

Exhibit A

**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,)	Civil Action No. 1:19-cv-00626 (LY)
LLC, LONE STAR TRANSMISSION, LLC,)	
and NEXTERA ENERGY TRANSMISSION)	Hon. Judge Lee Yeakel
SOUTHWEST, LLC,)	
)	
)	
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.)	

**INTERVENOR-PLAINTIFF EAST TEXAS ELECTRIC COOPERATIVE, INC.’S
COMPLAINT IN INTERVENTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW, Intervenor-Plaintiff East Texas Electric Cooperative, Inc. (“ETEC”) and hereby submits its Complaint in Intervention for Declaratory and Injunctive Relief, showing this Honorable Court the following:

INTRODUCTION

1. Intervenor-Plaintiff East Texas Electric Cooperative, Inc. (“EETEC”) brings this Complaint for Declaratory and Injunctive Relief against Ken Paxton, Attorney General of the State of Texas; DeAnn T. Walker, Chairman, Public Utility Commission of Texas (“PUCT”); Arthur C.

D'Andrea, Commissioner, PUCT; and Shelly Botkin, Commissioner, PUCT; each in his or her official capacity (collectively, "Defendants").

2. Under 42 U.S.C. § 1983, ETEC seeks a declaratory order from this Court holding that recently-passed amendments to §§ 37.051, 37.056, 37.057, 37.151, and 37.154 of the Texas Utilities Code (the "Amended Utilities Code"), which Defendants are obligated to enforce, are unconstitutional under the Commerce Clause of the United States Constitution.

3. The Amended Utilities Code grants incumbent Texas electric transmission owners the exclusive right to construct or acquire electric transmission facilities in the state of Texas, to the exclusion of out-of-state competitors. In so doing, it violates the "dormant" component of the Commerce Clause, which the Supreme Court has recently confirmed prevents States, including Texas, from enacting protectionist laws that discriminate in purpose or effect against out-of-state products and/or entities. *See slip op., Tennessee Wine & Spirits Retailers Assoc. v. Thomas*, No. 18-96 (U.S. June 26, 2019).

4. The Amended Utilities Code's unconstitutional discrimination against foreign utilities and obstruction of interstate commerce directly damages ETEC's legally-protected interests as a transmission owner and customer within Texas.

5. In addition to a declaratory order, ETEC seeks an injunctive order preventing the Defendants from enforcing the unconstitutional Amended Utilities Code.

PARTIES

6. ETEC is a not-for-profit electric generation and transmission cooperative corporation with its headquarters and principal place of business in Nacogdoches, Texas. On January 1, 2018, ETEC's former generation and transmission cooperative members, Sam Rayburn G&T Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., merged into ETEC.

Consequently, as of that date, ETEC now has one generation and transmission cooperative member, Northeast Texas Electric Cooperative, Inc. (“NTEC”), and, directly and indirectly, seven distribution cooperative members, which collectively serve approximately 350,000 member-customers in Texas and Louisiana.

7. Defendant Ken Paxton is the Attorney General of the State of Texas, and charged with enforcing the laws of the State of Texas.

8. Defendant Commissioners of the PUCT, DeAnn T. Walker, Arthur C. D’Andrea, and Shelly Botkin, are charged with the regulation of electric utilities doing business in the State of Texas. Among other duties, the PUCT is responsible for granting certificates for new transmission facilities throughout the State of Texas. The Amended Utilities Code restricts the PUCT’s authority to award certificates to companies with an existing in-state Texas presence. The Commissioners are therefore required to implement and enforce these unconstitutional laws.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331. ETEC asserts claims under 42 U.S.C. § 1983 and the Constitution of the United States.

10. This Court has personal jurisdiction over Defendants because all Defendants are residents of Texas and regularly conduct business in Texas.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district and a substantial part of the events giving rise to this claim have occurred in this district.

FACTUAL BACKGROUND

ETEC, Entergy, and Transmission in East Texas

12. As a non-profit rural electric cooperative, ETEC generates, transmits, and distributes wholesale electricity to its member distribution cooperatives within East Texas. These member distribution cooperatives, in turn, provide electricity at retail, a.k.a “load,” to their member-customers.

13. A system of interconnected grid operators, known either as regional transmission organizations (“RTOs”) or independent system operators (“ISOs”), oversee the transmission of electricity across various regions across the United States.

