Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE 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, Plaintiffs, v. 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.	Civil No. 1:19-cv-00626-LY **ENTERGY TEXAS, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I. Introduction

Plaintiffs' ("NextEra") motion for preliminary injunction (ECF No. 7) seeks to upend the State of Texas's traditional method for establishing who builds new transmission lines. Since 1975, the Texas Public Utility Regulatory Act ("PURA") has given utilities the right to build new lines that extend from their existing facilities: "Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity." Act of June 2, 1975, 64th Leg., R.S., ch. 721, §7, sec. 55(b) (*see* Tex. Util. Code § 37.101(b)). This right was recognized by the Texas Supreme Court as long ago as 1983. *Cent. Power & Light Co. v. Pub. Util. Comm'n of Tex.*, 649 S.W.2d 287, 288 (Tex. 1983).

SB 1938 reaffirms this existing regulatory framework. As the legislature found:

> S.B. 1938 will ***codify the existing process*** in Texas for determining the proper party to construct critical energy infrastructure . . . .

> Passage of this bill will protect the integrity of the electric transmission infrastructure and ***the way it is developed and built today***.
>
> ***Today in Texas***, the entity that owns the endpoint of an existing transmission line is the entity that has the right to build ***any new facility*** that may be interconnected . . . .

Senate Bus. & Commerce Comm., Bill Analysis, Tex. S.B. 1938, 86th Leg., R.S. (2019) (emphases added) (hereinafter "Sen. Bill Analysis"), Ex. A at 1.

Enjoining SB 1938 would not maintain the status quo—it would completely change the way Texas has regulated transmission service since PURA's enactment.[1] Even if the status quo were otherwise, NextEra has not made a clear showing that it is entitled to the "extraordinary and drastic remedy" of injunctive relief. *Munaf v. Geren*, 553 U.S. 674, 689 (2008).

II. Background

Because electric transmission service is a natural monopoly, Texas comprehensively regulates transmission owners' rates, operations, and services as a substitute for competition:

> Public utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

Tex. Util. Code § 11.002(b) (emphases added).

Texas has continued to regulate transmission as a natural monopoly, in which transmission owners are certified to serve a particular region, even after the deregulation of the ERCOT generation and retail markets in 1999. Tex. Util. Code § 39.001(a). In the areas of the state outside ERCOT—the MISO, SPP, and WECC transmission planning regions—"fully-bundled"

[1] The Legislature briefly authorized the certification of a few "transmission-only" utilities to build new facilities as part of the CREZ buildout, but this was only within ERCOT, and for the limited purpose of bringing new wind generation to the urban areas of the state. Sen. Bill Analysis, Ex. A at 1.

monopolies continue to provide generation, transmission and distribution, and retail services. The Texas legislature has prohibited investor-owned utilities operating in these areas from unbundling. *Id*. at §§ 39.401; 39.452(a); 39.501; 39.551.

Texas currently exercises ratemaking jurisdiction over every investor-owned utility that owns and operates transmission lines in Texas. It exercises that jurisdiction within ERCOT because that grid is wholly intrastate, and not subject to FERC's jurisdiction. It exercises that jurisdiction outside ERCOT, despite the fact that the utilities' transmission systems are part of an interstate transmission grid, because they each provide "fully-bundled" service. *See New York v. FERC*, 535 U.S. 1, 11-12, 25-28 (2002). The Public Utility Commission of Texas ("Commission") has never certified a utility to provide unbundled "transmission-only" service outside ERCOT.

Texas also exercises exclusive jurisdiction over the siting, permitting, and construction of new transmission facilities. *See S.C. Pub. Serv. Auth. v. F.E.R.C.*, 762 F.3d 41, 76 (D.C. Cir. 2014). FERC Order 1000 did not change that. Neither FERC Order 1000, nor the "competitive solicitation" processes adopted by MISO and SPP, give any utility the right to build new transmission in another utility's service territory. As FERC made clear, the selection of a bidder:

> ***only establishes how the developer may allocate the costs*** of such a facility in Commission-approved rates ***if it is built***. [It] ***does not . . . give any entity permission to build a facility***, or relieve a developer from obtaining any necessary state regulatory approvals.

