Section 2.4c with respect to those Retained Environmental Liabilities other than any Specified Retained Environmental Liabilities, the covenants and agreements of the Parties in this Agreement, including the covenants related to the Retained Liabilities (including any Specified Retained Environmental Liabilities), and the Assumed Liabilities, the covenants providing for the indemnification obligations of the Parties with respect thereto, and the

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covenants providing for indemnification obligations set forth in Section 6.6, shall survive the Closing indefinitely, and (d) the covenants and agreements of the Parties in Section 2.4b with respect to Retained Environmental Liabilities, other than any Specified Retained Environmental Liabilities, shall survive the Closing for the period specified in Section 2.4c. No indemnification based on breach of any representation or warranty to which a Claim Deadline Date applies shall be payable pursuant to this Article 10 after the applicable Claim Deadline Date, except with respect to claims made prior to such Claim Deadline Date, but not then resolved (such representation or warranty surviving with respect to such claim solely until resolution of such claim). Notwithstanding the foregoing, if a claim notice with respect to recovery under the indemnification provisions hereof is given in accordance with the terms hereof prior to the applicable Claim Deadline Date, the claim shall continue indefinitely until such claim is finally resolved in accordance with the terms of this Agreement.

Section 10.2 Seller's Obligation to Indemnify.

a. Subject to the terms and conditions set forth in this Article 10, Seller shall indemnify and hold harmless Purchaser and its Affiliates (collectively, the "Purchaser Indemnified Person") from and against any and all Damages suffered or incurred by any Purchaser Indemnified Person based upon, arising out of or otherwise in respect of:

(i) any breach of any representation or warranty of Seller contained in Article 4 of this Agreement;

(ii) any breach of any covenant or agreement of Seller in this Agreement;

(iii) any claims based on fraud or intentional misrepresentation by Seller in connection with the Transactions or pursuant to this Agreement or the other Transaction Documents; and

(iv) any claims related to the Excluded Assets or the Retained Liabilities, including any Specified Retained Environmental Liabilities and, only for so long as they are not deemed to have become Assumed Liabilities under Section 2.4c, Retained Environmental Liabilities, other than any Specified Retained Environmental Liabilities.

Section 10.3 Limitations on Indemnification Obligations.

a. Indemnity Threshold Amount. Notwithstanding anything to the contrary contained herein, Seller shall not have any obligation to indemnify any Purchaser Indemnified Persons pursuant to Section 10.2a(i) and Section 10.2a(ii), unless and until Purchaser shall have incurred, on a cumulative basis, aggregate Damages in an amount exceeding five percent (5%) of the Purchase Price (the "Threshold Amount"), in which event the obligation of Seller to indemnify shall apply to all Damages incurred above the Threshold Amount. Notwithstanding anything to the contrary in the preceding sentence, the Threshold Amount shall not apply to any Damages related breaches of Sections 4.1 or 4.2 or to breaches of Section 6.6 (as set forth therein), and the obligation of Seller to indemnify Purchaser with respect to such matters shall apply to all Damages incurred from the first dollar. For purposes of this Article 10, the amount (but not the existence) of any Damages for which a Purchaser Indemnified Person is entitled to indemnification shall be determined, in each case, as if any qualifications or exceptions contained therein based on materiality (including any qualifications related to the presence or absence of a Material Adverse Effect and any usages of "material," "in all material respects," "in any material respect," "would not be material," "would not reasonably be expected to be material," or similar qualifiers) were not included in any representation or warranty in this Agreement or in any certificate furnished by or on behalf of Seller to Purchaser pursuant to this Agreement.

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b. Limited to Cap. Notwithstanding anything to the contrary contained herein, the aggregate amount potentially available for Purchaser Indemnified Persons under Section 10.2a(i) or Seller Indemnified Persons under Section 10.6a(i) for all Damages owed by Seller under Section 10.2a(i) or by Purchaser under Section 10.6a(i), as the case may be, shall not exceed, in the aggregate, the Purchase Price.

c. Limitation on Types of Damages. No Party shall be liable to the other Party for special, punitive, exemplary, incidental, consequential or indirect damages, or lost profit or losses calculated by reference to any multiple of earnings, or earnings before interest, tax, depreciation (or any other valuation methodology), whether based on contract, tort, strict liability or otherwise for any matter relating to this Agreement and the transactions contemplated herein, *provided, however*, that if a Party is held liable to a third party for any such damages and the other Party is obligated to indemnify such Party for the matter that gave rise to such damages, then the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages.

d. Reduction in Damages. Purchaser shall use Commercially Reasonable Efforts to mitigate any Damages which it seeks to recover pursuant to this Article 10. With respect to any claims related to title with respect to the Real Property, Purchaser shall make a claim against any title policy that has been issued in favor of Purchaser before initiating any indemnifiable claims against Seller under this Article 10. If Purchaser or Seller receives any payment from the title insurer related to such Damages ("Claim Reduction Payment"), prior to Purchaser recovering amounts from Seller with respect to such Damages pursuant to this Article 10, then such Claim Reduction Payment shall offset any Damages that Purchaser may recover against Seller for such claim.

e. Specific Limitation. Notwithstanding anything to the contrary herein, Purchaser's sole remedy and Seller's sole liability and obligation with respect to any breach of Seller's representation contained in Section 4.5d shall be Seller's duty, prior to and following the Closing, to transfer to Purchaser any property, assets and real property entitlements and all right, title and interests related thereto necessary to make Seller's representation contained in Section 4.5d true and correct in all material respects as of the Closing Date.

Section 10.4 Claims by Purchaser for Third Party Claims.

a. If any claim by Purchaser hereunder results from any claim or Proceeding by a third party (including a Governmental Body) (a "Third Party Claim"), then Purchaser shall give Seller written notice thereof (together with a copy of such Third Party Claim, process or other legal proceeding) promptly after becoming aware of such Third Party Claim and in no event later than ten (10) Business Days after Purchaser becomes aware of such Third Party Claim; *provided, however*, that the failure of Purchaser to give such notice shall not impair the rights of Purchaser under this Article 10, except to the extent that Seller is actually prejudiced by such failure to give notice. Such notice shall describe such Third Party Claim in reasonable detail.

b. Seller may elect to defend any Third Party Claim against Purchaser through counsel chosen by it (which counsel shall be reasonably acceptable to Purchaser).

(i) If Seller desires to defend a Third Party Claim then, within ten (10) Business Days after receiving notice from Purchaser of such Third Party Claim, Seller shall notify Purchaser of its intent to do so, and Purchaser shall promptly thereafter make available to Seller such books, records and other documents as well as access to representatives of Seller, as in each case is reasonably

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requested, and shall otherwise cooperate and cause its representatives to cooperate (including providing testimony) in the defense of such Third Party Claim; provided that pending such notice and assumption of defense, Purchaser may take such steps to defend against such Third Party Claim as, in Purchaser's good-faith judgment, are appropriate to protect its interests.

(ii) After notice from Seller to Purchaser of its election to assume the defense of a Third Party Claim, Purchaser shall not be entitled to reimbursement of any legal or other expenses subsequently incurred by Purchaser in connection with the defense thereof.

(iii) If Seller elects to defend the Third Party Claim, no compromise or settlement thereof may be effected by Seller without the consent of Purchaser (which shall not be unreasonably withheld, conditioned or delayed) unless the sole relief provided is monetary damages.

c. If Seller elects not to defend a Third Party Claim, then Purchaser may defend, compromise, and settle such Third Party Claim; *provided, however*, that, Purchaser may not compromise or settle any such Third Party Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 10.5 Purchaser's Obligation to Indemnify.

a. Purchaser shall indemnify and hold harmless Seller and its respective members, directors, officers, employees, agents, Affiliates and assigns (each, a "Seller Indemnified Person") from and against all Damages suffered or incurred by any Seller Indemnified Person based upon, arising out of or otherwise in respect of:

(i) any breach or inaccuracy of any representation or warranty of Purchaser in this Agreement or any Transaction Documents;

(ii) any breach of or nonfulfillment of any covenant or agreement of Purchaser in this Agreement or any Transaction Document;

(iii) any liability for claims based on fraud or intentional misrepresentation by Purchaser in connection with the Transactions; and

(iv) claims related to Assumed Liabilities, including, from and after the time any Retained Environmental Liabilities are deemed to have become Assumed Liabilities under Section 2.4c, such Assumed Liabilities that, prior to such time, were Retained Environmental Liabilities, or otherwise caused by or arising out of or resulting from the ownership, use or operation of the Acquired Assets, including without limitation, the Real Property, after the Closing Date, but excluding Damages with respect to which Seller's obligation to indemnify under Section 10.2a(iv) applies.

Section 10.6 Claims by Seller for Third Party Claims.

a. If any claim for indemnification hereunder by Seller results from any Third Party Claim, Seller shall promptly notify Purchaser (and in any event within ten (10) Business Days after the applicable Seller receives notice of the Third Party Claim) of such claim, *provided, however*, that the failure to provide such notice shall not release Purchaser from its obligations under this Article 10 except to the extent, and only to the extent, Purchaser is prejudiced by such failure.

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b. Purchaser shall have the right to assume and thereafter conduct the defense of the Third Party Claim with counsel of its choice reasonably satisfactory to Seller; *provided, however*, that Purchaser shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of Seller (not to be unreasonably withheld) unless the judgment or proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon Purchaser.

c. Pending the assumption of defense, Seller may take such steps to defend against such Third Party Claim as, in Seller's good-faith judgment, are appropriate to protect its interests.

d. In no event will Seller consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of Purchaser (not to be unreasonably withheld, delayed or conditioned).

Section 10.7 Exclusive Remedy. Seller and Purchaser acknowledge and agree that the indemnification provisions in this Article 10 shall be the exclusive remedy of Purchaser and Seller with respect to breaches of representations and warranties in or under this Agreement and the other Transaction Documents. Notwithstanding the foregoing, nothing in this Agreement shall in any way prevent or limit a Party's claim for breaches of covenants or intentional fraud or any Person's remedies for breaches of covenants or intentional fraud.

Section 10.8 Adjustments to Purchase Price. All indemnification payments paid pursuant to this Article 10 shall be deemed adjustments to the Purchase Price.

**ARTICLE 11
MISCELLANEOUS**

Section 11.1 Communications. Any notice, request, instruction, correspondence or other document to be given hereunder by a Party to another Party (herein collectively called "Notice") shall be in writing and delivered in person or by courier service requiring acknowledgment of receipt of delivery or mailed by certified mail, postage prepaid and return receipt requested, or by facsimile (confirmed by appropriate answer back), as follows:

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If to Seller, addressed to:
Rayburn Country Electric Cooperative
Attention: General Manager
P.O. Box 37
Rockwall, TX 75087

With a copy to:

Campbell McGinnis
McGinnis Lochridge and Kilgore
600 Congress Avenue #2100
Austin, Texas 78701

If to Purchaser, addressed to:

NextEra Energy Transmission Southwest, LLC
5920 W. William Cannon Drive, Bldg. 2
Austin, Texas 78749
Attention: Michael Grable, Vice President

with a copy to:

NextEra Energy Transmission Southwest, LLC
c/o NextEra Transmission LLC
700 Universe Boulevard, UST/JB
Juno Beach, FL 33408
Attention: David Davis, Executive Director Development

All notices and other communications required or permitted under this Agreement that are addressed as provided in this Section 11.1: (i) if delivered personally against proper receipt or by confirmed electronic mail delivery, shall be effective upon delivery; and (ii) if delivered (a) by certified or registered mail with postage prepaid, shall be effective five (5) Business Days or (b) by an internationally recognized overnight express mail service such as Federal Express, UPS, or DHL Worldwide, with courier fees paid by the sender, shall be effective two (2) Business Days, in each case following the date when mailed or couriered, as the case may be. A Party may from time to time change its address for the purposes of Notice to such Party by a similar Notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the Party sought to be charged with its contents.

Section 11.2 Succession and Assignment. This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Purchaser nor Seller may assign this Agreement or any of its rights, interest or obligations hereunder without the prior written approval of the other. Any assignments made in contravention of the terms of this Section 11.2 shall be void *ab initio*.

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Section 11.3 Governing Law. This Agreement, the other Transaction Documents, and the legal relations between the Parties hereto shall be governed and interpreted in accordance with the laws of the State of Texas (provided that, the validity and enforceability of all conveyance documents or instruments executed and delivered pursuant to this Agreement insofar as they affect title to real property shall be governed by and construed in accordance with the Laws of the jurisdiction in which such property is located) without regard to principles of conflicts of law, except to the extent that United States bankruptcy law is applicable.

Section 11.4 Consent to Jurisdiction. Each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts in or for Travis County in the State of Texas (the "Texas Courts") in any action arising out of or relating to this Agreement or any other Transaction Document, and each such Party hereby irrevocably agrees that all claims in respect of any such action shall be heard and determined in Texas Courts. Each Party, to the extent permitted by applicable Law, hereby expressly waives any defense or objection to jurisdiction or venue based on the doctrine of *forum non conveniens*, and stipulates that the Texas Courts shall have *in personam* jurisdiction and venue over such Party for the purpose of litigating any dispute or controversy between the Parties arising out of or relating to this Agreement or any other Transaction Document. In the event that either Party shall commence or maintain any action arising out of or relating to this Agreement or any other Transaction Document in a forum other than Texas Courts, the other Party shall be entitled to request the dismissal or stay of such action, and each Party stipulates for itself that such action shall be dismissed or stayed. To the extent that either Party has or hereafter may acquire any immunity from the jurisdiction of Texas Courts or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to itself or its property, each such Party hereby irrevocably waives such immunity.

Section 11.5 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS. EACH PARTY HERETO: (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.5.

Section 11.6 Entire Agreement. This Agreement and the other Transaction Documents, each of which are incorporated herein, embody the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, commitments, arrangements, negotiations or understandings, whether oral or written, between the Parties hereto, their respective Affiliates or any representatives of any of them with respect thereto. There are no agreements, covenants or understandings with respect to the subject matter of this Agreement and the other Transaction Documents, other than those expressly set forth or referred to herein or therein and no representations or warranties of any kind or nature, whatsoever, express or implied, have been made or shall be deemed to have been made by the Parties hereto except those expressly made in this Agreement.

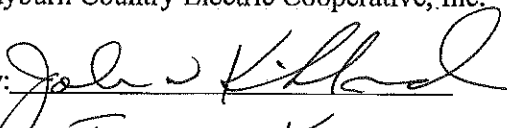
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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Execution Date.

SELLER:

Rayburn Country Electric Cooperative, Inc.

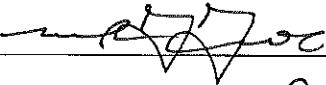
By: 

Name: JOHN W. KIRKLAND

Title: PRESIDENT / CEO

PURCHASER:

NextEra Energy Transmission
Southwest, LLC

By: 

Name: MICHAEL G. GRABLE

Title: VICE PRESIDENT

EXHIBIT A
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated and effective as of ____ 201__ (“Agreement”), is by and between Rayburn Country Electric Cooperative, Inc., a Texas electric cooperative corporation (“Assignor”) and NextEra Energy Transmission Southwest, LLC, a Delaware limited liability company (“Assignee”).

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of _____, 2016 (the “Purchase Agreement”), pursuant to which Assignor will sell, transfer, convey, assign and delivery to Assignee all of its right, title and interest in, to and under certain assets (as defined therein, the “Acquired Assets”), and Assignee will assume certain liabilities (as defined therein, the “Assumed Liabilities”), on the terms and subject to the conditions of the Purchase Agreement; and

WHEREAS, Assignor is the owner of the entire right, title and interest in, to and under certain intangible assets included in the Acquired Assets, including (a) any and all rights under any express or implied warranties provided by third parties relating to the Transmission Line or any part or component thereof, (b) all Permits (to the extent transferable, giving effect to the parties’ obligations under the Purchase Agreement as to the Required Consents) held by Assignor, or any of its Affiliates, that exclusively relate to the Acquired Assets (including the Permits listed on Schedule 4.7 of the Disclosure Schedules to the Purchase Agreement) and (c) any and all other intangible rights attaching to the other Acquired Assets or intangible personal property constituting any of the Acquired Assets except Entitled Real Property or Land Contracts or rights or interests in, to or under any Entitled Real Property or Land Contracts (collectively, the “Assigned Assets”).

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein set forth below and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.
2. Assignment and Assumption of Assigned Assets. Assignor hereby sells, transfers, conveys, assigns and delivers to Assignee all right, title and interest of Assignor in, to and under the Assigned Assets. Assignee hereby accepts the assignment of Assignor’s right, title and interest in, to and under the Assigned Assets so assigned.
3. Assignment and Assumption of Assumed Liabilities. In accordance with Section 2.3(a) of the Purchase Agreement, simultaneously with the assignment, transfer and conveyance of the Acquired Assets and the Assigned Assets by Assignor, Assignor hereby assigns, and Assignee hereby assumes and agrees to pay, perform or discharge in accordance with their respective terms, the Assumed Liabilities.
4. Integration with Purchase Agreement Provisions. Nothing contained in this Agreement shall expand, reduce, modify or waive any representations, warranties, covenants, rights or obligations of the parties under the Purchase Agreement. In the event that any of the provisions of this Agreement are determined to conflict with the terms of the Purchase Agreement, the terms of the Purchase Agreement shall control.
5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. Governing Law. This Agreement, and any legal disputes arising hereunder, shall be governed and interpreted in accordance with the laws of the State of Texas applicable to agreements made and to be performed entirely within such state, without giving effect to any conflict of laws principle to the contrary.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties herein have executed this Assignment and Assumption Agreement, effective as of the date set forth in the first paragraph.

Effective as of _____, 201_.

Rayburn Country Electric Cooperative, Inc.

By: _____

Name: _____

Title: _____

NextEra Energy Transmission Southwest, LLC

By: _____

Name: _____

Title: _____

EXHIBIT B

FORM OF BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Rayburn Country Electric Cooperative, Inc., a Texas electric cooperative corporation ("Transferor"), hereby sells, transfers, conveys, assigns and delivers to NextEra Energy Transmission Southwest, LLC, a Delaware limited liability company ("Transferee"), pursuant to the terms and conditions of that certain Asset Purchase Agreement between Transferor and Transferee, dated as of _____, 201__ (the "Purchase Agreement"), all of its right, title and interest in, to and under each and all of the:

(a) poles, lines, conductors, arms, braces, insulators, structures, facilities or improvements, fixtures, equipment and other items of tangible personal property comprising the Transmission Line;

(b) technical, maintenance and accounting books and records of Seller or in Seller's possession or control, to the extent relating to the Transmission Line or the Real Property; and

(c) improvements, fixtures, equipment and any other tangible personal property constituting any of the Acquired Assets;

All capitalized terms used but not otherwise defined herein have the meaning ascribed thereto in the Purchase Agreement.

Dated and effective as of: _____, 201__

Rayburn Country Electric Cooperative, Inc.

By: _____

Name: _____

Title: _____

NextEra Energy Transmission Southwest, LLC

By: _____

Name: _____

Title: _____

EXHIBIT C**Jacksonville-Overton 138 kV Transmission Line**

"Jacksonville-Overton 138 kV Transmission Line" means the transmission line segment beginning just outside of Southwestern Electric Power Company's Jacksonville substation beginning at Seller's transmission structure # 91 extending to Seller's transmission structure #368, just outside Southwestern Electric Power Company's Overton substation, as depicted below.

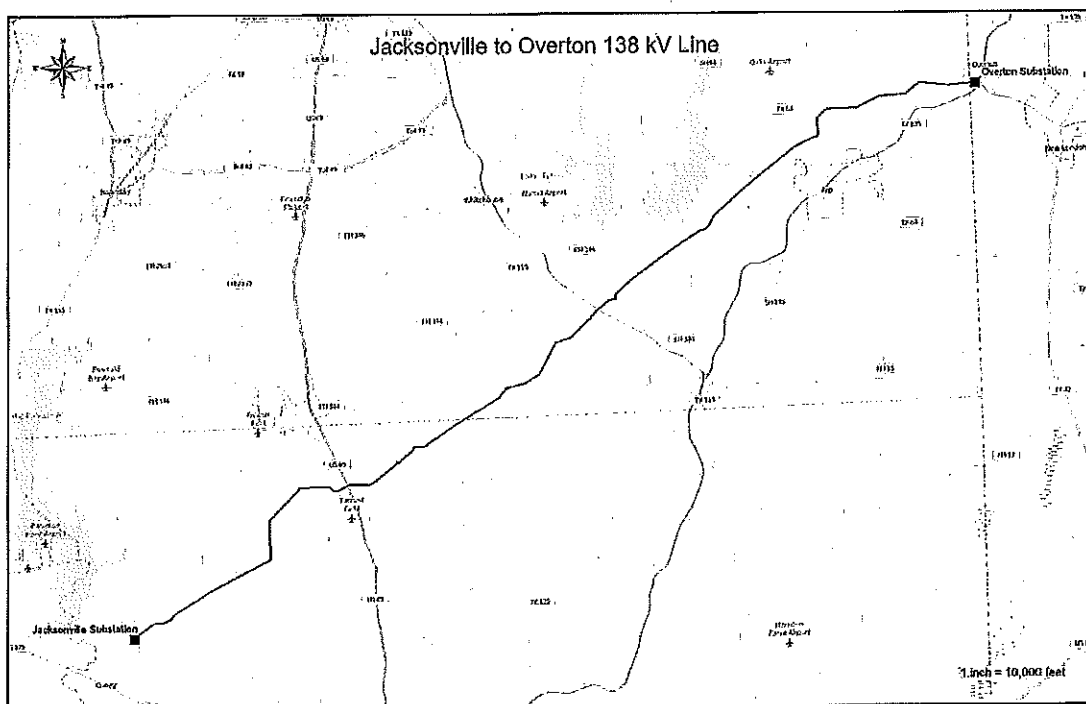


EXHIBIT D

FORM OF LAND CONTRACT ASSIGNMENT

ASSIGNMENT AND ASSUMPTION
OF LAND CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF LAND CONTRACTS ("Assignment") is made and dated as of this _____ day of _____ 201____ ("Effective Date") by and between Rayburn Country Electric Cooperative, Inc., a Texas electric cooperative corporation ("Assignor") and NextEra Energy Transmission Southwest, LLC, a Delaware limited liability company ("Assignee").

RECITALS

WHEREAS, Assignor and Assignee have concurrently herewith consummated the purchase by Assignee of certain Land Contracts pursuant to the terms and conditions of the Asset Purchase Agreement that is dated _____, 2016 ("Agreement"); and

WHEREAS, Assignor holds certain rights, title and interest in, to and under certain Land Contracts in Van Zandt and Henderson Counties, Texas; and

WHEREAS, Assignor now desires to transfer to Assignee, and Assignee desires to accept the transfer of, Assignor's interests in the Land Contracts pursuant to this Assignment.

NOW, THEREFORE, in consideration of Ten and NO/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Recitals are true and correct and are incorporated herein.
2. Assignor hereby grants, assigns, transfers and conveys to Assignee, all of its rights, title and interest in and to the Land Contracts set forth in **Exhibit "A"** encumbering those lands legally described in **Exhibit "A"** attached hereto and made a part hereof.
3. Assignee hereby accepts said assignment as the successor to Assignor under the Land Contracts and agrees to comply with each of the terms and conditions of the assigned Land Contracts from and after the Effective Date. Assignor shall provide written notice of this Assignment to the various property owners that are parties to the Land Contracts.
4. This Assignment is executed in accordance with the terms and conditions of the Agreement and the terms of this Assignment are in all respects subject to the terms and conditions

of the Agreement. To the extent there is a conflict or inconsistency between this Assignment and the Agreement, the terms of the Agreement shall control and prevail

5. If any provision of this Assignment or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

6. No provision set forth in this Assignment shall be deemed to enlarge, alter or amend the terms or provisions of the Land Contracts. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas.

7. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and may be executed in counterparts, each of which shall be deemed an original and all of which shall be one and the same instrument.

SIGNATURES ON NEXT PAGES

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

Assignor:

Rayburn Country Electric Cooperative, Inc.
a Texas electric cooperative corporation

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me this ____ day of _____
, 201__, by _____, as _____ of
Rayburn Country Electric Cooperative, Inc.

(seal)

Notary Public Signature

Assignee:

NextEra Energy Transmission Southwest, LLC
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF TEXAS

ಆದ್ದರಿಂದ

COUNTY OF

This instrument was acknowledged before me this _____ day of _____, 201____, by _____, as _____ of NextEra Energy Transmission Southwest, LLC.

(seal)

Notary Public Signature

After Recording Return to:

NEXTERA ENERGY TRANSMISSION SOUTHWEST, LLC,
5920 W. William Cannon Drive, Bldg. 2
Austin, Texas, 78749

EXHIBIT A

Land Contracts Assigned

EXHIBIT 2.1b

DESCRIPTION OF LAND CONTRACTS

See the description contained in rows 2 through 209 of the accompanying spreadsheet named "JO-ASSIGNMENT AND ASSUMPTION EASEMENTS.xlsx", which description is incorporated herein by this reference.

Tract #	Grantor(s)	Recorded Document #	Date of Recording	Volume	Page	County	Acres on Plat	Notes
55	SWEPCO	472952	12/9/1998	1407	404	Cherokee	0.2701	
59	Crow, Harlan R.	419342	1/11/1993	1200	147	Cherokee	63.77	
60	Armwine, Joe Washburn	414730	6/5/1992	1183	117	Cherokee	0.942	
61	Branham, Cleo Armwine	414731	6/5/1992	1183	120	Cherokee	0.774	
62	Jackson, Frenchell Armwine	414894	6/11/1992	1183	654	Cherokee	0.003	
64	Williamson, Ben Fred	414895	6/11/1992	1183	657	Cherokee	3.242	VLB
80.1	Huddleston, John	416753	7/4/1992	1190	469	Cherokee	8.281	
85.1	Tarrant, James R. and Mary A.	417664	10/15/1992	1194	48	Cherokee	15.915	
87	Stanley, Virgil and Virginia	419343	1/11/1993	1200	159	Cherokee	4.363	
89.1	Dennis, Jr., Donald I.	419344	1/11/1993	1200	162	Cherokee	2.404	
89.2	East Texas Rails to Trails	27531	9/8/1993	3409	460	Smith	0.231	
93.1	Brady, Billy J.	417654	10/15/1992	1194	19	Cherokee	1.94	
95	Stewart, Travis and Sharon G.	417662	10/15/1992	1194	43	Cherokee	7.806	
96	Harris, Herbert C. and Bonnie L.	417658	10/15/1992	1194	30	Cherokee	3.247	
99	Dowdy, Edward L.	417235	9/28/1992	1192	292	Cherokee	1.688	VLB
100	Gonzalez, V.V.		2/18/1993			Cherokee	4.241	Judgment
103	Smith, Doyle A. and Marilee Steed	414283	5/15/1992	1181	440	Cherokee	1.016	
104/106	Snow, D.L.	418879	12/16/1992	1198	299	Cherokee	10.612	
105	Wilkinson Jr., Henry Hayden	418507	11/24/1992	1197	64	Cherokee	3.885	
109	Gossett, Fred	415131	6/23/1992	1184	632	Cherokee	3.195	
109	Gossett, R. V.	415128	6/23/1992	1184	623	Cherokee		
109	Gossett, Vanell	415129	6/23/1992	1184	626	Cherokee		
109	Gossett, Carnell	415127	6/23/1992	1184	620	Cherokee		
109	Gossett, Fred Lewis	415130	6/23/1992	1184	629	Cherokee		
109	Robinson, Dorothy M.	415132	6/23/1992	1184	635	Cherokee		
109	Head, Ruby	415133	6/23/1992		638	Cherokee		
109	Gossett, Johnny V.	415252	6/29/1992	1185	254	Cherokee		
109	Gossett, Adell	415844	7/23/1992	1187	127	Cherokee		
109	Gossett, Ronnie P.	415144	8/6/1992	1188	210	Cherokee		
111	Nolley, I.H.	414393	5/20/1992	1181	833	Cherokee	0.054	
112	Kirkpatrick, Lynda Carol					Cherokee		Judgment
112.1	Barnes, David C. and Wilma Ester	419095	12/30/1992	1199	190	Cherokee	0.974	
112.2	Barnes, David Claude	419096	12/30/1992	1199	193	Cherokee	0.823	
112.3	Gray, Nancy Lyn Barnes		12/16/1992	1198	302	Cherokee	0.809	
112.4	Barnes Jr., C. A.		12/16/1992	1198	305	Cherokee	0.889	
112.5	Lynch, Brewster Vendell		12/16/1992	1198	308	Cherokee	2.056	
113	Pierson, Marianne Cawthon	417661	10/15/1992	1194	39	Cherokee	1.123	
115	Mabry, James E. and Bettie	418506	11/24/1992	1197	61	Cherokee	1.673	
117	Johnson, C.W.	39109	12/29/1992	3314	599	Smith	1.58	

Tract #	Grantor(s)	Recorded Document #	Date of Recording	Volume	Page	County	Acres on Plat	Notes
117	Johnson, C.W.	39110	12/29/1992	3314	602	Smith		Affidavit of intent showing all interest have signed easements.
	Johnson, Earline; Johnson, Hughlon; Smith, Jacob; Johnson, Paul; Johnson, David; Tolbert, Donnie L.; Johnson, Dorothy; Johnson, Robert Charles; Parson, Euredeli; Countee, Mauvelynne; Bradley, Jessie F.; Johnson, Paul U.; Johnson Sr., Rogers W.	39109				Smith		
117	Johnson, Charles H.V.	6872	3/10/1993	3339	352	Smith		
118	Carson, Fred M. and Willie Joice Tilley	18574	6/22/1992	3244	892	Smith	0.557	
119	Tilley, George Elvin	17510	6/11/1992	3241	678	Smith	1.077	
120	Franklin, Ethel	17511	6/11/1992	3241	681	Smith	0.219	
120.1	Tilley, Ernest J.	27141	9/4/1992	3273	362	Smith	0.035	
121	Mabry, Betty Jo Franklin	35775	11/24/1992	3303	432	Smith	1.658	
122	Lapeyre, William E.	36698	12/3/1992	3306	610	Smith	5.838	
123	Cooper, Thomas R. and Valerie S.	35776	11/24/1992	3303	435	Smith	0.038	Special Conditions
124	Strickland, Bobby G.	33706	11/4/1992	3296	42	Smith	1.312	
125	Barrett, David R. and Dorothy					Smith		Judgment; VLB
126.1	Bailey, James R.	31569	10/15/1992	3288	463	Smith	2.523	VLB
126.1	Bailey, James R. and Patsy D.	31570	10/15/1992	3288	467	Smith	0.873	
128	Thompson, Milton Lee	22220	7/24/1992	3257	176	Smith	0.543	
129	Fair, Imogene Thompson	22221	7/24/1992	3257	179	Smith	2.514	
130	Shubert, Ricky Lynn and Tracy Lynn	24961	8/12/1993	3400	830	Smith	16.7844	Warranty Deed to Rayburn
130	Rayburn Country Electric Cooperative, Inc.	2009-R00017174	4/15/2009			Smith	2.312	
130	Rayburn Country Electric Cooperative, Inc.	20150100039754	8/21/2015			Smith	16.7844	Warranty Deed to Ari Joe Ranch LTD
133	Burger, Jr., Harry and M. Jane	31890	10/11/1993	3424	37	Smith	2.767	
133.1	Riza, W.A. and Thelma K.	31571	10/15/1992	3288	470	Smith	2.583	
136	Williams, Evelyn A.	27142	9/4/1992	3273	365	Smith	2.6	
136	Dusek, Evelyn Marie Todd; W.L. Todd Estate, Roby H.	27143	9/4/1992	3273	368	Smith		
136	Todd Jr., Walter Lee	27144	9/4/1992	3273	371	Smith		
137.1	Hudnall, Ogden S.	27533	9/11/1992	3274	692	Smith	2.049	Warranty Deed to Rayburn
137.1	Rayburn Country Electric Cooperative, Inc.	2004-R0049856	9/1/2004			Smith		Warranty Deed to Donald Thompkins, Jr.
137.1	Rayburn Country Electric Cooperative, Inc.	2004-R0061613	12/1/2004			Smith		Correction Warranty Deed to Donald Thompkins, Jr.
137.1	Tompkins Jr., Donald Wayne	2004-R0049857	9/22/2004			Smith	0.52	Easement
138	Huddleston, Ella Mae Clapp	18575	6/22/1992	3244	895	Smith	2.488	
139	Huddleston, Ella Mae Clapp & as Guardian of A.Jack	18576	6/22/1992	3244	898	Smith	1.849	
141	Shuttlesworth, J.L.	30871	9/1/1994	3562	576	Smith		No Plat, but legal description is sufficient per Larry Clendennen

Tract #	Grantor(s)	Recorded Document #	Date of Recording	Volume	Page	County	Acres on Plat	Notes
142	The Shuttlesworth Corporation	30870	9/1/1994	3562	573	Smith		No Plat, but legal description is sufficient per Larry Clendennen
144	Brown, Charles B. and Nelda F.	15362	5/22/1992	3234	477	Smith	2.171	
146	Meisenheimer, Wayne E.	37204	12/11/1992	3308	487	Smith	6.146	
148	Quitter, James M.	1125	1/13/1993	3319	665	Smith	0.431	VLB
149	Zoller, John H. & Constance M.	16614	6/8/1992	3238	775	Smith	1.541	
152	Moran, Tom William	16615	6/8/1992	3238	778	Smith	1.23	
152.1	Partin, Jr., Joe Edd	16617	6/8/1992	3238	783	Smith	1.493	
152.2	Waller, Richard E.	14351	5/14/1992	3231	25	Smith	0.294	
154	Arterberry, Henry L.	16619	6/8/1992	3238	788	Smith	2.623	
154	Arterberry, Greg	18577	6/24/1992	3245	1	Smith		
154	Arterberry, Robert	18578	6/24/1992	3245	4	Smith		
154	Arterberry, Emma J. &	18579	6/24/1992	3245	7	Smith		
154	Arterberry, Bonnie Ruth & Tucker, Johnnie Mae; and	17512	6/15/1992	3241	684	Smith		
154	Lawson, Carrie L.	19165	6/29/1992	3246	724	Smith		
154	Arterberry, Sandra Ruth	22222	7/27/1992	3257	182	Smith		
156	Tindall, Albert Lee	2295	1/26/1993	3323	738	Smith	2.29	VLB
156.1	Barron, Gayla R.	36701	12/7/1992	3306	618	Smith	0.183	
157	Byrd, Gorman R. a/k/a Ralph Byrd	1126	1/15/1993	3319	668	Smith	1.026	VLB
158	Byrd, Gorman R. a/k/a Ralph Byrd	35777	11/30/1992	3303	439	Smith	1.076	
159/161	Newsome, Marcus (Hamilton Newton Estate)	25336	8/21/1992	3267	327	Smith	3.047	Abandoned Missouri Pacific Railroad runs through Easement
159/161	Daniel, Gracie Newsome (Hamilton Newton Estate)	25337	8/21/1992	3267	331	Smith		
159/161	Newsome, Lloyd (Hamilton Newton Estate)	25338	8/21/1992	3267	335	Smith		
159/161	Green, Margie Newsome (Hamilton Newton Estate)	25339	8/21/1992	3267	339	Smith		
159/161	Newsome, Willie (Hamilton Newton Estate)	25340	8/21/1992	3267	343	Smith		
159/161	Newsome, Harding (Hamilton Newton Estate)	25341	8/21/1992	3267	347	Smith		
162	Morby, Glenn H. & Doris M.	16620	6/8/1992	3238	791	Smith	2.111	
163/165	Dotson, David M.	722	1/11/1993	3318	586	Smith	4.638	VLB
166	Hart, Bret, Attorney in Fact (Mattie McGee Estate)	25343	8/21/1992	3267	354	Smith	0.592	
167	Cleaver, Theo	18581	6/24/1992	3245	13	Smith	0.611	
167	Hart, Bret, Attorney in Fact (Mattie McGee Estate)	25344	8/21/1992	3267	357	Smith		
168	Green, Patricia a/k/a Patricia Green Whitfield	16621	6/8/1992	3238	794	Smith	0.284	
170	Klueppel, Brenda R., Guardian of Estates of Klueppel,	16622	6/8/1992	3238	797	Smith	1.552	
171	Franklin, Wayne C.	27145	9/4/1992	3273	374	Smith	0.141	
171	Johnson, Malora F.	31572	10/19/1992	3288	473	Smith		
171	Isabell, Mary	31573	10/19/1992	3288	476	Smith		
171	Franklin, Winfred	33705	11/6/1992	3296	39	Smith		
172	Hardy, Robert L. and Patricia A.	16623	6/8/1992	3238	800	Smith	1.056	
173	Matlock, Francis E.	16624	6/4/1992	3238	803	Smith	0.931	
174/174.2	Muckelroy, Danon	17514	6/11/1992	3241	689	Smith	4.364	
174/174.2	Muckelroy, Erby	17515	6/11/1992	3241	692	Smith		

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174/174.2	Muckelroy, Roy	17516	6/11/1992	3241	695	Smith		
174/174.2	Muckelroy, Ras	18583	6/22/1992	3245	19	Smith		
174/174.2	Muckelroy, Damon	18584	6/22/1992	3245	22	Smith		
174/174.2	Morgan, Cleo	18585	6/22/1992	3245	25	Smith		
174/174.2	Rettig, Ernestine	18586	6/22/1992	3245	28	Smith		
174/174.2	Francis, Lorna June Brown	25345	8/20/1992	3267	360	Smith		
174/174.2	Nix, Luvena	25346	8/20/1992	3267	363	Smith		
174/174.2	Little, Flossie M.	25347	8/20/1992	3267	366	Smith		
174/174.2	Brown, Serena	25348	8/20/1992	3267	369	Smith		
174/174.2	Brown, Felix	25349	8/20/1992	3267	372	Smith		
174/174.2	Brown, Jr., Jessie	29534	9/28/1992	3281	469	Smith		
174/174.2	Pettiett, Johnnie Mae	31574	10/15/1992	3288	479	Smith		
176	Dunlap, Robert F.	2296	1/26/1993	3323	742	Smith	0.556	
177	Senter, Maurice, sole Heir of Senter, Emma Deceased	17518	6/11/1992	3241	701	Smith	2.492	
178	Dunlap Sr., Robert F.	2297	1/26/1993	3323	746	Smith	1.751	
180	McDonald, Johnnie Lynn	16626	6/4/1992	3238	808	Smith	1.898	
181	Roberts, Clark Wayne	22227	7/24/1992	3257	197	Smith	6.711	
181	Kirkland, Helen Grace	22225	7/24/1992	3257	191	Smith	6.711	
181	Herold, Barbara Ann	22226	7/24/1992	3257	194	Smith	6.711	
181	Christian, Bettye Ruth	23746	8/6/1992	3262	311	Smith	6.711	
181	George, Virginia	29535	8/28/1992	3281	472	Smith	6.711	
183	Hamilton Jr., Robert W.	27149	9/4/1992	3273	386	Smith	9.022	
183	Gunning, Emily Hamilton	27150	9/4/1992	3273	389	Smith	9.022	
183	Keetch, Ann Hamilton	23747	8/6/1992	3262	314	Smith	9.022	
183.1	Jack D. Wilson Trust	29536	9/30/1992	3281	475	Smith	0.667	
185	Jack D. Wilson Trust	29536	9/30/1992	3281	475	Smith	4.634	
186.1	Jack D. Wilson Trust	29536	9/30/1992	3281	475	Smith	1.789	
187/189	Moseley, Polly	16627	6/4/1992	3238	811	Smith	4.627	
189.1	Glenn, Jack C. and Pauline	29537	9/28/1992	3281	483	Smith	0.365	
192	Corley, Ruth Wilson	18589	6/22/1992	3245	37	Smith	2.684	
193	Cagle, Louis C. & Mildred	16628	6/4/1992	3238	814	Smith	3.563	
194	Holmes, Leonard W.	25350	8/20/1992	3267	375	Smith	0.08	
196	Reynolds, James & Nira M.	23748	8/6/1992	3262	317	Smith	1.481	
197	Hale Jr., Douglas Denton (Ella Hale Estate)	18590	6/22/1992	3245	40	Smith	2.42	
197	Clark, Mary B. (Ella Hale Estate)	19166	6/26/1992	3246	726	Smith		
197	Baker, Joe Henry (Ella Hale Estate)	19167	6/26/1992	3246	729	Smith		
197	Gwynn, Claudia F. (Ella Hale Estate)	19168	6/26/1992	3246	732	Smith		
197	Davenport, Lois Hale (Ella Hale Estate)	17520	6/11/1992	3241	706	Smith		
197	Birdwell, Jessamine (Ella Hale Estate)	18591	6/22/1992	3245	43	Smith		
197	Hale, James H. (Ella Hale Estate)	18592	6/22/1992	3245	46	Smith		
197	Hale, Luther (Ella Hale Estate)	18593	6/22/1992	3245	49	Smith		
197	Campbell, Billy L. (Ella Hale Estate)	18594	6/22/1992	3245	52	Smith		

Tract #	Grantor(s)	Recorded Document #	Date of Recording	Volume	Page	County	Acres on Plat	Notes
197	Bishop, Bethany Fair (Ella Hale Estate)	18595	6/22/1992	3245	55	Smith		
197	Hale, Bill (Ella Hale Estate)	18596	6/22/1992	3245	58	Smith		
197	Hale, Charles Stephen (Ella Hale Estate)	18597	6/22/1992	3245	61	Smith		
199/201	Showen, James H.					Smith	3.254	VLB
200/202	Long III, Charles E. and Marianne	27151	9/4/1992	3273	392	Smith	2.85	
203	Jack Denton Wilson Trust	29538	9/29/1992	3281	486	Smith	4.299	
204	Jean Hendry Family Trust	16629	6/4/1992	3238	817	Smith	1.356	
204.1	Hendry, Jean	16630	6/4/1992	3238	820	Smith	2.123	
205	Henry, Geraldine F.	17521	6/11/1992	3241	709	Smith	3.539	
205	Collins, Pauline F.	17522	6/11/1992	3241	712	Smith		
206	Parker, Neal	25353	8/20/1992	3267	382	Smith	0.241	
207	Allen Jr., John M.	22228	7/24/1992	3257	200	Smith	5.955	
210	Calcutt, Jackie L.	22229	7/24/1992	3257	203	Smith	1.592	
211	Howell, Joe Milan	17523	6/11/1992	3241	715	Smith	2.608	
211.1	McKay, Mary Francis	18598	6/22/1992	3245	64	Smith	1.462	
213	Owens, Ruth McKay	22230	7/24/1992	3257	206	Smith	1.5	
214	Russell, Sherry Ann (formerly Sherry Ann Parker)	25354	8/20/1992	3267	385	Smith	3.159	
214.1	Taliaferro, R.O.	17524	6/11/1992	3241	718	Smith	0.746	
216	Russell, Sherry Ann (formerly Sherry Ann Parker)	25355	8/20/1992	3267	388	Smith	2.24	
218	Parker, Samuel Lee	25356	8/21/1992	3267	391	Smith	7.895	
218.1	Gallegly, Danny Ray and Wanda Joyce	22231	7/24/1992	3257	209	Smith	0.121	
222.1	Hill, Billy J. and Joyce	22232	7/24/1992	3257	212	Smith	7.73	
224	McClard, John Lewis (Lewis Giles Estate)	25357	8/21/1992	3267	394	Smith	3.933	
224	Owens, Stella (Lewis Giles Estate)	25358	8/21/1992	3267	397	Smith		
224	Wilson, Dorothy Marie (Lewis Giles Estate)	31575	10/15/1992	3288	482	Smith		
224	Basham, Leslie & Alan (Lewis Giles Estate)	31576	10/15/1992	3288	485	Smith		
224	Hill, Billy Jason & Billy J. (Lewis Giles Estate)	22233	7/24/1992	3257	216	Smith		
224	Carlisle, Camilla (Lewis Giles Estate)	22234	7/24/1992	3257	219	Smith		
224	Hill, Ida May (Lewis Giles Estate)	22235	7/24/1992	3257	222	Smith		
224	Perry, Dorothy E. (Lewis Giles Estate)	22236	7/24/1992	3257	225	Smith		
224	Sanders, Howard L. & John L. (Lewis Giles Estate)	39406	1/7/1993	3315	683	Smith		
228	Jones, Nathan Edward; Jones, Samuel Jarvis; Jones, D.	35778	11/24/1992	3303	442	Smith	5.296	
229	Mills, Vernon E.	26161	8/28/1992	3270	158	Smith	4.501	
229	Mills, Ramsey Z.	26162	8/28/1992	3270	161	Smith		
229	Plimper, Frances Lamerl	19169	8/31/1992	3270	164	Smith		
230	Forshee, Hartentse (John Picton Forshee Estate)	27152	9/4/1992	3273	399	Smith	7.438	
231	Ram, Elaine Dyer	27153	9/4/1992	3273	403	Smith	1.262	
234.1	Bell, Harold Keith and Amber D.	27154	9/4/1992	3273	406	Smith	0.876	
234.2	Bell, Harold C. and Hazel N.	27155	9/4/1992	3273	409	Smith	1.258	
235 In PP; 236 on docs	Long, Charles and Edwina P.	31577	10/15/1992	3288	488	Smith	2.447	separate Subordination Agreement (Doc #31578)

Tract #	Grantor(s)	Recorded Document #	Date of Recording	Volume	Page	County	Acres on Plat	Notes
236.1	Philey, George Loyd	33704	11/6/1992	3296	36	Smith	1.286	VLB
237	Branch, James Powers	18599	6/22/1992	3245	67	Smith	4.518	
238	Powell, Alice	33703	11/4/1992	3296	33	Smith	2.38	
238	Thompson, Isabella, surviving spouse of Odell Thompson	27156	9/4/1992	3273	412	Smith		
238	Lockett, Lois	35779	11/24/1992	3303	445	Smith		
239	Odum, Willie S.	22237	7/24/1992	3257	228	Smith	1.922	
239	Winger, Shirley Bell	22238	7/24/1992	3257	231	Smith		
239	Beekman, Ethel Ree	22239	7/24/1992	3257	234	Smith		
239	Bass, Vera Mae Watkins	22240	7/24/1992	3257	237	Smith		
240	Allen, Buck Thomas	19170	6/26/1992	3246	738	Smith	2.926	
241	Honzell, Sr., Glen D.	19171	6/26/1992	3246	741	Smith	3.675	
242	City of Overton (Overton Lake)	29539	9/28/1992	3281	491	Smith	1.104	
243	City of Overton (Golf Course)	29540	9/28/1992	3281	494	Smith	1.432	
244	City of Overton	47187	3/31/1993	1814	164	Rusk		Microwave Tower Easement
244	SWEPCO	48623	5/21/1993	1821	180	Rusk		Released; Not needed since point of demarcation is pole #368. SWEPCO owns lines going east from the pole into their switching station.
244	SWEPCO	36162	12/9/1998	2107	602	Rusk		Release of Easement

Execution Version

**DISCLOSURE SCHEDULES
TO
ASSET PURCHASE AGREEMENT**

These disclosure schedules ("Disclosure Schedules"), dated as of June 7, 2017, are attached to that certain Asset Purchase Agreement, dated as of June 7, 2017 (the "Asset Purchase Agreement"), by and between Rayburn Country Electric Cooperative, a Texas electric cooperative corporation ("Seller"), and NextEra Energy Transmission Southwest, LLC, a Delaware limited liability company ("Purchaser"), and constitute, as of the date hereof, the "Disclosure Schedules" as defined in Section 1.1 of the Asset Purchase Agreement. Unless the context otherwise requires, capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Asset Purchase Agreement.