14. In Texas, there are three such grid operators: Midcontinent Independent System Operator (“MISO”), Southwest Power Pool (“SPP”), and Electricity Reliability Council of Texas (“ERCOT”). Although MISO and SPP operate across several states, ERCOT is located entirely within the State of Texas and is not synchronously interconnected with any other RTOs or ISOs.

15. ETEC is a transmission-owning member of, and customer within, MISO and SPP. ETEC is a transmission customer within ERCOT. NTEC, ETEC’s sole generation and transmission cooperative member, is a transmission customer within SPP and an aspiring transmission owner within Texas.

16. ETEC has roughly 105,000 total end-use customers within its MISO footprint in Texas. ETEC’s winter peak demand in MISO Texas is approximately 651 megawatts (MW), and it produces approximately 2,184 gigawatt hours (GWh) of total energy. ETEC owns, operates, and maintains roughly 255 miles of 69 kilovolt (kV) and above transmission lines within its MISO Texas footprint.

17. In MISO, ETEC specifically operates within the transmission footprint of Entergy

Texas (“Entergy”), a subsidiary of Entergy Corporation. ETEC is a “transmission dependent utility” in Entergy’s control area, in that it is a load-serving entity that depends on Entergy’s transmission system for delivering generated electricity to ETEC’s retail customers in that region.

18. ETEC has several ownership interests in generating plants that are dispatched into Entergy’s transmission system within Texas. These include a joint ownership arrangement in the following plants: Nelson 6 (105 MW), Independence 2 (60 MW), and Plum Point (50 MW). Additionally, ETEC exclusively owns its plants known as San Jacinto (150 MW) and Hardin County (150 MW). All of this capacity is devoted to serving that portion of ETEC’s member load in Entergy’s control area.

19. For many years, and continuing to the present day, congestion – the inability to get economically-priced electric power generated from power plants to retail consumers who are demanding it – has been a persistent and significant problem in East Texas.

20. Specifically, over the years, by failing to construct needed transmission facilities, Entergy has allowed its transmission system to become severely congested. Instead of adequately addressing the problem, Entergy has repeatedly failed to take corrective actions, including the construction of necessary transmission upgrades, which would provide firm transmission capacity and aid in relieving these persistent congestion issues in East Texas, particularly the West of the Atchafalaya Basin (“WOTAB”) region.

21. Entergy has steadfastly refused to upgrade its transmission system within Texas in order, among other objectives, to enhance its competitive position in the Texas generation market.

22. As a result, because of persistent congestion and Entergy’s obstinate refusal to address it, ETEC has historically had trouble accessing the competitive wholesale electric power market and bringing the benefits of that market to ETEC’s load in the East Texas portion of

Entergy's transmission system.

23. In or around 2010, the Department of Justice began investigating Entergy's anticompetitive practices, which included, among other things, the use of Entergy's transmission system. Specifically, in November 2012, DOJ released a statement whereby the agency indicated that it had "been exploring whether Entergy has harmed consumers by exercising its control over its transmission system...and evaluating whether Entergy's practices have effectively foreclosed these more efficient rivals from obtaining long-term firm transmission service." DOJ further indicated that its investigation of Entergy would remain open until Entergy obtained membership in an RTO and divested its transmission system to a third party.

24. In 2013, at DOJ's behest, Entergy applied to join MISO. After a contested PUCT proceeding, the PUCT approved Entergy's application to join MISO, as did other relevant state commissions. However, Entergy never divested its transmission system to a third party.

25. Unfortunately, Entergy's decision to join MISO alone has not resolved the congestion issues that persist in East Texas, which acutely impact ETEC's ability to provide low-cost power to its member-customers to this day.

26. The Amended Utilities Code, by unconstitutionally discriminating against the ability of foreign utilities to enter the Texas transmission market, will directly and imminently exacerbate these congestion issues that plague ETEC and its customers.

Texas Transmission Regulation and the Amended Utilities Code

27. Under Texas law, before a new transmission line can be built anywhere in the state (whether inside or outside of ERCOT), a prospective line-owner must receive a Certificate of Convenience and Necessity ("CCN"), or an amendment thereto, from the PUCT, which allows the line owners to build, own, and operate the line.

28. Historically, the PUCT has issued CCNs to new entrant transmission utilities, including to entities without an existing in-state Texas presence or entities based out-of-state.

29. When a new, out-of-state transmission company builds transmission in Texas, that company must submit to regulation by the PUCT for purposes of siting and reliability, and therefore become a Texas utility.