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000–A, 139 F.E.R.C. ¶ 61,132, 2012 WL 1758693 at *63, May 17, 2012 (hereinafter "FERC Order 1000-A"). The FERC Order 1000 process also incorporates and honors state right of first refusal ("ROFR") laws. The MISO tariff provides: "[t]he Transmission Provider ***shall comply*** with any Applicable Laws and Regulations granting a right of first refusal to a

Transmission Owner." MISO Tariff, Attachment FF, § VIII.A.1 (emphasis added).[2] FERC's decision to honor state ROFR laws was upheld by the Seventh Circuit. *MISO Transmission Owners v. F.E.R.C.*, 819 F.3d 329, 336 (7th Cir. 2016).

NextEra understood this when it submitted a bid for Hartburg-Sabine and signed a "Selected Developer Agreement" with MISO. (*See* Mot. at Doc. 7-10.) NextEra expressly agreed to be bound by the MISO tariff, including the process for transferring the project to an incumbent transmission owner that is granted a state right of first refusal. (*Id*. at §§ 2.4.A.1, 4.2, 6.2, 10.) The agreement does not give NextEra the right to build Hartburg-Sabine; it only gave NextEra the right to collect rates under the MISO tariff ***if*** NextEra successfully obtained all regulatory approvals and constructed the line. *See* Mot. at Doc. 7-10; FERC Order 1000-A, 2012 WL 1758693 at *63. The contract also required NextEra to apply for a certificate of convenience and necessity ("CCN") from the Commission in January 2019. (Mot. at Doc. 7-10, App.A.2.) Yet instead of filing for CCN approval, NextEra requested from FERC, and received, an "Abandoned Plant Incentive" that allows it to recover "100 percent of prudently-incurred costs" in the event it is unable to complete the project, including due to an inability to obtain a CCN. *Nextera Energy Transmission Midwest, LLC*, 166 FERC ¶ 61169, 2019 WL 1064886 at *5 (Mar. 5, 2019).

NextEra knew it was entering what was at best a legal gray area. No transmission-only utility has ever been certified in the areas of Texas outside ERCOT. An advisory opinion from a prior Commission that stated the Commission had authority to do so, and that existing utilities did not have a ROFR, was on appeal. That advisory opinion had never been relied on by the Commission to actually award a CCN. Instead, when NextEra's CCN application for the Rayburn

[2] *Available at*: https://cdn.misoenergy.org/Attachment%20FF240221.pdf. The Court may take judicial notice of MISO's tariff. *Carter v. Am. Tel. & Tel. Co.*, 365 F.2d 486, 491 (5th Cir. 1966).

Country asset purchase came before the current Commissioners, they expressed disagreement with the prior Commission's advisory opinion and did not vote to approve the CCN:

> Chairman Walker: I came to the Commission after they had voted on the case that this . . . is kind of based on, the SPS declaratory order—I ended up not signing that order because I would not have ruled that way. So I'm in a situation on this one where I don't believe that we do have the authority to grant this.
> …
> Comm. D'Andrea: . . . I've read the defenses of it below, and my reaction was to agree with you the first time I read it.

See Ex. B. SB 1938 cleared up any "ambiguity" on the issue. Sen. Bill Analysis, Ex. A at 1.

III. Argument and Authorities

"A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (quotation omitted). It "should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Speech First, Inc. v. Fenves*, 384 F. Supp. 3d 732, 739 (W.D. Tex. 2019) (Yeakel, J.) (emphasis in original, quotation omitted). NextEra must show (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the threatened injury outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction is in the public interest. *Id*. at 738.

A. NextEra is not substantially likely to prevail on the merits.

For the reasons discussed in Entergy's 12(b)(6) motion to dismiss, which Entergy incorporates here by reference, NextEra is not substantially likely to prevail on the merits of its dormant Commerce Clause and Contracts Clause claims.