SCHEDULE 4.3

SELLER'S REQUIRED CONSENTS

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.3: Subject to the receipt by Seller of the Consents listed on Schedule 4.3 of the Seller's Disclosure Schedules (collectively, the "Seller Required Consents"), the execution and delivery of this Agreement does not, and the execution and delivery of the other Transaction Documents will not, and the consummation of the Transactions will not: (a) violate or conflict with the provisions of the organizational documents of Seller; (b) result in the imposition of any Encumbrance (other than a Permitted Encumbrance) upon any of the properties or assets of Seller; (c) cause the acceleration or material modification of any obligation under, create in any Person who is not a Party the right to terminate, constitute a material default or material breach of, or violate or conflict, in any material respect, with the terms, conditions or provisions of, any material note, bond, mortgage, including deed of trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which Seller is a party or by which Seller or any of its Affiliates is bound (whether with notice, lapse of time or both); or (d) result in a breach or violation by Seller of any of the terms, conditions or provisions of any Law or Governmental Order.

- Consent and/or approval from CoBank and CFC with respect to existing loan(s) to Seller, including without limitation a partial release of lien as to any property being transferred under this Agreement.
- IA Consent

SCHEDULE 4.4

SELLER REQUIRED REGULATORY APPROVALS

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.4: Subject to the receipt by Seller of the Governmental Orders listed in Schedule 4.4 to the Seller's Disclosure Schedules (collectively, the "Seller Required Regulatory Approvals") and except as otherwise set forth in such Schedule 4.4, the execution, delivery and performance of this Agreement and the other Transaction Documents by Seller, and the consummation of the Transactions will not require on the part of Seller obtaining or filing any Governmental Order or any other filing with or notification to any Governmental Body.

- **Texas Public Utility Commission approval to transfer of Certificate of Convenience and Necessity and related approvals (the "PUCT Approvals" as defined in Section 6.3d of the Agreement)
- ***FERC application pursuant to Sections 203 and 205 of the Federal Power Act seeking authorization as necessary for the Transactions and, upon consummation of the Transactions, the transfer of operational control over the Transmission Line to Southwest Power Pool, Inc. (the "FERC Approval" as described in Section 6.3c of the Agreement)

**This is being listed as an informational item; the parties acknowledge that that they share responsibility to reasonably cooperate to obtain the PUCT Approvals.

***This is being listed as an informational item; the parties acknowledge that pursuant to Section 6.3c of the Agreement, Purchaser is responsible for seeking such approval, and that Seller is required to cooperate with attempts to obtain such approval.

SCHEDULE 4.5a

TANGIBLE PERSONAL PROPERTY – CERTAIN ENCUMBRANCES

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.5a: Schedule 4.5a of the Seller's Disclosure Schedules sets forth a list, as of the date reflected thereon, of the tangible personal property owned by Seller located at the Real Property as of the Closing Date. Seller has good and marketable title to all tangible and intangible personal property that make up the Acquired Assets, including the Transmission Line, free and clear of all Encumbrances except (i) Encumbrances described in Schedule 4.5a and (ii) Permitted Encumbrances.

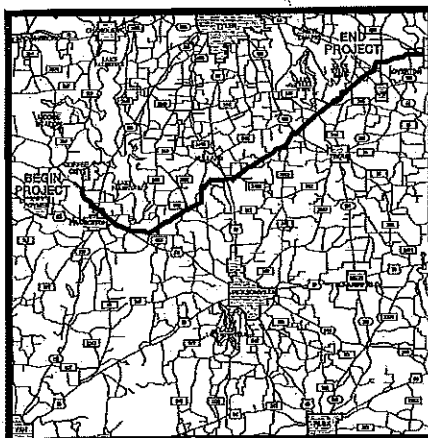
- The tangible personal property owned by Seller located at the Real Property consists of the Transmission Line, comprised of the following:
 - Approximately 30.9 miles of 138kV transmission line (conductor – 795 ACSR Drake)
 - 278 concrete monopoles (Poles numbered 91 - 368, as depicted generally on the attached plan profile drawing – NOTE: the attached drawing is provided solely for reference and convenience and may not reflect the poles or transmission line “as built,” and Seller makes no representation or warranty with respect to the information in the attached drawing)
 - All associated lines, conductors, arms, braces, insulators, structures, facilities or improvements, fixtures, equipment and other items of tangible personal property comprising the line
- The route of the Transmission Line is depicted on the attached page(s).
- The tangible personal property assets described above do not include the 138Kv Breaker located at Jacksonville Switching Station as owned by Seller, which shall constitute an “Excluded Asset” under this Agreement.
- All tangible personal property is subject to a lien in favor of CoBank and CFC relating to the Promissory Note described in Schedule 4.3. Seller expects to obtain a release of lien with respect to the tangible personal property at the Closing.

RAYBURN COUNTRY ELECTRIC CO-OP., INC. COFFEE TO OVERTON 138 KV TRANSMISSION LINE

ROCKWALL, TEXAS

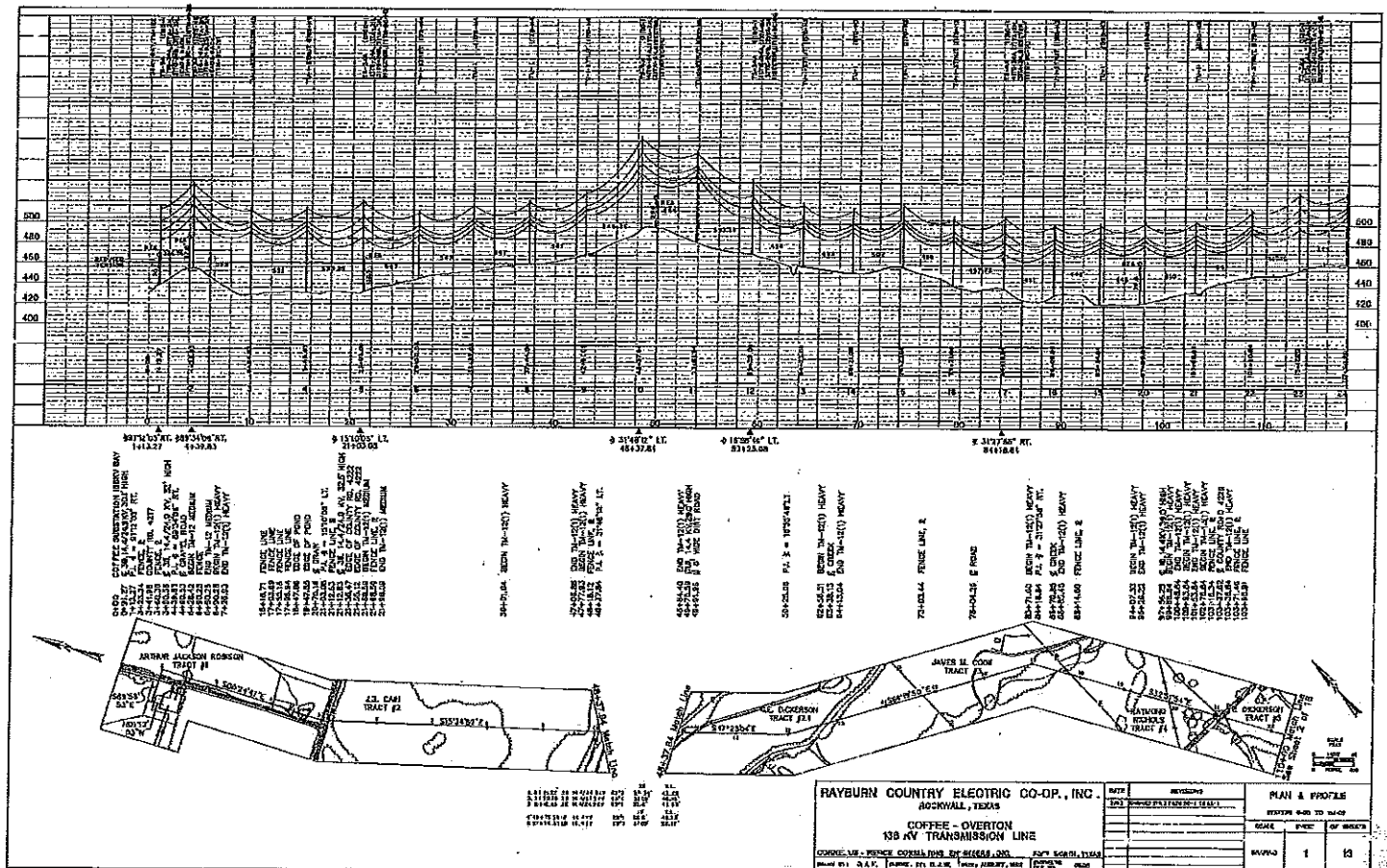
INDEX TO DRAWINGS

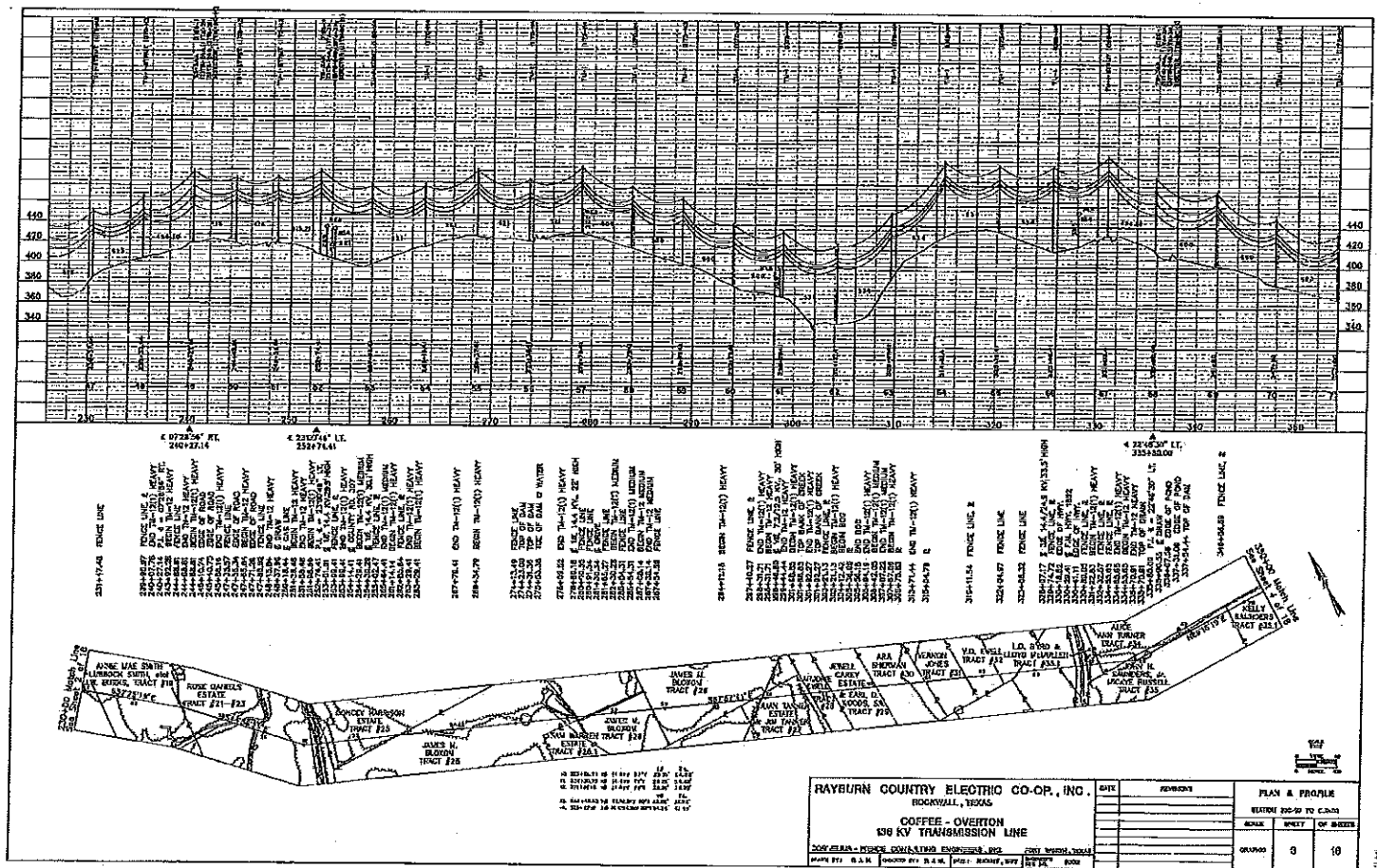
SHEET 1	OF 18	PLAN / PROFILE	STA 0+00 TO STA 110+00
SHEET 2	OF 18	PLAN / PROFILE	STA 110+00 TO STA 230+00
SHEET 3	OF 18	PLAN / PROFILE	STA 230+00 TO STA 360+00
SHEET 4	OF 18	PLAN / PROFILE	STA 360+00 TO STA 470+00
SHEET 5	OF 18	PLAN / PROFILE	STA 470+00 TO STA 590+00
SHEET 6	OF 18	PLAN / PROFILE	STA 590+00 TO STA 710+00
SHEET 7	OF 18	PLAN / PROFILE	STA 710+00 TO STA 830+00
SHEET 8	OF 18	PLAN / PROFILE	STA 830+00 TO STA 950+00
SHEET 9	OF 18	PLAN / PROFILE	STA 950+00 TO STA 1070+00
SHEET 10	OF 18	PLAN / PROFILE	STA 1070+00 TO STA 1190+00
SHEET 11	OF 18	PLAN / PROFILE	STA 1190+00 TO STA 1310+00
SHEET 12	OF 18	PLAN / PROFILE	STA 1310+00 TO STA 1430+00
SHEET 13	OF 18	PLAN / PROFILE	STA 1430+00 TO STA 1550+00
SHEET 14	OF 18	PLAN / PROFILE	STA 1550+00 TO STA 1670+00
SHEET 15	OF 18	PLAN / PROFILE	STA 1670+00 TO STA 1790+00
SHEET 16	OF 18	PLAN / PROFILE	STA 1790+00 TO STA 1910+00
SHEET 17	OF 18	PLAN / PROFILE	STA 1910+00 TO STA 2030+00
SHEET 18	OF 18	PLAN / PROFILE	STA 2030+00 TO STA 2124+3370

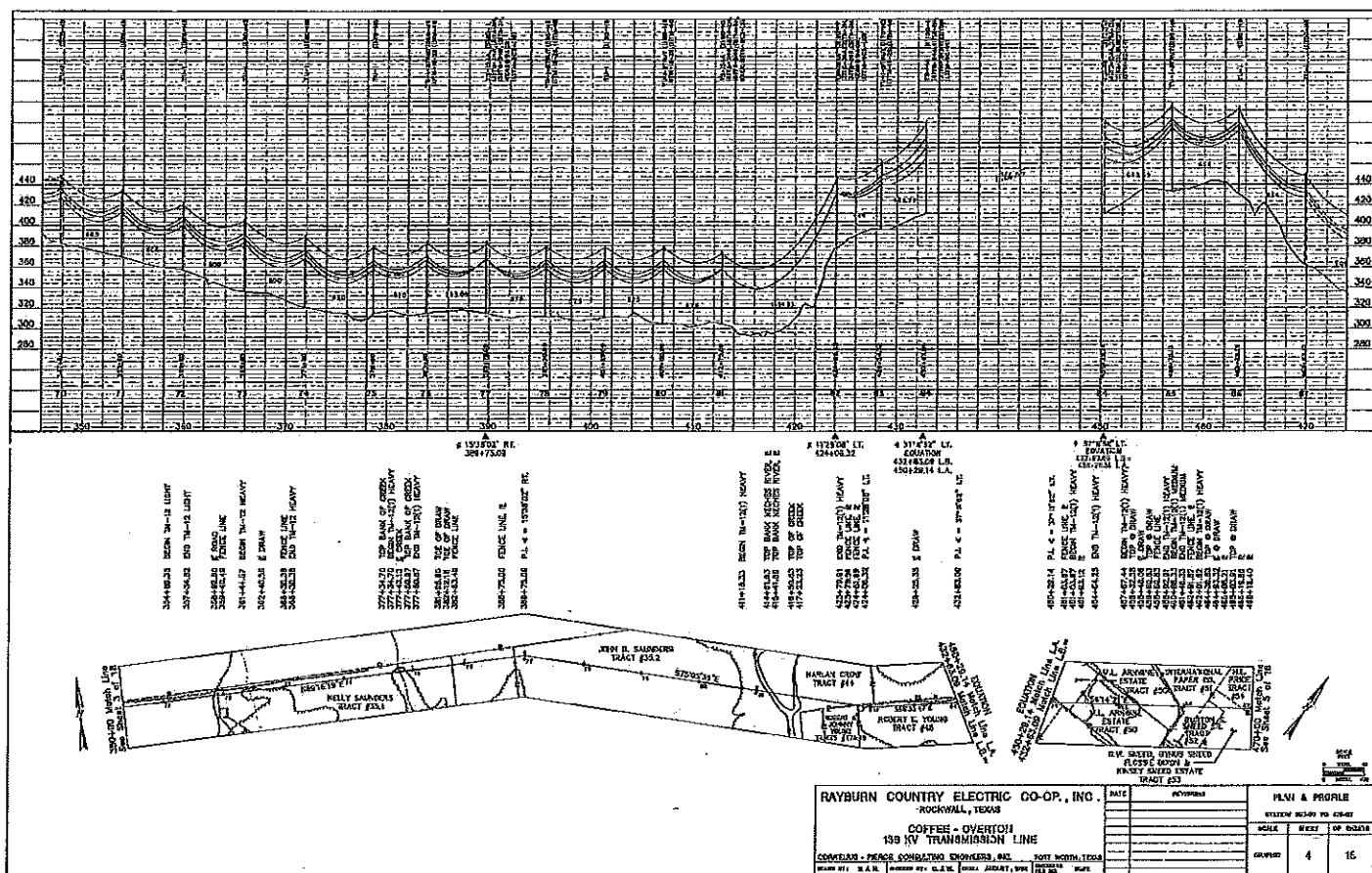


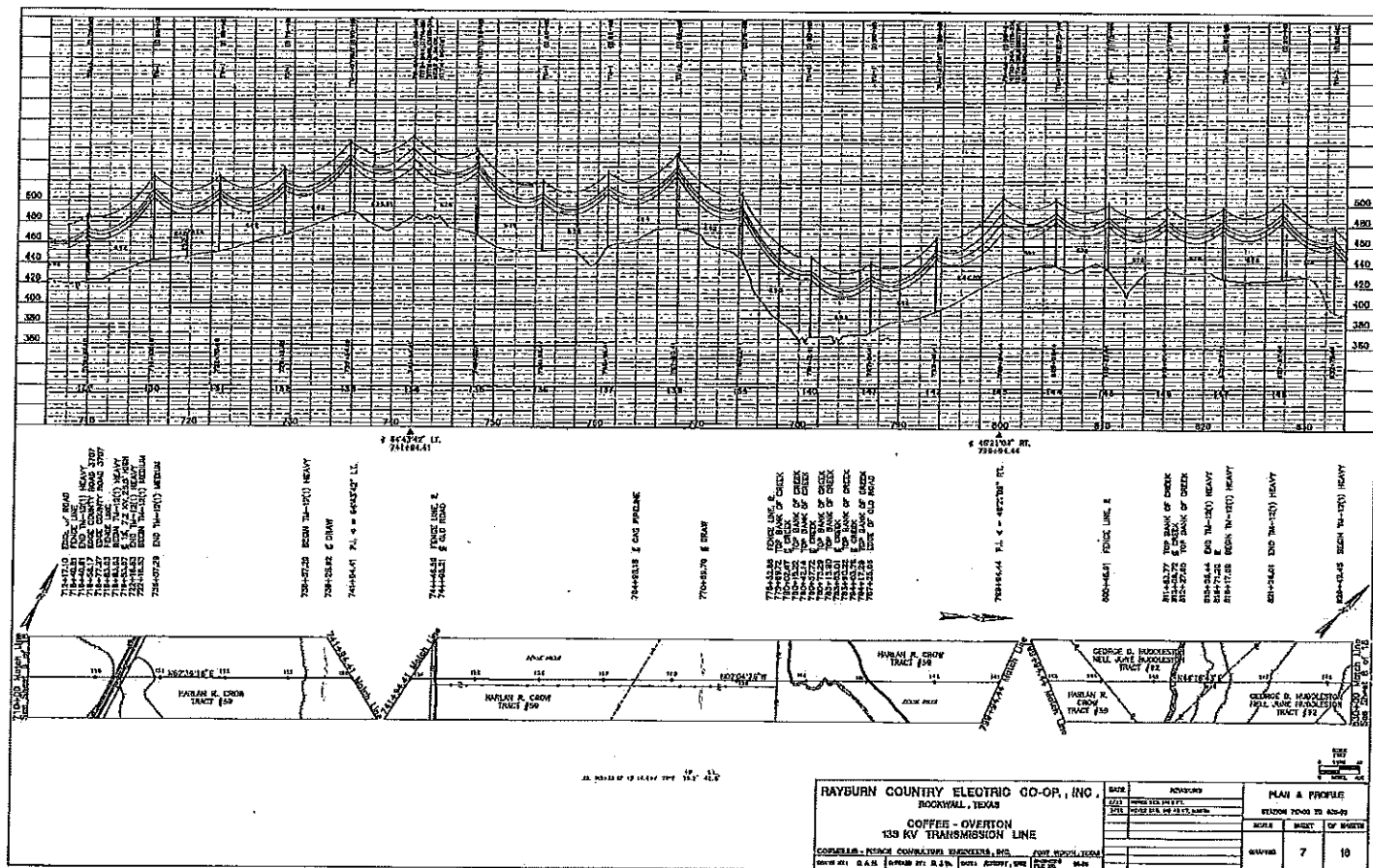
VICINITY MAP
APPROX. SCALE OF MILES

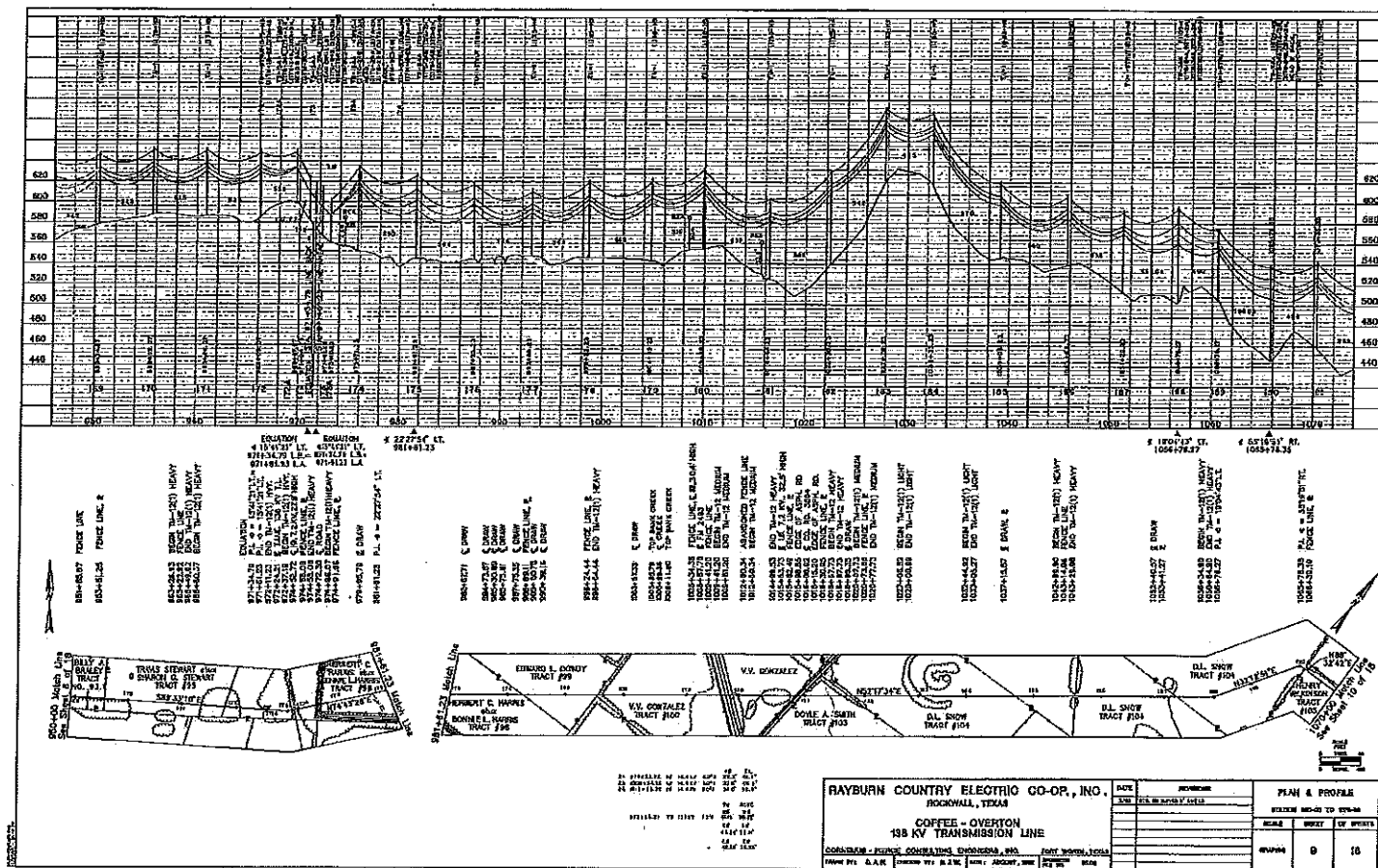
CORNELIUS - PIERCE
CONSULTING ENGINEERS INC.
FORT WORTH, TEXAS

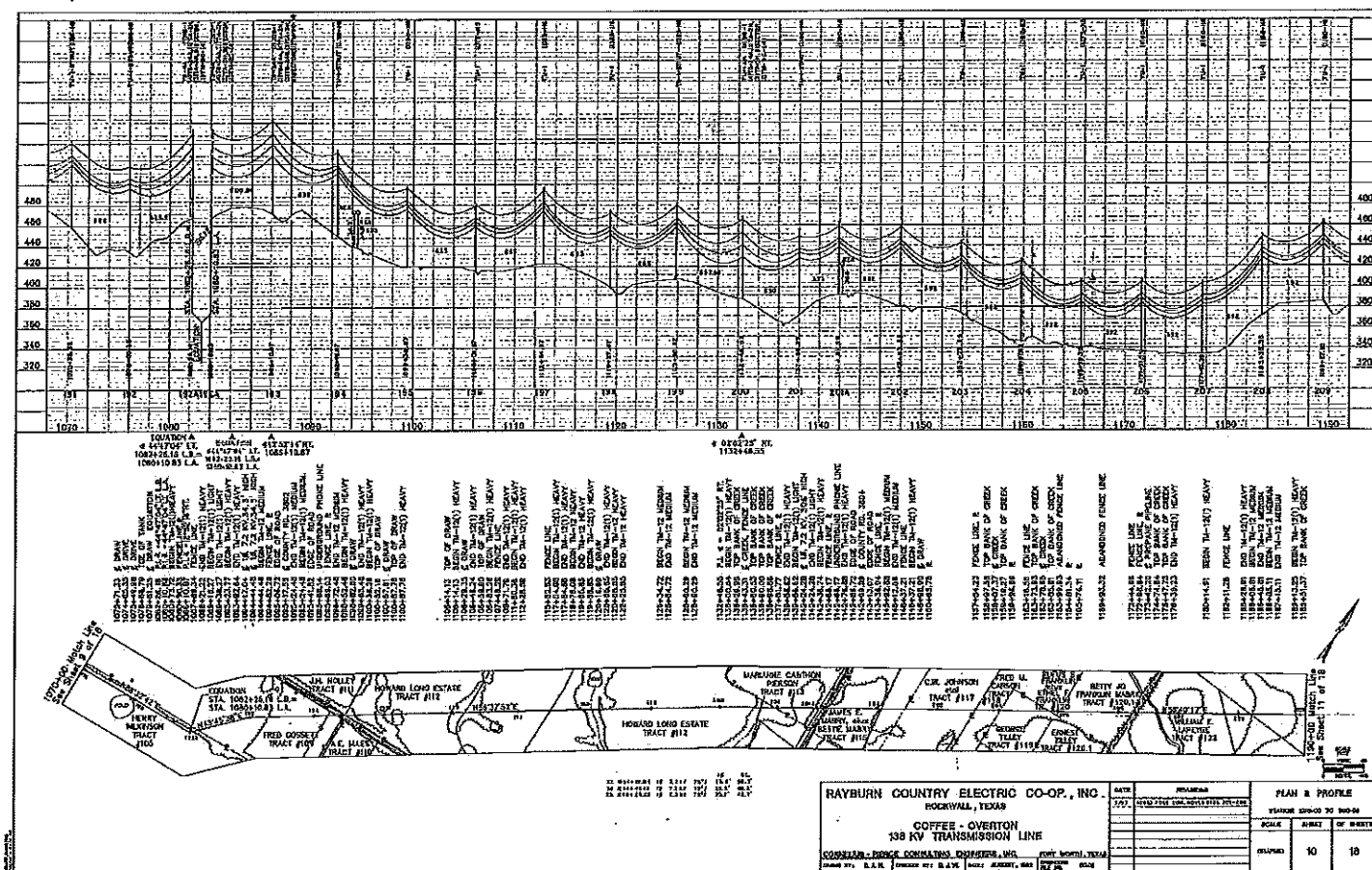


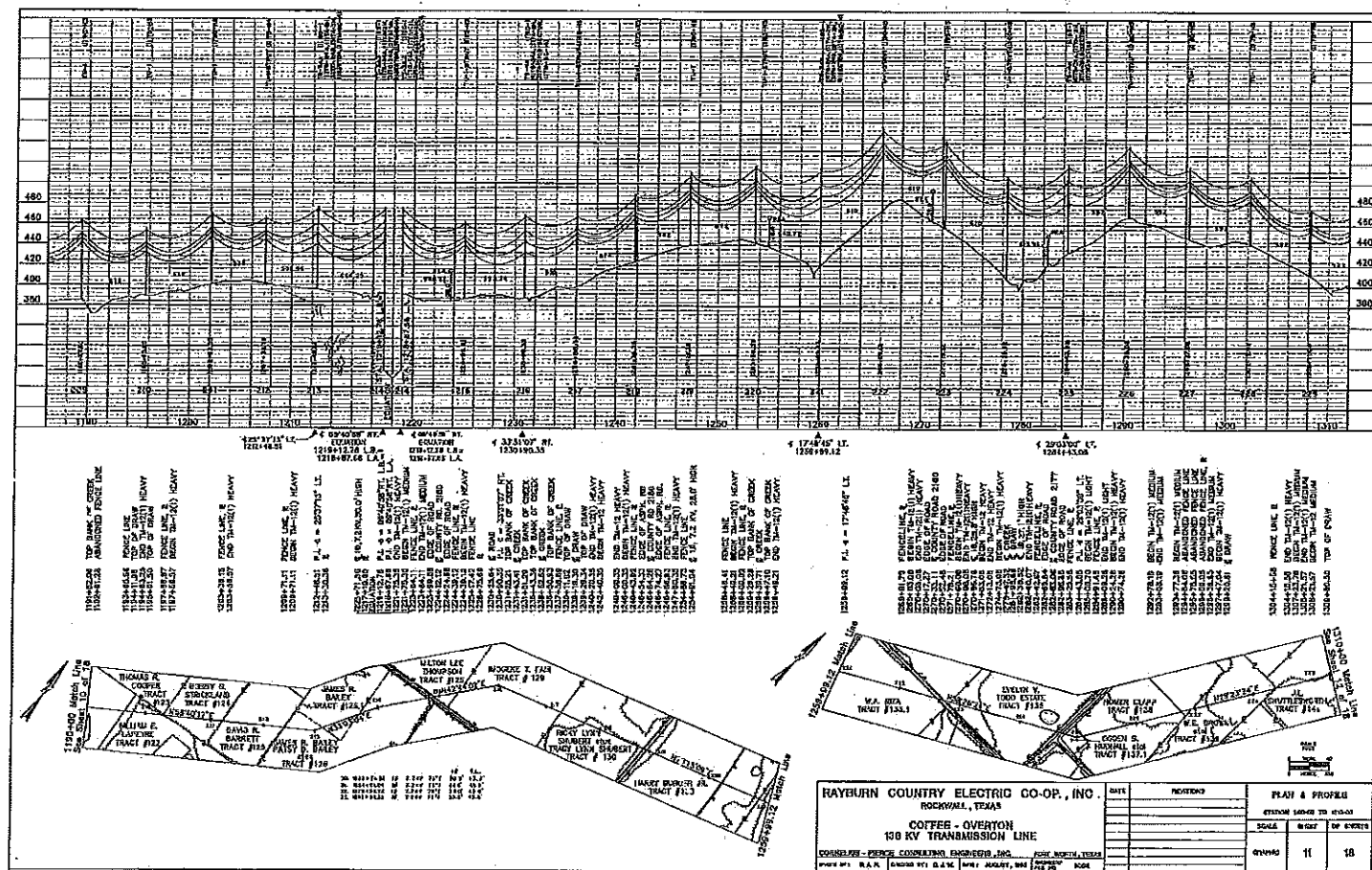


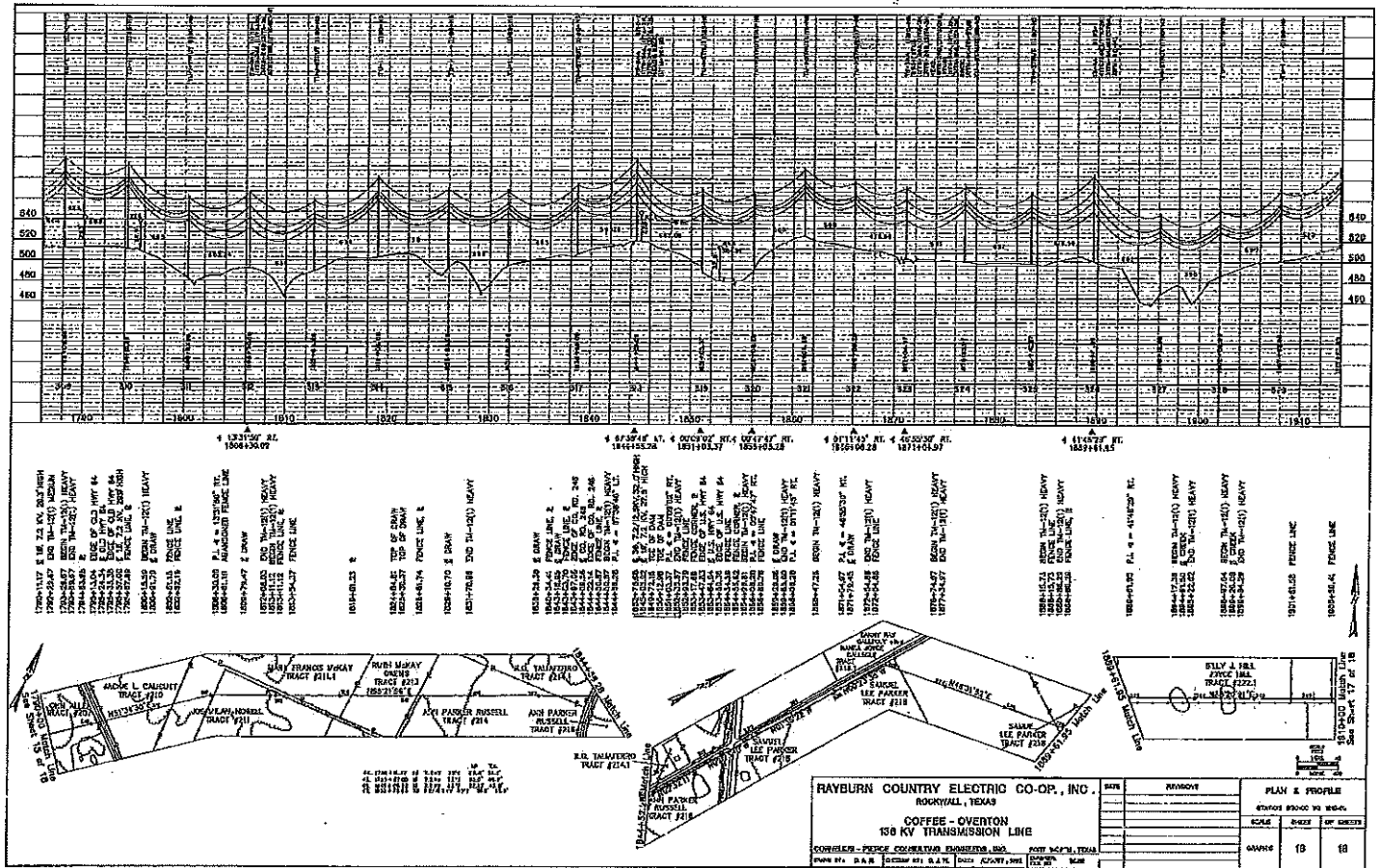


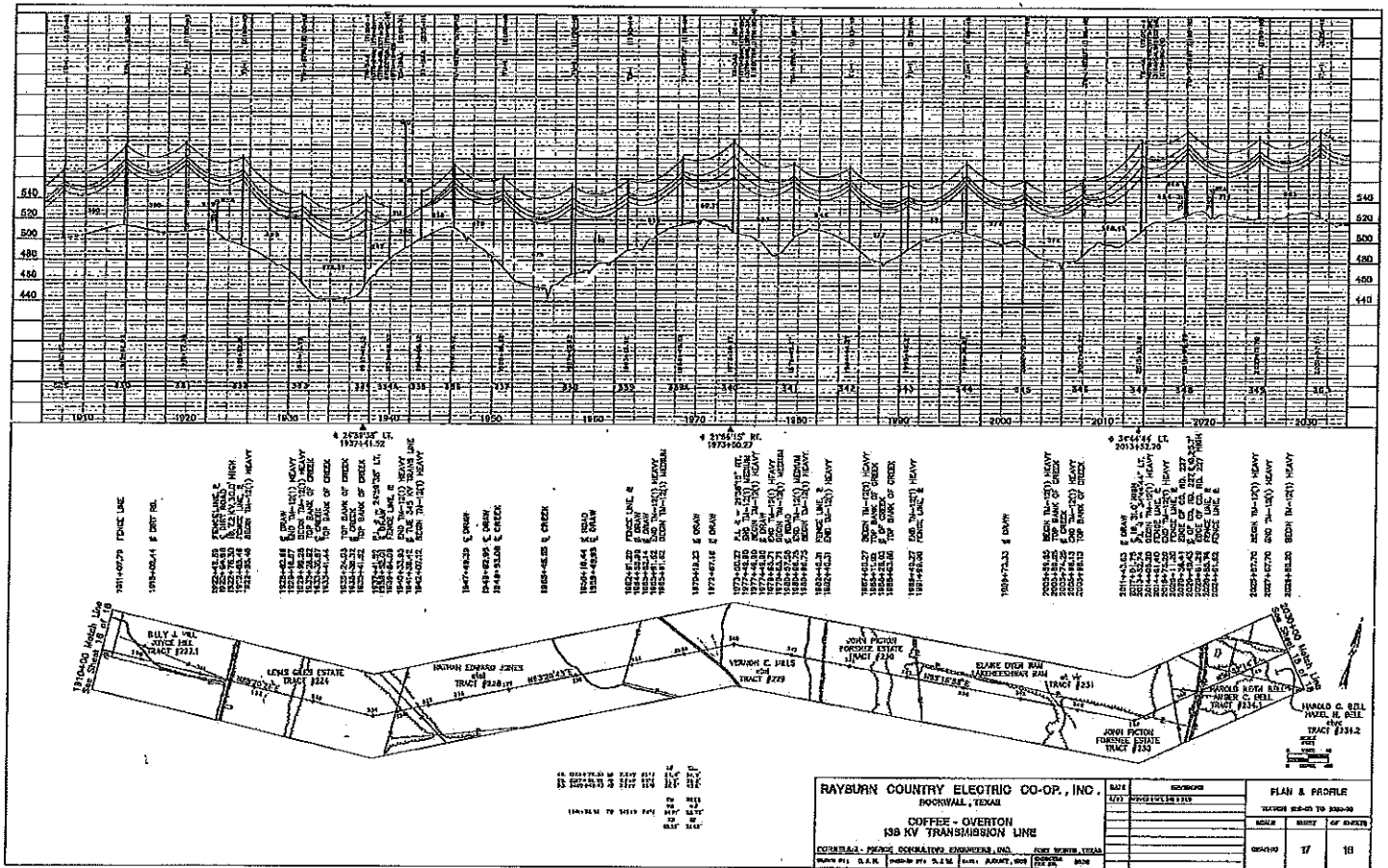












SCHEDULE 4.5e

NOTICE OF TITLE DEFECTS OR FAILURES

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.5c: Except as set forth on Schedule 4.5e, Seller has not received written notice from any Person within the three (3) years preceding the Execution Date of this Agreement asserting that Seller does not have the right, as a result of title defects or title failures, to use or occupy any portion of the Real Property.

