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

NEXTERA ENERGY CAPITAL HOLDINGS, INC., et al.,	)
11.C., Ct al.,	)
Plaintiffs,	, )
33 ,	) CIVIL ACTION NO.
v.	1:19-cv-00626-LY
	)
KEN PAXTON, Attorney General of the	) Hon. Judge Lee Yeakel
State of Texas, et al.,	)
	) SOUTHWESTERN PUBLIC
Defendants.	) SERVICE COMPANY'S REPLY
	) IN SUPPORT OF PARTIALLY
	OPPOSED MOTION TO
	) INTERVENE

Southwestern Public Service Company ("SPS") respectfully submits this Reply in support of its Motion to Intervene (ECF No. 54), in response to the opposition of Plaintiffs NextEra Energy Capital Holdings, Inc., NextEra Energy Transmission, LLC, NextEra Energy Transmission Midwest, LLC, Lone Star Transmission, LLC, and NextEra Energy Transmission Southwest, LLC, (collectively "NextEra") (ECF No. 70).

#### **ARGUMENT**

NextEra does not oppose SPS's intervention on any substantive ground. In light of its silence, as well as SPS's reasoned and well-supported grounds for intervention detailed in its motion, this Court should grant SPS's motion and allow it to intervene in this proceeding.

Rather than address the merits of SPS's request, NextEra instead asks this Court to condition intervention in three ways. First, NextEra asks that all Intervenors be required to follow the Court's schedule for NextEra's preliminary injunction motion. ECF No. 70 at 3. SPS, however, has already agreed to abide by that schedule. ECF No. 54 at 2, 8.

Second, NextEra asks the Court to prevent SPS, and the other presumptive Intervenors, from participating in the preliminary injunction hearing. ECF No. 70 at 3-4. Whether SPS can participate in the hearing, however, should not be addressed as a condition of its intervention in this proceeding. Instead, the Court should evaluate whether participation from SPS at the preliminary injunction hearing will assist its decision-making, after the Court has had the opportunity to review the parties' briefing on NextEra's motion for preliminary injunction. The Court can make a reasoned decision, in light of that briefing, regarding how best to structure the hearing.

Third, NextEra asks the Court to require that the three utility Intervenors submit joint briefing, claiming that the Intervenors' interests are "similar, if not identical," and that Intervenors' respective "unique" interests "do not justify separate briefing." ECF No. 70 at 4-5. The Court should reject this request. Although the three utility Intervenors certainly all agree that NextEra's Complaint should be dismissed, they may have different views, or choose to emphasize different arguments, as to *why* dismissal is appropriate. Moreover, each has distinct interests in the proceeding, as set forth in their respective motions. For example, Entergy highlighted its unique interest the Hartburg-Sabine line. ECF No. 50 at 1, 7-8. SPS, meanwhile, is governed by its own region-specific federal transmission tariff, ECF No. 54 at 9, and has never had any transmission-only utility in its service territory.

SPS intends to confer with the other utility Intervenors to avoid unnecessarily duplicative briefing. However, with only limited time remaining between now and the August 23, 2019 deadline for answers and motions to dismiss, it may be challenging for the utility Intervenors to agree to a single brief. In any event, this District's relatively short page limit for dispositive motions and supporting memoranda, *compare* Local Court R. CV-7(d)(3) (20 pages), *with* N.D.

Tex. Local R. 7.2(c) (25 pages); E.D. Tex. Local R. CV-7(a)(1) (30 pages); D.D.C. Local Civil R. 7(e) (45 pages), will ensure that, even if each utility Intervenor files its own 20-page brief, the Court will not be overwhelmed with paper.

#### **CONCLUSION**

For the foregoing reasons, SPS respectfully requests that the Court grant its motion to intervene without the conditions sought by NextEra.

Dated: August 15, 2019

Respectfully submitted,

.

Mark A. Walker, *pro hac vice* XCEL ENERGY SERVICES INC. 816 Congress Avenue, Suite 1650 Austin, Texas 78701-2471 Phone: (512) 236-6926

Fax: (512) 236-6935

mark.a.walker@xcelenergy.com

### /s/ Matthew E. Price

Matthew E. Price, pro hac vice Max J. Minzner, pro hac vice Tassity S. Johnson, pro hac vice Jason T. Perkins, pro hac vice JENNER & BLOCK LLP 1099 New York Ave. N.W. Suite 900 Washington, DC 20001-4412

Phone: (202) 639-6000 Fax: (202) 639-6066 mprice@jenner.com mminzner@jenner.com tjohnson@jenner.com

jperkins@jenner.com

Ron Moss WINSTEAD PC 401 Congress Avenue, Suite 2100 Austin, TX 78701

Phone: (512) 370-2867 Fax: (512) 370-2850 rhmoss@winstead.com

Counsel for Southwestern Public Service Company

# **CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of August, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and mailed the foregoing by United States Postal Service to the following non-CM/ECF participants:

George Hoyt Entergy Services, LLC 919 Congress Ave., Suite 701 Austin, TX 78701

Miguel Suazo Senior Counsel, Entergy Services, LLC 919 Congress Ave., Suite 701 Austin, TX 78701

/s/ Matthew E. Price