The dormant Commerce Clause prohibits "state regulation . . . that discriminates against or unduly burdens interstate commerce and thereby 'imped[es] free private trade in the national marketplace.'" *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 287 (1997) (emphasis added). The

Complaint's allegations that NextEra wants to become a public utility (Compl. ¶ 74) in order to obtain FERC-regulated rates (Compl ¶ 84) for transmission lines that it would build after obtaining state regulatory approval (*Id.*) are not what the dormant Commerce Clause protects. *See Tracy*, 519 U.S. at 287. NextEra's claim should be rejected.

Neither has NextEra shown that SB 1938 discriminates by "mandat[ing] 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'" *Churchill Downs Inc. v. Trout*, 979 F. Supp. 2d 746, 750 (W.D. Tex. 2013), *aff'd*, 767 F.3d 521 (5th Cir. 2014). SB 1938 is facially neutral and does not discriminate, either in purpose or effect. *See Allstate Ins. Co. v. Abbott*, 495 F.3d 151, 160 (5th Cir. 2007).

SB 1938's ROFR provisions, which are the heart of NextEra's objection to the legislation, apply equally for and against every utility inside and outside the state. *See* Tex. Util. Code § 37.056. This is made obvious by the fact that Lone Star Transmission LLC, a NextEra affiliate that already owns transmission lines in Texas, is a co-Plaintiff challenging the legislation's constitutionality. The same is true for Movant-Intervenors LSP Transmission and East Texas Electric Cooperative, which also own and operate transmission lines in Texas. The presence of in-state and out-of-state entities on both sides of this litigation reveals that the case is really about Texas's regulatory policy choice—not economic protectionism.

Nor does NextEra's motion reveal a discriminatory purpose, much less that any alleged discrimination was "a substantial or motivating factor" leading SB 1938's enactment. *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, No. 18-50299, 2019 WL 3822150, at *4 (5th Cir. Aug. 15, 2019). There is absolutely no "pattern of discrimination" nor any "history of discrimination" by Texas legislators against out-of-state utility owners. *See id.* In fact, the overwhelming majority of investor-owned utilities that have transmission lines in Texas—10 out

of 13—are owned by out-of-state companies. (*See* Entergy's Mot. to Dismiss at App. D.) NextEra's claim that SB 1938 impermissibly discriminates against those who do not "already have a physical presence in the State," has already been rejected by the U.S. Supreme Court in *Exxon Corp. v. Governor of Maryland*, and none of NextEra's cases suggest otherwise.[3] 437 U.S. 117, 125-126 (1978) (holding that a Maryland statute did not discriminate between in-state and out-of-state firms, since out-of-state firms continued to operate in the Maryland under the new law).

Instead, like the out-of-state gas companies that claimed to be "shut out" of the Maryland market, NextEra argues Texas must permit it to "compete" by providing unbundled transmission-only service within the state. Yet, the Commerce Clause does not protect "the particular structure or methods of operation" in a market. *Id*. at 128. SB 1938 prohibits a particular business model, namely, a transmission-only utility, from being certified. That prohibition advances a legitimate state interest by enabling Texas to continue exercising ratemaking jurisdiction over every investor-owned utility outside ERCOT, because all (within Texas) provide fully-bundled service. Sen. Bill Analysis, Ex. A at 1; *New York*, 535 U.S. at 26. This is constitutionally permissible. *Allstate Ins. Co.*, 495 F.3d at 161–62 (legislative interest in prohibiting particular business form in favor of another is constitutional). Moreover, because utilities providing fully-bundled service, like Entergy, are not substantially similar to unbundled transmission-only utilities, like NextEra, SB 1938 does not produce discriminatory effects on interstate commerce. *See Tracy*, 519 U.S. at 309-10; *Ford Motor Co. v. Texas Dep't of Transp*., 264 F.3d 493, 502 (5th Cir. 2001).

[3] *Granholm* dealt with statutes that favored in-state wineries over out-of-state wineries, which necessarily involve geographic distinctions. The constitutional test is whether the "economic interest" resides in-state or out-of-state. *Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 475 (5th Cir. 2013). The vast majority of utilities currently operating in Texas are owned by out-of-state residents; thus, the economic interests affected by SB 1938 are overwhelmingly located outside Texas. *Exxon Corp.*, 437 U.S. at 125-126.