- None

SCHEDULE 4.6

CONDEMNATION PROCEEDINGS – SETTLEMENTS OR COMPROMISES

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.6: There is no pending or, to Seller's Knowledge, threatened Proceeding to which Seller or any of its Affiliates is a party that challenges, that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, or would reasonably be expected to have any of the foregoing effects on, any of the Transactions or that has had or could reasonably be expected to have a Seller Material Adverse Effect or an Asset Material Adverse Effect. Except as set forth on Schedule 4.6 of the Seller's Disclosure Schedules, Seller is not a party to any agreement settling or compromising any condemnation proceedings with respect to any of the Acquired Assets and there has not been, in the past twelve (12) months, any pending or, to Seller's Knowledge, threatened Proceeding to which Seller or any of its Affiliates was a party that, if such Proceeding were pending or threatened as of the Execution Date, such Proceeding could reasonably be expected to have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Transactions or could reasonably be expected to have a Seller Material Adverse Effect or an Asset Material Adverse Effect.

- None

SCHEDULE 4.7

**PERMITS RELATED TO OWNERSHIP AND OPERATION
OF THE ACQUIRED ASSETS**

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.7: Seller has operated, and is operating as of the date hereof, the Acquired Assets in compliance in all material respects with the Laws generally applicable to the Acquired Assets, except where such non-compliance could not reasonably be expected to have an Asset Material Adverse Effect. Seller has not received any written or, to Seller's Knowledge, other, notice from any Governmental Body of any audit, review or investigation of Seller or the Acquired Assets or alleging any material violation of Law by Seller, in each case, with respect to the Acquired Assets. Schedule 4.7 lists all of the Permits held by Seller and its Affiliates exclusively related to the ownership and operation of the Acquired Assets.

- Certificate of Convenience and Necessity from Public Utility Commission of Texas

SCHEDULE 4.10

CERTAIN CONTESTED TAXES

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§4.10:

- a. Seller has (a) filed, or caused to be filed, all Tax Returns that it was required to file on or prior to the date hereof and (b) paid or caused to be paid all Taxes due and payable with respect to the Acquired Assets. All such Tax Returns filed were correct and complete in all material respects.
- b. There are no Liens for Taxes on any of the Acquired Assets other than Permitted Encumbrances.
- c. There are no outstanding agreements or waivers extending the statutory period of limitations applicable to the assessment of any Tax related to the Acquired Assets (other than automatic extensions arising from an extension of the due date for filing a Tax Return).
- d. There are no Taxes being contested other than those listed on Schedule 4.10 of the Seller's Disclosure Schedules.

- None

SCHEDULE 5.3

PURCHASER REQUIRED CONSENTS

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§5.3: Subject to the receipt by Purchaser of the Consents listed on Schedule 5.3 of the Purchaser's Disclosure Schedules and the Consents or Governmental Orders listed on Schedule 5.4 of the Purchaser's Disclosure Schedules (collectively, the "Purchaser Required Consents"), the execution and delivery of this Agreement does not, and the execution and delivery of the other Transaction Documents will not, and the consummation of the Transactions will not: (a) violate or conflict with the provisions of the organizational documents of Purchaser; (b) result in the imposition of any Encumbrance (other than a Permitted Encumbrance) upon any of the properties or assets of Purchaser; (c) cause the acceleration or material modification of any obligation under, create in any Person the right to terminate, constitute a material default or material breach of, or violate or conflict, in any material respect, with the terms, conditions or provisions of, any material note, bond, mortgage, including deed of trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which Purchaser is a party or by which Purchaser is bound (whether with notice, lapse of time or both); or (d) result in a breach or violation by Purchaser of any of the terms, conditions or provisions of any Law or Governmental Order.

- Agreement by the lenders, senior note holders, or trustee(s) or agent(s) acting on their behalf, to amend or modify the credit agreement and note purchase agreement to which Purchaser is a party and/or collateral security or other related agreements, instruments or documents to add, as of Closing, the Acquired Assets to the collateral security for Purchaser's obligations under or in connection with such credit agreement and note purchase agreement.

SCHEDULE 5.4

PURCHASER REQUIRED REGULATORY APPROVALS

Excerpt from Asset Purchase Agreement (for reference only; in the event of conflict the language of the Asset Purchase Agreement controls):

§5.4: Subject to the receipt by Purchaser of the FERC Approval, the PUCT Approval, and any other Governmental Orders listed in Schedule 5.4 to the Purchaser Disclosure Schedules (collectively, the "Purchaser Required Regulatory Approvals") and except as otherwise set forth in such Schedule 5.4, the execution, delivery and performance of this Agreement and the other Transaction Documents by Purchaser, and the consummation of the Transactions will not require on the part of Purchaser any Governmental Order or any filing with or notification to any Governmental Body.

- None



Control Number: 48071



Item Number: 80

Addendum StartPage: 0

SOAH DOCKET NO. 473-18-3750
PUC DOCKET NO. 48071

2018 OCT -1 PM 3: 27

PUBLIC UTILITY COMMISSION
FILING CLERK

JOINT APPLICATION OF NEXTERA
ENERGY TRANSMISSION
SOUTHWEST, LLC AND RAYBURN
COUNTRY ELECTRIC
COOPERATIVE, INC. TO
TRANSFER CERTIFICATE RIGHTS
TO FACILITIES IN CHEROKEE,
SMITH, AND RUSK COUNTIES

§
§
§
§
§
§
§
§

BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

STIPULATION

NextEra Energy Transmission Southwest ("NEET Southwest"), Rayburn Country Electric Cooperative, Inc., and the Public Utility Commission of Texas ("Commission") staff ("Staff") (together, "Signatories") have reached a settlement and joined in the attached Stipulation resolving all issues in this docket.

Hunt Transmission Services, L.L.C, LSP Transmission Holdings, LLC, and East Texas Electric Cooperative, Inc. do not oppose the Stipulation and do not oppose the Public Utility Commission of Texas entering a final order consistent with the Stipulation.

Southwestern Public Service Company and Texas Industrial Energy Consumers oppose the Stipulation for the reasons stated in statements of position filed on September 20, 2018; however both parties authorized NEET Southwest to represent that they waive the right to have a full hearing before a presiding officer and issuance of a proposal for decision because their opposition is based on legal grounds that the Commission has stated that it will not address in this proceeding.

By October 9, 2018, the Signatories will file a Proposed Order, Motion to Admit Evidence and Remand to the Commission, and testimonies supporting the Stipulation.

Respectfully submitted,



McGINNIS LOCHRIDGE LLP
Carl R. Galant
State Bar No. 24050633
Campbell McGinnis
State Bar No. 13630500
600 Congress Ave., Suite 2100
Austin, Texas 78701
(512) 495-6083 Telephone
(512) 505-6383 Facsimile
cgalant@mcginnislaw.com
cmcginnis@mcginnislaw.com

**Attorneys for Rayburn Country
Electric Cooperative, Inc.**

LOCKE LORD LLP
John K. Arnold
State Bar No. 24013829
Carrie Collier-Brown
State Bar No. 24065064
600 Congress Avenue, Suite 2200
Austin, Texas 78701
512-305-4732 (telephone)
512-391-4859 (fax)
John.Arnold@lockelord.com
Carrie.CollierBrown@lockelord.com

Tracy C. Davis
Senior Attorney
State Bar No. 24045758
NextEra Energy Transmission
Southwest, LLC
5920 West William Cannon Dr.,
Building 2
Austin, Texas 78749
(512) 236-3141 (telephone)
(512) 236-0484 (facsimile)
tracy.c.davis@nexteraenergy.com

**Attorneys for NextEra Energy
Transmission Southwest, LLC**

CERTIFICATE OF SERVICE

I, Carrie Collier-Brown, attorney for NEET Southwest, certify that a copy of this document was served on all parties of record in this proceeding on October 1, 2018 in the following manner: by electronic mail, facsimile and/or First Class Mail.



**SOAH DOCKET NO. 473-18-3750
PUC DOCKET NO. 48071**

JOINT APPLICATION OF NEXTERA	§	
ENERGY TRANSMISSION	§	
SOUTHWEST, LLC AND RAYBURN	§	BEFORE THE STATE OFFICE
COUNTRY ELECTRIC	§	OF
COOPERATIVE, INC. TO	§	ADMINISTRATIVE HEARINGS
TRANSFER CERTIFICATE RIGHTS	§	
TO FACILITIES IN CHEROKEE,	§	
SMITH, AND RUSK COUNTIES	§	

JOINT STIPULATION

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

NextEra Energy Transmission Southwest (“NEET Southwest”), Rayburn Country Electric Cooperative, Inc., and the Public Utility Commission of Texas (“Commission”) staff (“Staff”) (together, “Joint Movants”) have reached a settlement (hereinafter collectively referred to as “Signatories”) and joined in this Stipulation resolving all issues in this docket. The Signatories agree that a negotiated resolution of this proceeding on the basis set forth in this Stipulation is a just and reasonable disposition of the issues related to this docket consistent with the public interest. Accordingly, the Signatories request approval of this Stipulation by the Public Utility Commission of Texas (“Commission”) and entry of an order (including findings of fact and conclusions of law) consistent with this Stipulation.

Hunt Transmission Services, L.L.C., LSP Transmission Holdings, LLC, and East Texas Electric Cooperative, Inc. do not oppose this Stipulation and do not oppose the Commission entering a final order consistent with this Stipulation.

Southwestern Public Service Company and Texas Industrial Energy Consumers oppose the Stipulation for the reasons stated in statements of position filed on September 20, 2018; however both parties waive the right to have a full hearing before a presiding officer and issuance of a proposal for decision because their opposition is based on legal grounds that the Commission has stated that it will not address in this proceeding.

I. Application

By this Stipulation, the Signatories resolve all issues among them related to this proceeding and hereby stipulate and agree as follows and request that the Commission enter an Order that is consistent with the following:

II. Notice

The Signatories agree that Applicants' notice was sufficient and in compliance with 16 Texas Administrative Code § 22.55.

III. Transfer of Certificate of Convenience and Necessity

The Signatories agree that NEET Southwest has demonstrated that it is qualified to provide continuous and adequate service to the public, that it has the resources and ability to comply with Commission rules and the requirements of the Southwest Power Pool ("SPP") and the North American Electric Reliability Corporation ("NERC") applicable to transmission service, and that it possesses the technical ability, the financial ability, and the resources in this state necessary to own, operate, and maintain reliable transmission facilities. The Signatories further agree that NEET Southwest has demonstrated that it can provide adequate service utilizing the transmission facilities that are being purchased from Rayburn, as required by Public Utility Regulatory Act ("PURA") § 37.154(a). Therefore, a transfer to NEET Southwest of Rayburn's certificate of convenience and necessity ("CCN") rights and the associated authorization to provide service to the public under PURA § 37.051 for the Jacksonville-Overton Transmission Line is appropriate. The agreement by the Signatories is predicated on NEET Southwest's fulfillment of the following conditions:

- 1) NEET Southwest will provide a comparable level of service quality and reliability on the Jacksonville-Overton Transmission Line to that which is currently provided by Rayburn, and NEET Southwest will hold ratepayers harmless from any increases in the operations and maintenance expenses associated with the Jacksonville-Overton Transmission Line that may occur as a result of the transfer.
- 2) Any costs related to the transfer of load from SPP into ERCOT for which Rayburn has applied in Docket No. 48400 should be determined in Docket No. 48400, and approval of the transfer of the Jacksonville-Overton Transmission Line should not be conditioned on

a requirement that some part of the purchase price in excess of net book value be used to offset the cost of transferring Rayburn's remaining load in SPP to the Electric Reliability Council of Texas ("ERCOT").

- 3) The transfer of the Jacksonville-Overton Transmission Line is subject to the following conditions pursuant to PURA § 37.154(b):
- a. NEET Southwest will neither directly nor indirectly include nor seek to include the purchase price in excess of net book value in its regulated rates.
 - b. Within 90 days of closing the transaction with Rayburn, NEET Southwest will establish a service center that is less than 59.6 miles away from the Jacksonville-Overton Transmission Line that will be staffed with adequately trained and experienced personnel who can fully and adequately comply with the Commission's service quality and reliability standards.
 - c. NEET Southwest will not include the cost of establishing the service center in its cost of service or revenue requirement associated with the Jacksonville-Overton Transmission Line or in any cost of service or revenue requirement paid in whole or in part by Texas ratepayers.
 - d. NEET Southwest will ensure that it creates and maintains contractual relationships with contractors in Tyler, Texas and Shreveport, Louisiana or with other contractors within comparable distances from the Jacksonville-Overton Transmission Line, similar to those that Rayburn currently maintains that can provide service on the Jacksonville-Overton Transmission Line.
 - e. NEET Southwest will never seek to recover operations and maintenance ("O&M") costs related to service on the Jacksonville-Overton Transmission Line exceeding \$55,321 per year, which is the average of Rayburn's O&M costs for the line for the years 2013 - 2017, subject to adjustment if necessary to comply with future changes in law.

- f. No later than one year from the date NEET Southwest begins recovery for the Jacksonville-Overton Transmission Line under the Southwest Power Pool's Open Access Transmission Tariff ("OATT"), NEET Southwest will file with the Federal Energy Regulatory Commission ("FERC") an application requesting a modification of its currently FERC-approved return on equity ("ROE") for its Jacksonville-Overton Transmission Line and any other transmission facilities it owns that are located in Texas. The application will request a base ROE no higher than the average ROE then in effect for transmission-only electric utilities in ERCOT and will request no more than a total of 50 basis points for any and all incentives and adders. The application will request any reduction in NEET Southwest's maximum ROE that may be necessary to comply with the terms of this paragraph.
- g. For any transmission facilities located in Texas, NEET Southwest will never request from FERC a base ROE higher than the average ROE then in effect for transmission-only electric utilities in ERCOT, and will never request more than a total of 50 basis points for any and all incentives and adders.
- h. NEET Southwest agrees to reimburse the Commission for the costs of any consultant, accountant, auditor, engineer, or attorney retained by the Commission to represent the Commission in a proceeding before FERC, or before a court reviewing FERC proceedings, related to the relationship between NEET Southwest and a power region, regional transmission organization, or independent system operator; the approval of an agreement between NEET Southwest and NEET Southwest's affiliates concerning coordination of the operations of NEET Southwest and NEET Southwest's affiliates; or matters that may affect the ultimate rates paid by retail customers in this state.
 - i. Assistance for which NEET SW agrees to reimburse the Commission includes, but is not limited to, any person conducting a study, conducting an investigation, presenting evidence, advising the Commission, or representing the Commission.

- ii. NEET Southwest agrees to pay timely the reasonable costs, as determined by the Commission, of such person described in (h) above, not to exceed \$350,000 in a 12-month period.
 - iii. This condition expires on the later of September 1, 2023, or on the latest expiration date of PURA §§ 39.408, 39.4525, and 39.504.
 - iv. If any amendments to PURA permit the Commission to retain consultants, accountants, auditors, engineers or attorneys in any type of proceedings involving NEET Southwest or its affiliates outside of ERCOT, or if amendments are made to PURA §§ 39.408, 39.4525, or 39.504, the respective terms of subparagraph (h) shall be deemed to be modified to incorporate the most favorable terms for the Commission, of those amendments to PURA.
- i. NEET Southwest shall keep the Commission apprised of activities related to the transaction to acquire the Jacksonville-Overton Transmission Line and will provide Commission Staff with an informational update regarding the transaction within 30 days after the transaction closes. NEET Southwest will file this update, along with any other information it is required to provide under the terms of this stipulation, in a compliance docket that will be opened for that purpose.
 - j. NEET Southwest shall provide to the Commission any periodic filings required by other regulatory jurisdictions related to transmission system safety and reliability.
 - k. In accordance with Commission rules, NEET Southwest shall conform with the State of Texas Operation Center guidelines and provide full support to the transmission facilities it owns within Texas pursuant to such guidelines at all times.
 - l. NEET Southwest shall designate an employee whose main work location and residence is in Texas to be a liaison to the Commission on behalf of NEET Southwest.

- m. NEET Southwest shall make a presentation to the Commission staff regarding the SPP transmission planning process as it relates to the Texas market annually and provide the projects, solutions, and mitigation plans. NEET Southwest shall also include annual presentations of operations and maintenance procedures and provide Commission staff with a report of the challenges faced and solutions performed during the year.
 - n. NEET Southwest shall make a detailed presentation to Commission staff regarding any proposed rate increase before it files a rate case with FERC.
- 4) NEET Southwest shall take no action that would cause a market participant within the ERCOT region that is not a public utility under the Federal Power Act or ERCOT itself to become a public utility under the Federal Power Act or become subject to the plenary jurisdiction of FERC. NEET Southwest shall ensure that no commingling of energy between SPP and ERCOT systems occurs as a result of NEET Southwest's ownership and operation of the Jacksonville-Overton Transmission Line.

IV. Obligation to Support this Stipulation

The Signatories agree that the terms of this Stipulation are fair, reasonable, and in the public interest. The Signatories will take all reasonable efforts to obtain the prompt adoption of an order by the Commission consistent with this Stipulation. The Signatories further agree to support and defend the terms of this Stipulation as set forth herein.

V. Effect of Stipulation in this Proceeding

This Stipulation has been drafted by all Signatories and is the result of negotiation, compromise, settlement, and accommodation. The Signatories agree that the terms and conditions herein are interdependent. The various provisions of the Stipulation are not severable. None of the provisions of this Stipulation shall become fully operative unless the Commission shall have entered a final order approving this Stipulation. If the Commission does not accept this Stipulation as presented, or issues an order inconsistent with the terms of this Stipulation, the Signatories agree that any Signatory adversely affected by that alteration has the right to withdraw from this Stipulation, to submit testimony, and to obtain a hearing and advocate any position it deems appropriate with respect to any issue in this Stipulation.

VI. Effect of Stipulation in Other Regulatory Proceedings

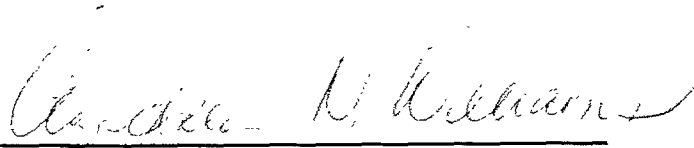
This Stipulation is binding on each of the Signatories only for the purpose of settling the issues set forth herein in this jurisdiction only and for no other purposes. The matters resolved herein are resolved on the basis of compromise and settlement. Except to the extent that this Stipulation expressly governs a Signatory's rights and obligations for future periods, this Stipulation shall not be binding or precedential on a Signatory outside of this proceeding or a proceeding to enforce the terms of this Stipulation. It is acknowledged that a Signatory's support of the matters contained in this Stipulation may differ from the position taken or testimony presented by it in other dockets or other jurisdictions. To the extent there is a difference, a Signatory does not waive its position in any of those other dockets or jurisdictions. Because this is a stipulated resolution, no Signatory is under any obligation to take the same positions as set out in this Stipulation in other dockets or jurisdictions, regardless of whether other dockets present the same or different set of circumstances, except as otherwise may be explicitly provided by this Stipulation. Agreement by the Signatories to any provision in this Stipulation will not be used against any Signatory in any future proceeding with respect to different positions that may be taken by that Signatory.

The provisions of this Stipulation are intended to relate to only the specific matters referred to herein. By agreeing to this Stipulation, no Signatory waives any claim it may otherwise have with respect to issues not expressly provided for herein. It is further understood and agreed that this Stipulation represents a negotiated settlement of all issues in this proceeding.

VII. Multiple Counterparts

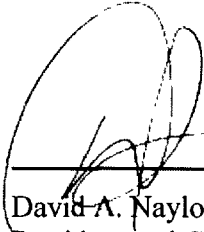
Each copy of this Stipulation may not bear the signatures of all the Signatories but will be deemed fully executed if all copies together bear the signatures of all Signatories.

AGREED:

A handwritten signature in cursive script, reading "Aundrea N. Williams". The signature is written in dark ink and is positioned above a horizontal line.

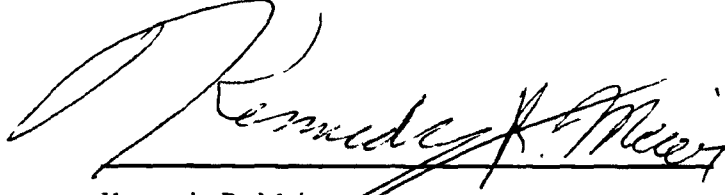
Aundrea N. Williams
President
NextEra Energy Transmission Southwest, LLC
5920 W. William Cannon Drive, Building 2
Austin, Texas 78749

AGREED:

A handwritten signature in black ink, appearing to read "David A. Naylor", is written over a horizontal line.

David A. Naylor
President and CEO
Rayburn Country Electric Cooperative, Inc.
950 Sids Road
Rockwall, Texas 75032

AGREED:

A handwritten signature in black ink, appearing to read "Kennedy R. Meier", written over a horizontal line.

Kennedy R. Meier
State Bar No. 24092819
Attorney—Legal Division
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attorney for Public Utility Commission of Texas Staff

SELECTION REPORT

Hartburg-Sabine Junction 500 kV Competitive Transmission Project



November 27, 2018



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Selection Report

Hartburg-Sabine Junction 500 kV Competitive Transmission Project

1. Executive Summary

On February 6, 2018, MISO issued a request for proposals for a market efficiency project known as the Hartburg-Sabine Junction 500 kV Competitive Transmission Project. MISO has completed its in-depth comparative analysis of the 12 comprehensive proposals submitted in response to the request for proposals, applying the four evaluation criteria specified in MISO's tariff: cost and design, project implementation, operations and maintenance, and planning participation.

MISO designated **NextEra Energy Transmission Midwest, LLC ("NextEra")** as the Selected Developer for the Hartburg-Sabine Junction 500 kV Competitive Transmission Project. NextEra's proposal offers an outstanding combination of low cost and high value, with best-in-class cost and design, best-in-class project implementation plans, and top-tier plans for operations and maintenance. NextEra's Selected Proposal has an estimated benefit-to-cost ratio of 2.20.¹

NextEra is a subsidiary of NextEra Energy Transmission, LLC and an indirect, wholly owned subsidiary of NextEra Energy, Inc., which is headquartered in Juno Beach, Florida. NextEra Energy, Inc. is the largest investor-owned electric utility in the United States. NextEra Energy, Inc.'s principal subsidiaries are Florida Power & Light Company, which serves nearly five million customer accounts in Florida and is one of the largest rate-regulated electric utilities in the United States, and NextEra Energy Resources, LLC, which, together with affiliated entities, is the largest generator of energy from the wind and sun in North America.

The Hartburg-Sabine Junction 500 kV Competitive Transmission Project consists of five new high-voltage transmission lines and one new substation. The new 500 kV transmission line will run generally southwest from the existing Hartburg Substation to a new project substation—the Stonewood 500 kV Substation. Four new 230 kV transmission lines originating from the Stonewood 500 kV Substation will interconnect to existing 230 kV transmission lines nearby.

MISO received responses to the request for proposals from the following RFP Respondents², which are listed alphabetically:

- Avangrid Networks, Inc.
- EasTex TransCo, LLC
- GridLiance Heartland, LLC
- ITC Midcontinent Development, LLC / Hunt Transmission Services, L.L.C.
- Midwest Power Transmission Arkansas, LLC

¹ MISO's estimated benefit-to-cost ratio for the project was 1.35. The minimum threshold required to recommend a market efficiency project to MISO's Board of Directors is 1.25.

² All RFP Respondents must be MISO Qualified Transmission Developers. MISO received more than one proposal from one or more RFP Respondents.

- NextEra Energy Transmission Midwest, LLC
- Transource Energy, LLC
- Verdant Plains Electric, LLC
- Xcel Energy Transmission Development Company, LLC

The proposals submitted for the Hartburg-Sabine Junction 500 kV Competitive Transmission Project built upon the quality and depth of the Duff-Coleman EHV 345 kV Competitive Transmission Project selection process in 2016. It was clear RFP Respondents that participated in the Duff-Coleman solicitation brought forward meaningful insights and experience they gained in that process. MISO was encouraged by the level of interest and that the Hartburg-Sabine Junction 500 kV Competitive Transmission Project attracted new entrants as well, and thanks the RFP Respondents for their submissions.

The figure below depicts the final scoring results (as called for in the MISO Tariff and further detailed in the business practices manual) for each proposal. All RFP Respondents (other than NextEra) are identified only by numerical designations to protect confidentiality.

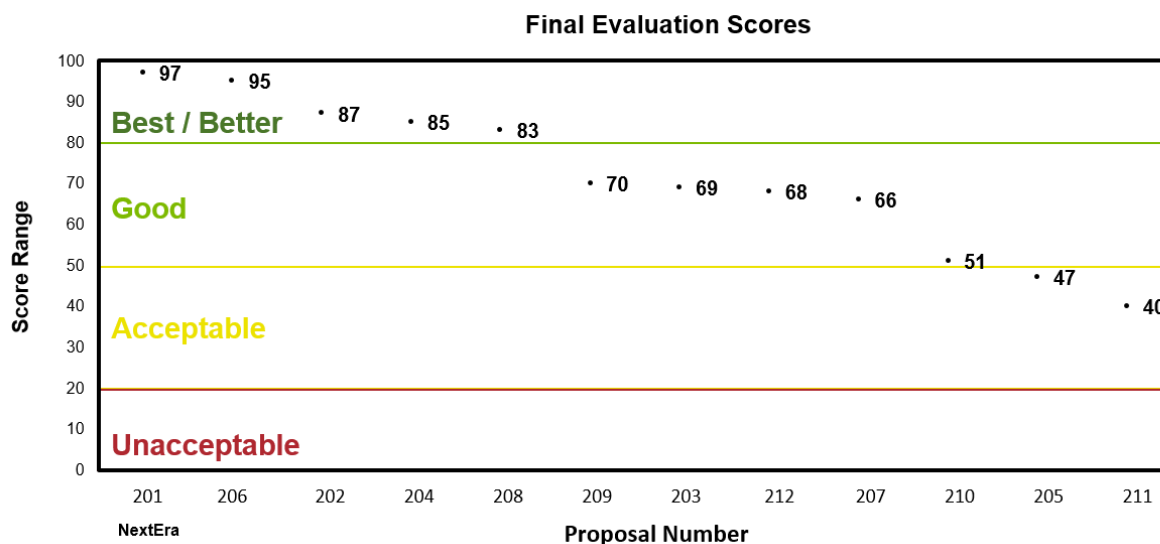


Figure 1-1: Final Scoring Summary

The scores shown in Figure 1-1 illustrate that each RFP Respondent has the necessary capabilities to design, finance, construct, operate, and maintain the project. There were nevertheless meaningful distinctions among the proposals with respect to specificity, certainty, risk mitigation, cost, quality of design and overall value. The scores reflect these distinctions and show how some RFP Respondents are comparatively better positioned based on the facts submitted in their proposals.

MISO's Tariff requires MISO to evaluate and score proposals for mixed projects (transmission lines and substations) according to four evaluation criteria: cost and design,



weighted at 35%; project implementation, weighted at 30%; operations and maintenance, weighted at 30%; and transmission planning participation, weighted at 5%.³

MISO evaluated each proposal according to the information submitted by the RFP Respondents in their respective proposals. The obligations of RFP Respondents to provide the needed information were communicated clearly up front in the request for proposals package. MISO's decisions with regard to evaluation, selection, and scoring reflect the specific documentation provided by the RFP Respondents, without relying on any information outside the four corners of their proposals.

Any proposal considered the best in a given evaluation criterion was categorized as 'Best' for that criterion. The remaining proposals in that same criterion were then categorized into one of the remaining four categories ('Better,' 'Good,' 'Acceptable,' or 'Unacceptable')⁴ based upon the merits of the proposal and the application of the evaluation principles. A numerical score was then awarded to each proposal, commensurate with its categorization and comparative ranking for each evaluation criterion.

The table below shows MISO's comparative categorizations of all proposals within each of MISO's four evaluation criteria, arranged numerically based on their randomly assigned proposal identification number.

Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 1-1: Comparative Categorization Summary Table

With its strength across all four of MISO's evaluation criteria, NextEra's Selected Proposal earned a total score of 97 out of a possible 100 points, as illustrated in Figure 1-1. All other proposals scored between 95 and 40 points.

³ MISO Tariff, Attachment FF, Section VIII.E.1.

⁴ Business Practices Manual No. 027 – Competitive Transmission Process (BPM-027), Section 8.2.1.



Noteworthy: Cost and Design

MISO's review and analysis of the cost and design information submitted by each RFP Respondent revealed the following noteworthy points:

- RFP Respondents submitted total project implementation cost estimates⁵ that ranged from \$95.4 million to \$133.9 million (in 2018 dollars). This compares to MISO's scoping-level cost estimate of \$122.4 million (in 2018 dollars) for the facilities within the scope of the request for proposals.
- MISO's calculations of benefit-to-cost ratios for the proposals ranged from a low of 1.37 to a high of 2.34, with higher ratios reflecting RFP Respondents' ability to deliver lower up-front costs, lower costs over time, or both. This compares to MISO's transmission expansion plan estimate for the project of 1.35.
- MISO's calculations of cost-per-mile for the proposals' 500 kV transmission lines showed a range of \$3.0 million to \$4.3 million per mile.
- The net present value of estimated annual transmission revenue requirements (reflecting caps where applicable) ranged from \$88.2 million to \$166.3 million (in 2018 dollars).
- RFP Respondents offered a variety of cost caps, concessions, and commitments, as well as schedule guarantees, which enhanced competition on project cost, annual transmission revenue requirement, and certainty of the project in-service date.
- Proposals with 10- or 40-year caps on their annual transmission revenue requirements generally performed well in scenarios testing how changes to particular cost drivers affected project costs over time.
- There were diverse proposals for structure and conductor types for the 500 kV and 230 kV transmission lines, reflecting common industry practices.
- 230 kV bus arrangements included ring bus, breaker-and-a-half, and double-breaker, double-bus configurations, reflecting common industry practices.
- Most proposals designed the new substation as an open air-insulated substation. Two proposals designed the substation as a gas-insulated substation.

The Selected Proposal earned the categorization of 'Best' in cost and design, providing high value through robust transmission line and substation designs at comparatively low cost. NextEra's project implementation cost of \$114.8 million⁶ is \$6.5 million below the median cost

⁵ Unless otherwise stated, cost estimates are presented in nominal dollars and all annual transmission revenue requirements are presented in net present value 2018 dollars.

⁶ This equates to \$103.9 million in 2018 dollars, which is below the MISO scoping-level estimate, noted above, of \$122.4 million in 2018 dollars.

estimate. NextEra submitted a comparatively low estimated annual transmission revenue requirement of \$95.0 million, which is \$11 million below the median estimate.

NextEra provided greater cost certainty than most other proposals through its proposed cost caps and cost containment features. NextEra committed to forego both allowance for funds used during construction and construction work in progress. NextEra's cost recovery caps include:

- project implementation cost, at \$114.8 million,
- a limit on annual transmission revenue requirement, as well as operations and maintenance costs, for the first 10 years,
- return on equity, at 9.8%, and
- equity in its capital structure, at 45%.

NextEra's multiple categories of cost caps and cost containment measures enhance cost certainty and convey substantial benefits to ratepayers over time.

NextEra's Selected Proposal excelled in its transmission line and substation design. The Selected Proposal offers:

- robust and thoroughly supported 500 kV and 230 kV transmission line and substation designs,
- 500 kV and 230 kV transmission line ratings above minimums required in the request for proposals,
- a double-breaker, double-bus arrangement for the 230 kV bus in the new Stonewood 500 kV Substation,
- the highest-capacity transformer bank,
- thoughtful features to enhance operational and planning flexibility, and
- balanced environmental risks and mitigation in transmission line and substation design.

Noteworthy: Project implementation

MISO observed the following noteworthy points from its review and analysis of the project implementation information submitted by each RFP Respondent:

- Every RFP Respondent demonstrated previous experience with transmission project development.
- Every RFP Respondent had general strategies for project management, permitting, environmental assessment, land acquisition, construction and materials procurement,

commissioning, and safety throughout the construction process. The highest-scoring proposals were most robust and tailored specifically for this project.

- Many RFP Respondents supplied well-developed project schedules and plans, supported by critical path recognition and thorough risk analysis that included potential impacts and mitigation steps.
- Proposed route lengths (in geographical miles) ranged from roughly 19.9 to 24.5 miles for the 500 kV transmission line and from approximately one-quarter mile to 2.4 miles for each circuit of the 230 kV transmission lines.
- All locations for the new Stonewood 500 kV Substation were within two and a half miles of each other.
- Many RFP Respondents had undertaken early consultations with regulatory authorities, as well as other governmental agencies in the project area, and had taken soil samples and conducted preliminary fieldwork to increase the certainty and reduce risk for their project implementation proposals.
- Every RFP Respondent submitted financing and capital resource plans that explained and demonstrated its ability to fund the construction of this project.

MISO determined that NextEra's project implementation is the 'Best' among all the proposals. NextEra managed the potential impacts of route and design changes ordered by the Public Utility Commission of Texas by completing substantial project-specific planning, site analysis, and field investigation. NextEra also conducted extensive outreach to federal, state, and local authorities.

Noteworthy: Operations and Maintenance

MISO's review and analysis of the operations and maintenance information submitted by each RFP Respondent revealed the following noteworthy points:

- All RFP Respondents demonstrated that they, their affiliates, or their anticipated maintenance contractors had previous experience maintaining Extra-High Voltage (EHV) transmission facilities.
- Many RFP Respondents proposed to rely on affiliated companies to perform maintenance and forced outage responder duties, although in some cases third-party contractors would supplement internal capabilities or be entirely responsible for project maintenance activities.
- RFP Respondents' forced outage and emergency response times ranged from less than one hour to several hours.
- The proposals varied considerably in the degree to which RFP Respondents explicitly considered and addressed unique challenges (and the need for specialized equipment

and capabilities) to maintain and potentially restore facilities located near coastal waterways and wetland areas in a hurricane-prone area.

- The divergence among proposals of estimated operations and maintenance costs over the projected 40-year life was remarkable, ranging from roughly \$6.4 million to \$178.4 million.

MISO determined that NextEra's overall operations and maintenance plan was 'Better,' ranked second only to the 'Best' operations and maintenance proposal submitted by RFP Respondent 203. NextEra's Selected Proposal featured:

- comprehensive procedures for repairing various types of equipment for the project and for testing equipment before re-energizing,
- extensive 500 kV experience in hurricane-prone areas to support integration of the project into its control center,
- the ability to leverage experienced affiliates,
- local field crews with extra-high voltage experience,
- access to specialized equipment for the project-area terrain,
- hurricane preparedness and response plans developed and tested over time,
- personnel with live-line insulator replacement capability (combined with project transmission structure designs and configurations designed to accommodate live-line work),
- well-supported testing, switching, and predictive maintenance programs, and
- access to ample spare parts, with a spare 500/230 kV transformer, a spare 500 kV breaker, and a spare 230 kV breaker located at the Stonewood 500 kV Substation site.

Noteworthy: Planning Participation

MISO reviewed and verified the planning participation documentation submitted by each RFP Respondent. Planning participation was unique in that it was scored on an all-or-nothing basis, meaning that a proposal was awarded the full planning participation score (5 points) if at least one RFP Respondent or Proposal Participant or an affiliated entity participated in the MISO annual transmission expansion planning process that included the project. The planning participation criterion did not differentiate any of the top proposals in MISO's comparative analysis. To avoid revealing the identities of the RFP Respondents, except with respect to the Selected Proposal, MISO has redacted proposal-specific information about planning participation in this report.

Looking Ahead

The remainder of this report provides background information on the Hartburg-Sabine Junction 500 kV Competitive Transmission Project and describes, in summary form, how MISO performed its comparative analysis for the 12 proposals. Sections 3 and 4 summarize in greater depth the Selected Proposal submitted by NextEra, together with the proposals submitted by the other RFP Respondents.

The project implementation process will begin immediately with execution of the Selected Developer Agreement. MISO looks forward to collaborating with NextEra to support successful, on-time completion of project implementation and enable ratepayers to realize the value offered by NextEra's Selected Proposal.

2. Introduction and Overview

2.1 Introduction to Selection Report

This report explains the basis for MISO's determination of the Selected Developer for the Hartburg-Sabine Junction 500 kV Competitive Transmission Project, and provides an overview of the selection process MISO used to make its determinations. Apart from the introduction in this Section 2.1, this document consists of the following elements:

- an executive summary (Section 1),
- an overview of the project and the selection process, including issuance of the request for proposals ("RFP"), submission of proposals, and a brief summary of the comparative analysis process MISO used to evaluate all submitted proposals (Sections 2.2 through 2.6),
- summary descriptions of the 12 proposals received by MISO in response to the RFP, together with the results of the comparative analysis (with the Selected Proposal discussed in Section 3 and remaining proposals discussed in Section 4),⁷
- a glossary of defined terms used in this report (Attachment 1),
- explanations of specialized terminology used in connection with the RFP (Attachment 2),
- an overview of MISO's comparative analysis process to evaluate proposals (Attachment 3), and
- summary tables correlating information requested in the RFP to Tariff-prescribed evaluation criteria and sub-criteria (Attachment 4).

Please note that much of the detailed information provided in the RFP Respondents' proposals must be kept confidential. For this reason, this report is necessarily general when describing attributes of RFP Respondents and their proposals, and refers to all proposals other than the Selected Proposal according to their randomly assigned numerical designations (201 through 212), to mask their identities as required by the Tariff. Section 2.5 of this report summarizes the Tariff confidentiality provisions governing the MISO Competitive Developer Selection Process.

This report may disclose the following types of information:

- the high-level design for the project,
- the estimated cost of the project,

⁷ MISO has determined criteria-level scores for each proposal in accordance with the Tariff and business practices manual; however, the criteria-level scores are not included in this report. MISO will provide criteria-level scores to each RFP Respondent for its own proposal.

- the estimated 40-year annual transmission revenue requirement for the project, and
- information relating to any cost-containment measures, cost-caps, and rate-incentives.

Consistent with the MISO Tariff and business practices, MISO provides more detailed information about the Selected Proposal than remaining proposals and identifies the Selected Developer by name.

There are aspects of the proposals, particularly discussions of high-level project design, that are inherently technical. Use of some specialized terminology is unavoidable in these areas. To assist readers who may not be familiar with concepts used in transmission line design, MISO has included a table with non-technical explanations of common terms in Attachment 2.

Cost information summarized in this report is in the form submitted by RFP Respondents, except where specifically stated otherwise (such as in calculations of cost-per-mile of 500 kV transmission lines). These submittals are in most cases stated nominal dollars. Net present value calculations for ATRR use an 8% discount rate back to 2018, applied over a 40-year period for costs beginning with the project in-service date of June 1, 2023.