None of NextEra's allegations of discrimination withstand scrutiny. SB 1938 was enacted to ensure that the transmission grid is built in a way that "facilitates reliability" and "ensure[s] that the [Commission] maintains its current jurisdiction over transmission rates borne by Texas customers." Sen. Bill Analysis, Ex. A at 1. These legislative findings are entitled to a presumption of good faith. *Wal-Mart Stores, Inc.*, 2019 WL 3822150, at *6. SB 1938 does not discriminate.

NextEra's motion does not contain a single allegation of a burden on interstate commerce, only a burden on certain types of interstate firms, which is constitutionally permissible. *Exxon Corp.* 437 U.S. at 125. In any event, Texas's interest here far outweighs any potential burden. "[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Co-op. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983). SB 1938 preserves the state's ability to regulate utilities, *New York*, 535 U.S. at 11-12, and preserves utilities' service areas, Tex. Util. Code § 37.056(e), an integral part of the regulatory compact that underlies Texas' system of utility regulation, *Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Texas*, 104 S.W.3d 225, 227-228 (Tex.App.—Austin 2003, no pet.). The Supreme Court has "consistently recognized the legitimate state pursuit of such interests as compatible with the Commerce Clause." *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 306 (1997); *see also, LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695, 710-11 (D. Minn. 2018).

NextEra does not assert it as a ground in its Motion, but regardless, it is unlikely to prevail on its Contracts Clause claim. Simply put, NextEra does not have a contractual right to build Hartburg-Sabine. That right is only Texas's to give under the CCN statutes. NextEra's Developer Agreement expressly recognizes this fact, consistent with FERC Order 1000. FERC Order 1000-A, 2012 WL 1758693 at *63. And even if the contract had attempted to give NextEra that right, the right was not "substantially impaired" because when NextEra "'purchased into an enterprise

already regulated in the particular to which [it] now objects, [it] purchased subject to further legislation upon the same topic.'" *Exxon Corp. v. Eagerton*, 462 U.S. 176, 194 n.14 (1983).

B. NextEra has not shown irreparable harm.

NextEra has not shown a constitutional violation, nor has it shown harm that justifies the extraordinary and drastic remedy of an injunction. As shown above, NextEra never had a right to build Hartburg-Sabine, contractual or otherwise. Neither has NextEra previously enjoyed a right to "compete" to build transmission lines in Entergy's service territory. Thus, SB 1938's clarification that NextEra lacks those rights—rights it never had—cannot "irreparably harm" NextEra. *Avmed Inc. v. BrownGreer PLC*, 300 F. App'x 261, 265 (5th Cir. 2008) (per curiam). And given the FERC-approved incentive granted to it, NextEra is effectively insured against any prudently incurred losses related to Hartburg-Sabine, including losses arising from a failure to obtain a CCN. *Nextera Energy Transmission Midwest*, 2019 WL 1064886 at *5.

C. The equities favor denying an injunction.

NextEra agreed to be bound by the MISO tariff, including the provisions requiring compliance with state ROFR laws, and agreed to "cooperate in good faith" in the event Hartburg-Sabine is reassigned based on that tariff provision. (Mot. at Doc. No. 7-10, §§ 2.4.A.1, 10.) NextEra knew what it was signing up for. It might have made a regulatory "guess" that it could obtain approvals, but that guess pales in comparison to Entergy's longstanding right to build new transmission facilities within its service territory—a right it has exercised since it was certified in 1976. *See Lamb Cty. Elec. Co-op., Inc. v. Pub. Util. Comm'n*, 269 S.W.3d 260, 265 (Tex.App.—Austin 2008, pet. denied). The harm to Entergy is significantly greater than any harm to NextEra, as an injunction would strip Entergy of the CCN rights that it received as part of the regulatory compact. *See Office of Pub. Util. Counsel*, 104 S.W.3d at 228; Sen. Bill Analysis, Ex. A at 1.

An injunction also threatens to seriously burden the entire transmission system in Texas. As the legislative history shows, SB 1938 merely clarifies current law and practice concerning who has a right to build transmission extensions. Sen. Bill Analysis, Ex. A at 1. If the law is enjoined, transmission developers may challenge whether ***any*** transmission projects can receive a CCN, or whether Texas must instead allow competition for new lines. That type of regulatory uncertainty would delay the timely construction of transmission lines that are necessary for the continued safe and reliable operation of the grid and provision of electricity to Texas homes and businesses. *See* Hearings on Tex. S.B. 1938 Before the Senate Bus. & Commerce Comm., 86th Leg. R.S. (April 2, 2019).[4]

D. An injunction would seriously harm the public interest.

As discussed above, an injunction would seriously harm the public interest in maintaining safe, reliable transmission service. *See* Tex. Util. Code § 31.001(a). It would undermine Texas's ability to regulate all transmission owners that operate in Texas, "one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Co-op. Corp.*, 461 U.S. at 377. As "Congress has done nothing to limit its unbroken recognition of the state regulatory authority that has created and preserved the local monopolies . . . [p]rudence counsels against running the risk of weakening or destroying [Texas's] regulatory scheme of public service and protection . . . ." *Tracy*, 519 U.S. at 304–05.

IV. Conclusion and Prayer

For the foregoing reasons, NextEra's motion for a preliminary injunction should be denied.

[4] *Available at*: http://tlcsenate.granicus.com/MediaPlayer.php?view_id=45&clip_id=14109 at 6:40-7:14.

Dated: August 23, 2019

Respectfully submitted,

/s/ Lino Mendiola III

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ATTORNEYS FOR ENTERGY TEXAS, INC.

Exhibit A

BILL ANALYSIS

Senate Research Center

S.B. 1938
By: Hancock
Business & Commerce
3/31/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1938 will codify the existing process in Texas for determining the proper party to construct critical energy infrastructure, maintain Texas rate jurisdiction over transmission in the non-ERCOT areas of Texas, and clean-up statutory remnants of the Competitive Renewable Energy Zone (CREZ) buildout.

Today in Texas, the entity that owns the endpoint of an existing transmission line is the entity that has the right to build any new facility that may be interconnected, an established process embodied in ERCOT Protocol. There has been some ambiguity because of statutory exceptions that were included in the Utilities Code to allow outside utilities to construct transmission as a part of the CREZ buildout, which was all brand new transmission in areas of West Texas that were not certificated by the Public Utility Commission of Texas (PUC).

Electric utilities in Texas have established geographic footprints, and this bill would ensure the geographic continuity of the system in a way that further facilitates reliability.

Passage of this bill will protect the integrity of the electric transmission infrastructure and the way it is developed and built today. Additionally, in the non-ERCOT areas of the state served by utilities engaged in interstate commerce, this legislation will ensure that PUC maintains its current jurisdiction over transmission rates borne by Texas customers rather than having a federal rate.

As proposed, S.B. 1938 amends current law relating to certificates of convenience and necessity for the construction of transmission facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.051(a), Utilities Code, as follows:

> (a) Prohibits an electric utility, rather than an electric utility or other person, from directly or indirectly providing service to the public under a franchise or permit unless the utility, rather than the utility or other person, first obtains from the Public Utility Commission of Texas (PUC) a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.

SECTION 2. Amends Section 37.053(a), Utilities Code, to require an electric utility, rather than an electric utility or a person, that wants to obtain or amend a certificate to submit an application to PUC.

SECTION 3. Amends Section 37.055, Utilities Code, as follows:

Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) Authorizes an electric utility, rather than an electric utility or other person, that wants to exercise a right or privilege under a franchise or permit that the utility, rather than the utility or other person, anticipates obtaining but has not been granted to apply to PUC for a preliminary order under this section.

(b) Authorizes PUC to issue a preliminary order declaring that PUC, on application and under PUC rules, will grant the requested certificate on terms PUC designates, after the electric utility, rather than the utility or other person, obtains the franchise or permit.

(c) Requires PUC to give the certificate on presentation of evidence satisfactory to PUC that the electric utility, rather than the electric utility or other person, has obtained the franchise or permit.