2.2 Overview of the Hartburg-Sabine Junction 500 kV Project

MISO's Board of Directors approved MISO's transmission expansion plan for 2017 ("MTEP17"), which included one project eligible for the competitive developer selection process—the Hartburg-Sabine Junction 500 kV Competitive Transmission Project (referred to in this report as the "Hartburg-Sabine Project," or simply the "project"). MTEP17 showed the Hartburg-Sabine Project had an estimated benefit-to-cost ratio 1.35, which exceeds the 1.25 benefit-to-cost ratio required for designation of a MISO market efficiency project.⁸

This project, which has a planned in-service date of June 1, 2023, consists of five new high-voltage transmission lines and one new substation, as follows:

1. Hartburg-Stonewood 500 kV Transmission Line
2. Stonewood 500 kV Substation
3. Sabine-Stonewood 230 kV Transmission Line #1
4. Sabine-Stonewood 230 kV Transmission Line #2
5. Nederland-Stonewood 230 kV Transmission Line
6. McFadden Bend-Stonewood 230 kV Transmission Line

⁸ MTEP17: Book 1 – Transmission Studies, p. 90, available at <https://cdn.misoenergy.org/MTEP17%20Full%20Report106032.pdf>



The illustrative map below shows the general location of the project:⁹

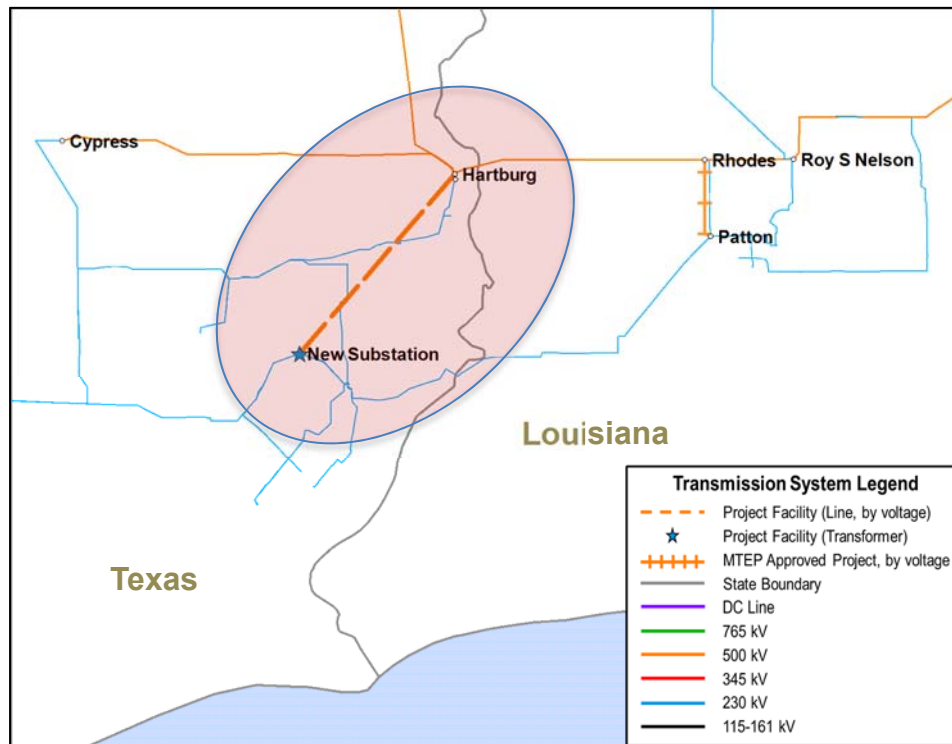


Figure 2-1: Simplified Project Map

⁹ This image is for illustrative purposes only and does not represent line routing. Final line routing will be determined by the Selected Developer and the applicable siting authorities.

As shown in the simplified diagram at Figure 2-2,¹⁰ the project's new single-circuit 500 kV transmission line will interconnect the existing Hartburg 500 kV substation (owned by Entergy Texas, Inc. ("Entergy")) to a new substation, which will interconnect with two of Entergy's existing 230 kV transmission lines. The new substation will include one 500 kV transmission position, one 500/230 kV transformer, and four 230 kV transmission positions.

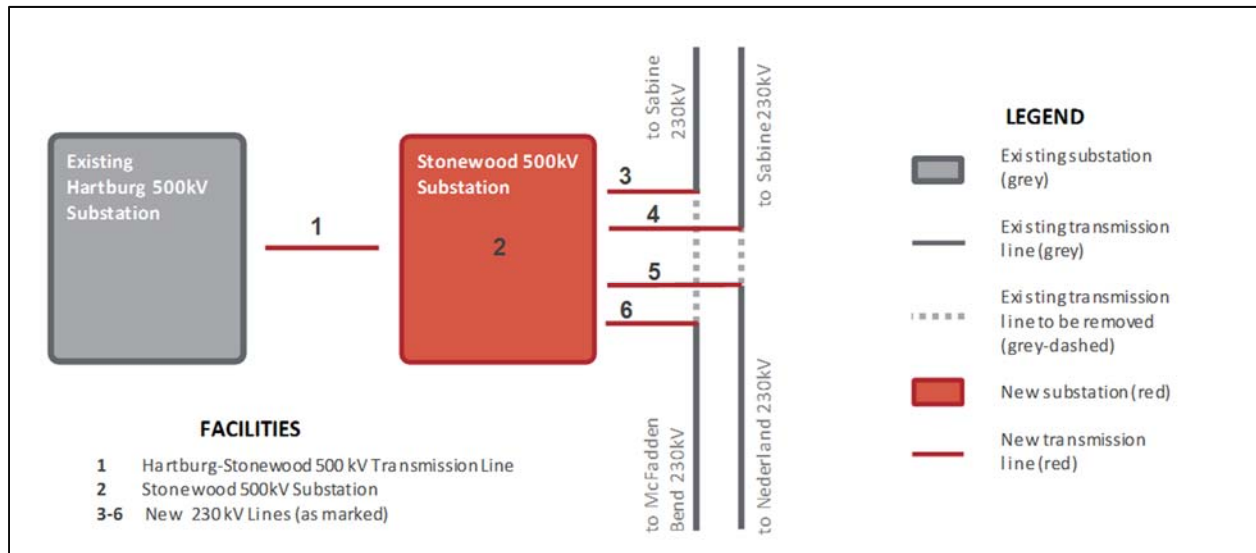


Figure 2-2: Simplified Depiction of Project Facilities

More information about the Hartburg-Sabine Project is available through MISO's Competitive Transmission Administration webpage¹¹ and in the MTEP17 Report.¹²

2.3 The Request for Proposals

2.3.1 Issuance

MISO issued the RFP for the Hartburg-Sabine Project on February 6, 2018, with proposals due by July 20, 2018. Full details about the RFP are available through MISO's Competitive Transmission Administration webpage.¹³

2.3.2 Post-Issuance Informational Meetings

MISO held public meetings to provide information and answer questions about the Hartburg-Sabine Project and the RFP on February 27, April 9, and June 7, 2018. MISO

¹⁰ This image is for illustrative purposes only. Not intended to communicate configuration, scale, or location.

¹¹ <https://www.misoenergy.org/planning/competitive-transmission-administration/#nt=%2Fctadocctype%3ACurrent%20Projects&t=10&p=0&s=FileName&sd=desc>

¹² <https://cdn.misoenergy.org/MTEP17%20Full%20Report106032.pdf>

¹³ <https://www.misoenergy.org/planning/competitive-transmission-administration/#nt=%2Fctadocctype%3ACurrent%20Projects&t=10&p=0&s=FileName&sd=desc>

maintains a publicly available register of questions asked, along with the answers provided by MISO, on its Competitive Transmission Administration webpage.¹⁴

2.4 Receipt of Proposals and Completeness Check

By the Proposal Submission Deadline of July 20, 2018, MISO received 12 proposals responding to the RFP. MISO reviewed each proposal for completeness and validated whether the RFP Respondents for each proposal were certified as Qualified Transmission Developers on the dates the proposals were submitted. MISO gave every RFP Respondent the opportunity to clarify or cure unclear or incomplete submissions. All RFP Respondents responded to MISO requests for clarification or cure and no proposals were subsequently withdrawn.

On August 31, 2018, after completing the validation, MISO publicly announced that it had received 12 valid and complete proposals from the following RFP Respondents and Proposal Participants:¹⁵

¹⁴ https://cdn.misoenergy.org/Hartburg-Sabine_QA_PUBLIC144105.zip

¹⁵ <https://cdn.misoenergy.org/20180831%20Hartburg-Sabine%20Project%20-%20completed%20proposals271474.pdf>



List of Respondents Providing Complete Proposals	
RFP Respondent(s) <i>(Sorted Alphabetically)</i>	Proposal Participant(s)
Avangrid Networks, Inc.	N/A
EasTex TransCo, LLC	N/A
GridLiance Heartland, LLC	Cleco Energy, LLC
ITC Midcontinent Development, LLC / Hunt Transmission Services, L.L.C.	Texas Infrastructure Holdings, LLC
Midwest Power Transmission Arkansas, LLC	N/A
NextEra Energy Transmission Midwest, LLC	N/A
Transource Energy, LLC	Transource Texas, LLC
Verdant Plains Electric, LLC	N/A
Xcel Energy Transmission Development Company, LLC	N/A

Table 2-1: Announced List of RFP Respondents and Proposal Participants

2.5 Confidentiality, Communication Protocols, and Document Control

2.5.1 Confidentiality

MISO recognizes the importance of transparency in every step of the Competitive Transmission Process (as defined in the Tariff). At the same time, MISO is obligated to treat proposal materials submitted by RFP Respondents as confidential, except with respect to certain content of the Selected Proposal and other proposals.¹⁶

Proposal information that must be kept confidential (unless the RFP Respondent has consented to disclosure) includes the following:

- all detailed breakdowns of costs, *including* but not limited to, the itemized costs for labor and materials,
- all details of an RFP Respondent's financing arrangements (as well as those for any project participants),
- all detailed design, routing, siting, or specialty construction techniques, and

¹⁶ Attachment FF, Section VIII.D.9.

- any other information or portions of documents that an RFP Respondent has clearly designated as confidential (excluding items that are expressly categorized by the MISO Tariff as non-confidential or that MISO has an obligation to make publicly available).¹⁷

Proposal information the Tariff categorizes as not confidential includes:

- the identity of RFP Respondents and Proposal Participants,
- the high-level design for the project,
- the estimated cost of the project,
- the estimated 40-year annual transmission revenue requirement for the project,
- information relating to any cost-containment measures, cost-caps, and rate incentives,
- information about the proposed in-service dates of the project,
- the final evaluation score assigned to each proposal (with the names of the RFP Respondents and Proposal Participants redacted or masked),
- all timetables and milestones agreed to between the Selected Developer and MISO in the Selected Developer Agreement,
- information that is publicly available,
- any information an RFP Respondent or Proposal Participant has consented to release, and
- any information the Tariff requires MISO to make publicly available.¹⁸

To comply with these requirements, this report describes RFP Respondents and their proposals in general terms, to avoid revealing which RFP Respondent submitted which proposal, and to protect commercially sensitive and confidential information.

2.5.2 Communication Protocols

MISO adheres to the following self-imposed communication protocols throughout the competitive developer selection process:

- **Project Information Kept Confidential:** Information deemed confidential under the Tariff related to competitive projects will be treated as commercially / competitively sensitive.
- **Communications to Be Coordinated:** MISO aims to coordinate all communications with interested stakeholders regarding RFPs, the evaluation process, selection report, and variance analysis. Please refer all questions to MISO Client Relations at TDQS@misoenergy.org and not to individual MISO personnel.

¹⁷ Attachment FF, Section VIII.D.9.a.

¹⁸ Attachment FF, Section VIII.D.9.b.

- **Questions Will Be Answered Transparently:** MISO will publicly post questions it receives and vetted answers at the Competitive Transmission Administration webpage.
- **Project-Specific Questions to Be Directed to MISO:** Once an RFP is issued for a Competitive Project and until the Selection Report is issued, all questions regarding that project / RFP must be directed to MISO and not to interconnecting incumbent transmission owners. MISO will process these questions in accordance with MISO's Business Practices Manual 027 ("BPM-027").

These communication protocols are posted on MISO's public website,¹⁹ were incorporated in part within the RFP and BPM-027, and made part of presentations delivered by MISO's evaluation team during public stakeholder meetings.

MISO conducted internal training for employees with responsibilities in the competitive developer selection process, and communicated the protocols to all MISO employees and consultants. MISO emphasized the need for confidentiality and announced the communication protocols at every meeting of MISO staff or the Competitive Transmission Executive Committee ("Executive Committee") where information about the RFP, RFP Respondents, or their proposals was discussed. MISO limited access to all proposal materials to members of the MISO evaluation team, who were required to protect the confidentiality of all proposals and associated work products, and refrain from discussing them with entities or individuals that were not part of the MISO evaluation team.

All MISO employees and consultants carefully followed the confidentiality and communication protocols established by MISO throughout the competitive developer selection process, and restricted access and discussions about proposals not only as to external parties, but as to other staff members within MISO who were not part of the MISO evaluation team. In addition, to protect the integrity of the evaluation process, MISO required its consultants to attest that they were free from conflicts of interests with Qualified Transmission Developers participating in the RFP, and has kept (and will continue to keep) the identities of its independent consultants confidential.

2.5.3 Document Control Procedures and Sequencing of Proposal Designation and Review

To facilitate secure proposal access and evaluation, MISO restricted access to all electronic versions of proposal-related documents. Only members of the MISO evaluation team were allowed access to proposal materials.

In addition, before MISO evaluated the proposals, MISO assigned a numerical designation to each proposal (randomly selected from the range of 201 to 212) to enable evaluation team members to review and discuss proposals without referring to any RFP Respondent by name.

¹⁹ https://cdn.misoenergy.org/Hartburg-Sabine_CommunicationProtocols_20180205122801.pdf

To avoid bias due to order of evaluation during comparative analysis, each of the work stream teams (composed of MISO staff and consultants with expertise in cost, design, project implementation, and operations and maintenance) reviewed proposals in a randomly ordered sequence, and each work stream's review sequence differed from that of the other work streams.

2.6 Comparative Analysis Process to Evaluate Proposals

2.6.1 Basis for Proposal Evaluation, Proposal Summaries, and Scope of Proposals

MISO evaluated each proposal based on the information submitted by the RFP Respondents. The obligations of RFP Respondents to provide the needed information were communicated clearly up front in the RFP package. MISO's decisions on proposal evaluation, selection, and scoring relied solely on the specific documentation the RFP Respondents submitted and were not based on any information obtained from outside the four corners of the submitted proposals.

Section 8 of BPM-027²⁰ describes key components of the process MISO uses to evaluate proposals, including MISO's overarching evaluation principles and evaluation criteria. Attachment 3 provides a general overview of MISO's competitive developer selection process.

MISO personnel and consultants with expertise in each subject area addressed by the proposals carefully reviewed all information submitted for every proposal, including supporting attachments. To comply with Tariff confidentiality requirements, this report must condense and describe in general terms the results of MISO's comparative analysis, focusing on the meaningful differences among proposals. The proposal summaries in Section 3 and Section 4 do not attempt to convey the full scope and content of any proposal, but rather highlight the most salient information.

Managing and evaluating 12 proposals is a major undertaking, requiring sustained efforts by the Executive Committee and evaluation team to analyze proposals that averaged over 5,700 pages of narrative text, design discussion, cost and financial data, and supporting attachments. The average number of files accompanying a single proposal was 150. Each proposal included a proposal template workbook, each of which encompassed at least 11 worksheets.

2.6.2 Aspects and Elements

In the RFP for the Hartburg-Sabine Project, MISO encouraged RFP Respondents to think creatively about how their proposals could deliver the highest overall value to the project. MISO identified a set of aspects and elements MISO anticipated could be particularly important for the

²⁰ A link to BPM-027 is posted on MISO's Competitive Transmission Administration page at <https://www.misoenergy.org/planning/competitive-transmission-administration/#t=10&p=0&s=FileName&sd=asc>

success of the project, carefully noting that the list was neither prescriptive nor exhaustive. Section 4.B of the RFP described these aspects and elements as follows:

1. **Cost Certainty.** The project's estimated benefit-to-cost ratio is 1.35. Therefore, an important element of the project will be the mitigation of risks that may result in cost increases, ensuring the current benefit-to-cost ratio will be preserved or increased.
2. **230 kV Line Length.** An important aspect of the project will be balancing the minimization of line length for each 230 kV transmission line (and thereby maximizing the benefits calculated in MTEP17 for this project), with other design considerations such as landowner, environmental, and pipeline impacts.
3. **Operational and Planning Flexibility.** Of particular importance to project success will be how the designs for the 500 kV and 230 kV transmission lines and substation for this project translate into flexibility in both operation and maintenance of facilities and over the planning horizon.
4. **Regulatory Certainty.** Of particular importance to project success in planning, financing, constructing, owning and operating this project are the regulatory requirements, necessary permits, certifications, and authorizations needed from all regulators.

2.6.3 Unique Considerations for Mixed Competitive Transmission Projects

For Mixed Competitive Transmission Facility Projects ("mixed projects"), such as the Hartburg-Sabine Project, the evaluation process entails more design elements and additional project implementation tasks, as compared to projects consisting of only competitive transmission lines or only competitive substations. Within the cost and design and the project implementation criteria for mixed projects, some sub-criteria include factors that apply solely to transmission line facilities, or factors that apply solely to substation facilities, or factors relevant to the project as a whole. The correlation tables from the RFP, which are included with this report at Attachment 4, provide a helpful overview of the relationship among these dimensions of the evaluation process, with color coding to distinguish between factors common to all facilities, factors specific to transmission lines, and factors specific to substations.

2.6.4 Overview of Proposal Cost Caps, Commitments, and Concessions

RFP Respondents proposed a wide range of cost caps, concessions, and other cost-containment commitments in their proposals. Attachment 3 provides an overview of MISO's process and analytical framework for evaluating the proposals, including RFP Respondents' cost and design information. To illustrate the wide range of innovative cost elements included in the proposals, Table 2-2 summarizes the cost caps, concessions, and commitments of all of the proposals.



Section 2: Introduction and Overview

OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate² Cap increases subject to commodity inflation³ Only a portion of construction costs are capped⁴ Project cost cap includes additional 1.5 miles and

caps the per mile cost of additional miles

⁵ Schedule guarantee⁶ Reliability guarantee⁷ 10 year ROE and capital structure cap⁸ Cap on cost of debt through 2025

Table 2-2: Cost Cap Summary

The table above uses several acronyms for brevity. These include “AFUDC” (allowance for funds used during construction), “CWIP” (construction work in progress), “PUCT” (Public Utility Commission of Texas), “ROE” (return on equity), and “ATRR” (annual transmission revenue requirement). The glossary in Attachment 1 provides more detailed definitions.

2.6.5 Planning Participation

On February 6, 2018, MISO publicly identified the Qualified Transmission Developers that earned planning participation credit. MISO has redacted information on credit for planning participation from the proposal summaries (to avoid indirectly disclosing the identity of RFP Respondents that did not receive credit for planning participation).

The entities that received credit for planning participation in MTEP17 are as follows:

Entity Name (Sorted Alphabetically)
Ameren Transmission Company of Illinois
Duke – American Transmission Company, LLC
East Texas Electric Cooperative
Entergy Services, Inc.
Grid America LLC
ITC Holdings Corp., a Fortis Company
Midcontinent MCN, LLC
Midwest Power Transmission Arkansas LLC
NextEra Energy Transmission LLC (NEET) & NextEra Energy Transmission Midwest LLC
Transource Energy, LLC
Xcel Energy, NSP, XETD

Table 2-3: Entities Receiving Planning Participation Credit

3. The Selected Proposal

3.1 Summary Description of the Selected Proposal

3.1.1 Overview of Selected Proposal

MISO has designated NextEra Energy Transmission Midwest, LLC ("NextEra") as the Selected Developer, and the proposal identified as Proposal 201 as the Selected Proposal.

The Selected Proposal provides the greatest overall value by offering an outstanding combination of low cost, robust transmission and substation design, and strength across all evaluation criteria. MISO determined that the Selected Proposal was 'Best' in cost and design, 'Best' in project implementation, and 'Better' in operations and maintenance (ranked second in operations and maintenance only to one other proposal). The project-specific, extensive analysis and narrative in NextEra's proposal reflected thorough knowledge and substantial effort in proposal development.

NextEra's project cost cap for the Selected Proposal is equal to its project implementation cost of \$114.8 million. NextEra also capped several other inputs to its ATRR, including return on equity (at 9.8%) for the life of the project, equity in capital structure (at 45%) for the life of the project, and the first 10 years of operations and maintenance costs. NextEra offered a 10-year cap on its ATRR and committed to forego both AFUDC and CWIP.

NextEra's multiple categories of cost caps and cost containment measures increase cost certainty, and convey substantial benefits to ratepayers over time. For example, by foregoing AFUDC and CWIP, NextEra makes available to ratepayers, without interest charges, the benefit of the capital it expends while the project is under construction. NextEra's Selected Proposal has an estimated benefit-to-cost ratio of 2.20, which is well above the MISO estimated ratio of 1.35.

NextEra's Selected Proposal excelled in operational and planning flexibility. The Selected Proposal offers the most robust bus arrangement for the 230 kV bus in the new Stonewood 500 kV Substation (double-breaker, double-bus), the highest capacity transformer bank, and thoughtful discussion of flexibility into the planning horizon for the Stonewood 500 kV Substation. Both the 500 kV and 230 kV transmission line conductors chosen by NextEra had ratings that exceeded the RFP-required minimums.

NextEra completed substantial project-specific planning, extensive outreach to federal, state, and local agencies, fieldwork and well-supported contingency analysis. This helped mitigate the potential impact of changes to its route or design for the 500 kV transmission line ordered by the PUCT.

For operations and maintenance, in addition to its top-tier plans in the proposal, NextEra also noted its ability to leverage an affiliate with extensive 500 kV experience in hurricane-prone areas to support integration of the project into its local control center. NextEra has field crews local to the project area with extra-high voltage ("EHV") experience, access to specialized



equipment for the terrain, and hurricane preparedness and response plans developed and tested over time. NextEra designed the project facilities to enable field crews to perform live-line work. The Selected Proposal includes a well-supported predictive maintenance program and documented access to a large inventory of spare parts.

The Executive Committee assigned the Selected Proposal a total evaluation score of 97 and found it to be the best of all proposals (Figure 3-1).

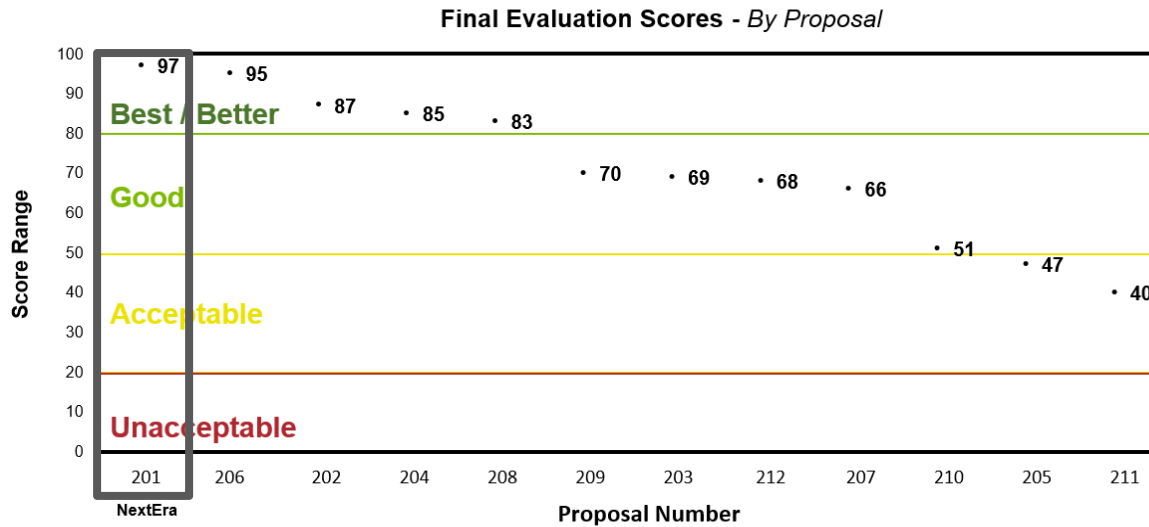


Figure 3-1: Selected Proposal Final Scoring Summary

Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 3-1: Selected Proposal Criteria-Level Categorization



Table 3-2 below (and similar tables provided for all other proposals) shows how the proposals were ranked, from best to 12th, in each of the evaluation criteria of cost and design, project implementation, and operations and maintenance.

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 3-2: Selected Proposal Ranking

3.1.2 Project Cost and Design for the Selected Proposal

When MISO evaluated the Selected Proposal, it found NextEra's cost and design for the Selected Proposal were the 'Best' among all proposals, as depicted in Table 3-1.

Cost Highlights

NextEra submitted a low project implementation cost of \$114.8 million for the Selected Proposal, and offered a 'rate base cap' equal to its project implementation cost. NextEra's project implementation cost was \$6.5 million below the median project implementation cost of \$121.3 million. Based on MISO's calculations, the Selected Proposal has the third-lowest cost per mile of 500 kV line at \$3.2 million²¹ (\$0.3 million lower than the average). NextEra will forego both AFUDC and recovery of funds for CWIP, which reduces long-term project costs to ratepayers.

NextEra provided robust supporting information and explanations for its cost estimates. For example, NextEra determined its contingency level for the Selected Proposal by quantifying the magnitude and likelihood of numerous risks, which it linked to its project implementation risk register. This resulted in a well-supported level of contingency for the Selected Proposal. NextEra also offered a schedule guarantee.

²¹ For purposes of comparison, MISO's calculation of costs per mile for the 500 kV transmission line included the project cost associated with that facility as well as a pro rated share of estimated Total Allowance for Contingencies, Administrative and General Overhead, and Miscellaneous and Other Expenses.



OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 3-3: Selected Proposal Cost Cap Summary²²

NextEra's submitted ATRR estimate of \$95.0 million is one of the lowest among the proposals, and has greater certainty than most other proposals because it is subject to a 10-year cap (structured as individual one-year caps on annual revenue recovery across the first 10 years of project operations). The median ATRR estimate was \$106 million. Among the drivers for the Selected Proposal's low ATRR estimate are NextEra's comparatively low project costs, as well as its low percentage of equity in its capital structure (at 45%) and low return on equity (at 9.8%, including adders), both of which are capped for the life of the project.

NextEra also committed to cap its operations and maintenance costs, which were in the moderate range among the submitted proposals, for the first 10 years of project operation. This cap, like the cap on ATRR, was structured as individual one-year caps across the first 10 years of project operations. NextEra provides for a moderate amount of capital expenditures in future years of the project, which also increased certainty, as compared to those proposals that did not provide for future capital expenditures.

Design Features

The Selected Proposal's 500 kV and 230 kV transmission line designs are very robust in performance and rigor, supported by engineering studies and drawings, as well as fieldwork in the project area, including multiple soil borings.

The estimated length of the Selected Proposal's 500 kV transmission line is roughly 23 geographical miles, with a right-of-way width of 200 feet. NextEra selected primarily guyed-V steel lattice structures for the 500 kV transmission line, which are compatible with the terrain in the project area and offer significant cost savings. The structures would be supported by helical pile, helical anchor, and concrete drilled pier foundations. NextEra specified its transmission line design criteria and provided all structure load and design drawings, showing 125 mph and 140 mph wind load cases.

²² The table above uses several acronyms for brevity. These include "AFUDC" (allowance for funds used during construction), "CWIP" (construction work in progress), "PUCT" (Public Utility Commission of Texas), "ROE" (return on equity), and "ATRR" (annual transmission revenue requirement). The glossary in Attachment 1 provides more detailed definitions.

The proposed 500 kV bundled conductor—2,156 kcmil ACSR Bluebird—has a maximum summer emergency line rating of 4,152 Amps at 239°F maximum conductor temperature (with wind speed of two feet per second). This line rating is approximately 39% higher than the minimum required in the RFP. NextEra provided all rating parameters and discussed loss of conductor strength. NextEra defined its galloping and vibration criteria for the 500 kV transmission line and discussed relevant tension limits.

For the 230 kV transmission lines, NextEra selected steel monopole structures with drilled pier foundations, located in a right-of-way roughly 250 feet wide. The Selected Proposal has relatively short 230 kV transmission lines (approximately 1,100 feet for each circuit, with aggregate circuit length of less than a mile). NextEra included a design criteria document that discussed meeting Entergy interconnection requirements.

The 230 kV bundled conductor—1,272 kcmil ACSR Pheasant—has a maximum summer emergency line rating of 2,964 Amps at 239°F maximum conductor temperature (with wind speed of two feet per second). The 230 kV transmission line rating is approximately 72% higher than the MISO-required minimum. NextEra provided all rating parameters and discussed loss of conductor strength.

For both its 500 kV and 230 kV transmission lines, NextEra specified its ground resistance targets and provided detail drawings. The Selected Proposal includes a lightning study report and discusses shield angle and related lightning performance targets.

NextEra had a well-supported substation design with numerous redundant features, as well as a 500/230 kV transformer with a higher capacity than the minimum required by the RFP. NextEra thoroughly identified, considered, and discussed environmental risks and mitigation and was among the most thorough in completion of supporting design studies for the project.

NextEra designed a substation site of approximately six acres. The 230 kV bus arrangement is double-breaker, double-bus, which is the most robust among all bus arrangements proposed. NextEra's substation design adds further value by including two fully redundant line relaying protection schemes for the 500 kV transmission line and three sources for station service power. NextEra provided thorough supporting narrative for its protection and control schemes and addressed visual and sound impacts for its proposed site.

NextEra further supported its substation design with side-view elevation drawings of its physical layout, a lightning protection study, and attachments showing alternating current station service power sizing calculations, direct current battery sizing calculations, and bus and electrical jumper ampacity calculations.

NextEra took proactive steps in its design to mitigate flood risk, taking into account the high water mark experienced during Hurricane Harvey, as well as ensuring the substation site is not within the 100-year or 500-year floodplain. NextEra included supporting design study information showing how it determined the relevant flood mitigation level. To support the certainty of its grading design and reduce risk, NextEra took soil borings at locations surrounding its substation parcel.

NextEra addressed cost-effective flexibility in the planning horizon by laying out the substation to allow for ready expansion of the 500 kV bus and discussed the potential to add one more 500 kV transmission line. NextEra also discussed how further 230 kV lines could be added to either side of substation, supported by a general arrangement drawing showing where this could be done.

By providing a transformer with capacity 25% higher than the RFP-required minimum, NextEra increased the value of its proposal because the 500/230 kV transformer becomes a less limiting system element for 500 kV to 230 kV power flows. The 230 kV breakers dedicated to the transformer in the substation also have a higher capacity than the RFP-required minimum, which enables NextEra to take advantage of the higher capacity transformer included in its design. NextEra's Selected Proposal is comparable to several other proposals in providing for one spare single-phase transformer unit installed at the substation.

3.1.3 Project Implementation for the Selected Proposal

When MISO evaluated the Selected Proposal, it found NextEra's project implementation for the Selected Proposal was categorized as 'Best' among proposals, as depicted in Table 3-1. NextEra's highly organized proposal for project implementation increased certainty and specificity and highlighted NextEra's understanding of the RFP. The facts and findings supporting MISO's determination are summarized below.

NextEra provided a project-specific schedule that included a thorough breakdown at the task and activity level. NextEra demonstrated comprehensive treatment of project risks, with a risk register that included probability of occurrence, cost and schedule impacts, mitigation steps, and risk responsibilities. NextEra identified experienced project management staff, along with a construction plan that would rely on a reputable, experienced construction contractor.

NextEra submitted routing studies and environmental assessments, showing it evaluated many different routes for the 500 kV transmission line and identified one preferred route. Consistent with PUCT procedures, NextEra used an array of segments to develop its routing alternatives. NextEra obtained a number of geotechnical core samples, identified existing infrastructure crossings (noting the need for alternating current mitigation at pipeline crossings), and included supporting aerial video of its proposed routes.

NextEra conducted initial coordination with federal, state, and local agencies to discuss potential routes and identify constraints, and sent letters to other agencies requesting routing input. NextEra also met with the Sabine River Authority to evaluate canal crossings and associated requirements. The level of regulatory outreach reflected in the Selected Proposal was outstanding.

The Selected Proposal had a well-supported inventory of parcels including landowners, utility crossings, identification of infrastructure co-location, and other constraints. NextEra identified high-risk parcels and secured options on two easements adjacent to the existing Hartburg Substation. NextEra identified and provided experience for routing and siting staff, as

well as third-party contractors engaged to provide permitting support. NextEra also furnished a clear summary and timeline for the Certificate of Convenience and Necessity (“CCN”) process.

NextEra’s project risk register included substation-related risks. In evaluating potential substation sites, NextEra conducted a fatal flaw analysis, included floodplains and wetlands on maps, and provided cultural resource maps for the three parcels it considered. There was a high-level study for each potential substation site, as well as a table of permits needed for the substation. NextEra developed a risk exposure matrix for the sites it considered and included a full wetland delineation study for those parcels.

In addition to the easement options for the Hartburg Substation, NextEra secured an option for its selected substation site. NextEra explained its land acquisition plan, listed the personnel involved in land acquisition (and their experience) and provided maps for landowners and all rights-of-way.

NextEra submitted a comprehensive construction plan, including map books, task sequencing, outages needed on existing transmission equipment, a commissioning plan, and quality assurance and quality control measures. NextEra identified its primary construction contractor along with a list of subcontractors. The construction plan identified the scope of work for each contract and was accompanied by an organizational chart, which enhanced specificity. NextEra analyzed cost and commodity risk and potential effects on key equipment pricing and specified an independent testing contractor for materials testing.

The Selected Proposal identified transmission line engineering and substation design contractors, as well as supporting personnel and their locations and a scope of work for both the new Stonewood 500 kV Substation and the transmission lines. NextEra described plans for future coordination with Entergy as the interconnecting utility and addressed engineering team support for the CCN filing process. NextEra summarized its commissioning process, including a list of personnel and support positions, an equipment testing plan, and a well-supported outage overview.

NextEra included a workplace safety plan for the construction process (although it was not project-specific) and identified a project safety manager, but had more limited discussion of stop-work authority than some other proposals.

3.1.4 Operations and Maintenance for the Selected Proposal

When MISO evaluated the Selected Proposal, it found NextEra’s operations and maintenance plans were ‘Better’ than most other proposals, as depicted in Table 3-1, second only to the highest-scoring proposal, as shown in Table 3-2.

NextEra stated that an affiliated company has an existing Local Balancing Authority agreement with Entergy and that it intends to add the project to that agreement. One of NextEra’s affiliates has a control center that operates EHV facilities in the ERCOT portion of Texas. NextEra documented its affiliates’ extensive 500 kV experience operating in the Eastern Interconnection in hurricane-prone areas and their commitment to support the project. NextEra

provided evidence that its affiliated companies have had successful operations audits in several regions.

The Selected Proposal described NextEra's plan to model the project area for state estimator and real-time contingency analysis. The NextEra family of companies have extensive resources available for engineering, technical support, asset management, and maintenance planning. NextEra included a document describing Reliability Coordinator outage procedures and timing.

NextEra's proposal did not score the highest in operations and maintenance because it had a less robust outage coordination process and less project area experience with switching coordination. NextEra did not detail as thoroughly its processes for control center outage engineering or creating operating guides, compared to the proposal categorized as 'Best' for operations and maintenance.

For switching coordination, the Selected Proposal described comprehensive field crew and control center training programs and qualification, and provided a safety rulebook and a safety operating plan. NextEra will retain a local contractor crew to facilitate all planned switching. For forced outage response and emergency repairs, NextEra will use a two-person internal local crew located less than an hour from the project, with support from NextEra's local control room.

NextEra's internal crews will be supported by a contractor with numerous personnel less than one hour from the project. The contractor owns tracked carriers for wetlands and has 500 kV experience in the area. NextEra has tracked vehicles and high water access vehicles available, and will also contract for cranes, helicopters, environmental, and EHV testing equipment from original equipment manufacturers.

NextEra submitted comprehensive procedures for repairing various types of equipment for the project and for testing equipment before re-energizing. NextEra support personnel will have live-line insulator replacement capability, and NextEra explained how its project transmission structure designs and configurations will accommodate live-line work. The Selected Proposal included detailed testing and switching procedures.

NextEra documented its ability to leverage an affiliated company's emergency preparedness plans and procedures for multiple threats, reflecting extensive experience with hurricane response and preparedness, procedures, and in-house storm weather tracking. There is spare equipment located within 3.5 hours of the project (to protect from weather events). NextEra provided evidence that its family of companies has financed and performed extensive crisis repair work, and has robust financial capability, although the Selected Proposal did not detail a specific plan to finance project work.

As noted in the discussion of substation design, NextEra will have a spare single-phase transformer installed at the new substation, and has committed to replace it if it is used, as well as to maintain one spare 230 kV breaker and one spare 500 kV breaker at the substation site.

Beyond that, NextEra has access to a large inventory of spares held by affiliated companies, supplemented by pre-arranged support from various suppliers.

For maintenance, NextEra has an asset management program that can trigger changes to scheduling, adjust task frequency, and generate new work orders to address identified non-normal conditions. The asset management program also has computerized capability to manage spares stock and restocking, oversee spares holding location, and dispatch needed spare parts within hours. NextEra will leverage existing real-time monitoring tools to enable field operations teams to detect impending problems immediately.

NextEra detailed costs associated with individual maintenance tasks and on-going capital expenditures. As noted in the cost and design discussion above, NextEra has committed to cap its operations and maintenance costs for the first 10 years of project operations.

NextEra submitted a comprehensive safety program for operations and maintenance, together with relevant documentation and supporting narrative. NextEra's description of mitigating induced current hazard when grounding was not as thorough as some other proposals.

The Selected Proposal detailed NextEra's safety requirements for contractors and included a safety manual from its main operations and maintenance contractor. NextEra has a dedicated safety manager and numerous safety professionals in its organization.

3.1.5 Planning Participation for the Selected Proposal

MISO evaluated planning participation for NextEra's Selected Proposal, as described in Section 2.6.5 of this report. NextEra received planning participation credit.



Hartburg-Sabine Junction 500 kV Selection Report

Section 4: Proposal Summaries

4. Proposal Summaries

This section summarizes MISO's comparative analysis results for all proposals other than the Selected Proposal. It includes an overview of each proposal, together with discussion of how each proposal performed with respect to the four Tariff evaluation criteria (cost and design, project implementation, operations and maintenance, and planning participation).

For ease of reference, in the following proposal summaries, the designation "RFP Respondent" followed by a number signifies the entity that submitted the proposal associated with that identification number. For example, "RFP Respondent 210" refers to the entity that submitted Proposal 210. As noted in Section 2, proposal identification numbers were randomly assigned.

4.1 Proposal 201 (Selected Proposal)

The proposal designated as Proposal 201, which was submitted by NextEra, is the Selected Proposal. Information about Proposal 201, and why the Executive Committee chose it as the Selected Proposal, is provided in Section 3 of this report.



Hartburg-Sabine Junction 500 kV Selection Report

Section 4: Proposal Summaries

4.2 Proposal 202

4.2.1 Overview of Proposal 202

Proposal 202 stood out for its low cost, solid transmission line design, well-thought-out substation design, and comprehensive approach to project implementation. Proposal 202 had a project implementation cost of \$114.3 million, with a project cost cap (which included AFUDC) of \$127.5 million. Proposal 202 offered to cap its return on equity at 9.8%.

Proposal 202 was one of four proposals to expressly assume the risk that project costs could increase if the PUCT were to require routing or design changes to the project's 500 kV transmission line. MISO recognized the benefit to ratepayers of this type of project cost cap, but noted that Proposal 202 had an offsetting effect from its contingency funding and the buffer from its higher-than-estimate project cost cap. As a result, overall project costs (including any due to PUCT-mandated changes) would have to increase substantially before Proposal 202 would reach its cost cap.

RFP Respondent 202 conducted outreach with local and state authorities and had a comprehensive project implementation plan. Proposal 202 was notably less strong than other well-performing proposals in operations and maintenance, but reasonably addressed several aspects of operations and maintenance (such as testing, specialized equipment, and maintenance management software).

The Executive Committee assigned Proposal 202 a total evaluation score of 87 and found it to be generally better than all proposals other than the top two proposals (Figure 4-1).

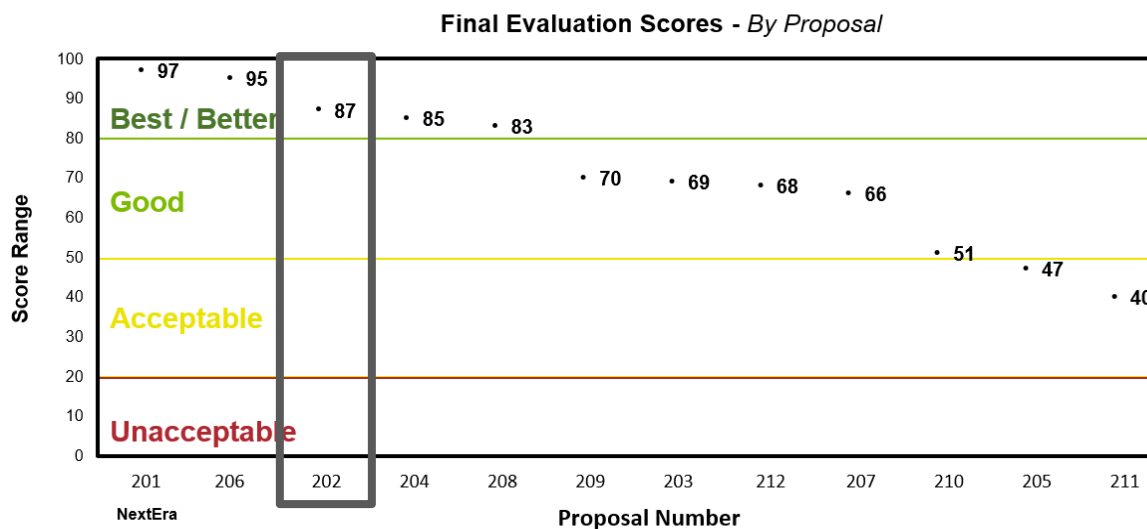


Figure 4-1: Proposal 202 Final Scoring Summary



Hartburg-Sabine Junction 500 kV Selection Report

Section 4: Proposal Summaries

In evaluating Proposal 202 against the four Tariff evaluation criteria, MISO categorized it as 'Better' in cost and design, 'Better' in project implementation, and 'Good' in operations and maintenance, as compared to the other proposals (Table 4-1).

Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	
202	Better	Better	Good	
203	Acceptable	Good	Best	Redacted
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-1: Proposal 202 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-2: Proposal 202 Ranking

4.2.2 Project Cost and Design for Proposal 202

When MISO evaluated Proposal 202, it found Proposal 202's cost and design were 'Better' compared to other proposals, as depicted in Table 4-1, and that Proposal 202's cost estimate information included robust supporting information and explanations.

Cost Highlights

Proposal 202 submitted a low project implementation cost of \$114.3 million (compared to the median project implementation cost of \$121.3 million). Proposal 202 offered a 'rate base cap' of \$127.5 million, which was \$13.2 million higher than its cost estimate. The cost cap included AFUDC and RFP Respondent 202 agreed not to seek recovery for CWIP.