SECTION 4. Amends Section 37.056, Utilities Code, by adding Subsection (e), as follows:

(e) Authorizes a certificate for a new transmission facility that directly interconnects with an existing electric utility facility to only be granted to the owner of that existing facility. Requires that one or both of those utilities, if a new transmission facility will directly interconnect with facilities owned by different electric utilities, be certificated to construct the new facility.

SECTION 5. Amends Section 37.057, Utilities Code, as follows:

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. Deletes existing text authorizing PUC to grant a new certificate for a new transmission facility to a qualified applicant that meets the requirements of this subchapter. Makes no further changes to this section.

SECTION 6. Amends Section 37.151, Utilities Code, as follows:

Sec. 37.151. PROVISION OF SERVICE. Deletes existing text referring to a certificate holder granted a certificate under Section 37.051(d) (relating to authorizing a certificate to be granted to an electric utility or other person for a facility used as part of a transmission system serving the ERCOT power region solely for the transmission of electricity).

SECTION 7. Amends Section 37.154(a), Utilities Code, as follows:

(a) Authorizes an electric utility to sell, assign, or lease a certificate or a right obtained under a certificate if the purchaser, assignee, or lease was previously certificated by PUC to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool. Authorizes PUC, as part of the transaction subject to Sections 39.262(l) (relating to requiring an electric utility or transmission and distribution facility to report to and obtain approval from PUC before closing certain transactions) through (o) (relating to authorizing PUC to reasonably interpret and enforce certain conditions) and 39.915 (Consideration and Approval of Certain Transactions), to approve of a sale, assignment, or lease to an entity that has not been previously certificated if the approval will not diminish the retail rate jurisdiction of this state, rather than authorizing an electric utility to sell, assign, or lease a certificate or a right obtained under a certificate if PUC determines that the purchaser, assignee, or leaser can provide adequate service.

SECTION 8. Repealer: Section 37.051(d) (relating to authorizing a certificate to be granted to an electric utility or other person for a facility used as part of a transmission system serving the ERCOT power region solely for transmission of electricity), Utilities Code.

Repealer: Section 37.051(e) (relating to requiring PUC to make certain findings in relation to an application), Utilities Code.

Repealer: Section 37.051(f) (relating to requiring PUC to consider certain requirements to have been met by an electric utility company or other person under certain conditions), Utilities Code.

SECTION 9. Effective date: upon passage or September 1, 2019.

Exhibit B

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

PUBLIC UTILITY COMMISSION OF TEXAS

AUSTIN, TEXAS

OPEN MEETING

THURSDAY, FEBRUARY 7, 2019

BE IT REMEMBERED THAT AT approximately 9:30 a.m., on Thursday, the 7th day of February 2019, the above-entitled matter came on for hearing at the Public Utility Commission of Texas, 1701 North Congress Avenue, William B. Travis Building, Austin, Texas, Commissioners' Hearing Room, before DeANN T. WALKER, CHAIRMAN; ARTHUR C. D'ANDREA and SHELLY BOTKIN, COMMISSIONERS; and the following proceedings were reported by William C. Beardmore, Certified Shorthand Reporter.

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AGENDA ITEM NO. 2

DOCKET NO. 47973; SOAH DOCKET NO. 473-18-3045 -APPLICATION OF ELECTRIC TRANSMISSION TEXAS, LLC TO AMEND CERTIFICATES OF CONVENIENCE AND NECESSITY FOR THE STEWART ROAD 345-KV TRANSMISSION LINE IN HIDALGO COUNTY

CHAIRMAN WALKER: Item No. 2, Docket No. 47973, I filed a memo on this.

COMM. BOTKIN: I was fine with the memo.

COMM. D'ANDREA: I'm fine with the memo.

CHAIRMAN WALKER: I will entertain a motion to adopt an order consistent with my memorandum.

COMM. D'ANDREA: You have your motion.

COMM. BOTKIN: Second.

CHAIRMAN WALKER: Okay.