Proposal 202 was one of four proposals that expressly offered to assume part or all of the costs of PUCT-mandated route or design changes for its 500 kV transmission line. MISO noted that Proposal 202's project implementation cost included a moderate amount of stated contingency, which RFP Respondent 202 determined by quantifying the impact of key risks. With stated contingency funding and an additional "cushion" provided by the difference between Proposal 202's project implementation cost and its project cost cap, RFP Respondent would be



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able to recover substantial project cost increases (including any resulting from PUCT-mandated route or design changes) before reaching the cost cap. Proposal 202 was one of eight proposals to offer a schedule guarantee.

OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-3: Proposal 202 Cost Cap Summary

Proposal 202 submitted an ATRR estimate of \$101.6 million (compared to the median ATRR estimate of \$106 million). Proposal 202's ATRR estimate was lower than most other proposal due primarily to its low project cost, although it was offset, to some degree, by high operations and maintenance costs. Proposal 202 also provided for ongoing capital expenditures in future years of the project, whereas some proposals did not.

Proposal 202 was one of seven proposals to cap return on equity at 9.8% (including adders) and cap equity percentage in its capital structure at 45%. Proposal 202 did not offer to cap its operations and maintenance costs or its ATRR (whereas the Selected Proposal offered to cap both for the first 10 years of the project).

Design Features

For its project transmission lines, Proposal 202 offered designs that were robust in performance and rigor, supported by engineering studies and drawings. RFP Respondent 202 also thoroughly considered and planned to mitigate environmental risks related to the transmission lines and the new Stonewood 500 kV Substation.

For the 500 kV transmission line, Proposal 202 provided a detailed conductor selection study report including electrical effects, operating temperature, and environmental conditions. RFP Respondent 202 also performed an economic analysis to support its conductor selection. The proposed 500 kV bundled conductor—954 kcmil ACSS (MA3) Cardinal—had a maximum normal and summer emergency line rating of 3,948 Amps at 257°F maximum conductor temperature with a wind speed of two feet per second.

The estimated length of Proposal 202's 500 kV transmission line was roughly 23.5 geographical miles, with a right-of-way width of 225 feet. Proposal 202 featured primarily H-frame and three-pole tubular steel structures for the 500 kV transmission line, which RFP Respondent 202 determined to be most efficient and cost effective. Proposal 202 discussed foundation types and suitability in detail, and selected drilled pier foundations for stable soils



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and vibratory caisson foundations for unstable soils. Proposal 202 included a robust discussion of load cases and addressed lightning performance targets and shield wire angles for all structure types, and thoroughly demonstrated how its proposal conformed to Entergy interconnection and line tension requirements.

For the 230 kV transmission line conductor, Proposal 202 selected 954 kcmil ACSS (MA3) Cardinal based on its detailed conductor study report. The 230 kV conductor had maximum summer emergency line rating of 2,632 Amps at 257°F maximum conductor temperature with a wind speed of two feet per second.

Proposal 202's 230 kV transmission line would have a right-of-way width of 125 feet for each double circuit, with a length of roughly 2,500 feet for each circuit (collectively totaling approximately 10,000 feet). Proposal 202 explored the suitability of steel, wood, and concrete structures for its 230 kV transmission line, and chose steel monopoles for cost savings. Proposal 202 included modeling results and foundation details, and supported its 230 kV transmission line design with the same rigor as it did for its 500 kV transmission line.

RFP Respondent 202 provided comprehensive narrative and attachments to support its substation design. The proposed substation site for Proposal 202 was approximately eight acres. The 230 kV bus arrangement would be a ring bus configuration, which was less robust than the proposals that offered either breaker-and-a-half or double-breaker, double-bus arrangements for the 230 kV bus.

RFP Respondent 202 took proactive steps in its design to mitigate flood risk by taking into account the high water mark experienced during Hurricane Harvey, as well as placing all equipment and facilities for the new substation outside of the 100-year or 500-year floodplains. To support the certainty of its grading design and reduce risk, RFP Respondent 202 took soil borings at locations surrounding its substation parcel. Proposal 202's substation design was more robust than many other proposals because RFP Respondent 202 designed all elements to withstand 140 mph winds. Proposal 202 included a detailed discussion of substation protection and control design, which increased certainty. RFP Respondent 202 supported its substation design with side-view elevation drawings of its physical layout, provided bus and electrical jumper ampacity calculations, and included a lightning protection study for its site.

Proposal 202 demonstrated thoughtful consideration of flexibility in the planning horizon (one the RFP's aspects and elements) by laying out the substation to allow for ready expansion of the 500 kV bus and discussing the potential to expand the 500 kV bus to a ring or a breaker-and-a-half, supported by drawings. Proposal 202 also provided drawings and discussed the potential to add a second 500/230 kV transformer and to convert the 230 kV ring bus arrangement to a breaker-and-a-half.

By providing a 500 kV circuit breaker with a rating higher than the RFP-required minimum, RFP Respondent 202 increased the value of its proposal because the 500 kV breaker becomes a less limiting system element. Proposal 202 was comparable to several other proposals in providing for one spare single-phase transformer unit installed at the substation. Proposal 202



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distinguished itself from other proposals by including a detailed discussion of transformer vendor evaluation and selection, which increased the certainty of its substation proposal.

4.2.3 Project Implementation for Proposal 202

When MISO evaluated Proposal 202, it found Proposal 202's project implementation was 'Better' compared to other proposals, as depicted in Table 4-1. MISO based its finding on the results of its comparative analysis as summarized below.

Proposal 202 submitted a well-supported project management plan, including project-specific content and a responsibility matrix. The overall project schedule for Proposal 202 had a comprehensive, project-specific schedule for transmission line construction. Proposal 202 identified the project critical path and included a thorough risk register that addressed the likelihood of occurrence, consequences, risk level to MISO, and mitigation measures. Proposal 202's project management plan was also project specific that tied together all elements of the proposal.

The routing study provided with Proposal 202 included a discussion of co-location with infrastructure, KMZ files, a map of route crossings, and preliminary access plans. RFP Respondent 202 had completed design for several 500 kV transmission line routes and identified hundreds of route alternatives.

RFP Respondent 202 evaluated more than a dozen potential substation sites, performed geotechnical studies, and secured an option on the site it selected (which was close to the existing 230 kV transmission lines and therefore consistent with the aspect and element calling for minimizing the length of the project's new 230 kV transmission lines). The project risk register identified substation-related risks, with mitigation steps for each risk. RFP Respondent 202 conducted a wetland delineation survey of the substation site using field-collected data, noting that site-specific data differed from publicly available data.

Proposal 202 included a comprehensive permitting plan that identified necessary permits, described the process and associated schedule of activities to obtain them, and was complemented by a flow chart describing the PUCT permitting process. Proposal 202's right-of-way acquisition plan identified the specific parcels needed for its recommended route and addressed major crossings and the need for mitigation. Although proposal 202 solicited feedback from government agencies, the level of outreach and feedback incorporated into the proposal was not as comprehensive as the proposals categorized as 'Best' in project implementation.

Proposal 202 had a well-developed construction plan including map books, task sequencing, commissioning plan, and quality assurance and quality control (QA/QC). It also included an identified QA/QC manager. The schedule allowed reasonable buffer for the longest lead-time requirement, and the QA/QC plan for materials had contractual remedies for delays in material delivery.



The construction plan for Proposal 202 included access maps showing where to access equipment during construction, wetlands, and where equipment would be assembled. The commissioning plan was thorough, featuring project-specific testing plans for transmission lines and the new Stonewood 500 kV Substation. Construction risks were included in the project risk register and well supported.

With respect to safety during project construction, Proposal 202 identified a power safety coordinator and indicated that all employees would have stop work authority. The transmission line foreman would also have stop work authority for storms. Proposal 202 included multiple safety plans covering all project contractors.

4.2.4 Operations and Maintenance for Proposal 202

When MISO evaluated Proposal 202, it found Proposal 202's operations and maintenance were 'Good' compared to other proposals, as depicted in Table 4-1.

MISO found, among other things, that RFP Respondent 202 had a control center certified as a "high impact" for purposes of NERC critical infrastructure protection standards and demonstrated understanding of Reliability Coordinator operations processes and tools. RFP Respondent 202 indicated that it intended to integrate the project into the existing Local Balancing Authority Agreement with the interconnecting utility. Proposal 202 did not demonstrate a level of experience operating in the Eastern Interconnection (or with 500 kV transmission facilities) comparable to what MISO found in the 'Best/Better' proposals.

Proposal 202 did not document current communications infrastructure to the project Reliability Coordinator and Balancing Authority. Detail on modeling in the project area was limited compared to other proposals, which reduced certainty.

Proposal 202 provided less thorough explanations than some other proposals of the EHV experience and training plans for field crews to be involved in project maintenance activities. This reduced MISO's certainty that these crews would be capable of working on the project. Proposal 202 explained how RFP Respondent 202's switch order management software was embedded in its SCADA system.

For forced outage response, RFP Respondent 202 would have one dedicated first responder located less than an hour from the project. Affiliated companies (at least one of which had EHV experience but had personnel four hours away from the project) would provide additional outage support. The substation would have 24 hours of battery backup and a generator hookup available. Proposal 202 documented access to wetland equipment and provided detailed testing and re-energization procedures.

If emergency repairs were needed for the project, RFP Respondent 202 would have a first responder to assess damage. RFP Respondent 202 would use a contractor with EHV experience for significant repairs or rebuilds. RFP Respondent 202 could rely on its internal engineering staff to plan repairs and had some emergency replacement structures to use if permanent structures were unavailable. Proposal 202 provided less specificity on substation



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and relay work from internal crews and contractors than most other proposal and did not provide the level of evidence showing successful prior catastrophic response comparable to the 'Best/Better' proposals.

Proposal 202 included a detailed three-year maintenance plan. RFP Respondent 202 would use a computerized system to manage a project maintenance plan, which included on-line monitoring for transformer dissolved gas conditions and temperature. Maintenance contractors would be able to perform live-line maintenance. Proposal 202 provided less specificity concerning vegetation management contractors and staffing for maintenance-related equipment than many other proposals. Materials on hand would be sufficient to replace one mile of 500 kV and 230 kV line, and RFP Respondent would have available materials for breakers parts (but no full spare 500 kV or 230 kV breakers). RFP Respondent 202 committed to assess spare inventory annually for needed parts, structures, and equipment but did not specify triggers for minimum quantities.

Proposal 202 featured comprehensive safety plans from affiliated companies and a main contractor and described RFP Respondent 202's online safety training tools, which would follow International Electric Testing Association standards for certification. RFP Respondent 202 had a single contact safety director. Proposal 202 was stronger than some other proposals in supplying a location-specific hazard assessment and emergency action plan and a well-detailed induced current risk assessment and danger mitigation plan.

Proposal 202's safety information about participating companies' experience with EHV equipment was limited compared to proposals categorized as 'Best/Better.'

4.2.5 Planning Participation for Proposal 202

MISO evaluated planning participation for Proposal 202, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.3 Proposal 203

4.3.1 Overview of Proposal 203

Proposal 203 was notable for the variability in its performance across different evaluation criteria—more so than most other proposals. Proposal 203 was one of the least well-performing proposals in cost and design, roughly average in project implementation, and the best in operations and maintenance.

Proposal 203 had high project costs (\$141.9 million) and offered a ‘rate base cap’ of \$152.3 million, which was \$10.4 million higher than its project implementation cost. Proposal 203’s cost cap included AFUDC. Proposal 203 offered to cap its return on equity at 9.8% and equity in its capital structure at 45%.

Proposal 203 showed comprehensive understanding of agency requirements and processes related to routing, siting, and permitting for the project. Discussions of project risks and mitigation strategies were thorough, but the delineation of responsibilities between RFP Respondent and its project contractors was less specific than many other proposals.

Proposal 203 performed the best of all proposals in operations and maintenance based on many factors, including robust maintenance crews available in the project area, dedicated personnel for different facility types, substantial resources for maintenance and repairs, and top-tier safety metrics.

The Executive Committee assigned Proposal 203 a total evaluation score of 69 and found it to be generally good, as compared to the other proposals (Figure 4-2).

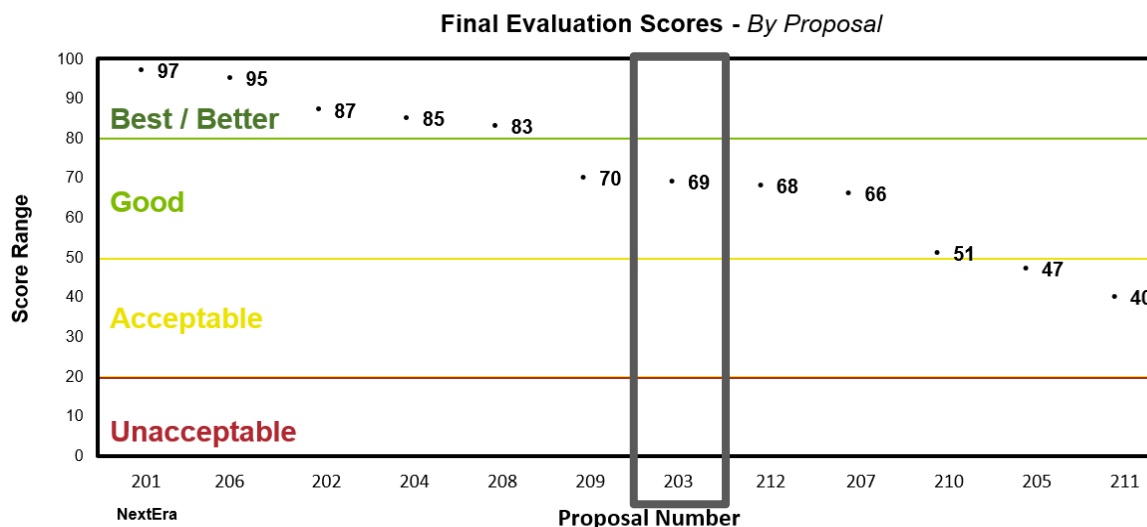


Figure 4-2: Proposal 203 Final Scoring Summary

In evaluating Proposal 203 against the four Tariff evaluation criteria, MISO categorized it as ‘Acceptable’ in cost and design, ‘Good’ in project implementation, and ‘Best’ in operations and maintenance, as compared to the other proposals (Table 4-4).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-4: Proposal 203 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-5: Proposal 203 Ranking

4.3.2 Project Cost and Design for Proposal 203

When MISO evaluated Proposal 203, it found Proposal 203's cost and design were 'Acceptable' compared to other proposals, as depicted in Table 4-4.

Cost Highlights

In evaluating Proposal 203's estimated project cost, MISO found that Proposal 203 submitted a high project implementation cost of \$141.9 million (compared to the median project implementation cost of \$121.3 million). Proposal 203 had high administrative and general costs and high AFUDC. Proposal 203 also offered a high 'rate base cap' of \$152.3 million, which was \$10.4 million above its project implementation cost. Proposal 203 included AFUDC in its rate base cap and offered to cap the AFUDC rate as well. Proposal 203 discussed how project risks might affect project costs but did not include stated contingency costs to cover identified risks.

Proposal 203 is one of eight proposals with a schedule guarantee. Proposal 203 was the only proposal to offer a reliability guarantee (under which failure to meet a minimum percentage of in-service availability for the 500 kV line would result in a reduction to rate of return), but MISO did not anticipate the reliability guarantee would significantly increase operational requirements beyond applicable NERC standards. Proposal 203's cost estimate information was generally well supported.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-6: Proposal 203 Cost Cap Summary

Proposal 203 submitted an ATRR estimate of \$127.7 million (compared to the median ATRR estimate of \$106 million). Proposal 203's ATRR estimate was higher than most other proposals. The high project and administrative and general costs noted above were partially offset by low operations and maintenance costs. RFP Respondent 203 offered to cap the rate on AFUDC and had caps on return on equity (9.8%, including adders) and equity percentage in capital structure (45%) that were comparable to a number of other proposals.

A notable feature in Proposal 203 was an offer to cap the cost of debt through 2025, but this interest rate cap was higher than the figure used in Proposal 203's ATRR estimates. Proposal 203 had very low estimated costs for operations and maintenance, but with no caps on operations and maintenance costs and no funding for on-going capital expenditures.

Design Features

Proposal 203 discussed evaluating several structure types and considered aesthetics, conductor configuration, foundations, terrain, weather, right-of-way width, operations and maintenance, and cost. Proposal 203 provided engineering studies and drawings to support its transmission line design.

For the 500 kV transmission line, RFP Respondent 203 selected guyed-delta steel lattice structures on vibratory pipe pile foundations as the most economical and most environmentally compatible structure configuration. RFP Respondent 203 committed to test the structures to full design loading to ensure they would be adequate. The estimated length of the 500 kV transmission line would be roughly 23 geographical miles, with a right-of-way width of 180 feet.

For the 230 kV transmission lines, Proposal 203 selected steel monopole structures with vibratory pipe pile foundations, located in a right-of-way roughly 175 feet wide. Proposal 203 had relatively short 230 kV transmission lines (approximately half a mile for each circuit, for aggregate circulate length of two miles), which better conformed than some other proposals to the RFP's aspect and element emphasizing shorter 230 kV transmission lines.

The proposed 500 kV bundled conductor—954 kcmil ACSR Rail—had a maximum summer emergency line rating of 3,024 Amps at 248°F maximum conductor temperature (with



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no wind). In MISO's opinion, this was higher than typical industry standard for this type of conductor and Proposal 203 did not discuss potential loss of conductor strength.

The 230 kV conductor—1,272 kcmil ACSS Bittern—had maximum summer emergency line rating of 2,139 Amps at 392°F maximum conductor temperature with wind speed of two feet per second. RFP Respondent 203 had performed studies for electric field, magnetic field, and audible noise limits, and provided a geotechnical report and plan and profile drawings for both the 230 kV and 500 kV transmission lines.

Proposal 203 did not have as thorough a narrative explaining its proposed substation design, and provided fewer supporting design drawings and studies than higher-scoring proposals. Proposal 203 designed a substation site of approximately 8.5 acres. Proposal 203 was one of several proposals with a ring bus design for the 230 kV bus in the new Stonewood 500 kV Substation, and, in general, met the requirements in the RFP whereas other proposals exceeded the requirements.

RFP Respondent 203 took proactive steps in its design to mitigate flood risk to the substation by taking into account the site's experience during Hurricane Harvey, as well as ensuring the substation site was not within the 100-year or 500-year floodplain. To support its grading design, RFP Respondent 203 took soil borings at its proposed substation site, which increases certainty and reduced risk. The substation structures and bus work in the Stonewood 500 kV substation were more robust than other proposals because they were designed to withstand up to 150 mph winds. Proposal 203 provided redundant line relaying on the 500 kV transmission line protection scheme.

Proposal 203 showed thoughtful consideration of flexibility in the planning horizon (another of the RFP's aspects and elements) by laying out the substation to allow for ready expansion of the 500 kV bus. Proposal 203 also discussed converting its 230 kV bus arrangement to breaker-and-a-half to add positions and provided relevant drawings. While several other proposals provided for one spare single-phase transformer unit installed on site, Proposal 203 did not.

4.3.3 Project Implementation for Proposal 203

When MISO evaluated Proposal 203, it found Proposal 203's project implementation was 'Good' compared to other proposals, as depicted in Table 4-4.

Proposal 203 contained a thorough risk register, which included probability of occurrence, cost and schedule impacts, mitigation steps, contingency analysis, and narrative to support risk assessments. Weather days were built into the schedule, which also included a critical path and identified the potential for additional float if the project schedule were to change from a five-day to a six-day schedule.

The project management plan for Proposal 203 was project specific. It included a comprehensive project management policy, along with an outline of the project management process. The allocation of responsibility between RFP Respondent 203 and its contractors was not as well delineated as in some other proposals. This was true in many areas of project



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implementation, which made it more difficult for MISO to assess capabilities and qualifications, and reduced certainty with respect to Proposal 203's project implementation plan.

RFP Respondent 203 did demonstrate knowledge of federal, state, and local permitting processes and provided a well-supported permitting strategy. This was notable in view of the importance of regulatory certainty as one of the RFP's aspects and elements.

The routing process for Proposal 203 was thorough, with identified line segments and a table showing interference types for each segment. The proposal explained RFP Respondent 203's criteria for ranking and prioritizing routes, referring to PUCT guidelines. In discussing the preferred route, Proposal 203 described each segment in the preferred route and addressed pipeline crossings and other relevant constraints.

RFP Respondent 203 had secured an option on its preferred substation site, had taken soil borings, and spoke with local landowners to confirm the site did not flood during Hurricane Harvey. RFP Respondent 203 described the criteria it used for ranking sites, based on PUCT requirements, and conducted fatal flaw analysis on the substation site based on an array of selection criteria but provided less dialogue to support its analysis than other proposals.

In discussing permitting, Proposal 203 listed best practices for work with the PUCT and its CCN process and provided a flow chart of the CCN application process. RFP Respondent 203 had also evaluated local species of wildlife that could affect project sites and provided supporting discussion that demonstrated knowledge of federal, state, and local permitting processes.

MISO found that RFP Respondent 203 had identified the parcels in its recommended route, but the information provided in support of the parcels was less robust than higher-scoring proposals. Proposal 203's construction plan narrative was not as descriptive as several other proposals. RFP Respondent 203's construction contractors had recent relevant experience in the project area.

MISO found that Proposal 203's safety plan offered limited information, but proposal narrative explained how the RFP Respondent would require all personnel assigned to the project to be trained to company-specific safety requirements. The proposal did address stop-work authority.

4.3.4 Operations and Maintenance for Proposal 203

When MISO evaluated Proposal 203, it found Proposal 203's operations and maintenance were 'Best' among all proposals, as depicted in Table 4-4.

MISO found that RFP Respondent 203 had a control center with qualified resources that were experienced in monitoring, operating, and coordinating EHV facilities in the project area. The backup control center would operate as a "hot" backup with diversely routed communications. RFP Respondent 203 demonstrated experience with the project Reliability Coordinator's processes.



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RFP Respondent 203 had an integrated, organization-wide outage management system that interfaced with the project Reliability Coordinator's coordinated outage tool. There were personnel in the project area, experienced with 500 kV equipment, available for outage coordination. Switching coordination would be supported by trained employees, on call at all times, with response times under 45 minutes. Proposal 203 described the required training for switching and clearance certification and included a relay training plan.

RFP Respondent 203 had access to local, task-specific field crews (substation, relay, substation operations, and transmission line) with EHV experience and access to specialized equipment for local terrain, as well as predictive tools. Proposal 203 included restoration plans for the project area, a comprehensive emergency response plan, and thorough pre-restoration testing procedures. Proposal 203 discussed the potential to engage additional crews, as well as helicopters and heavy cranes.

Proposal 203 did not include a plan for temporary construction following a catastrophic loss because RFP Respondent 203 intended to maintain sufficient material and resources, as well as funding, to replace the entire project as designed. Proposal 203 provided a well-supported catastrophic restoration plan that took into account local storm considerations.

RFP Respondent 203 had a comprehensive maintenance plan supported by robust staff and centralized systems that predict, schedule, and monitor maintenance effectiveness and track spare parts for all equipment. Proposal 203 had much lower estimated operations and maintenance costs than all other proposals. Proposal 203 did not include a plan to fund on-going capital expenditures in future years of the project.

RFP Respondent 203 had available 230 kV and 500 kV spare breakers, and had access to more than five miles of 500 kV spare transmission material and a remote spare transformer phase through affiliated organizations. Maintenance would be funded through cash on hand and revenue from the project's ATRR.

RFP Respondent 203 had a robust safety program with training (based on a multi-year training curriculum, including human performance) and a dedicated onsite safety specialist. Contractors would be vetted and held to the same standard as employees. RFP Respondent 203 had top-tier safety metrics and facilities that had been recognized for outstanding safety efforts.

4.3.5 Planning Participation for Proposal 203

MISO evaluated planning participation for Proposal 203, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.4 Proposal 204

4.4.1 Overview of Proposal 204

Proposal 204 showed particular strength in areas of project implementation and transmission line design. Proposal 204 had a moderate project implementation cost estimate (\$127.9 million) and a project cost cap equal to that estimate. Proposal 204 capped several other inputs to its ATRR, including return on equity (at 9.8%), equity in capital structure (at 45%), and the first 10 years of operations and maintenance costs. Proposal 204 offered a 10-year ATRR cap and included no AFUDC. The multiple cost-capping components of Proposal 204 were responsive to the aspect and element from the RFP emphasizing cost certainty to maintain or increase the benefit-to-cost ratio of the project.

Proposal 204 included guyed-V lattice transmission towers as the primary structures for the 500 kV transmission line and a gas-insulated substation with a breaker-and-a-half bus arrangement for the 230 kV bus. Project implementation for Proposal 204 reflected extensive field investigation and outreach to federal, state, and local authorities. The project-specific, extensive analysis and narrative in Proposal 204 show thorough knowledge and substantial effort in proposal development.

The Executive Committee assigned Proposal 204 a total evaluation score of 85 and found it to be generally better than most other proposals (Figure 4-3).

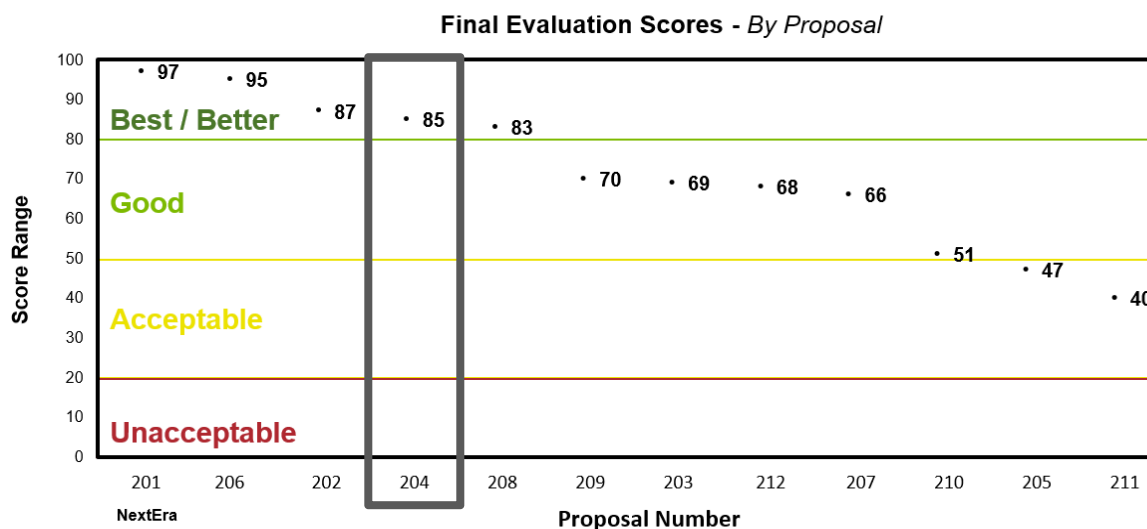


Figure 4-3: Proposal 204 Final Scoring Summary

In evaluating Proposal 204 against the four Tariff evaluation criteria, MISO categorized it as 'Good' in cost and design, 'Best' in project implementation (tied with the other three proposals), and 'Better' in operations and maintenance, as compared to the other proposals (Table 4-7).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	Redacted
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-7: Proposal 204 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-8: Proposal 204 Ranking

4.4.2 Project Cost and Design for Proposal 204

When MISO evaluated Proposal 204, it found Proposal 204's cost and design were 'Good' compared to other proposals, as depicted in Table 4-7.

Cost Highlights

In evaluating Proposal 204's estimated project cost, MISO found that Proposal 204 submitted a moderate project implementation cost of \$127.9 million (compared to the median project implementation cost of \$121.3 million). Proposal 204's 'rate base cap' was equal to its project implementation cost. RFP Respondent 204 committed not to seek AFUDC or CWIP.

Proposal 204's project implementation cost included a high amount of contingency. Proposal 204 determined its contingency level by quantifying the magnitude and likelihood of numerous risks. Proposal 204 was one of eight proposals with a schedule guarantee.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-9: Proposal 204 Cost Cap Summary

Proposal 204 submitted an ATRR estimate of \$105.5 million, which was very close to the median ATRR estimate of \$106 million. Proposal 204 would cap ATRR for the first 10 years of project operation (structured as individual one-year caps on annual revenue recovery across the first 10 years of project operations). Proposal 204 would also cap its return on equity (at 9.8% for the life of the project) and equity percentage in capital structure (at 45% for the life of the project). Proposal 204 would cap operations and maintenance costs for the first 10 years of project operation (also structured as individual one-year caps). Proposal 204 provided for a moderate amount of capital expenditures in future years of the project.

Design Features

Proposal 204's 500 kV and 230 kV transmission line designs were very robust in performance and rigor, supported by engineering studies and drawings, as well as fieldwork in the project area, including multiple soil borings.

The estimated length of the Proposal 204's 500 kV transmission line was roughly 23 geographical miles, with a right-of-way width of 200 feet. RFP Respondent 204 selected primarily guyed-V steel lattice structures for the 500 kV transmission line, which were compatible with the terrain in the project area and offered significant cost savings. The structures would be supported by helical anchor and concrete drilled pier foundations. RFP Respondent 204 specified its transmission line design criteria and provided all structure load and design drawings, showing 125 mph and 140 mph wind load cases.

The proposed 500 kV bundled conductor—2,156 kcmil ACSR Bluebird—had a maximum summer emergency line rating of 4,152 Amps at 239°F maximum conductor temperature (with wind speed of two feet per second). This line rating was approximately 39% higher than the minimum required in the RFP. Proposal 204 provided all rating parameters and discussed loss of conductor strength. RFP Respondent 204 defined its galloping and vibration criteria for the 500 kV transmission line and discussed relevant tension limits.

For the 230 kV transmission lines, Proposal 204 featured steel monopole structures with drilled pier foundations, located in a right-of-way roughly 250 feet wide. Proposal 204 had a relatively short 230 kV transmission lines (approximately 1,100 feet for each circuit, with aggregate circuit length of less than a mile), which conformed to the RFP's aspect and element



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emphasizing shorter 230 kV transmission lines. Proposal 204 included a design criteria document that discussed meeting Entergy interconnection requirements.

The 230 kV bundled conductor—1,272 kcmil ACSR Pheasant—had a maximum summer emergency line rating of 2,964 Amps at 239°F maximum conductor temperature (with wind speed of two feet per second). The 230 kV transmission line rating was approximately 72% higher than the MISO-required minimum. Proposal 204 specified all rating parameters and discussed loss of conductor strength.

For both its 500 kV and 230 kV transmission lines, RFP Respondent 204 specified its ground resistance targets and provided detail drawings. Proposal 204 included a lightning study report and discussed shield angle and related lightning performance targets.

Proposal 204 had a well-supported substation design with numerous redundant features, as well as a 500/230 kV transformer capacity larger than the minimum required by the RFP. RFP Respondent 204 thoroughly identified, considered, and discussed environmental risks and mitigation and was among the most thorough in completion of supporting design studies for the project.

Proposal 204 was one of only two proposals with a gas-insulated substation design. (The other was Proposal 208, which was submitted by the same RFP Respondent and had an identical substation design but a different 500 kV transmission line design.)

Proposal 204 called for a substation site of approximately three acres. The arrangement for Proposal 204's 230 kV bus—a breaker-and-a-half—was more flexible and robust than a ring bus arrangement. Three other proposals (Proposals 208, 209, and 211) offered a breaker-and-a-half arrangement. Proposal 204 incorporated two fully redundant line relaying protection schemes for the 500 kV transmission line. Proposal 204 provided a grounding study (as did several other proposals). Equipment ratings for the circuit breakers and the transformers were all higher than the requirements in the RFP. Proposal 204 provided three sources of station service power.

Proposal 204's substation design and location offered some flexibility in the planning horizon (although not as much as the Selected Proposal). Proposal 204 discussed the potential to add one more 500 kV transmission line and provided a drawing depicting it. Proposal 204 was comparable to several other proposals in providing for one spare single-phase transformer unit installed on site.

4.4.3 Project Implementation for Proposal 204

When MISO evaluated Proposal 204, it found Proposal 204's project implementation was 'Best' compared to other proposals, as depicted in Table 4-7.

RFP Respondent 204's highly organized proposal for project implementation increased certainty and specificity and highlighted its understanding of the RFP. The facts and findings supporting MISO's determination are summarized below.



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Proposal 204 provided a project-specific schedule that included a thorough breakdown at the task and activity level. Proposal 204 demonstrated comprehensive treatment of project risks, with a risk register that included probability of occurrence, cost and schedule impacts, mitigation steps, and risk responsibilities. Proposal 204 identified experienced project management staff, along with a construction plan that would rely on a reputable, experienced construction contractor.

RFP Respondent 204 submitted routing studies and environmental assessments, showing it evaluated many different routes for the 500 kV transmission line and identified one preferred route. Consistent with PUCT procedures, RFP Respondent 204 used an array of segments to develop its routing alternatives. RFP Respondent 204 obtained a number of geotechnical core samples, identified existing infrastructure crossings (noting the need for alternating current mitigation at pipeline crossings), and included supporting aerial video of its proposed routes.

RFP Respondent 204 conducted initial coordination with federal, state, and local agencies to discuss potential routes and identify constraints, and sent letters to other agencies requesting routing input. RFP Respondent 204 also met with the Sabine River Authority to evaluate canal crossings and associated requirements. The level of regulatory outreach reflected in Proposal 204 was outstanding among proposals.

Proposal 204 had a well-supported inventory of parcels including landowners, utility crossings, and other constraints. Proposal 204 identified high-risk parcels and had secured options on two easements adjacent to the existing Hartburg Substation. RFP Respondent 204 identified and provided experience for routing and siting staff, as well as third-party contractors engaged to provide permitting support. RFP Respondent 204 also furnished a clear summary and timeline for the CCN process.

Proposal 204's project risk register included substation-related risks. In evaluating potential substation sites, RFP Respondent 204 conducted a fatal flaw analysis, included floodplains and wetlands on maps, and provided cultural resource maps for the parcels it considered. There was a high-level study for each potential substation site, as well as a table of permits needed for the substation. RFP Respondent 204 developed a risk exposure matrix for the sites it considered and included a full wetland delineation study for those parcels.

In addition to the easement options for the Hartburg Substation, RFP Respondent 204 secured an option for its selected substation site. RFP Respondent 204 explained its land acquisition plan, listed the personnel involved in land acquisition (and their experience) and provided maps for landowners and all rights-of-way.

RFP Respondent 204 submitted a comprehensive construction plan, including map books, task sequencing, outages needed on existing transmission equipment, a commissioning plan, and quality assurance and quality control measures. Proposal 204 identified the primary construction contractor along with a list of subcontractors. The construction plan identified the scope of work for each contract and was accompanied by an organizational chart, which enhanced specificity. RFP Respondent 204 analyzed cost and commodity risk and potential



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effects on key equipment pricing and specified an independent testing contractor for materials testing.

Proposal 204 identified transmission line engineering and substation design contractors, as well as supporting personnel and their locations and a scope of work for both the new Stonewood 500 kV Substation and the transmission lines. Proposal 204 described plans for future coordination with Entergy as the interconnecting utility and addressed engineering team support for the CCN filing process. RFP Respondent 204 summarized its commissioning process, including a list of personnel and support positions, an equipment testing plan, and a well-supported outage overview.

Proposal 204 included a workplace safety plan for the construction process (although it was not project-specific) and identified a project safety manager, but did not specifically address who had stop-work authority.

4.4.4 Operations and Maintenance for Proposal 204

When MISO evaluated Proposal 204, it found Proposal 204's operations and maintenance were 'Better' compared to other proposals, as depicted in Table 4-7.

RFP Respondent 204 stated that it would leverage existing relationships to integrate the project. One of RFP Respondent 204's affiliates had a control center that operates EHV facilities in the ERCOT portion of Texas. RFP Respondent 204 documented its affiliates' extensive 500 kV experience operating in the Eastern Interconnection in hurricane-prone areas and their commitment to support the project. Proposal 204 included evidence that RFP Respondent 204's affiliated companies have had successful operations audits in several regions.

Proposal 204 described plans to model the project area for state estimator and real-time contingency analysis. RFP Respondent 204's affiliated companies had extensive resources available for engineering, technical support, asset management, and maintenance planning. Proposal 204 included a document describing Reliability Coordinator outage procedures and timing.

Proposal 204 was less strong than the proposals that scored higher in operations and maintenance in its approach to communications, had a less robust outage coordination process, and less local experience with switching coordination. RFP Respondent 204 did not detail as thoroughly its processes for control center outage engineering or creating operating guides, compared to the proposal categorized as 'Best' for operations and maintenance. In addition, although Proposal 204 called for a gas-insulated substation, the implications of having a gas-insulated substation, from an operations and maintenance standpoint, were not thoroughly discussed.

For switching coordination, the Proposal 204 described comprehensive field crew and control center training programs and qualification, and provided a safety rulebook and a safety operating plan. RFP Respondent 204 would retain a local contractor crew to facilitate all planned switching. For forced outage response and emergency repairs, RFP Respondent 204



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would use a two-person internal local crew located less than an hour from the project, with support from RFP Respondent 204's control room for the project.

RFP Respondent 204's internal crews would be supported by a contractor with numerous personnel less than one hour from the project. The contractor would have tracked carriers for wetlands and had 500 kV experience in the area, including interconnecting 500 kV facilities. RFP Respondent 204 would have tracked vehicles and high water access vehicles available, and would also contract for cranes, helicopters, environmental, and EHV testing equipment from original equipment manufacturers.

Proposal 204 included comprehensive procedures for repairing various types of equipment for the project and for testing equipment before re-energizing. RFP Respondent 204's support personnel would have live-line insulator replacement capability, and Proposal 204 explained how its project transmission structure designs and configurations would accommodate live-line work. Proposal 204 included detailed testing and switching procedures.

RFP Respondent 204 documented its ability to leverage an affiliated company's emergency preparedness plans and procedures for multiple threats, reflecting extensive experience with hurricane response and preparedness, procedures, and in-house storm weather tracking. There would be spare equipment located within 3.5 hours from the project (to protect from weather events). RFP Respondent 204 provided evidence that its family of companies had financed and performed extensive crisis repair work and had robust financial capability, although Proposal 204 did not detail a specific plan to finance project work.

As noted in the discussion of substation design, RFP Respondent 204 would have a spare single-phase transformer installed at substation, and committed to replace it if it were used, as well as to maintain one spare 230 kV and one spare 500 kV breaker at the substation site. Beyond that, RFP Respondent 204 would have access to a large inventory of spares held by affiliated companies, supplemented by pre-arranged support from various suppliers.

For maintenance, RFP Respondent 204 had an asset management program that could trigger changes to scheduling, adjust task frequency, and generate new work orders to address identified non-normal conditions. The asset management program also had computerized capability to manage spares stock and restocking, oversee spares holding location, and dispatch needed spare parts within hours. RFP Respondent 204 would leverage existing real-time monitoring tools to enable field operations teams to detect impending problems immediately. While RFP Respondent 204's affiliated companies would have an internal vegetation management program and software tools, most maintenance work would be bid out or assigned to capable vendors.

Proposal 204 detailed costs associated with individual maintenance tasks and on-going capital expenditures. As noted in the cost and design discussion above, RFP Respondent 204 committed to cap its operations and maintenance costs for the first 10 years of project operations.



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RFP Respondent 204 submitted a comprehensive safety program for operations and maintenance, together with relevant documentation and supporting narrative. Proposal 204 detailed safety requirements for contractors and included a safety manual from its main operations and maintenance contractor. RFP Respondent 204 had a dedicated safety manager and dozens of safety professionals in its organization. Proposal 204's description of mitigating induced current hazard when grounding was not as thorough as some other proposals.

4.4.5 Planning Participation for Proposal 204

MISO evaluated planning participation for Proposal 204, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.5 Proposal 205

4.5.1 Overview of Proposal 205

Proposal 205 was a relatively high-cost proposal without any distinguishing features in design or other areas commensurate with its high costs. Proposal 205 had high project costs (\$142.2 million), but offered a 'rate base cap' (\$135 million) that was \$7.2 million lower than its project implementation cost. Proposal 205's cost cap included AFUDC, but allowed the cap to increase based on commodity cost increases. Proposal 205 has offered to cap its return on equity at 10.7% (which was higher than most other proposals) and proposed the highest percentage of equity in its capital structure, at 60%. Proposal 205 was one of four proposals to expressly assume some risk related to route changes order by the PUCT. Specifically, Proposal 205, which had an estimated 500 kV transmission line length of 24.5 miles, would assume cost risk for increases up to 26 miles, and would cap costs for mileage beyond that at a specific per-mile limit.

The substation site for Proposal 205 was closer to coastal waterways than other proposals, which potentially increased flooding risks. Proposal 205 had a more preliminary project implementation plan than many other proposals, had inconsistent information on routing, and provided less detail on risks and project schedule than other proposals. Operations and maintenance information was sparse in many areas. MISO noted a single asset manager charged with many critical tasks and an acknowledgement that during catastrophic events, response resources were likely to be strained.

The Executive Committee assigned Proposal 205 a total evaluation score of 47 and found it to be generally acceptable, as compared to the other proposals (Figure 4-4).

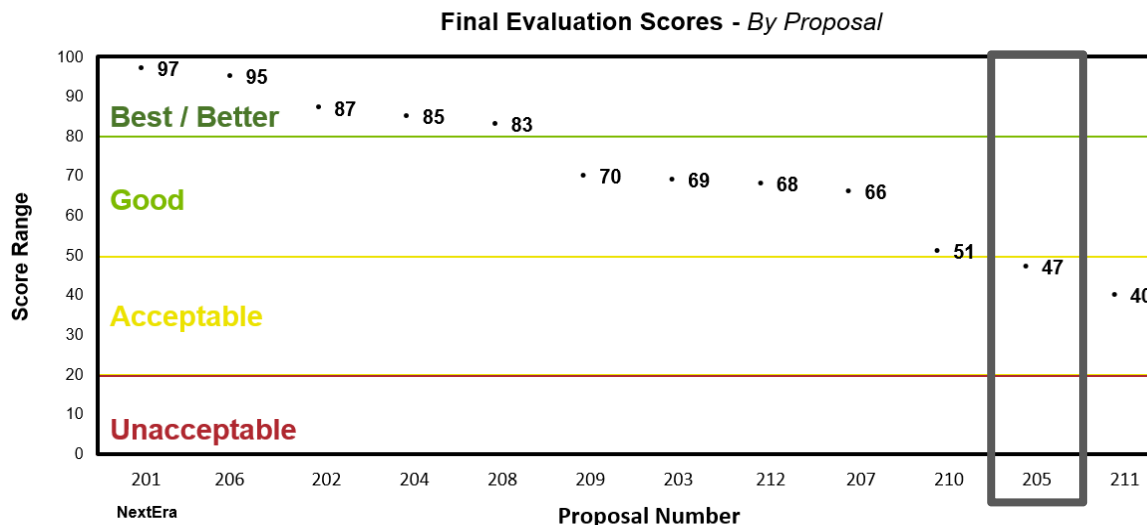


Figure 4-4: Proposal 205 Final Scoring Summary



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In evaluating Proposal 205 against the four Tariff evaluation criteria, MISO categorized it as 'Acceptable' in cost and design, 'Acceptable' in project implementation, and 'Acceptable' in operations and maintenance, as compared to the other proposals (Table 4-10).

Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	Redacted
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-10: Proposal 205 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-11: Proposal 205 Ranking

4.5.2 Project Cost and Design for Proposal 205

When MISO evaluated Proposal 205, it found Proposal 205's cost and design were 'Acceptable' compared to other proposals, as depicted in Table 4-10.

Cost Highlights

In evaluating Proposal 205's estimated project cost, MISO found Proposal 205 submitted a high project implementation cost of \$142.2 million (compared to the median project implementation cost of \$121.3 million), although Proposal 205 offered to cap project costs at \$135 million (including AFUDC). This was \$7.2 million lower than its cost estimate. Proposal 205 reserved the option to exceed its cost cap due to increases in commodity costs, and was the only proposal to specify this cost cap exemption.

Proposal 205 included the largest contingency of all proposals, which was offset in part the \$7.2 million reduction in estimated costs from the cost cap. Proposal 205 offered to absorb up to a 1.5-mile increase in the length of its 500 kV transmission line based on PUCT-mandated changes to the route. Based on the estimated 500 kV line length of 24.5 miles (the longest of all



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proposals), this would mean that additional costs for length up to 26 miles would not increase Proposal 205's cost cap. The costs for any necessary mileage beyond that would be capped at a specific per-mile limit. Proposal 205 was one of eight proposals with a schedule guarantee.

OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-12: Proposal 205 Cost Cap Summary

Proposal 205 submitted an ATRR estimate of \$136 million (compared to the median ATRR estimate of \$106 million). Proposal 205's submitted estimate was higher than others, due to high project costs, and Proposal 205 did not offer to cap ATRR.

Proposal 205 also had a high cap on return on equity (at 10.7%, including adders). Only one proposal had higher return on equity. Proposal 205's cap on equity percentage in capital structure was 60%. This was the highest equity percentage (along with one proposal that also called for 60% equity).

The estimated operations and maintenance costs for Proposal 205 was in the high range, but Proposal 205 offered to cap operations and maintenance costs for the first five years of project operations. Proposal 205 did not provide for capital expenditures in future years of the project. The information supporting Proposal 205's cost and ATRR estimates was generally high level.

Design Features

Proposal 205 would use a combination of guyed steel lattice V and self-supporting lattice towers on helical pier foundations with a horizontal phase configuration for the 500 kV transmission line. The route length of the 500 kV transmission line for Proposal 205 (roughly 24.5 geographical miles) was the longest of all proposals. The proposed right-of-way width for the 500 kV transmission line was 200 feet.

All four of the 230 kV transmission lines for Proposal 205 would extend less than one-quarter of a mile in geographical distance. This was comparable to several other proposals, and was responsive to the aspect and element of the RFP that encouraged minimizing 230 kV line length. Proposal 205 was unique in proposing to locate all 230 kV transmission lines within its Stonewood 500 kV Substation land parcel.



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For its proposed 500 kV bundled conductor—954 kcmil ACSR Cardinal—Proposal 205 indicated a maximum conductor temperature of 248°F with wind speed of two feet per second. In MISO's opinion, this was higher than typical industry standard for this type of conductor and Proposal 205 did not discuss potential loss of conductor strength. For its proposed 230 kV conductor—1,272 kcmil ACSS Bittern—Proposal 205 indicated a maximum conductor temperature of 428°F, with wind speed of two feet per second. The 500 kV line's summer and winter emergency rating was 3,485 Amps; the 230 kV line's summer and winter emergency rating was 1,948 Amps.

Proposal 205 provided transmission line design criteria and design modeling information for both 230 kV and 500 kV transmission lines that addressed existing transmission line crossing requirements but did not fully demonstrate that its proposal conformed to Entergy interconnection tension requirements. Proposal 205 included industry guideline design tension and discussed catenary constant.

RFP Respondent 205 completed a preliminary geotechnical survey and did numerous soil borings in the project area. Proposal 205's substation site (approximately five acres) would be located very close to coastal waterways. The substation grade would be above the nearest 100-year floodplain, which was comparatively less robust than other proposals that committed to design their substations outside of the 100-year floodplain, the 500-year floodplain, and take into account the water elevation experienced during Hurricane Harvey.

Proposal 205 was one of several proposals with a ring bus design for the 230 kV bus in the new Stonewood 500 kV Substation. Proposal 205 included a grounding study, which increased certainty in its substation design. Equipment ratings for the circuit breakers and transformers all met all requirements in the RFP.

With respect to planning flexibility, which was noted in the RFP as another aspect and element, the substation location for Proposal 205 would present challenges, and would provide less planning flexibility than other proposals. Proposal 205 did discuss converting the 230 kV ring bus arrangement to breaker-and-a-half, and provided a corresponding drawing. Proposal 205 was comparable to several other proposals in providing for one spare single-phase transformer unit installed on site.

4.5.3 Project Implementation for Proposal 205

When MISO evaluated Proposal 205, it found Proposal 205's project implementation was 'Acceptable' compared to other proposals, as depicted in Table 4-10.

Proposal 205's information on project schedule and management laid out a general schedule with a critical path and a high-level risk register, but had limited supporting discussion in many areas, such as weather delays. Proposal 205 also had a high-level project management plan that lacked supporting discussion, was not project specific, and did not tie individual elements of the plan together as well as other proposals.



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Proposal 205's information on regulatory permitting, route, and site evaluation indicated that RFP Respondent 205 evaluated numerous routes. A preferred route was shown on Proposal 205's KMZ file, but not provided in the routing study. Although Proposal 205 identified route crossings, there was minimal supporting discussion of risk analysis associated with the crossings. RFP Respondent 205 performed some geotechnical work, but there was but no indication which route was studied. Proposal 205's routing study and environmental assessment for transmission routing were more preliminary than other proposals. Likewise, Proposal 205's narrative explaining its choice among potential routes and tying its selection criteria to the routes evaluated was more limited than other proposals. Proposal 205 did not document outreach to relevant agencies comparable to higher-scoring proposals.

RFP Respondent 205 secured an option for its chosen substation site, as well as an option for a laydown yard, but provided ambiguous information on the number of substation sites it evaluated. Proposal 205 identified pipelines close to its substation site but did not discuss mitigation and offered limited description of its siting process. Proposal 205 reflected minimal evaluation of additional site concerns and there was little evidence of wetland delineation or discussion of storm surge and flooding. For land and right-of-way acquisition, Proposal 205 included a list of landowners with parcel cost estimations.

Proposal 205's information on its construction process generally consisted of limited, high-level discussion and most supporting information was not project specific. Neither quality control and quality assurance nor materials transportation were as thoroughly discussed as other proposals. Proposal 205's construction plan had limited process information and addressed constructability and project controls only at a high level.

Proposal 205 included a comprehensive safety plan that specifically addressed stop-work authority (granted to all employees) and identified a safety manager.

4.5.4 Operations and Maintenance for Proposal 205

When MISO evaluated Proposal 205, it found Proposal 205's operations and maintenance were 'Acceptable' compared to other proposals, as depicted in Table 4-10, based on the facts and determinations summarized below.

RFP Respondent 205 indicated it would create a new Local Balancing Authority for the project, but did not thoroughly explain its plan for doing so. An entity with experience in the immediate project area would perform the associated operational duties. RFP Respondent 205 described its "high-impact" compliant primary control center in the project area, and mentioned a backup control center, but did not provide supporting information. Although Proposal 205 demonstrated experience with the project Reliability Coordinator's outage coordination process, it lacked specificity on outage coordination software, processes, operating guides, and outage request timing.

RFP Respondent 205 had internal staff with 500 kV line and substation experience in the project area, as well as a dedicated project asset manager and several staff operations engineers. Discussion of field personnel qualifications and training for switching coordination



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lacked specificity. RFP Respondent 205 would have available at all times an asset manager with broad, critical responsibilities for the project, with more than two dozen field staff (experienced with 500 kV facilities in local area) less than three hours from project. Proposal 205 lacked description of monitoring and control capabilities during outages and wetland-appropriate vehicles.

RFP Respondent 205 acknowledged that its asset manager could be overwhelmed after an event strong enough to damage project facilities and that other priorities could strain resources during a catastrophic event. Proposal 205 did not provide a well-supported mitigation plan.

Although RFP Respondent 205 would have a spare transformer installed at the substation, as well as materials on hand sufficient to replace one mile of 500 kV transmission line, Proposal 205's material procurement plan was less comprehensive than other proposals. Unspecified temporary structures could be used if correct replacements were unavailable.

Proposal 205 had minimal information on transformer maintenance tasks and limited information on maintaining 500 kV facilities. Although Proposal 205 mentioned a maintenance database, it did not explain how data would drive and trigger maintenance decisions. Available spare parts for the project were limited. One of the entities responsible for maintenance would be capable of performing live-line maintenance on the project.

Proposal 205's discussion of its safety plan for operations and maintenance activities was less thorough than some other proposals, which reduced certainty. There was minimal information on location-specific safety practices or a safety manager, safety training and certification, different hazard types, or induced current hazard mitigation. Proposal 205 stated that RFP Respondent 205 would ensure contractors comply with state standards. The entity performing fieldwork showed top-tier safety metrics, but there were no safety records for operations and maintenance contractors and minimal supporting information for maintenance tasks and project-specific safety considerations.

4.5.5 Planning Participation for Proposal 205

MISO evaluated planning participation for Proposal 205, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.6 Proposal 206

4.6.1 Overview of Proposal 206

Proposal 206 was submitted by the RFP Respondent that submitted Proposal 204. Proposal 206 shared some strengths of Proposal 204 including solid transmission line design, robust substation design, and strength across all evaluation criteria.

Proposal 206 had a moderate project implementation cost estimate (\$119.7 million) and a project cost cap equal to that estimate. Like Proposal 204, Proposal 206 capped several other inputs to its ATRR, including return on equity (at 9.8%), equity in capital structure (at 45%), and the first 10 years of operations and maintenance costs. Proposal 206 offered a 10-year ATRR cap and included no AFUDC. The multiple cost-capping components of Proposal 206 were responsive to the aspect and element from the RFP emphasizing cost certainty to maintain or increase the benefit-to-cost ratio of the project.

Proposal 206 differed from Proposal 204 by offering H-frame transmission towers as the primary structures for the 500 kV transmission line (rather than the guyed-V lattice towers for the Proposal 204), which increased 500 kV transmission line cost for Proposal 206, as compared to Proposal 204. Proposal 206 also had an air-insulated substation design, rather than a gas-insulated substation like Proposal 204. Proposal 206 was analogous to Proposal 204 in project implementation and similar in most respects for operations and maintenance.

The Executive Committee assigned Proposal 206 a total evaluation score of 95 and found it to be generally better than most other proposals (Figure 4-5).

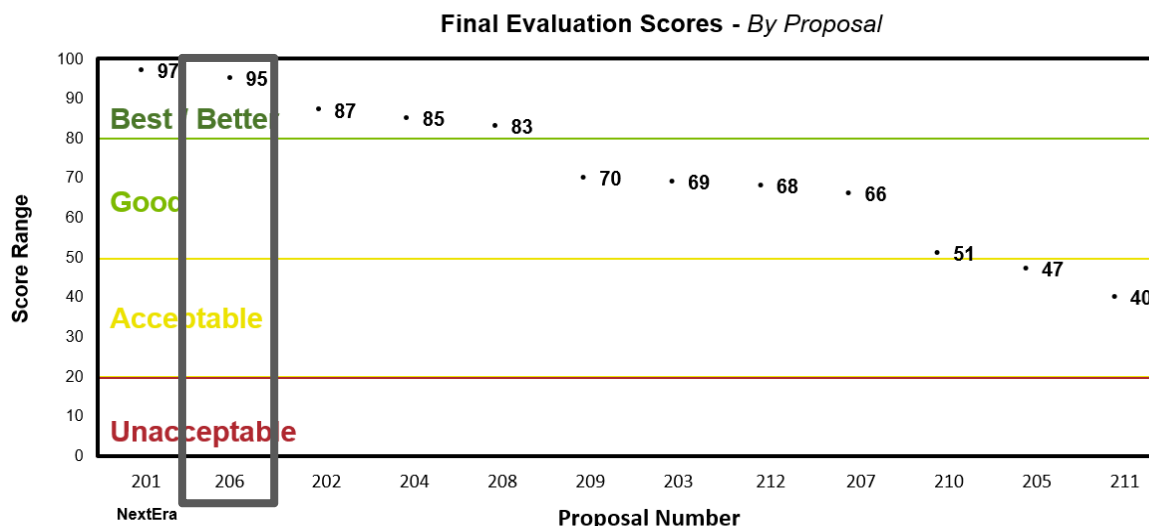


Figure 4-5: Proposal 206 Final Scoring Summary

In evaluating Proposal 206 against the four Tariff evaluation criteria, MISO categorized it as 'Better' in cost and design, 'Best' in project implementation (tied with three other proposals), and 'Better' in operations and maintenance, as compared to the other proposals (Table 4-13).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	Redacted
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-13: Proposal 206 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-14: Proposal 206 Ranking

4.6.2 Project Cost and Design for Proposal 206

When MISO evaluated Proposal 206, it found Proposal 206's cost and design were 'Better' compared to other proposals, as depicted in Table 4-13.

Cost Highlights

In evaluating Proposal 206's estimated project cost, MISO found that Proposal 206 submitted a moderate project implementation cost of \$119.7 million (compared to the median project implementation cost of \$121.3 million). Proposal 206's 'rate base cap' is equal to its project implementation cost. Like Proposal 204, Proposal 206 would not seek AFUDC or CWIP.

Proposal 206's project implementation cost included a relatively high amount of contingency, which was determined in the same manner as Proposal 204. Proposal 206 was one of eight proposals with a schedule guarantee.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-15: Proposal 206 Cost Cap Summary

Proposal 206 submitted an ATRR estimate of \$98.8 million (compared to the median ATRR estimate of \$106 million). The other elements of Proposal 206's ATRR estimate (for example, the types of cost caps, return on equity, equity percentage, foregoing CWIP and AFUDC) were analogous to Proposal 204.

Design Features

Proposal 206 would rely on steel H-frames as the primary structure for the 500 kV transmission line (as compared to Proposal 204's use primarily of guyed-V lattice structures). Proposal 206's 500 kV and 230 kV transmission line designs were, in most other respects, the same as Proposal 204.

Proposal 206 had a well-supported substation design with numerous redundant features, as well as a 500/230 kV transformer capacity larger than the minimum required by the RFP. RFP Respondent 206 thoroughly identified, considered, and discussed environmental risks and mitigation and was among the most thorough in completion of supporting design studies for the project.

RFP Respondent 206 designed a substation site of approximately six acres. The 230 kV bus arrangement is double-breaker, double-bus, which is the most robust among all bus arrangements proposed. Proposal 206 substation design adds further value by including two fully redundant line relaying protection schemes for the 500 kV transmission line and three sources for station service power. RFP Respondent 206 provided thorough supporting narrative for its protection and control schemes and addressed visual and sound impacts for its proposed site.

RFP Respondent 206 further supported its substation design with side-view elevation drawings of its physical layout, a lightning protection study, and attachments showing alternating current station service power sizing calculations, direct current battery sizing calculations, and bus and electrical jumper ampacity calculations.

RFP Respondent 206 took proactive steps in its design to mitigate flood risk by taking into account the high water mark experienced during Hurricane Harvey, as well as ensuring the substation site would not be within the 100-year or 500-year floodplain. RFP Respondent 206



included supporting design study information showing how it determined the relevant flood mitigation level. To support the certainty of its grading design and reduce risk, RFP Respondent 206 took soil borings at locations surrounding its substation parcel.

Proposal 206 addressed cost-effective flexibility in the planning horizon (another of the RFP's aspects and elements) with a substation layout that allowed for ready expansion of the 500 kV bus and discussed the potential to add one more 500 kV transmission line. Proposal 206 also discussed how further 230 kV lines could be added to either side of substation, supported by a general arrangement drawing showing where this could occur.

By providing a transformer with higher capacity than the RFP-required minimum, RFP Respondent 206 increased the value of its proposal because the 500/230 kV transformer becomes a less limiting system element for 500 kV to 230 kV power flows. The 230 kV breaker for the transformer position in the substation also has higher capacity than what most other RFP Respondents proposed, which enabled RFP Respondent 206 to take advantage of the higher capacity transformer included in its design. Proposal 206 is comparable to several other proposals in providing for one spare single-phase transformer unit installed at the substation.

4.6.3 Project Implementation for Proposal 206

When MISO evaluated Proposal 206, it found Proposal 206's project implementation was the 'Best' (tied with three other proposals), as depicted in Table 4-13. Project implementation for Proposal 206 was analogous to Proposal 204.

4.6.4 Operations and Maintenance for Proposal 206

When MISO evaluated Proposal 206, it found Proposal 206's operations and maintenance were 'Better' compared to other proposals, as depicted in Table 4-13.

Operations and maintenance for Proposal 206 were analogous to Proposal 204 in all respects but one. Whereas Proposal 204 related to operations and maintenance for project facilities that included a gas-insulated substation, Proposal 206's substation was air insulated (as described above). Proposal 206 thoroughly addressed operations and maintenance for all its proposed facilities.

4.6.5 Planning Participation for Proposal 206

MISO evaluated planning participation for Proposal 206, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.7 Proposal 207

4.7.1 Overview of Proposal 207

Proposal 207 was a generally solid proposal. Proposal 207 had moderate project costs (\$118.8 million) and offered a 'rate base cap' equal to its project implementation cost. Proposal 207's cost cap included AFUDC. Proposal 207 offered a low cap on return on equity (at 9.75%), but equity in its capital structure was higher than many other proposals (at 52.5%). Proposal 207 stood out for the uncertainty of some cost assumptions, including a plan to use bonus depreciation and low assumed taxes. Proposal 207 did not offer to cap its ATRR, and was one of four proposals that did not offer a schedule guarantee.

Proposal 207 featured well-supported transmission line and substation designs. Although Proposal 207 had a less thorough project management plan, most other areas of project implementation, such as treatment of risk and discussion of routing requirements, were strong. Proposal 207 was the only proposal to omit discussion of a spare transformer and was generally uneven in addressing operations and maintenance.

The Executive Committee assigned Proposal 207 a total evaluation score of 66 and found it to be generally good, as compared to the other proposals (Figure 4-6).

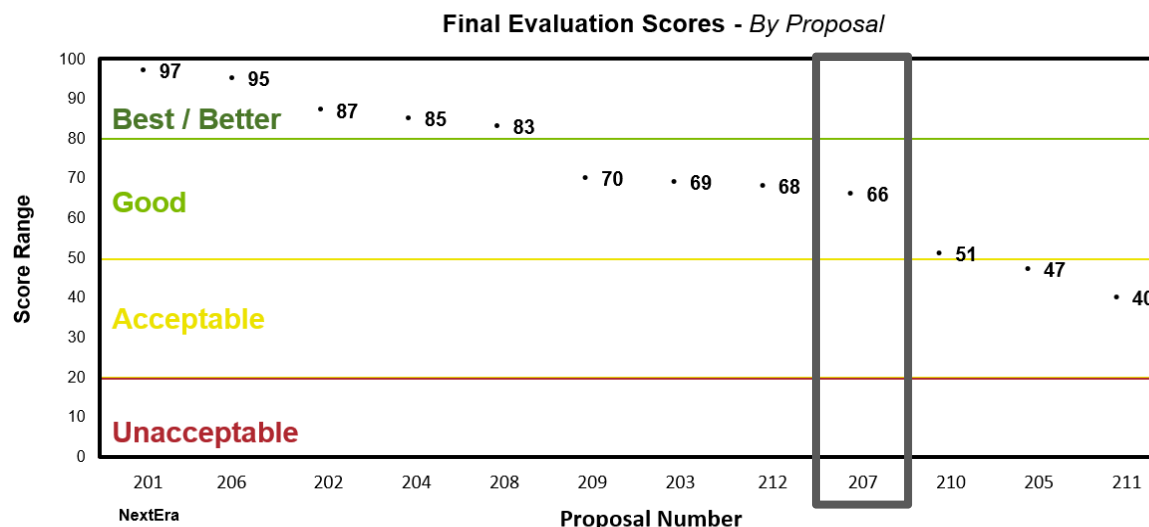


Figure 4-6: Proposal 207 Final Scoring Summary

In evaluating Proposal 207 against the four Tariff evaluation criteria, MISO categorized it as 'Good' in cost and design, 'Good' in project implementation, and 'Good' in operations and maintenance, as compared to the other proposals (Table 4-16).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-16: Proposal 207 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-17: Proposal 207 Ranking

4.7.2 Project Cost and Design for Proposal 207

When MISO evaluated Proposal 207, it found Proposal 207's cost and design were 'Good' compared to other proposals, as depicted in Table 4-16.

Cost Highlights

In evaluating Proposal 207's estimated project cost, MISO found that Proposal 207 submitted a moderate project implementation cost of \$118.8 million (compared to the median project implementation cost of \$121.3 million). Proposal 207's 'rate base cap' was equal to its project implementation cost and included AFUDC.

Proposal 207 determined its contingency level (which was relatively low) by quantifying the magnitude and likelihood of numerous risks. This aspect of Proposal 207's cost estimate was well supported. Others elements, such as right-of-way costs, were less so. Proposal 207 was one of only four proposals that did not offer some form of schedule guarantee, and was one of only three proposals that did not offer to forego recovery of funds for CWIP.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-18: Proposal 207 Cost Cap Summary

Proposal 207 submitted an ATRR estimate of \$90.2 million (compared to the median ATRR estimate of \$106 million). This ATRR estimate was lower than all but one other proposal, which was due to the lowest property taxes and use of bonus depreciation. Proposal 207 did not offer to cap its ATRR and was the only proposal to use cost estimates that relied on bonus depreciation.

Proposal 207's cap on return on equity, at 9.75% (including adders), was the lowest of all proposals. At the same time, Proposal 207 had one of the higher caps on equity in its capital structure, at 52.5%. Only three proposals had higher equity percentages. Proposal 207's operations and maintenance costs were in the low range, and were not subject to a cap. Proposal 207 did not provide for capital expenditures in future years of the project.

Design Features

Proposal 207's 500 kV transmission line design featured primarily H-frame structures on vibratory caisson foundations (a foundation type common to the project area and selected to minimize soil excavation). The geographical length of the 500 kV transmission line would be approximately 19.9 miles (which was the shortest of all proposals), with a right-of-way width of 200 feet. The proposed 500 kV bundled conductor—954 kcmil ACSR Cardinal—had a maximum summer and emergency line rating of 3,287 Amps and a maximum normal and emergency maximum operating temperature of 212°F (with wind speed of two feet per second).

The 230 kV transmission line would use primarily braced post galvanized steel monopole structures, also on vibratory caisson foundations. Proposal 207 would have right-of-way width for the 230 kV transmission line of 150 feet, and relatively long 230 kV transmission lines (approximately 1.4 miles for each circuit, with combined circuit length of roughly 5.6 miles). This was longer than all but two proposals, and less responsive to the RFP aspect and element of minimizing 230 kV line length than other proposals. The 230 kV bundled conductor was of the same conductor type as the 500 kV transmission line (and had a maximum line rating of 2,191 Amps). The maximum normal and emergency maximum operating temperature was 212°F (with wind speed of two feet per second).

Proposal 207's foundation design discussion was thorough but had limited supporting data compared to other proposals. Proposal 207 did not discuss lightning strike density or target



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outages per mile per year, which higher-scoring proposals did, and lacked attention to interconnection and crossing requirements comparable to higher-scoring proposals.

Proposal 207's substation design had less advantageous design features than some of the higher-scoring proposals, but was generally well supported. Proposal 207 included top-view and side-view drawings for its control shelter, which increased specificity for its design for the protection and control system.

Proposal 207 was one of several proposals with a ring bus arrangement design for the 230 kV bus. RFP Respondent 207 elected to mitigate flood risk by designing a site (approximately five acres in size) further away from coastal waterways, in an area it deemed to have minimal flooding and no designated base flood elevation. As noted above, this increased the length of its 230 kV transmission line. RFP Respondent 207 also took soil borings near its proposed substation site, another measure to reduce risk. Equipment ratings for the circuit breakers and the transformers met RFP requirements.

While Proposal 207's substation design and location did not preclude future expansion, the proposal has less thorough discussion of substation flexibility into the planning horizon than some other proposals. Proposal 207 did discuss converting the 230 kV ring bus arrangement into a breaker-and-a-half and provided a drawing.

4.7.3 Project Implementation for Proposal 207

When MISO evaluated Proposal 207, it found Proposal 207's project implementation was 'Good' compared to other proposals, as depicted in Table 4-16.

MISO found that Proposal 207's schedule was not as comprehensive as some other proposals. Proposal 207 prepared a comprehensive risk register that included probability of occurrence, schedule and cost impact, risk owner, mitigation, and contingency.

The project management plan for Proposal 207 had less supporting information and discussion and did not delineate which parties would be responsible for which tasks as well as other proposals. Proposal 207's information on regulatory permitting, route, and site evaluation, included a thorough discussion of the routing process, including segment impact categories, identification of routing segments, and extensive supporting narrative. RFP Respondent 207 demonstrated experience obtaining previous CCNs for projects in Texas.

Proposal 207 evaluated a number of potential routes. It provided an impact comparison study and selected a preferred route by applying specified criteria and adhering to PUCT routing guidelines. Proposal 207's supporting information for routing studies was not as comprehensive as other proposals. RFP Respondent 207 met with some permitting agencies (though fewer than higher-scoring proposals) and demonstrated its ability to navigate through the permitting process.

Proposal 207 secured an option on its selected substation site. Although Proposal 207 discussed high water impacts, it did not address adjacent infrastructure impacts or mitigation.



Proposal 207 provided less information than other proposals regarding key parcels and property rights for its preferred route.

For the construction materials procurement and management plan Proposal 207 did not consistently delineate the roles between RFP Respondent 207 and its contractors. The primary construction contractor identified in Proposal 207 listed experience up to 345 kV but did not include as much discussion regarding 500 kV experience.

Proposal 207 identified an engineering and surveying company that had worked on 500 kV and 230 kV projects in the area within the past two years, and described the qualifications of the key personnel. Proposal 207 was less specific about the roles and responsibilities of the relevant contractors than higher-scoring proposals. Proposal 207 included safety processes for key contractors (but not for subcontractors).

4.7.4 Operations and Maintenance for Proposal 207

When MISO evaluated Proposal 207, it found Proposal 207's operations and maintenance were 'Good' compared to other proposals, as depicted in Table 4-16.

RFP Respondent 207 had robust control center staffing and operating tools and a "hot" backup control center. RFP Respondent 207 had experience with the project Reliability Coordinator, but did not describe other assets, relationships, or experience in the project area. Proposal 207 clearly described the overall Balancing Authority process and its plan to incorporate the project into an interconnecting Local Balancing Authority Area, including a hard completion date.

Although RFP Respondent 207 demonstrated its experience as a transmission operator for 500 kV transmission lines and substations, its plans to incorporate local modeling into its energy management system were less specific than those of proposals categorized as 'Best/Better' in operations and maintenance. RFP Respondent 207 proposed to enter into a first responder agreement with a third party. One first responder, located one hour from the project would perform local switching. A supporting contractor could be available in less than six hours.

Proposal 207 would rely on the same supporting contractor for emergency repairs, and had only one field person within four hours of the project. RFP Respondent 207 could tap into substantial resources of its parent company and contractors if major repairs were needed. Proposal 207 was the only proposal that did not provide for a spare transformer phase or spare breakers either onsite at the Stonewood 500kV Substation or in a remote location. This would considerably increase replacement time in the event of a failure. RFP Respondent 207 would have temporary towers available to restore one-half mile of transmission line and had access to a substantial credit facility for necessary replacements or rebuilds, but was not as specific in this area as some other proposals.

For maintenance activities, RFP Respondent 207 had a master agreement with a contractor to perform 230 kV and 500 kV transmission line maintenance. Proposal 207 included a comprehensive asset management and predictive maintenance systems and tools. Proposal



207 would rely on membership in multiple industry group collaborations and contractors for sparing strategy, but did not mention any centralized spare management system.

Proposal 207 provided thorough safety documentation for RFP Respondent 207 and its contractor, which included a dedicated safety manager, site-specific safety plan, and an emergency plan. Proposal 207 also had robust procedures for preventing induced or transient over-voltage scenarios. RFP Respondent 207 showed top-tier safety metrics over the last four years. Safety data for contractors included both construction and operations and maintenance.

4.7.5 Planning Participation for Proposal 207

MISO evaluated planning participation for Proposal 207, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.8 Proposal 208

4.8.1 Overview of Proposal 208

Proposal 208 was submitted by the same RFP Respondent that submitted Proposals 204 and 206. Proposal 208 shared some of the strengths of Proposal 206, particularly in the areas of project implementation and transmission line design. Proposal 208 had a moderate to high project implementation cost estimate (\$132.9 million) and a project cost cap equal to that estimate. Like Proposals 204 and 206, Proposal 208 capped several other inputs to its ATRR, including return on equity (at 9.8%), equity in capital structure (at 45%), and the first 10 years of operations and maintenance costs. Proposal 208 offered a 10-year ATRR cap and included no AFUDC. The multiple cost-capping components of Proposal 208 were responsive to the aspect and element from the RFP emphasizing cost certainty to maintain or increase the benefit-to-cost ratio of the project.

Proposal 208 differed from Proposal 204 by offering H-frame transmission towers as the primary structures for the 500 kV transmission line (rather than the guyed-V lattice towers for Proposal 204). Proposal 208 was the same as Proposal 204 in calling for a gas-insulated substation with a breaker-and-a-half bus arrangement for the 230 kV bus. Proposal 208 was also the same as Proposal 204 in operations and maintenance.

The Executive Committee assigned Proposal 208 a total evaluation score of 83 and found it to be better than most other proposals (Figure 4-7).

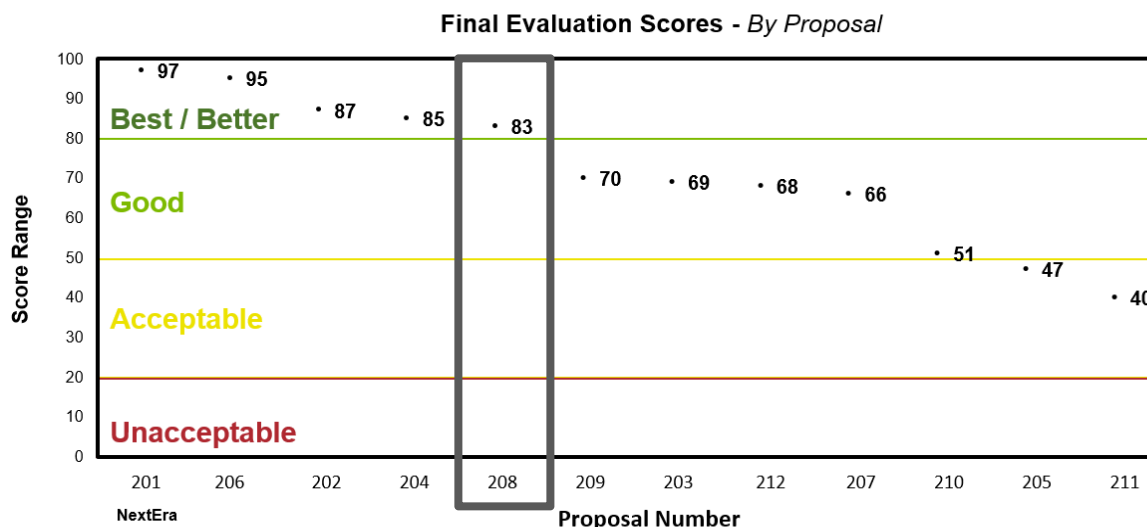


Figure 4-7: Proposal 208 Final Scoring Summary

In evaluating Proposal 208 against the four Tariff evaluation criteria, MISO categorized it as 'Good' in cost and design, 'Best' in project implementation (tied with three other proposals), and 'Better' in operations and maintenance, as compared to the other proposals (Table 4-19).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-19: Proposal 208 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-20: Proposal 208 Ranking

4.8.2 The Project Cost and Design for Proposal 208

When MISO evaluated Proposal 208, it found Proposal 208's cost and design were 'Good' compared to other proposals, as depicted in Table 4-19.

Cost Highlights

In evaluating Proposal 208's estimated project cost, MISO found Proposal 208 submitted a moderate to high project implementation cost of \$132.9 million (compared to the median project implementation cost of \$121.3 million). Proposal 208's 'rate base cap' was equal to its project implementation cost. Like Proposals 204 and 206, Proposal 208 would not seek AFUDC or CWIP.

Proposal 208's project implementation cost included a high amount of contingency, which was determined in the same manner as Proposal 204. Proposal 208 was one of eight proposals with a schedule guarantee.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-21: Proposal 208 Cost Cap Summary

Proposal 208 submitted an ATRR estimate of \$109.3 million (compared to the median ATRR estimate of \$106 million). The other elements of Proposal 208's ATRR estimate (for example, the types of cost caps, return on equity, equity percentage, foregoing CWIP and AFUDC) were analogous to Proposal 204.

Proposal 208's transmission line design was identical to Proposal 206. Proposal 208's substation design was identical to Proposal 204.

4.8.3 Project Implementation for Proposal 208

When MISO evaluated Proposal 208, it found Proposal 208's project implementation was 'Best,' as compared to other proposals, as depicted in Table 4-19. Project implementation for Proposal 208 was analogous to Proposals 204 and 208.

4.8.4 Operations and Maintenance for Proposal 208

When MISO evaluated Proposal 208, it found Proposal 208's operations and maintenance were 'Better' compared to other proposals, as depicted in Table 4-19.

Proposal 208's discussion of operations and maintenance was analogous to the discussion in Proposal 204.

4.8.5 Planning Participation for Proposal 208

MISO evaluated planning participation for Proposal 208, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.9 Proposal 209

4.9.1 Overview of Proposal 209

Proposal 209 had varied performance across MISO's evaluation criteria. Its relative area of strength was in operations and maintenance.

Proposal 209 had the lowest project implementation cost of all proposals, at \$104.4 million, and offered a 40-year cap on its ATRR (including AFUDC)—something no other proposal did. Proposal 209's low project costs were offset, to some degree, by its high rate of return on equity (at 11.35%) and the highest percentage of equity in capital structure (at 60%). Proposal 209 expressly assumed cost risk for route and design changes ordered by the PUCT. Only three other proposals expressly offered to assume some or all of this risk.

Although Proposal 209 had a generally well-designed transmission line, Proposal 209 did not fully demonstrate that its proposal conformed to Entergy's interconnection requirements. Proposal 209 had a robust substation design, but its substation site was located significantly farther away from the 230 kV line interconnection point than most other proposals. Although Proposal 209 did some things well in project implementation (for example, identifying a well-qualified permitting team with recent relevant experience in the project area), it was not as thorough in addressing project-specific infrastructure and other implementation risks. Proposal 209's plan for operations and maintenance was relatively robust.

The Executive Committee assigned Proposal 209 a total evaluation score of 70 and found that overall, it was good, as compared to the other proposals (Figure 4-8).

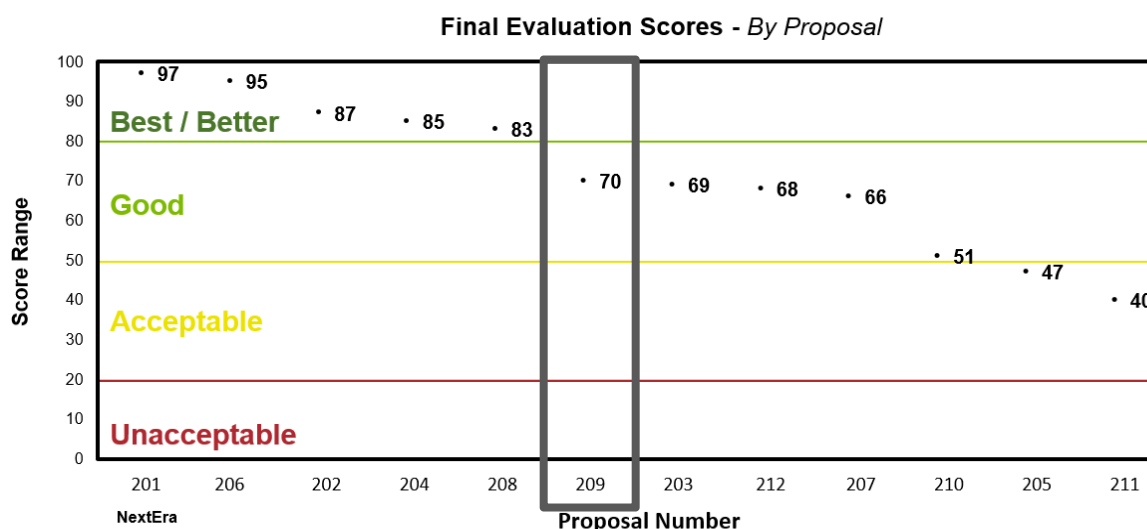


Figure 4-8: Proposal 209 Final Scoring Summary

In evaluating Proposal 209 against the four Tariff evaluation criteria, MISO categorized it as 'Good' in cost and design, 'Acceptable' in project implementation, and 'Better' in operations and maintenance, as compared to the other proposals (Table 4-22).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	Redacted
212	Good	Good	Good	

Table 4-22: Proposal 209 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-23: Proposal 209 Ranking

4.9.2 Project Cost and Design for Proposal 209

When MISO evaluated Proposal 209, it found Proposal 209's cost and design were 'Good' compared to other proposals, as depicted in Table 4-22.

Cost Highlights

In evaluating Proposal 209's estimated project cost, MISO found Proposal 209 had the lowest project implementation cost, at \$104.4 million. The median project implementation cost was \$121.3 million. According to MISO's calculations, Proposal 209's had the lowest total cost for its 500 kV and 230 kV transmission lines and the lowest engineering and project management costs. This was true even though three other proposals had shorter 500 kV transmission lines.

Proposal 209's project implementation cost included a low amount of contingency. Proposal 209 was one of only four proposals that did not offer a schedule guarantee, and was one of only three proposals that did not offer to forego recovery of funds for CWIP. Although Proposal 209 did not offer to separately cap any individual project cost components, its ATRR cap, which was structured as individual annual caps on ATRR for each of the first 40 years of project operation, contained its overall project costs. RFP Respondent 209 also expressly



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assumed risk of cost-increases from PUCT-mandated changes to its transmission line routing and design.

OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-24: Proposal 209 Cost Cap Summary

Proposal 209 submitted an ATRR estimate of \$110.3 million, and offered to cap its ATRR at this amount for the first 40 years of the project. Even though Proposal 209 had the lowest project implementation cost, its ATRR was higher than the median of \$106 million. This was because, offsetting Proposal 209's low project costs were the highest return on equity (at 11.35%), the highest percentage of equity in capital structure (at 60%, although one other proposal had an equally high percentage), and the highest taxes of all proposals.

Proposal 209 described several contingencies, with associated cost risks contained by its 40-year cap on ATRR. Proposal 209 did not offer to cap its return on equity or the equity percentage in its capital structure, whereas all other proposals did. Proposal 209 did not separately cap its operations and maintenance costs. The supporting information for Proposal 209's cost estimates was modest compared to proposals categorized as 'Best/Better' in cost and design.

Design Features

Overall, Proposal 209's transmission facilities reflected modest design in both performance and rigor, supported by limited narratives and engineering studies. All transmission line facilities would be designed to withstand 140 mph winds, but Proposal 209 did not fully demonstrate that its proposal conformed to Entergy interconnection requirements for either the 500 kV or the 230 kV transmission lines.

The estimated length of Proposal 209's 500 kV transmission line was roughly 22.4 miles, with a right-of-way width of 180 feet. The line would use primarily steel H-frame V-string structures, with all structures on concrete drilled pier foundations.

Proposal 209 elected to design for a construction buffer to wire clearance two feet greater than the minimum required by the RFP, which was intended to serve several purposes, including reducing field effects and providing future flexibility. The proposed 500 kV bundled conductor—954 kcmil ACSR Cardinal per phase—had a summer normal and emergency temperature rating of 3,342 Amps at 212°F with a wind speed of two feet per second.



The proposed length of Proposal 209's 230 kV transmission line (approximately 9,000 feet for each circuit, with combined length for all four circuits of 36,000 feet) was longer than all but one other proposal, and therefore less responsive to the aspect and element emphasizing limiting 230 kV line length. The 230 kV transmission structures would be primarily double-circuit brace-post monopoles on drilled pier foundations, positioned in a right-of-way approximately 225 feet wide. The proposed 230 kV conductor would be 954 kcmil ACSS Cardinal per phase, with a summer normal and emergency temperature rating of 1,918 Amps at 392°F with wind speed of two feet per second.

Proposal 209's substation area would cover approximately 7.5 acres and would feature a breaker-and-a-half 230 kV bus arrangement. Three other proposals (Proposals 204, 208, and 211) had similar bus arrangements, which are more flexible and robust than a ring bus arrangement.

Proposal 209 selected a substation site that was not within the 100-year or 500-year floodplains. While the location of Proposal 209's substation (more distant from coastal waterways) mitigated flood risk, it also increased the length of its 230 kV lines. Proposal 209 demonstrated its strong substation design process through its well-described approaches to structure selection, protection and control design, and relay device selection. RFP Respondent 209 also included equipment outline drawings, steel drawings and sketches, alternating current and direct current station service diagrams, bus and electrical jumper ampacity calculations, a lightning protection study, and a microwave feasibility study. Proposal 209 enhanced the value of its proposed substation by designing its control enclosure to withstand winds of up to 200 mph.

Proposal 209's substation design was responsive to the aspect and element calling for operational and planning flexibility by supporting more cost-effective flexibility in the planning horizon than some other proposals. Proposal 209 laid out its substation for ready expansion of the 500 kV bus, discussed plans for a potential additional 500 kV line, and provided illustrative drawings (as well as a drawing of a potential additional 230 kV line). Proposal 209 also discussed the possibility of an additional 500/230 kV transformer bank, again, supported by a drawing.

Equipment ratings for the circuit breakers and the transformers all met MISO's RFP requirements in the RFP. Proposal 209 was comparable to several other proposals in providing for one spare single-phase transformer unit installed on site.

4.9.3 Project Implementation for Proposal 209

When MISO evaluated Proposal 209, it found Proposal 209's project implementation was 'Acceptable' compared to other proposals, as depicted in Table 4-22. MISO based its finding on the following facts and conclusions from its comparative analysis of Proposal 209.