AGENDA ITEM NO. 3

DOCKET NO. 48071; SOAH DOCKET NO. 473-18-3750 - 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

CHAIRMAN WALKER: Item No. 3 -- Shelly, I know you filed a memo -- I'm in kind of an awkward situation on this case.

I came to the Commission after they had voted on the case that this basically -- and I forget the docket number of the case that this is kind of based

on, the SPS declaratory order -- I ended up not signing that order because I would not have ruled that way.

So I'm in a situation on this one where I don't believe that we do have the authority to grant this.

If you-all want to I will dissent on it, but I actually don't think the Commission has the authority. If you-all would like more time to go back -- I know I'm dropping a bombshell. If you-all would like more time to go back and look at that docket it's --

MS. CARTER: 46901.

CHAIRMAN WALKER: Yeah, 46901, you-all can do that or if you-all want to move forward and I can just dissent.

COMM. D'ANDREA: Yeah. So -- I'm sorry. Do you want to --

COMM. BOTKIN: Go ahead.

COMM. D'ANDREA: I read the briefing in the Third Court. I discussed this a bit actually in briefing. I've not actually come down on it. I think I tend to agree with you; I mean, I think at least that might have a stronger argument.

I was kind of -- I didn't actually follow through on reaching a decision because I was not sure

whether the rule was just, let's just keep doing what the Commission's done until the courts say not to or whether, you know, we want to just change course.

I haven't really thought that through. I'm happy changing, of course, if that's where we want to go. You know, I -- I meant to give this a lot more thought. I mean, I know we're building -- they're doing FERC 1,000 stuff and that Entergy line was done through that process and so -- hey.

CHAIRMAN WALKER: Well, they don't have a CCN yet. So -- and this one is a little bit, even more troubling to me because it's 30 miles of wire. They don't even own the two end points that they're connecting to. They won't ever operate this line.

They're building things to maintain it that I -- I just see a lot of inefficiencies and I have a lot of concerns with this.

COMM. D'ANDREA: Okay. And like I said, my first reaction in reading the briefing, now to be fair, you know, the AG hasn't filed our side yet, but that's -- so --

CHAIRMAN WALKER: Yeah, I know.

COMM. D'ANDREA: But I've read the defenses of it below, and my reaction was to agree with you the first time I read it.

C E R T I F I C A T E

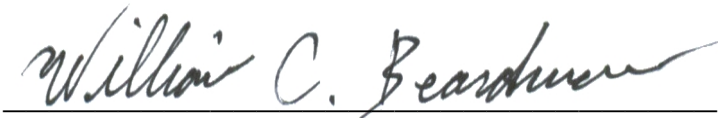
STATE OF TEXAS)

COUNTY OF TRAVIS)

I, William C. Beardmore, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true, and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of February 2019.



WILLIAM C. BEARDMORE
Certified Shorthand Reporter
CSR No. 918 - Expires 12/31/20
Firm Registration No. 276

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IN THE UNITED STATES DISTRICT COURT
FOR THE 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,

Plaintiffs,

v.

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.

Civil No. 1:19-cv-00626-LY

DECLARATION OF MICHAEL A. BOLDT IN SUPPORT OF ENTERGY TEXAS, INC.'S RESPONSE IN OPPOSITION TO PLANTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Michael A. Boldt, declare as follows:

1. My name is Michael A. Boldt. I am above the age of 18, of sound mind, and competent to make the statements contained in this declaration. The facts stated herein are true and correct to the best of my knowledge.

2. I am employed by Entergy Texas, Inc. ("Entergy") as an attorney in the above-captioned cause. This declaration is made in support of Entergy's Response in Opposition to Plaintiffs' Request for a Preliminary Injunction ("Response").

3. Attached as Exhibit A to Entergy's Response is a true and correct copy of the Texas Senate Committee on Business & Commerce's Bill Analysis for Senate Bill 1938, 86th Leg., C.S. (2019).

4. Attached as Exhibit B to Entergy's Response is a true and correct copy of excerpts from a transcript of an Open Meeting held by the Public Utility Commission of Texas on February 7, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 23rd day of August, 2019, in Travis County, Texas.

Michael A. Boldt