Proposal 209 had a general project schedule, and supporting discussion on critical path and weather days was minimal. Proposal 209's project management plan was less comprehensive and had less supporting information compared to most other proposals. In



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addressing project risk management, Proposal 209 provided a high-level risk register, with limited supporting discussion and identification of risks. Proposal 209 evaluated several potential routes for its 500 kV transmission line, which it narrowed down to one preferred route.

Proposal 209 included KMZ files and parcel maps for transmission line routing, but they were less specific and had more limited supporting discussion than other proposals. Proposal 209's routing studies covered only a subset of its route alternatives and reflected limited geotechnical analysis, and, in general, were less thorough than higher-scoring proposals. RFP Respondent 209's regulatory permitting team had recent relevant experience in project area.

For substation siting, Proposal 209 began with a number of potential sites, which it narrowed down to one recommended site. Proposal 209 provided less robust evidence supporting its site evaluation, including minimal comparative analysis between sites and little discussion of constraints for its chosen site. Although Proposal 209 stated that its recommended site was not in 100- and 500-year floodplains, it provided minimal background information in comparison to other proposals' analysis of flood risks. Proposal 209's treatment of site related-risks and mitigation was not as thorough as other proposals.

Proposal 209 identified a large set of parcels for its proposed transmission line and substation siting, but accompanying maps showed less specificity than higher-ranking proposals. There was minimal discussion of high-risk parcels. Proposal 209's engineering and surveying plans were not as project specific, and did not delineate roles and responsibilities with the specificity shown in other proposals. Proposal 209 noted an affiliate with 500 kV experience to support its design and construction activities.

Proposal 209 included several site-specific drafts of safety forms and information, but the submitted safety plans were not site specific. There would be designated onsite safety authorities with stop-work authority.

4.9.4 Operations and Maintenance for Proposal 209

When MISO evaluated Proposal 209, it found Proposal 209's operations and maintenance were 'Better' compared to other proposals, as depicted in Table 4-22. MISO based its finding on the information and comparative analysis results summarized below.

Proposal 209 described, in general terms, its plans to integrate the project into the interconnecting Local Balancing Authority. While Proposal 209 did not provide evidence of experience with operations in the project area, RFP Respondent 209 had an experienced control center in the Eastern Interconnection and demonstrated its ability to integrate the project.

RFP Respondent 209 demonstrated extensive outage coordination capabilities and tools, including procedures to study both reliability and congestion cost impacts when scheduling facility outages. Proposal 209 stated that there would be a field person stationed at the Stonewood 500 kV Substation, immediately available during business hours, to perform local



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switching. The resume for this designated resource showed experience and training with facilities up to 345 kV.

To address forced outages and emergency repairs, Proposal 209 would have one immediately available first responder. Several dozen additional personnel would be less than 90 minutes away from the project location, with hundreds of additional company personnel available within 24 hours. Proposal 209 did not specify the 500 kV experience of its field crews, but could draw on 500 kV engineering and design experience from an affiliated organization.

Among other support capabilities, Proposal 209 would have in-house relay and engineering staff available 24 hours a day, seven days a week for diagnosis and repair design. There would be wetlands equipment, as well as a helicopter, available for emergency repairs.

For preventive and predictive maintenance activities, Proposal 209 provided a comprehensive list of specialized testing equipment to be regularly contracted, but did not specify criteria for triggering maintenance or prioritization. Because Proposal 209 would have a spare transformer phase installed on site, it could be in service in less than a week. Proposal 209 did not propose to have a spare 230 kV breaker for the project.

Major facility replacement or rebuilds could be performed by contractors. RFP Respondent 209 provided evidence of access to large cash and credit facilities, with enough cash on hand to rebuild the entire project. Proposal 209 stated that it would have enough 230 kV transmission materials to replace all project facilities. RFP Respondent 209 would rely on its materials procurement team for further needs.

To address safety considerations related to operations and maintenance, Proposal 209 submitted a comprehensive safety handbook. RFP Respondent 209's training department would conduct thorough contractor safety reviews and certifications. Although RFP Respondent 209 did not demonstrate specific experience with 500 kV facilities, it did indicate experience with EHV facilities and had procedures for 500 kV facilities. Proposal 209 did not include an induced-current hazard mitigation plan.

RFP Respondent 209 had top-tier safety metrics over the last 10 years. Its average DART rate had improved in that period. Because Proposal 209 provided a single combined metric for its parent company and contractor safety records, MISO was unable to assess how the metrics would apply to operations and maintenance personnel.

4.9.5 Planning Participation for Proposal 209

MISO evaluated planning participation for Proposal 209, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.10 Proposal 210

4.10.1 Overview of Proposal 210

Proposal 210, as a whole, performed less well than most other proposals. Proposal 210 had project costs of \$122.8 million and offered a 'rate base cap' equal to its project implementation cost. Proposal 210's cost cap included AFUDC. Proposal 210 offered a cap on return on equity (at 9.8%) and equity in its capital structure (at 45%). Proposal 210 had a higher net present value for its ATRR than all proposals MISO categorized as 'Best/Better.'

Proposal 210 had a robust transmission line design and well-supported substation design details. Proposal 210 did not perform as well as most other proposals in project implementation because the majority of its routing options terminated at the existing Sabine Substation, rather than at the new Stonewood 500kV Substation to be constructed for the project. Proposal 210 demonstrated less relevant experience or lower certainty than other higher-scoring proposals in several key areas of operations and maintenance.

The Executive Committee assigned Proposal 210 a total evaluation score of 51 and found it to be generally good, as compared to the other proposals (Figure 4-9).

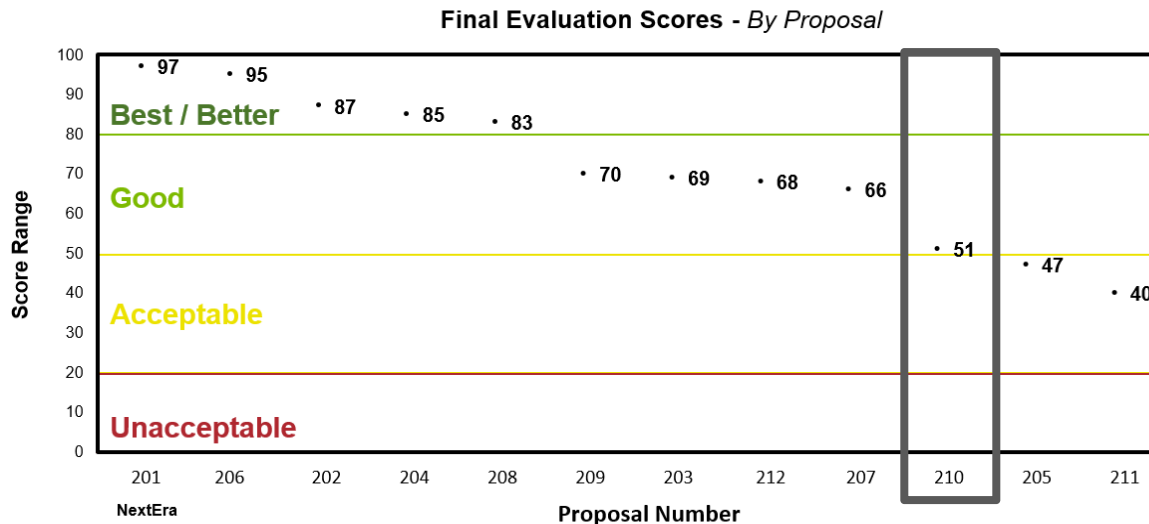


Figure 4-9: Proposal 210 Final Scoring Summary

In evaluating Proposal 210 against the four Tariff evaluation criteria, MISO categorized it as 'Good' in cost and design, 'Acceptable' in project implementation, and 'Acceptable' in operations and maintenance, as compared to the other proposals (Table 4-25).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	Redacted
212	Good	Good	Good	

Table 4-25: Proposal 210 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-26: Proposal 210 Ranking

4.10.2 Project Cost and Design for Proposal 210

When MISO evaluated Proposal 210, it found Proposal 210's cost and design were 'Good' compared to other proposals, as depicted in Table 4-25.

Cost Highlights

In evaluating Proposal 210's estimated project cost, MISO found that Proposal 210's estimate of \$122.8 million was close to the median project implementation cost of \$121.3 million, which MISO considered moderate. Proposal 210 offered a "rate base cap" of \$122.8 million (equal to its project implementation cost), and included AFUDC in its cost cap.

Proposal 210's project implementation cost included one of the lowest amounts of contingency, yet Proposal 210 included minimal description of risks that could affect project costs. Proposal 210 was one of eight proposals to offer a schedule guarantee.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-27: Proposal 210 Cost Cap Summary

Proposal 210 submitted an ATRR estimate of \$106.2 million (very close to the median of \$106 million), but did not offer to cap its ATRR. Proposal 210 had a low return on equity cap of 9.8%, including adders, which would remain in effect for the life of the project. Several other proposals proposed the same 9.8% cap on return on equity; only one proposal was lower (at 9.75%). The equity percentage in Proposal 210's capital structure was low, at 45%, and capped for the life of the project. Seven other proposals had comparable equity percentages; only one proposal was lower (at 40%).

Proposal 210's offered to cap its operation and maintenance costs for the first five years following the project in-service date. Proposal 210 did not provide for capital expenditures in future years of the project.

Design Features

The route length of Proposal 210's 500 kV transmission line—approximately 24.3 miles—was longer than all but one other proposal. The proposed right-of-way width was 200 feet.

Proposal 210 featured galvanized steel H-frame structures with drilled pier foundations for its 500 kV transmission line. The proposed bundled 500 kV conductor—954 kcmil ACSS/TW Cardinal—had maximum operating temperature of 392°F and an emergency line rating of 5,440 Amps (with wind speed of two feet per second). This was approximately 82% above the MISO-specified minimum, while the line rating for the bundled 230 kV line conductor—954 kcmil ACSS/TW Cardinal—had maximum conductor temperature of 392°F with a summer emergency rating of 3,618 Amps (with wind speed of two feet per second). This was approximately 110% above the MISO-specified minimum. The route length for 230 kV transmission lines was about 0.4 miles, containing all four circuits, with a right-of-way width of 200 feet.

Proposal 210 lacked supporting discussion, for both the 500 kV and 230 kV lines, of load cases, sag-tension, foundation design, galloping and vibration, and RFP requirements for interconnecting with Entergy's existing system. Proposal 210 had more limited discussion and drawings for insulation or hardware than other proposals. While several proposals included lightning studies to tie their ground resistance targets to actual predicted outages, Proposal 210 did not.



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Proposal 210 selected a substation site of approximately 7.5 acres and featured a ring bus design for the 230 kV bus for the new Stonewood 500 kV Substation. The substation design itself was well supported, although less advanced in the design process than some other proposals. Narrative and supporting information related to environmental risks were limited. Equipment ratings for substation circuit breakers and transformers met RFP requirements. Proposal 210 included a network communication diagram that clearly delineated the communication scopes of work between itself and the interconnecting Transmission Owner. This diagram enhanced certainty for RFP Respondent 210's proposed communication design.

Proposal 210's substation design provided more flexibility in the planning horizon than some other proposals. The proposal discussed the potential for one additional 500 kV line, an additional 500/230 kV transformer bank, and converting the 230 kV bus arrangement to breaker-and-a-half to add further 230 kV lines. Proposal 210 was unique in providing a bypass switch on the 500 kV circuit breaker. Proposal 210 was comparable to several other proposals in providing for one spare single-phase transformer unit installed on site.

4.10.3 Project Implementation for Proposal 210

When MISO evaluated Proposal 210, it found Proposal 210's project implementation was 'Acceptable' compared to other proposals, as depicted in Table 4-25.

Proposal 210's project management plan was less comprehensive than others. Overall staffing roles and responsibilities were not well delineated. Scheduling information was ambiguous with respect to project float and supported by limited discussion. Where other proposals had thorough risk registers, Proposal 210 had minimal risk identification.

While Proposal 210's preferred route terminated in the new Stonewood 500 kV Substation, as required by the RFP, the alternative routes evaluated for Proposal 210 had termination points inconsistent with the RFP (terminating at the existing Sabine Substation site). There was minimal comparison between preferred and alternative routes. Although Proposal 210 completed some geotechnical work using public data, study information focused on the preferred route and provided limited detail.

Proposal 210 identified a single substation site, with minimal supporting study information and no discussion of alternatives sites. Proposal 210 lacked the thorough quantitative and qualitative analysis MISO found in other proposals, as well as process related to evaluating potential substation locations. Proposal 210 did not mention securing an option on its designated substation site. Although Proposal 210 provided project-specific permitting table, its description of permitting process was high level and not specific to the Hartburg-Sabine Project.

Proposal 210 included only high-level discussion of plans for land and right-of-way acquisition. Although Proposal 210 had identified 60 parcels needed for the project, it did not include a map showing the parcels (as most other proposals did). Proposal 210 provided a high-level overview of its materials procurement and management process and included quality assurance and quality control.



Proposal 210 had an adequate construction plan, which provided pole locations and included crew sizes and equipment. The discussion of the construction sequence was high level and not project specific, and lacked an access plan. RFP Respondent 210 had completed a LiDAR study. Proposal 210's discussion of the commissioning process was relatively preliminary, but the proposal included a list of equipment to be tested and described the experience of commissioning personnel.

Proposal 210 included construction-related project safety risks and mitigation in table form and provided a safety manual. Although the safety manual did not mention stop-work authority, the proposal narrative stated that stop-work authority is every employee's responsibility.

4.10.4 Operations and Maintenance for Proposal 210

When MISO evaluated Proposal 210, it found Proposal 210's operations and maintenance were 'Acceptable' compared to other proposals, as depicted in Table 4-25, and generally lacked supporting information to enable MISO to ascertain relevant capabilities and experience.

RFP Respondent 210 intended to contract with a third party to provide various operations services, but the contract could be terminated at will by RFP Respondent 210. This significantly reduced certainty for MISO in evaluating the activities for which the third-party contractor would be responsible, such as local balancing authority functions and real-time operations monitoring and control.

Proposal 210 also lacked description of transmission operator experience, either within the project area or with 500 kV facilities, and included no plans for area modeling, state estimation, and real-time contingency analysis capability. Proposal 210 identified sufficient resources for planned outages, assuming the contractor arrangements described in the proposal would not change. Proposal 210 provided comprehensive plan for working with the project Reliability Coordinator for project outage coordination.

The main contractor identified in Proposal 210 for field switching had experience with 500 kV facilities. There was limited information on other contractors. RFP Respondent 210 would rely on the control center contractor to perform remote switching, although the contractor currently operates solely in the Western Interconnection.

RFP Respondent 210 intended to have transmission and substation fieldwork, as well as emergency repairs, performed by a primary contractor. Response times were relatively long. While the primary contractor had local experience with 500 kV facilities and substantial staff and equipment, the proposal did not specify what was located within reasonable proximity to the project. Backup capabilities for loss of power to the substation were shorter than some other proposals. Proposal 210 lacked a comprehensive plan for emergency repairs, major replacements, and maintenance for the project. Proposal 210 did provide for a spare transformer phase installed on site, with bus work built for quick replacement.

RFP Respondent 210 did not intend to have spare structures for the project but would acquire wood poles for temporary repairs if needed. There was no mention of a spare parts



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management system, and limited spare parts for the substation apart from the spare transformer phase.

Proposal 210 included thorough safety information from one operations and maintenance contractor, but had more limited discussion of how RFP Respondent 210 would provide safety leadership for the project than other proposals. The contractor had experience with safety on 500 kV facilities and submitted comprehensive safety manuals covering various equipment and processes. There was a procedure in place to create location-specific emergency plans, as well as a plan to de-energize parallel circuits to mitigate induced current hazard when grounding. The primary contractor also had top-tier safety metrics, but the proposal has no safety data for subcontractors.

4.10.5 Planning Participation for Proposal 210

MISO evaluated planning participation for Proposal 210, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.11 Proposal 211

4.11.1 Overview of Proposal 211

Proposal 211, as a whole, performed less well than most other proposals. Proposal 211 had the highest project cost among all proposals submitted, at \$146.3 million. Proposal 211 was also the only proposal that did not offer a firm cap on overall project costs and did not apply its cost cap to AFUDC. Proposal 211 was one of only three proposals that did not offer a schedule guarantee. Proposal 211 offered to cap its return on equity at 10% and the equity percentage in its capital structure at 55%, both of which were higher than most other proposals.

Proposal 211 had fewer supporting details for its transmission line and substation designs than most other proposals and proposed the longest 230 kV transmission lines, even though minimizing 230 kV line length was another aspect and element noted in the RFP. The project implementation section of Proposal 211 had a strong approach to safety, but did not provide a risk register and was generally vague about project contractors. Proposal 211 did not provide the strong evidence of relevant experience and certainty in operations and maintenance comparable to higher-scoring proposals.

The Executive Committee assigned Proposal 211 a total evaluation score of 40 and found it to be generally acceptable, as compared to the other proposals (Figure 4-10).

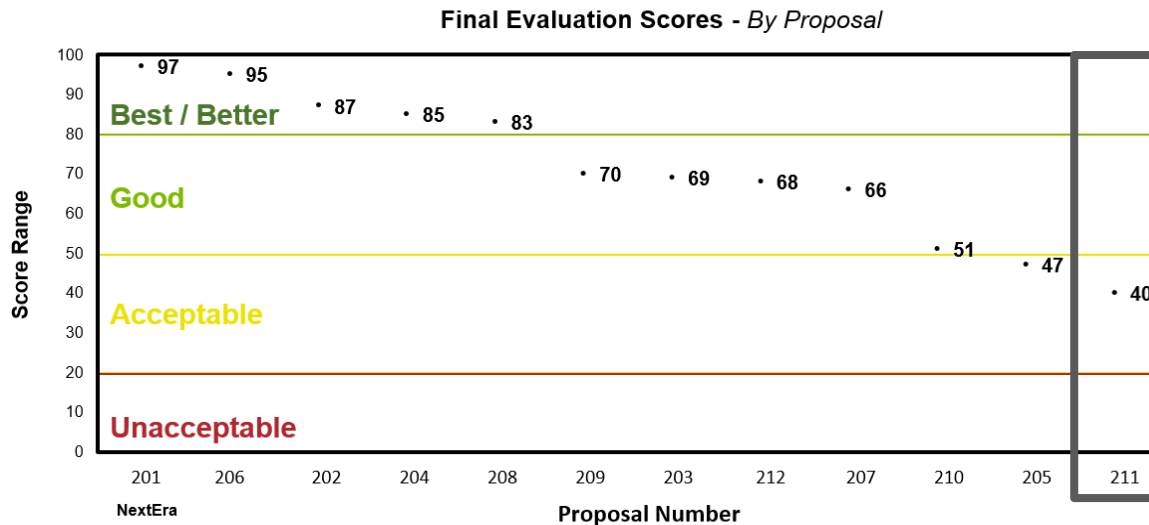


Figure 4-10: Proposal 211 Final Scoring Summary

In evaluating Proposal 211 against the four Tariff evaluation criteria, MISO categorized it as 'Acceptable' in cost and design, 'Acceptable' in project implementation, and 'Acceptable' in operations and maintenance, as compared to the other proposals (Table 4-28).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-28: Proposal 211 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-29: Proposal 211 Ranking

4.11.2 Project Cost and Design for Proposal 211

When MISO evaluated Proposal 211, it found Proposal 211's cost and design were 'Acceptable' compared to other proposals, as depicted in Table 4-28.

Cost Highlights

In evaluating Proposal 211's estimated project cost, MISO found that Proposal 211 submitted the highest project implementation cost, at \$146.3 million, as well as the highest cost cap. The median project implementation cost was \$121.3 million. Proposal 211 had higher substation and AFUDC costs than all other proposals. Proposal 211 was one of only three proposals that did not commit to forego recovery of funds for CWIP.

At the same time, cost risks associated with Proposal 211 were higher than many other proposals because Proposal 211 offered to cap most, but not all, of its project costs. In fact, Proposal 211 was the only proposal without a firm cap on 100% of project cost, even though cost certainty was called out in the RFP as one of four important aspects and elements. Proposal 211 provided for less contingency funding than most other proposals, with minimal discussion of risks.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-30: Proposal 211 Cost Cap Summary

Proposal 211 submitted the highest ATRR estimate, at \$166.3 million, with no cap. The median ATRR estimate was \$106 million. Proposal 211's high ATRR estimate result from the highest project costs and the highest operations and maintenance costs (although cost risk associated with operations and maintenance was somewhat offset by a 40-year cumulative cap on operations and maintenance expenses).

Proposal 211 had a return on equity cap of 10% (including adders). Only three proposals had higher return on equity. Likewise, the equity percentage in Proposal 211's capital structure (55%) was high compared to most other proposals. Only two proposals had higher equity percentages.

Design Features

The route length of the 500 kV transmission line for Proposal 211 (roughly 21.1 miles) was shorter than most other proposals and the route length of the 230 kV line (approximately 2.33 miles, containing all four circuits) was the longest proposed. This was less responsive to the RFP aspect and element of minimizing 230 kV line length than other proposals. The proposed right-of-way width for the 500 kV transmission facilities would be 200 feet, and 175 feet for the 230 kV facilities.

Proposal 211 was the only proposal to feature galvanized steel monopoles with davit arms, and Y-frame structures, for its 500 kV designs. The monopoles would be supported on drilled pier foundations. The proposed 500 kV bundled conductor—1,033.5 kcmil ACSS Curlew—had a maximum summer emergency line rating of 3,398 Amps at 257°F and no wind. The 230 kV bundled conductor—795 kcmil ACSS Drake—had a maximum summer emergency line rating of 1,948 Amps at 257°F and no wind. Both conductors would provide some additional transfer capacity above the MISO-specified minimum.

Proposal 211 lacked thorough discussion of another important consideration in project transmission line design, that is, meeting line tension and catenary constant parameters related to Entergy interconnection and crossing requirements. Proposal 211 also lacked data supporting targets for grounding and lightning protection.



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Proposal 211's contemplated new substation site was approximately nine acres. The arrangement for Proposal 211's 230 kV bus—a breaker-and-a-half—was more flexible and robust than a ring bus arrangement. Three other proposals (Proposals 204, 208, and 209) offered a similar arrangement with a breaker-and-a-half. Equipment ratings for the circuit breakers and the transformers all met MISO's RFP requirements.

Proposal 211 selected a substation site intended to minimize flooding concerns and avoid tree clearing and wetlands. While the location of Proposal 211's substation (more distant from coastal waterways) mitigated flood risk, it also increased the length of its 230 kV lines.

Proposal 211 offered less supporting information for its substation design, less consideration of project-specific requirements, and was in general more preliminary than many other proposals. While Proposal 211's design did not preclude future expansion, the proposal had limited discussion of substation design flexibility into the planning horizon. Proposal 211 was comparable to several other proposals in providing for one spare single-phase transformer unit installed on site.

4.11.3 Project Implementation for Proposal 211

When MISO evaluated Proposal 211, it found Proposal 211's project implementation was 'Acceptable' compared to other proposals, as depicted in Table 4-28.

In many areas Proposal 211 offered minimal supporting discussion for its project schedule and management information. For example, several other proposals provided greater detail on critical path considerations, risk analysis, weather delays, and project float. While Proposal 211 discussed managing schedule at a high level, there were fewer specifics linking the elements of the project together than MISO found in other proposals.

Proposal 211 had identified several potential routes for its 500 kV transmission lines, but provided less supporting data and narrative than other proposals. Proposal 211 also did not thoroughly explain how potential routes were evaluated, including assessment of route feasibility, mitigation steps for pipeline crossings, and co-location.

Although RFP Respondent 211 secured an option for its proposed substation site, there was limited supporting information explaining its site evaluation process or associated roles and responsibilities. Proposal 211 provided fewer details about geotechnical studies, risk analysis, and mitigation steps than most other proposals. Proposal 211 identified a large percentage of landowners and parcels needed for the project.

Proposal 211 had a more general discussion of the construction process than most other proposals. Proposal 211 included a comprehensive construction plan, but did not tailor it specifically to the Hartburg-Sabine Project. Discussion of project commissioning described relevant roles but not who would do the commissioning work. Proposal 211's discussion of engineering and surveying processes was limited.

Proposal 211 provided thorough construction-related safety plan and job briefings, although they were not project specific. Proposal 211 identified positions relevant to safety



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oversight, but overall provided less specific information regarding safety-related roles and responsibilities than other proposals. MISO found it difficult to determine from the safety history information Proposal 211 provided which entities and personnel the safety data applied to.

4.11.4 Operations and Maintenance for Proposal 211

When MISO evaluated Proposal 211, it found Proposal 211's operations and maintenance were 'Acceptable' compared to other proposals, as depicted in Table 4-28, based on the facts and conclusions summarized below.

For most aspects of operations and maintenance, RFP Respondent 211 intended to engage contractors to be identified after proposal selection. Because the proposal did not identify intended contractors, MISO could not meaningfully evaluate relevant capabilities, experience, response time, or safety metrics.

RFP Respondent 211 proposed to incorporate the project into the Local Balancing Authority Area of the interconnecting utility. While the Local Balancing Authority with which RFP Respondent 211 proposed to contract for operations services was experienced and willing to provide Local Balancing Authority services, Proposal 211 did not describe its proposed operations contractor's experience with the project Reliability Coordinator.

RFP Respondent 211 planned to have a local (unspecified) transmission operator monitor and operate the project, which reduced certainty for real-time operation. RFP Respondent 211 also submitted information about its own control center (which was considered a fallback option). Proposal 211 described an internal application used for outage coordination, but stated that RFP Respondent 211 intended to contract for a different control center to handle outage coordination. Proposal 211 did not specify whether the control center was experienced with 500 kV or the project area. RFP Respondent 211 expressed a preference to engage unspecified contractors for most aspects of non-normal operations, including forced outages and emergency repairs.

Proposal 211 included a plan for capital replacement of project equipment such as protection and control systems, battery, backup generator, and surge arrestors. Proposal 211 laid out specific plans for various substation equipment failures and would have a spare transformer installed at the substation, but did not describe its policy for transmission repair after a catastrophic failure.

Proposal 211 included ample funding for operations and maintenance and included a specific description of on-going capital expenditures. MISO found, however, that these notably high costs were not supported by the operations and maintenance plan laid out in the proposal. Many maintenance tasks for Proposal 211 were to be assigned to undetermined contractors. Proposed spare parts for substation and transmission line maintenance (apart from a spare transformer) were limited. Proposal 211 did not identify how many transmission line miles could be restored with materials on hand, or a strategy for procuring more equipment.



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MISO found that Proposal 211's operations and maintenance safety information was difficult to evaluate because so many elements depended on engaging contractors to be determined in the future. MISO could not assess the experience, procedures, and safety ratings of unspecified contractors. Proposal 211 did include a comprehensive safety handbook. Details on RFP Respondent 211's safety history were limited.

4.11.5 Planning Participation for Proposal 211

MISO evaluated planning participation for Proposal 211, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.



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4.12 Proposal 212

4.12.1 Overview of Proposal 212

Proposal 212, as a whole, was roughly average among the 12 proposals submitted. Proposal 212 had a moderate project implementation cost of \$117.1 million, and offered a project cost cap equal to its project estimate (which included AFUDC). Proposal 212 was one of four proposals to expressly assume some or all of the risk that project costs could increase due to PUCT-required routing or design changes to the project's 500 kV transmission line. Proposal 212 was also one of only four proposals that did not offer a schedule guarantee.

Proposal 212 offered a cap on return on equity (at 10.35%, including adders), but only for the first 10 years of operation (which reduced cost certainty). Although Proposal 212's cap on equity in its capital structure was the lowest proposed (at 40%), that cap would likewise apply for only the first 10 years. Proposal 212, in general, provided less supporting information for its cost estimates than proposals categorized as 'Best/Better.'

Proposal 212 had well-supported transmission line design details, but had lower transmission line ratings than all 'Best/Better' proposals. Proposal 212 provided only general discussion of routing, siting, and project implementation, but had a detailed, project-specific discussion of the construction process. Proposal 212 did not have as much specificity on Local Balancing Authority considerations as most other proposals.

The Executive Committee assigned Proposal 212 a total evaluation score of 68 and found it to be generally good, as compared to the other proposals (Figure 4-11).

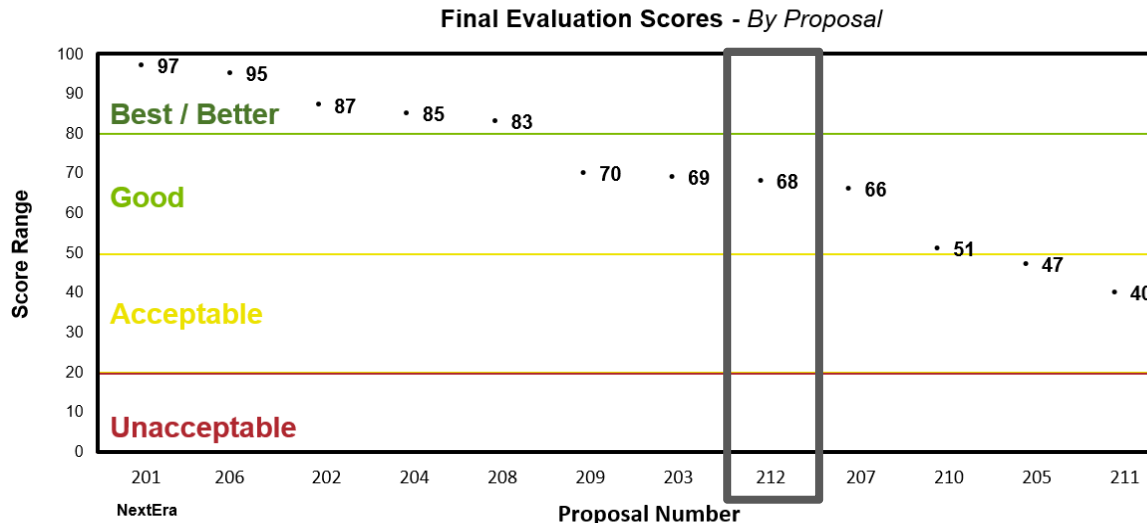


Figure 4-11: Proposal 212 Final Scoring Summary

In evaluating Proposal 212 against the four Tariff evaluation criteria, MISO categorized it as 'Good' in cost and design, 'Good' in project implementation, and 'Good' in operations and maintenance, as compared to the other proposals (Table 4-31).



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Proposal ID #	Cost and Design (35%)	Project Implementation (30%)	Operations and Maintenance (30%)	Planning Participation (5%)
201	Best	Best	Better	Redacted
202	Better	Better	Good	
203	Acceptable	Good	Best	
204	Good	Best	Better	
205	Acceptable	Acceptable	Acceptable	
206	Better	Best	Better	
207	Good	Good	Good	
208	Good	Best	Better	
209	Good	Acceptable	Better	
210	Good	Acceptable	Acceptable	
211	Acceptable	Acceptable	Acceptable	
212	Good	Good	Good	

Table 4-31: Proposal 212 Criteria-Level Categorization

Proposal Number	201	202	203	204	205	206	207	208	209	210	211	212
Cost and Design	Best	3	11	5	10	2	8	6	4	9	12	7
Project Implementation	Best	5	6	Best	10	Best	7	Best	9	12	11	8
Operations and Maintenance	2	9	Best	4	10	2	8	4	6	11	12	7

Table 4-32: Proposal 212 Ranking

4.12.2 Project Cost and Design for Proposal 212

When MISO evaluated Proposal 212, it found Proposal 212's cost and design were 'Good' compared to other proposals, as depicted in Table 4-31.

Cost Highlights

MISO found that Proposal 212 submitted a moderate project implementation cost of \$117.1 million (compared to the median project implementation cost of \$121.3 million). Proposal 212 offered a 'rate base cap' that was equal to its project implementation cost and included AFUDC. Proposal 212 presented minimal discussion of project risks and had one of the lowest amounts of contingency funding in its project implementation cost.

Proposal 212 had lower substation costs than many other proposals, accompanied by limited supporting information. Proposal 212 was one of four proposals to expressly assume some or all of the risk that project costs could increase due to PUCT-required routing or design changes to the project's 500 kV transmission line. Proposal 212 was one of four proposals that did not offer a schedule guarantee.



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OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table 4-33: Proposal 212 Cost Cap Summary

Proposal 212's ATRR estimate was the lowest submitted, at \$88.2 million. The median ATRR estimate among proposals was \$106 million. RFP respondent 212 did not offer to cap its ATRR, did not include capital expenditures for future years of the project, and its estimated operations and maintenance costs were among the lowest of all proposals, with less supporting information than other proposals.

Contributing to Proposal 212's low ATRR estimate were low operations, maintenance, and administration costs (the second-lowest submitted) and the lowest percentage of equity in capital structure (at 40%). At the same time, the cap restricting equity in Proposal 212's capital structure would apply only during the first 10 years of project operation. This was also true of Proposal 212's cap on base return on equity (which was set at 9.85%, but, with adders, could increase total return on equity to 10.35%). Only two proposals had higher total return on equity.

Design Features

Proposal 212 provided a modest transmission line design with some supporting engineering studies. The 500 kV transmission line would feature primarily self-supporting lattice towers on drilled pier foundations. Proposal 212 did not discuss foundation design criteria (other than adjusting drilled pier foundation depth based on soil conditions), and provided less project-specific geotechnical data than proposals categorized as 'Best/Better' in cost and design.

The right-of-way width for the 500 kV facilities would be 175 feet, with an estimated line length of roughly 21.8 geographical miles. The proposed 500 kV bundled conductor—954 kcmil ACSR Cardinal per phase—had a summer normal and emergency temperature rating of 3,219 Amps at 212°F (with wind speed of two feet per second). Proposal 212 showed that 500 kV transmission line spans crossing local utility lines would follow the catenary constant criteria from the RFP, but did not provide as much lightning performance data (for the 500 kV line or the 230 kV lines) as other proposals did.

Proposal 212's 230 kV transmission line would feature galvanized steel monopole tangent structures with polymer insulator assemblies on directly embedded with concrete backfill foundations. Discussion of 230 kV structure foundations was limited as with the 500 kV structures.



The right-of-way width on the 230 kV lines would be 230 feet, with an estimated length for each 230 kV line of just under 5,000 feet. The proposed 230 kV conductor would be 1,033.5 kcmil ACSS Curlew per phase, which had a summer normal and emergency temperature rating of 1,920 Amps (based on an operating temperature of 392°F and wind speed of two feet per second). Proposal 212 demonstrated that it had considered industry guidelines in evaluating its 230 kV line, with additional ice and wind beyond guidelines, and stated it would consider broken wire and unbalanced ice cases for tangent and running angle and all wires broken on dead-end structures.

Proposal 212 selected a substation site that was roughly five-and-a-half acres and did not lie in a floodplain, but provided less thorough treatment of flooding considerations than other proposals. Some aspects of Proposal 212's substation design were contingent on future analysis of potential environmental impacts, and in general supporting information was less well developed than proposals categorized as 'Best/Better.' Proposal 212 provided steel drawings and sketches for its substation structures, which increased certainty for its design.

Proposal 212 called for a ring bus arrangement for its 230 kV bus and met all minimum MISO substation equipment ratings as stated in the RFP. Proposal 212 provided evidence that it had considered coastal wind conditions at the substation site and selected steel substation structures and foundations that were more robust to withstand higher wind speeds.

While Proposal 212's design did not preclude future expansion, the proposal had limited discussion of substation flexibility into the planning horizon other than identifying a position for one additional 230 kV line, along with an associated drawing. This was less responsive to the operational and planning flexibility component of the aspects and elements than several other proposals. Proposal 212 did not provide for spare single-phase transformer unit at its substation site, whereas several other proposals did.

4.12.3 Project Implementation for Proposal 212

When MISO evaluated Proposal 212, it found Proposal 212's project implementation was 'Good' compared to other proposals, as depicted in Table 4-31. MISO based its finding on the following facts and conclusions from its comparative analysis of Proposal 212.

Proposal 212 had a comprehensive project schedule, which included a critical path. The schedule had ample float, with specific subsets of days identified for regulatory delays and transmission line tie-in activities. Proposal 212's presentation of schedule information (including screen shots) helped show the connections between its schedule and associated sections of the proposal throughout. Proposal 212 had a less thorough risk register than proposals categorized as 'Best/Better,' and did not explain how associated cost impacts might affect the schedule, but did include risk mitigation and how it would tie back to project schedule.

The project management plan for Proposal 212 was well formatted and easy to understand. The scopes of work for each of the entities responsible for project implementation were thoroughly described, with each entity's roles discussed separately from its responsibilities.



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In addressing regulatory permitting, route, and site evaluation, Proposal 212 identified a number of potential routes for its 500 kV transmission line and one preferred route. The discussion of Proposal 212's preferred route was high level and Proposal 212's routing study offered less certainty as compared to other proposals. Proposal 212 provided fewer specifics regarding roles and responsibilities than other proposals.

Geotechnical analysis in Proposal 212 was less comprehensive than other proposals. Although Proposal 212 identified crossings for its preferred route, supporting narrative was limited. KMZ files were included with Proposal 212 but provided less specific supporting information than other proposals.

Proposal 212 described its process for routing evaluation studies, but the process was less specific than other proposals and had minimal discussion to support evaluated routes. Information about who would conduct environmental assessments lacked certainty.

Proposal 212 described a plan to purchase an option on its substation site, and provided maps showing its location. Although the narrative in Proposal 212 described evaluating several sites, there was minimal background on the sites evaluated and limited information on site constraints. Supporting discussion of wetlands and pipeline crossings was minimal.

Proposal 212 provided a map showing parcels and the quantity of land to be acquired, but with very little information about landowners or other supporting discussion. Proposal 212 provided a comprehensive, project-specific description of the construction process, including specific schedules, activities, and tasks. The proposal included separate construction plans for the transmission lines and substations and explained the sequence of construction steps.

Proposal 212 provided an organization chart that identified the project engineer, as well as roles associated with engineering and surveying. Proposal 212 included a surveying plan and a thorough engineering plan, although it was not project specific.

With respect to construction-specific safety information, Proposal 212 provided information related to different entities that would be involved in project implementation, including a safety manual, a job hazard assessment, and an emergency action plan.

4.12.4 Operations and Maintenance for Proposal 212

When MISO evaluated Proposal 212, it found Proposal 212's operations and maintenance were 'Good' compared to other proposals, as depicted in Table 4-31. This finding was supported by the information and comparative analysis results summarized below.

In general, Proposal 212 described robust control center capabilities and qualified personnel. Proposal 212 demonstrated experience with EHV facilities in the project area and operations tied into multiple control centers, but did not specify which would serve as the backup control center for the project. Proposal 212 provided less evidence supporting its discussion of control center characteristics than other proposals that scored higher in operations and maintenance. Proposal 212 described one control center as lead for managing state



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estimation and real-time contingency analysis, but did not discuss current capabilities or a plan to model the project area for state estimation and real-time contingency analysis.

Although RFP Respondent 212 identified dedicated personnel for outage response and emergency repairs (as well as coordinated crisis command capabilities), the crews' response times were longer than many other proposals. Proposal 212 described plans to contract for first responder services, but potential vendors were three hours away from the project area and the proposal lacked associated details, resumes, and safety metrics.

RFP Respondent 212 would rely on internal resources for disaster response (as well as major facility replacements or rebuilds), with support from contractors if needed. Because Proposal 212 did not identify these potential third-party contractors, MISO could not determine their experience or safety records. However, RFP Respondent 212 demonstrated recent, relevant experience with large-scale storm response.

Proposal 212 laid out a comprehensive re-energization plan and testing for the substation transformer, but did not do so for other equipment. Resources included one all-terrain vehicle for wetlands with limited capability. Proposal 212 did not discuss operations and maintenance funding or an on-going capital expenditure budget to fund project rebuilds, although it demonstrated the financial capability to do so. There were EHV structures available for temporary construction if needed, as well as in-house engineering, project management, procurement, and field services.

Proposal 212 described comprehensive asset management programs for line maintenance, substation maintenance, and vegetation management. Preventive maintenance and test results trigger maintenance decisions using a defined algorithm. RFP Respondent 212 could monitor substation transformer phases in real time, but did not have a spare transformer phase at the substation and did not explain its transportation plan to move a remotely located spare transformer to the project site if needed. In general, while Proposal 212 laid out a robust maintenance plan, it had significantly lower estimated operations and maintenance costs than all other proposals, and did not offer to cap these costs.

With respect to safety information for operations and maintenance, MISO found that Proposal 212 submitted a thorough safety program, which included a contractor safety program with specific requirements. Among other details, Proposal 212 described a human performance initiative, an initial screening and safety metric review, penalties for violations, and required job site briefings for local hazards. Proposal 212 included a plan for mitigating induced current hazard on grounded equipment.

Proposal 212 showed top-tier safety metrics for a parent company, but without sufficient detail for MISO to determine whether stated rates related to operations and maintenance activities or to the company as a whole.



4.12.5 Planning Participation for Proposal 212

MISO evaluated planning participation for Proposal 212, as described in Section 2.6.5 of this report; however, the results of this analysis are redacted to maintain the confidentiality of all RFP Respondents other than the Selected Developer.

Attachment 1 Glossary

Introductory notes:

- (1) Any capitalized terms used in this document for which definitions are not provided in this glossary are as defined in the MISO Tariff or the applicable MISO business practices manuals.
- (2) For some terms defined in the MISO Tariff, definitions provided in this glossary have been adapted to make them easier to understand when separated from the Tariff, but the formal Tariff definitions are controlling for all purposes.
- (3) For readability, many of the terms defined below are not capitalized when used in the body of this report.

Term	Meaning for Purposes of Selection Report
AFUDC	AFUDC is an abbreviation for “allowance for funds used during construction.” In the context of transmission rate regulation, it refers to a request by the owner of a transmission facility to be allowed to capitalize, and earn a permitted rate of return on, the net cost of borrowed funds used during construction, as well as equity funding. Recovery of AFUDC is not available until after the facility has been placed in service.
Annual Transmission Revenue Requirement (ATRR)	The sum total of the revenues required to pay all operating and return on rate base costs of providing transmission service. Generally, this term is used in the calculation of the Attachment O revenue requirement of a transmission owner within MISO. For purposes of the RFP, a proposal is to include an aggregate ATRR value determined by combining the annual transmission revenue requirements of each individual RFP Respondent and each individual Proposal Participant identified in a proposal, as provided in Attachment FF of the Tariff. All statements in this report describing proposals’ ATRR estimates are referring to the net present value, in 2018 dollars, of submitted ATRR over a 40-year period, discounted annually at 8%.
Aspects and Elements	Particular characteristics MISO emphasized out in the RFP as particularly important to the success of the Hartburg-Sabine Project. These aspects and elements are summarized in Section 2.6.4.



Term	Meaning for Purposes of Selection Report
Business Practices Manual (BPM)	A MISO Business Practices Manual consists of instructions, rules, policies, procedures, and guidelines established by MISO for the operation, planning, accounting, and settlement requirements of the MISO region. For purposes of the RFP, BPM-027 provides further background information, business rules, processes, and guidelines for the Competitive Transmission Process (including the roles and responsibilities of MISO, Transmission Owners, Members, and any other non-MISO Members and other interested parties).
CCN	Certificate of Convenience and Necessity.
CEII	Critical Energy Infrastructure Information, as described in 18 C.F.R. § 388.113(c)(1), as it may be amended from time to time.
Competitive Developer Selection Process	MISO's process to certify Qualified Transmission Developers, identify Competitive Transmission Projects, solicit proposals, evaluate proposals, and designate a Selected Proposal and Selected Developer in accordance with Attachment FF of the Tariff.
Competitive Transmission Executive Committee (Executive Committee)	The Competitive Transmission Executive Committee consists of three or more MISO executives, including at least one officer, who are charged with overseeing MISO staff and consultants involved in implementing the MISO Competitive Transmission Process. The MISO Tariff provides that the Executive Committee has exclusive and final authority to approve or reject Transmission Developer Applications and certify Transmission Developer Applicants as Qualified Transmission Developers.
Competitive Transmission Process	The process used to certify Qualified Transmission Developers, identify Competitive Transmission Projects, solicit proposals, evaluate proposals, and designate a Selected Developer and Selected Proposal, all in accordance with the MISO Tariff. The competitive transmission process includes the competitive developer qualification process and the competitive developer selection process.
CWIP	CWIP is an abbreviation for "construction work in progress." In the context of transmission rate regulation, it refers to a request by the owner of a transmission facility to be allowed to include costs of facility construction in rate base before the corresponding transmission facility has been placed in service. Under FERC rules, CWIP funding is limited to amounts that would otherwise qualify for AFUDC.
DART	" DART " stands for "days away, restricted, or transferred," which is an OSHA safety metric.
EHV	Extra-High Voltage.
Entergy	Entergy Texas, Inc.



Term	Meaning for Purposes of Selection Report
Evaluation Criteria	The four FERC-approved criteria the Tariff requires MISO to use for the competitive developer selection process: (1) cost and design, (2) project implementation, (3) operations and maintenance, and (4) planning participation.
Evaluation Principles	The four evaluation principles specified in Section 8.1 of BPM-027, which MISO uses to guide and influence the collective application of the MISO evaluation criteria. The evaluation principles are: (1) certainty, (2) risk mitigation, (3) cost, and (4) specificity.
Evaluation Team	Designated members of MISO management and staff responsible, together with independent consultants retained by MISO to assist management and staff, responsible for administration of MISO's competitive developer selection process, subject to oversight by the Executive Committee.
FERC	The Federal Energy Regulatory Commission.
KMZ	KMZ is a file extension for a file type used by Google Earth. KMZ stands for "Keyhole Markup language Zipped," which is a compressed version of a KML (Keyhole Markup Language) file. KML is notation related to geographic display and visualization within Internet-based, two-dimensional maps and three-dimensional Earth browsers.
LiDAR	LiDAR (L ight D etection A nd R anging) is a surveying method that measures distance to a target by illuminating the target with pulsed laser light and measuring the reflected pulses with a sensor.
Local Balancing Authority	An operational entity or a "Joint Registration Organization" (as defined by NERC) that is (a) responsible to NERC for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for its local area within the MISO Balancing Authority Area, (b) a Party (other than MISO) to the MISO Balancing Authority Agreement, and (c) shown in Appendix A to the Balancing Authority Agreement.
MISO	Midcontinent Independent System Operator, Inc.
MISO Tariff (Tariff)	MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (including all of its schedules and attachments), as amended from time to time.
MTEP	MISO's Transmission Expansion Plan, which is a long-range plan used to identify expansions or enhancements to the MISO transmission system to (a) support efficiency in bulk power markets, (b) facilitate compliance with documented federal and state energy laws, regulatory mandates, and regulatory obligations, and (c) maintain reliability. The MTEP is developed biennially or more frequently, and subject to review and approval by MISO's Board of Directors.



Term	Meaning for Purposes of Selection Report
MTEP17	MISO's 2017 Transmission Expansion Plan, which was the transmission plan in which the project was approved.
NESC	National Electrical Safety Code, which sets the ground rules and guidelines for practical safeguarding of utility workers and the public during the installation, operation, and maintenance of electric supply and communication lines and associated equipment.
Nominal Dollars	Nominal dollars reflect the costs to construct / operate the project at the time the cost is incurred. For example, if an RFP Respondent expects an item will cost \$1,000 in 2023, then the cost estimate in nominal dollars in 2023 will be \$1,000.
OSHA	The U.S. Occupational Safety and Health Administration.
Project	The Hartburg-Sabine Junction 500 kV Competitive Transmission Project, which consists of a new single-circuit 500 kV transmission line that will interconnect the existing Hartburg 500 kV substation (owned by Entergy) to a new substation (the Stonewood 500 kV substation). The Stonewood 500 kV substation will interconnect with two of Entergy's existing 230 kV transmission lines, and will include one 500 kV transmission position, one 500/230 kV transformer, and four 230 kV transmission positions. This report uses the term "project" throughout in lower-case form.
Project Implementation Cost	For purposes of this report, project implementation cost (or simply " implementation cost ") refers to the cost estimate (in nominal dollars) for fully implementing the proposal and placing the project into service. Project implementation cost is calculated in the Proposal Template Workbook based on required inputs for cost categories explained in Part 2 of the RFP package.
Proposal Participant	For purposes of this project, a Proposal Participant is an entity that is involved in a proposal and is not the RFP Respondent, but will co-own the project and rely on the RFP Respondent to be responsible for constructing and implementing the project. A proposal may designate a Proposal Participant as responsible for one or more aspects of operations, maintenance, repair, or restoration, on terms comparable to those that would apply if the RFP Respondent intended to rely on a third-party contractor. Every proposal must specify whether the RFP Respondent plans to convey any interests in the project to one or more Proposal Participants.
Proposal Submission Deadline	The date and time by which proposals responding to an RFP must be delivered to MISO—in the case of this project, 5:00 p.m. Eastern Time on July 20, 2018.

Term	Meaning for Purposes of Selection Report
Proposal Template Workbook	An Excel spreadsheet template, included as part of the RFP materials, for each RFP Respondent to use in submitting financial information for its proposal.
PUCT	Public Utility Commission of Texas
Qualified Transmission Developer	A MISO Transmission Owner, independent transmission company, or non-owner Member of MISO that submits a Transmission Developer Application and is subsequently determined by MISO to meet the minimum requirements for a Qualified Transmission Developer as outlined in Attachment FF of the Tariff.
RFP	A request for proposals issued by MISO, which constitutes an invitation (including associated requirements) for Qualified Transmission Developers to submit proposals to construct, implement, own, operate, maintain, repair, and restore a Competitive Transmission Project. The RFP for this project, which was issued on February 6, 2018, is available at https://www.misoenergy.org/planning/competitive-transmission-administration/#nt=%2FctadocType%3ACurrent%20Projects&t=10&p=0&s=FileName&sd=desc
RFP Respondent	Any one or more of the Qualified Transmission Developers that elected to submit proposals responding to the RFP.
SCADA	S upervisory C ontrol A nd D ata A cquisition.
Selected Developer	The RFP Respondent designated by the Executive Committee as having submitted the Selected Proposal, and therefore selected to implement the project according to the Selected Developer Agreement.
Selected Developer Agreement	The form of agreement, as set forth in Appendix 1 to Attachment FF of the Tariff, to be executed between the Selected Developer and MISO. The Selected Developer Agreement establishes the terms and conditions under which the Selected Developer will construct and implement the project as specified in its Selected Proposal.
Selected Proposal	The proposal selected by the Executive Committee (in accordance with the competitive developer selection process) as the highest-scoring proposal submitted in response to the RFP.



Term	Meaning for Purposes of Selection Report
Switching Order	A switching order is a written set of instructions, using three-way communications during implementation, to ensure that an electrical facility is de-energized and put into an electrically safe condition before maintenance is performed. It would typically include at least the following elements: • switching activities step by step, • estimated times, • responsibility assignments, • applicable safety measures, and • necessary personal protective equipment for each step.

Attachment 2 Design-Related Terminology

Term	Explanation
ACSR	Aluminum conductor, steel reinforced. With ACSR conductor, both the primary conducting material (aluminum) and steel strands contribute to overall conductor strength. Because the aluminum is important as a supporting material, system operators must be careful not to allow the conductor to become so hot that the aluminum starts to soften (referred to as annealing). Extended operation at higher temperatures could cause ACSR to start losing its strength, increasing risk of low clearance or conductor failure.
ACSS	Aluminum conductor, steel supported. ACSS conductors use fully annealed aluminum supported on high-strength steel. Because the steel is the primary source of conductor strength, ACSS conductor usually can be operated at higher temperatures than ACSR.
Bittern	Bittern is a trade name for a conductor variety of a specific gauge (as measured in kcmil), with a particular combination of steel and aluminum strands—in this case, 1,272 kcmil 45/7, denoting 45 aluminum strands surrounding seven steel strands in each conductor bundle.
Bluebird	Bluebird is a trade name for a conductor variety of a specific gauge (as measured in kcmil), with a particular combination of steel and aluminum strands—in this case, 2,156 kcmil 84/19, denoting 84 aluminum strands surrounding 19 steel strands in each conductor bundle.
Breaker-and-a-half (or breaker-and-a-half arrangement)	A breaker-and-a-half arrangement consists of two main buses, both of which are normally energized. Associated facilities interconnect with the main buses in sets of two positions, and these pairs of positions each have three associated breakers – a center circuit breaker common to the two positions and two additional circuit breakers specific to each of the two positions. Each position is therefore associated with one-and-a-half breakers. A breaker-and-a-half arrangement is more robust than a ring bus, but not as robust as a double-breaker, double-bus.
Bus	An electrical bus in a substation is a conductor or group of conductors that serves as a collection and transfer point for energy flowing into and out of substation feeders. A bus has an associated arrangement of circuit breakers that allow the bus to be disconnected from individual or sets of positions, so that, with all breakers open, the bus is electrically isolated from remaining power system elements. The number and positions of the circuit breakers vary with different substation designs, as further described in this glossary

Term	Explanation
	under the definitions for “double-breaker, double-bus,” “breaker-and-a-half,” and “ring bus.”
Cardinal	Cardinal is a trade name for a conductor variety of a specific gauge (as measured in kcmil), with a particular combination of steel and aluminum strands—in this case, 954 kcmil 54/7, denoting 54 aluminum strands surrounding seven steel strands in each conductor bundle.
Catenary constant	For a wire with no wind and no ice, the catenary constant is the ratio of horizontal tension to unit mass of the wire (H/w). In transmission line design, the catenary constant determines the shape of the sag (catenary) and corresponding tension in the wire. This is one of the controlling mechanisms used in transmission line design for wire sag and tension.
Counterpoise	The term counterpoise describes measures, such as lengths of conductive line or other material, used to further dissipate electrical charge when primary methods used for grounding around transmission structures (such as driven ground rods) are not sufficient to achieve a desired target level of ground resistance.
Creep	Creep is the permanent elongation of conductor cable due to everyday tensions that the cable experiences over a period of time.
Curlew	Curlew is a trade name for a conductor variety of a specific gauge (as measured in kcmil), with a particular combination of steel and aluminum strands—in this case, 1,033.5 kcmil 54/7, denoting 54 aluminum strands surrounding seven steel strands in each conductor bundle.
Dead-end structures (also failure containment, containment, or storm structures)	Dead-end or failure containment transmission structures are designed to withstand more mechanical stress than standard “tangent” or “running angle” structures (explained below). They are used at heavy-angle turns along transmission routes (where the forces created by the high degree of the angle in conjunction with the conductor weight and tension make it harder for support structures to remain upright). They are also placed at specified intervals along a transmission line so that, if something seriously damages or destroys some of the supporting structures, the structure failure will not cascade through many miles of transmission line. Instead, the dead-end structures on either side of the damaged area will arrest the structure failures.
Direct embed	Transmission structures that are direct embedded are generally anchored by extending the structure shaft below grade, relying on the surrounding



Term	Explanation
	earth and backfill material for support. To place direct-embedded structures, construction workers excavate a hole of sufficient depth, place the structure in it, and then refill the space around the structure. (The fill material may be gravel, engineered material or replacement of the excavated backfill. A bearing plate may be engineered into the design of the foundation as needed.)
Double-breaker, double-bus	A double-breaker, double-bus arrangement consists of two main buses, both of which are normally energized. Associated positions interconnect individually to each bus, with two circuit breakers for each position (one for each of the connections to each of the buses). As compared to a ring bus or a breaker-and-a-half arrangement, a double-breaker, double-bus is the most robust arrangement.
Drake	Drake is a trade name for a conductor variety of a specific gauge (as measured in kcmil), and a particular combination of steel and aluminum strands—in this case, 795 kcmil 26/7, denoting 26 aluminum strands surrounding seven steel strands in each conductor bundle.
Drilled pier	A drilled pier is a concrete pier foundation with steel reinforcement and anchor bolts. Depending on soil conditions installation may be with or without casing. Either permanent or temporary casing may be used. Installation may require specialized techniques and drilling fluids.
Galloping	Galloping is a term for how overhead power lines will oscillate (generally, but not exclusively, in a vertical direction) in a low-frequency, high-amplitude motion due to wind and the formation of a thin layer of ice on the wire. Sustained or severe galloping can damage or cause failure of transmission line components and supporting structures.
Galvanized steel	A galvanized steel transmission structure is one in which the steel has been coated in zinc to prevent corrosion. This gives it a shiny appearance.
Guying	Guying is the practice of attaching tensioned cables (typically steel) to transmission structures to increase their stability.
Helical anchor/helical pile	A helical anchor/pile is an extendable foundation system with helical plates welded to a central steel shaft. Load is transferred from the shaft to the soil through these plates.
Kcmil	Kcmil is an abbreviation for thousands of circular mils, a measurement of wire gauge (a mil is 1/1000 inch).

Term	Explanation
MA3	MA3 behind ACSS conductor denotes core high-strength steel strands available in ACSS.
Monopole	A monopole is a single primary structure (typically, either wood or steel) that supports an overhead transmission line—as distinguished, for example, from H-frame, three-pole, or lattice tower structures. Tangent monopole structures typically have davit arms to position conductor assemblies a minimum distance away from the structure.
Optical ground wire	Optical ground wire (or “OPGW”) is composed of optical fiber surrounded by conductive material (steel and aluminum). It is used in conjunction with overhead transmission lines to combine the functions of grounding (see the explanation of shield angle below) and communications.
Pheasant	Pheasant is a trade name for a conductor variety of a specific gauge (as measured in kcmil), with a particular combination of steel and aluminum strands—in this case, 1,272 kcmil 54/19, denoting 54 aluminum strands surrounding nineteen steel strands in each conductor bundle.
PLS-CADD	PLS-CADD™ (Power Line Systems - Computer Aided Design and Drafting) is a line design program that includes all the terrain, sag-tension, loads, clearances and drafting functions necessary to design an electric power line. It is a trademark of Power Line Systems.
Position	In an electrical substation, the term position refers to the connection point between a particular facility—either a transmission line or a transformer—and a bus within the substation.
Rail	Rail is a trade name for a conductor variety of a specific gauge (as measured in kcmil), with a particular combination of steel and aluminum strands—in this case, 954 kcmil 45/7, denoting 45 aluminum strands surrounding seven steel strands in each conductor bundle.
Ring bus (or ring bus arrangement)	In a ring bus arrangement, the positions associated with the bus form a closed loop or “ring,” with each position separated by a circuit breaker. The numbers of circuit breakers and positions are equal. A ring bus arrangement is a sound design, but is not as robust as a breaker-and-a-half or a double-breaker, double-bus arrangement.
Running angle (structure)	Running angle structures are structures used for portions of a transmission line route that have light- or medium-angle turns. Typically, the suspension assemblies for attaching the conductor to the structures will permit the

Term	Explanation
	insulators to swing away from the support structure.
Shield (or shielding) angle	The terms shield angle or shielding angle describe the position of optical ground wire secured on a transmission structure in relation to the position of the conductor below for which it provides shielding. (Because the optical ground wire is positioned above the conductor, it will attract lightning strikes that might otherwise strike the conductor, and safely conduct the resulting electrical charge along grounding material on the structure to grounding rods or other devices below.) Specifically, shield angle describes the angle between (a) an imaginary vertical line drawn from the attachment point of the optical ground wire and (b) an imaginary line drawn between the attachment point for the optical ground wire and the attachment point (on the same structure) for the shielded conductor. A smaller shield angle more effectively protects the conductor beneath.
Tangent (structure)	Tangent structures are structures used for portions of a transmission line route that are mostly straight or have very minor turns).
TW	TW denotes Trapezoidal Wire, Trapezoidal Shaped Aluminum Strands in conductor construction.
Vibratory Caisson/Pipe Pile	A vibratory caisson or a pipe pile is a steel tube or pipe pile driven in the ground using vibrations induced by a hammer mounted on top. This foundation type can be used when soil conditions allow a steel caisson to be driven into the ground without excavating the site.

Attachment 3 Overview of Comparative Analysis Process

A3.1 Evaluation Process

With the tremendous volume of information that accompanied 12 comprehensive proposals, the evaluation team began work to support the competitive developer selection process as soon as all submittals were received. Collaborating as work stream teams, the evaluation team members conducted iterative cycles of analysis for each of the proposals, using structured, quantitative and qualitative processes to synthesize the extensive proposal information from each RFP Respondent. Figure A3-1 illustrates the four steps MISO used to carry out its comparative analysis. (Note that “CTEC” refers in the figures below to the Competitive Transmission Executive Committee, or “Executive Committee.”)

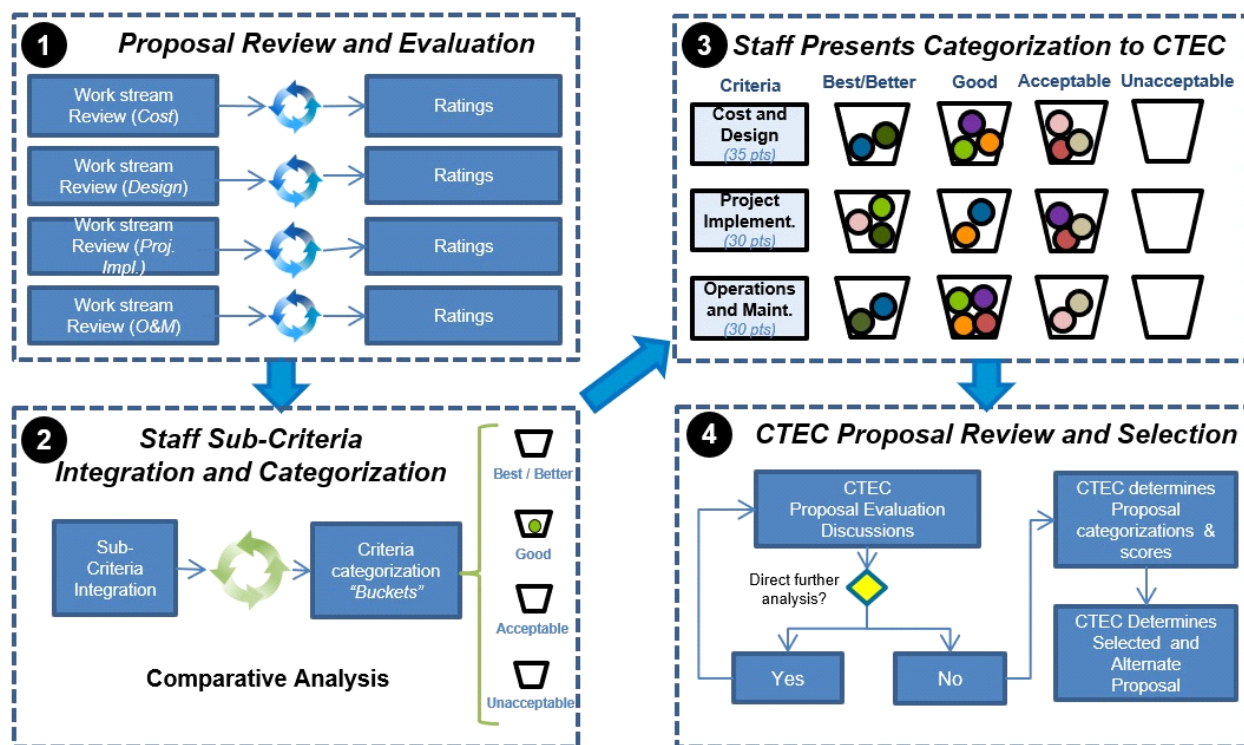


Figure A3-1: Illustrative Overview of MISO Evaluation Process

The evaluation team used this four-step process to facilitate a highly qualitative approach with appropriate flexibility, complemented by analytical tools. The evaluation team was guided and influenced by the evaluation principles (certainty, risk mitigation, cost, and specificity) as it applied the four evaluation criteria (cost and design, project implementation, operations and maintenance, and planning participation) and their associated sub-criteria in the competitive developer selection process. The evaluation team remained focused on the evaluation criteria, sub-criteria, evaluation principles, and the RFP’s aspects and elements, using tools and templates through each step of the process to assess the relative merits of each proposal, as opposed to ranking them against a static, absolute scale.



Figure A3-2 below shows the organization of the evaluation team.

CRITERIA	COST AND DESIGN		PROJECT IMPLEMENTATION		OPERATIONS AND MAINTENANCE	PLANNING PARTICIPATION
WORK STREAM	DESIGN	COST	CAPITAL RESOURCES AND FINANCING PLAN	PROJECT IMPLEMENTATION	OPERATIONS AND MAINTENANCE	PLANNING PARTICIPATION
MISO STAFF MEMBERS	Lead	Lead		Lead	Lead	Lead
CONSULTANTS	Consultant	Consultant		Consultant	Consultant	
MISO MANAGEMENT	Competitive Transmission Administration					
	Finance					
	Legal					
DECISION MAKER	Competitive Transmission Executive Committee					

Figure A3-2: Organization of the MISO Evaluation Team

A3.2 Work Stream Team Analytical Framework

The discussion below presents a high-level description of the approach MISO's work stream teams used to carry out their respective responsibilities in the competitive developer selection process. The information presented here is not an exhaustive account of every element and dimension of the evaluation process, but provides a general flavor of the analytical framework the work stream teams employed.

Cost and Design

Cost and design is unique among the criteria in requiring substantial comparative analysis and integration of two distinct work streams. In evaluating the sub-criteria of estimated project cost and estimated ATRR for each proposal, MISO used the associated factors, as shown in the correlation tables in Attachment 4, which correspond to information requested in the RFP.

The RFP contained a proposal template workbook to foster consistency in proposal format and content, particularly for financial data. Even so, the proposals differed, sometimes subtly and sometimes more profoundly, within the proposal template structure. For example, RFP Respondents differed not only in proposed design, materials, right-of-way, and implementation costs for their projects, but in areas such as cost containment provisions, estimated cost of debt, return on equity, and assumed property tax rates.

Because the Tariff evaluation criteria direct MISO to analyze cost information in conjunction with project design, MISO used a cross-disciplinary approach to evaluate estimated implementation costs, ATRRs, and transmission line and substation design. MISO's internal and external finance and rate analysis experts collaborated with evaluation team members specializing not only in transmission line and substation design, but project implementation and

operations and maintenance as well. This enabled MISO to blend financial and technical expertise to assess how well proposal features and resulting costs would align to deliver a high-value, cost-effective solution.

To facilitate thorough and consistent comparison across proposals, the evaluation team used a range of tools and perspectives to analyze cost information provided by the RFP Respondents. MISO evaluated submitted values, but also ran sensitivity studies to test how resilient or variable different proposals might be with changes to particular cost drivers such as higher-than-estimated capital expenditures for implementation, depreciation schedules, return on equity, cost of debt, the percentages of equity and debt in capital structure, taxes, inflation, and operations and maintenance costs. MISO modeled ATRR estimates using common and proposal-specific values where appropriate across a range of possible scenarios. This enabled MISO to compare the rigor of submitted cost estimates and assess resulting certainty and risk mitigation offered to ratepayers while taking into account all relevant binding cost caps and cost containment features.

RFP Respondents proposed a wide range of cost caps, concessions, and other cost-containment commitments in their proposals. The instructions and templates in the RFP package were designed to enable RFP Respondents to approach cost competition creatively, but with rigor and specificity (including sample contract language). This flexible approach entailed greater complexity, but enabled RFP Respondents to craft diverse approaches to project cost mitigation. The selection report notes proposals that offered cost caps, concessions, and cost containments that delivered significant long-term value and cost risk mitigation benefits to ratepayers.

To illustrate the wide range of innovative cost elements included in the proposals, Table A3-1 summarizes the cost caps, concessions, and commitments of all of the proposals.

OFFERED COST CAPS / CONTAINMENT	PROPOSAL NUMBER											
	201	202	203	204	205	206	207	208	209	210	211	212
Implementation Cost – nominal (\$M)	114.8	127.5	152.3 ¹	127.9	135.0 ²	119.7	118.8	132.9		122.8	✓ ³	117.1
Forego AFUDC	✓			✓		✓		✓				
Forego CWIP	✓	✓	✓	✓	✓	✓		✓		✓		✓
PUCT Route Change		✓			✓ ⁴				✓			✓
ROE and Incentives (%)	9.8 ⁵	9.8 ⁵	9.8 ^{5 6}	9.8 ⁵	10.7 ⁵	9.8 ⁵	9.75	9.8 ⁵		9.8 ⁵	10	10.35 ⁷
Capital Structure (Equity %)	45	45	45 ⁸	45	60	45	52.5	45		45	55	40 ⁷
Operations and Maintenance	10 yr.			10 yr.	5 yr.	10 yr.		10 yr.		5 yr.	40 yr.	
ATRR	10 yr.			10 yr.		10 yr.		10 yr.	40 yr.			

¹ Also capped the AFUDC rate

² Cap increases subject to commodity inflation

³ Only a portion of construction costs are capped

⁴ Project cost cap includes additional 1.5 miles and caps the per mile cost of additional miles

⁵ Schedule guarantee

⁶ Reliability guarantee

⁷ 10 year ROE and capital structure cap

⁸ Cap on cost of debt through 2025

Table A3-1: Cost Cap Summary

For MISO, it comes down to providing the greatest overall value and that, encompasses more than just cost. There are more elements to cost than just the overall number. In MISO's process, cost is a comparative advantage, not an absolute determinate.

In evaluating each proposals for the sub-criteria of electrical design and structural design (which pertained to project transmission lines and the substation), MISO used the associated factors, as shown in the correlation tables in Attachment 4, which reflect the information requested in the RFP.

Attachment 3 – Overview of Comparative Analysis Process

Through in-depth review of these factors collectively, MISO gained a thorough understanding of each RFP Respondent's ability to successfully design the project with appropriate specificity, certainty, and risk mitigation measures. The cost sub-criterion was considered in the cost aspect of the evaluation. MISO evaluated the rigor of design data collection and supporting design studies. Some examples of this include acquisition of geotechnical data; acquisition or consideration of routing data including parcel crossings, road crossings, pipelines, and line crossings; and consideration of potential environmental and external impacts on the design (relevant flood levels, lightning frequency, etc.). A proposal with a higher level of certainty is less likely to be exposed to major design changes down the road.

MISO evaluated the ability of the design to perform well throughout its expected life. A design with lower risk increases the likelihood the line will perform in an adequate and reliable manner over its life.

In evaluating transmission line design for the Hartburg-Sabine Project, MISO noted that all proposals met the minimum transmission line rating requirements. A few proposals provided the transmission design software (PLS-CADD) line models to support their designs. Several proposals did not fully demonstrate how they conformed to Entergy interconnection and existing transmission line crossing requirements. The selection report notes proposals that most distinguished themselves in their transmission line designs.

For the new Stonewood 500 kV Substation, MISO evaluated the civil, structural, and physical design for all proposals. MISO found that all RFP Respondents demonstrated adequate means to design their substations. In addition to the required physical top-down drawings, some RFP Respondents also provided grading plan drawings, conduit and cable trench drawings, grounding plan drawings, and bills of material, which increased specificity and enabled MISO to assess the merits of these proposals in greater detail. The selection report notes proposals that most distinguished themselves in the civil, structural, and physical substation designs.

MISO also evaluated substation protection, control, and communication system designs for all proposals. All proposals explained their approaches to line protection, bus protection, breaker failure protection, and transformer protection. In addition to required one-line diagrams, and protection and control functional diagrams, many RFP Respondents also provided control enclosure drawings, relay panel front drawings, and preliminary SCADA points lists. For their communication systems, all proposals had similar designs to communicate with the interconnecting substations. The selection report notes proposals that most distinguished themselves in their approach to protection, control, and communication systems.

Calculation of Estimated Benefit-to-Cost Ratios

For MTEP17, MISO's scoping-level cost estimate and the gross-plant weighted average of MISO Transmission Owners was used to estimate the benefit-to-cost for the project of 1.35. The benefit-to-cost calculation reflects the present value of the benefits and the ATRR for the project up to and including the year 2042.

Attachment 3 – Overview of Comparative Analysis Process

MISO used the same present value of the benefits from MTEP17, converting the results to 2018 dollars. MISO used the same assumptions (including assumed discount rate) when calculating the present value of each RFP Respondent's ATRR estimates up to and including the year 2042 to calculate the benefit-to-cost ratio discussed in the selection report. All proposals had benefit-to-cost ratios higher than MISO's estimate, reflecting RFP Respondents' ability to deliver lower up-front costs, lower costs over time, or both.

Project Implementation

MISO evaluated proposals for project implementation based on sub-criteria identified in the Tariff, including project schedule and management, regulatory permitting, route and site evaluation, right-of-way and land acquisition, construction, financing and capital resources, and safety.

To analyze how the proposals performed against these sub-criteria, the project implementation team used the associated factors, as shown in the tables in correlation tables in Attachment 4, which correspond to information requested in the RFP. Through in-depth review of these factors collectively, the project implementation team gained a holistic view of each RFP Respondent's ability to successfully implement the project while managing costs and risks.

In assessing each proposal's project implementation information, MISO found that all RFP Respondents had adequate approaches to managing their projects, including schedules, plans, relevant experience, analysis, and process descriptions. Notable proposals included thorough, project-specific risk registers and project management plans that linked all elements of the proposal together. Although most RFP Respondents submitted construction plans, commissioning plans, permitting plans, routing studies, site analyses, and right-of-way and land acquisition plans, the quality of supporting discussion varied markedly among the proposals. The selection report notes proposals that most distinguished themselves in project implementation.

Operations and Maintenance

MISO evaluated proposals for operations and maintenance based on sub-criteria identified in the Tariff, including normal operations, non-normal operations, maintenance activities, and safety. To analyze how the proposals performed against these sub-criteria, the operations and maintenance team used the associated factors, as shown in the correlation tables in Attachment 4, which correspond to information requested in the RFP.

Through in-depth review of these factors collectively, the operations and maintenance team gained a holistic view of each RFP Respondent's ability to successfully integrate, operate, and maintain the project. MISO found that all RFP Respondents demonstrated the necessary capability and resources to operate and maintain the project. Some RFP Respondents provided comprehensive, project-specific operations and maintenance plans and demonstrated thoughtful consideration of the particular challenges of maintaining extra-high voltage facilities under the conditions found in the project area. The selection report notes proposals that most distinguished themselves with respect to their strategies and fitness to operate and maintain the project.

Transmission Planning Participation

The Tariff directs MISO to consider whether at least one RFP Respondent or Proposal Participant associated with a given proposal has conducted relevant planning studies and provided associated results to MISO during the planning process. Part of this consideration includes whether an RFP Respondent or Proposal Participant has submitted any transmission project ideas submitted as potential solutions to address the same issues the project is intended to address.²³

Planning participation was scored on an all-or-nothing basis, meaning that a proposal was awarded the full planning participation score if at least one RFP Respondent or Proposal Participant or an affiliated entity participated in MTEP17. If not, a proposal received zero points for planning participation.²⁴

A3.3 Evaluation Scorecard

The evaluation scorecard below (Figure A3-3) illustrates how MISO synthesized the evaluation criteria, sub-criteria, and evaluation principles to develop categorizations and final scores in the competitive developer selection process.²⁵

²³ Attachment FF, Section VIII.E.1.4.

²⁴ BPM-027, Section 8.2.2. To avoid revealing the identities of RFP Respondents, MISO has redacted proposal-specific information about planning participation in this report.

²⁵ MISO has determined criteria-level scores for each proposal in accordance with the Tariff and business practices manual; however, the criteria-level scores are not included in this report. MISO will provide criteria-level scores to each RFP Respondent for its own proposal.



Attachment 3 – Overview of Comparative Analysis Process

Evaluation Principles Applied (Certainty, Risk Mitigation, Cost, & Specificity)	Tariff Criteria		Tariff Subcriteria	Score
	Cost & Design	35%	Electrical Design	0-35 pts.
			Structual Design	
			Estimated Project Cost	
			Estimated Annual Transmission Revenue Requirement	
	Project Implementation	30%	Project Schedule & Management	0-30 pts.
			Regulatory Permitting & Route Evaluation	
			Right-of-Way & Land Acquisition	
			Construction	
			Financing & Capital Resources Plan	
			Safety	
	O & M	30%	Normal Operations	0-30 pts.
			Non-Normal Operations	
			Maintenance Activities	
			Safety	
Planning Participation	5%	Transmission Solution Idea Submittal Form	0 or 5 pts.	
Total Score:			0-100 pts.	

Figure A3-3: Proposal Evaluation Scorecard

The Executive Committee exercised its exclusive and final decision-making authority to determine the Selected Developer and the Alternate Selected Developer by categorizing and scoring each proposal.²⁶ The maximum total score was 100 points. The proposals the Executive Committee determined to be best for a given evaluation criterion was awarded the maximum points available for that criterion.²⁷ Planning participation was scored on an all-or-nothing basis, meaning that a proposal was awarded the full planning participation score if at least one RFP Respondent or Proposal Participant or an affiliated entity participated in MTEP17. If not, a proposal received zero points for planning participation. To protect confidentiality, MISO has redacted proposal-specific information about planning participation in this report.

All proposals were scored commensurate with their categorization and comparative performance within each of the evaluation criteria. The RFP Respondent that submitted the proposal to which the Executive Committee awarded the highest aggregate score was designated as the Selected Developer. The Executive Committee also designated the Alternate Selected Developer. MISO will not publicly disclose the identity of the Alternate Selected Developer unless the Alternate Selected Developer is required to assume the obligations of the Selected Developer.

²⁶ MISO Tariff, Attachment FF, Section, VIII.E.2; Module A (Definitions), Section 1.C, "Competitive Transmission Executive Committee."

²⁷ BPM-027, Section 8.2.1.

**A3.4 Completion of the Competitive Developer Selection Process**

After completing reconciliation of proposal evaluation expenses, MISO will publicly post on the MISO website the expenses it has incurred to facilitate the competitive developer selection process for the Hartburg-Sabine Project. These expenses include the issuance of the Hartburg-Sabine Project RFP, the management and facilitation of MISO's project questions and responses log, the evaluation of all 12 proposals, and the issuance of the Hartburg-Sabine Project selection report.



Attachment 4 Correlation Tables



Factors from RFP: Cost and Design

TARIFF		PROPOSAL INFORMATION
CRITERIA	SUBCRITERIA	FACTOR
Cost and Design	Estimated Project Cost	Project Cost Estimate Supporting Information
		Project Cost Estimate Binding Cost-Caps
		Project Cost Estimate Binding Cost-Containment
	Estimated Annual Transmission Revenue Requirement	40-Year ATRR Estimate Supporting Information
		Operation and Maintenance Estimate Supporting Information
		Taxes Supporting Information
		Return on Rate Base Assumptions
		Additional or On-going Capital Expenditures
		Annual Transmission Revenue Requirements Binding Cost-Caps
		Annual Transmission Revenue Requirements Binding Cost-Containment
	Electrical Design	Proposed Conductor Selection
		Estimated Positive Sequence Line Impedance & Pi-Equivalent Shunt Susceptance
		Galloping and Vibration Consideration
		Line Rating Information Considered
		Line Losses and Normalized Loss Value
		OPGW or Communication System Provided and Considered
		Detailed One-Line Diagram
		Protection, Control and Communication System
		Bus Configuration and Ratings
		Facility Design Complies with all Applicable Laws and Regulations
	Structural Design	Estimated Line Length and Termination Points
		Structure Types, Structure Materials, and Structure Foundations Identified
		Proposed Grounding Consideration
		Lightning Protection and Reliability Consideration
		Location and Site Work
		Structures and Equipment
		Detailed Physical Layout Drawing
		Facility Design Complies with all Applicable Laws and Regulations



Factors from RFP: Project Implementation

TARIFF		PROPOSAL INFORMATION
CRITERIA	SUBCRITERIA	FACTOR
Project Implementation	Project Schedule and Management	Project Schedule (Route, Permitting, Engineering and Design, Materials, etc.)
		Project Management Plan
	Regulatory Permitting, Route and/or Site Evaluation	Identification of Potential Routing Corridors
		Routing Evaluation Studies
		Feasibility of Proposed Routes
		Site Evaluation
		Siting Evaluation Studies
		Feasibility of Proposed Routes
	Right-of-Way and Land Acquisition	Right-of-Way and/or Land Acquisitions Identified
		Right-of-Way and/or Land Acquisitions Plan
	Construction	Materials Procurement and Management Plans
		Construction Plan
		Commissioning Plan
		Constructability
		Engineering and Surveying Required
	Financing and Capital Resource Plan	Description of Capital Resources
		Expected Cash Flows
		Schedule of Significant Expenditures
		Capital Reserves
		Credit Ratings
		Audited and Pro Forma Financial Statements
	Safety	Site Specific Safety Considerations (Construction Specific)
		Safety Record including OSHA/DART report (Construction Specific)



Factors from RFP: Operation & Maintenance and Planning Participation

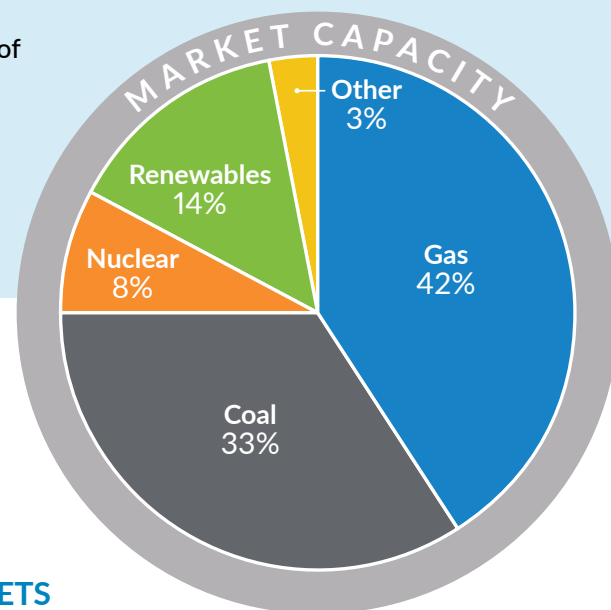
TARIFF		PROPOSAL INFORMATION
CRITERIA	SUBCRITERIA	FACTOR
Operations and Maintenance	Normal Operations	Local Balancing Authority (Project Specific)
		Real-Time Operations Monitoring and Control (Project Specific)
		Planned Outages and Response Plan
		Switching Coordination (Project Specific)
	Non-Normal Operations	Forced Outage and Response Plan (Project Specific)
		Emergency Repair (Project Specific)
		Major Facility Replacement and/or Rebuilds (Facility Specific)
		Financial Strategy for Replacement and/or Rebuilds (Facility Specific)
	Maintenance Activities	Preventative and Predictive Maintenance (Project Specific)
		Maintenance and Management of Spare Parts
		Financial Strategy for Maintenance Activities (Facility Specific)
	Safety	Project/Site Specific Safety Considerations (O&M Specific)
		Safety Record including OSHA/DART report (O&M Specific)
Planning Participation	Proposal Participant or RFP Respondent participation in relevant Planning Study for specific MTEP cycle.	

LEGEND	Criteria
	Sub-Criteria
	Factor
	(Line, Substation, All Facilities)



CORPORATE INFORMATION

The **Midcontinent Independent System Operator, Inc. (MISO)** is a not-for-profit, member based organization. We ensure the reliable delivery of electricity, at the lowest cost, across high-voltage power lines in 15 U.S. States and the Canadian province of Manitoba. MISO also conducts transmission planning and manages the buying and selling of wholesale electricity in one of the world's largest energy markets. The company's vision is to be the most reliable, value-creating RTO.



SCOPE OF OPERATIONS

Generation Capacity

- 174,724 MW (market)
- 191,062 MW (reliability)

Historic Summer Peak Load (set July 20, 2011)

- 127,125 MW (market)
- 130,917 MW (reliability)

Historic Winter Peak Load (set January 6, 2014)

- 109,336 MW (market)
- 117,903 MW (reliability)

Transmission

- 65,800 miles

Balancing Authorities

- 36 Local Balancing Authorities in MISO

Network Model

- 293,009 SCADA data points
- 6,640 generating units

Registered Wind Generation Capacity	18,204 MW
Registered In-Service Wind Generation Capacity	17,117 MW
Registered Solar Generation Capacity	312 MW
Registered In-Service Solar Generation Capacity	312 MW

MARKETS OVERVIEW

MISO manages one of the world's largest energy and operating reserves markets using security-constrained economic dispatch of generation.

The Energy and Operating Reserves Market includes a Day-Ahead Market, a Real-Time Market, and a Financial Transmission Rights (FTR) market. These markets are operated and settled separately.

- \$26.9 billion annual gross market charges (2017)
- 453 Market Participants who serve ~42 million people

TRANSMISSION EXPANSION PLANNING

- 354 approved new projects in MTEP17, representing \$2.7 billion investment and 6,129 miles of new or upgraded line transmission

MEMBERSHIP

- 50 Transmission Owners with \$37.9 billion in transmission assets under MISO's functional control
- 131 Non-transmission owners

CONTACT US

MISO Central Region & Corporate Headquarters

720 West City Center Drive
Carmel, IN 46032
866-296-6476 | 317-249-5400

MISO North Region

2985 Ames Crossing Road
Eagan, MN 55121

MISO South Region

1700 Centerview Drive
Little Rock, AR 72211

MISO South Region Transmission Planning

3850 N. Causeway Blvd.
Two Lakeway, Suite 442
Metairie, LA 70002