30. Accordingly, out-of-state utilities have historically been subject to the same rules as their in-state counterparts.

31. In March 2019, that all changed. Lawmakers in the Texas Legislature introduced Senate Bill 1938 and the companion House Bill 3995 (collectively, the “Bill”), which sought to grant transmission utilities that already owned and operated lines in Texas the exclusive right to build lines that interconnected to their current lines.

32. Entergy was openly supportive of the Bill. Its Senior Advisor, Tony Clark, and counsel, Lino Mendiola, both testified as supporting witnesses before the April 2, 2019 Texas Senate Business and Commerce Committee Hearing on the Bill (its Vice President, Chance Sampson, registered as a supporter at the hearing without testifying). Entergy, among other incumbent utilities, also sponsored a one-page paper distributed to legislators advocating for passage of the Bill.

33. As the Bill moved forward in the Legislature, Texas House of Representatives member Travis Clardy invited the DOJ’s Antitrust Division to comment on the proposed legislation. Daniel E. Haar, Acting Chief of the Competition Policy and Advocacy Section of the Division, responded to Rep. Clardy’s request in a letter expressing DOJ’s concern that the Bill’s transmission limitations would “limit competition, thereby potentially raising prices and lowering the quality of service for electricity consumers.”

34. In the letter, Mr. Haar further urged Texas to “consider whether [the Bill] may harm competition and consumers in ways that resemble the harm that can be caused by [right of first refusal] laws found in other states.” The letter continued: “In particular, by restricting the development of transmission facilities to local incumbents, [the Bill] can harm consumers by reducing or eliminating competition.” “[A]s a result of this lost competition,” Mr. Haar concluded, “consumers may have higher expenses in the form of greater transmission rates.”

35. Despite the concerns raised by DOJ, the Bill advanced through the legislative process and was passed by both the Senate and the House, and Texas Governor Gregory Abbott signed the Bill into law on May 16, 2019.

36. The statute, as enacted, requires that any utility that provides electric service in Texas must first receive a certificate from the PUCT. Utils. Code § 37.051.

37. The statute then adds new subsections to Utilities Code §37.056. These new subsections give incumbent transmission owners the exclusive right to build new transmission lines that interconnect with their existing projects. Utils. Code § 37.056(e)-(f).

38. The statute also grants currently certificated Texas utilities the right to choose which entity will operate a new line in the event the line’s owner chooses to pass up the project. But, critically, it restricts that choice to the pool of existing utilities that are already certified within Texas. *Id.* § 37.056(g). Moreover, whether to designate another utility is left to the sole discretion of the local incumbent utility.

39. Finally, the statute limits the entities to which an electric utility that holds a CCN can transfer its CCN. *Id.* § 37.154(a).

40. The statute limits the right to build, own, and operate transmission lines in Texas to those incumbent entities that already have a Texas transmission footprint and specifically

excludes any non-incumbent entities from building these lines.

41. Moreover, because the statute prevents transfer of CCN rights to an entity that does not already have a certificate in the “same electric power region, coordinating council, independent system operator, or power pool,” if a facility owner decides to transfer its exclusive right to build, own, and operate a given transmission facility or wishes to transfer an existing transmission facility, the statute still prevents out-of-state entities from entering the Texas market by requiring the transmission facility owner to transfer its rights only to another entity that is already operating in Texas.

42. The Bill was clearly intended to preserve the exclusive rights of incumbent utilities, such as Entergy, to operate in Texas.

43. In a recent motion to dismiss filed in a Texas Third Court of Appeals case, several incumbent Texas investor-owned utilities, including Entergy and Southwestern Public Service Company (“SPS”), admitted that the State of Texas amended the Utilities Code to prevent out-of-state competition, stating that the “[l]egislature has thus clarified that Texas law provides SPS and Entergy, subject to limitations on transfer rights, the exclusive right to build new transmission lines in their respective service territories.”¹ They further argued:

These amendments also clarify the Legislature’s intent to retain the state’s jurisdiction over retail rates in the areas of Texas outside ERCOT by effectively prohibiting the certification of new-entrant transmission-only utilities whose rates would be subject to FERC’s exclusive jurisdiction. Because no transmission-only utilities currently operate in Texas outside ERCOT, the exclusivity provisions and limitations on transfers of certificate rights to utilities already certified within a particular power region will act as a bar to any future certification of such entities, which bar functions to preserve state jurisdiction over the rates charged for transmission

¹ Appellants Entergy Texas, Inc., Southwestern Public Service Company, and Texas Industrial Energy Consumers’ Motion to Dismiss for Mootness, *Entergy Tex., Inc., et al. v. Pub. Util. Comm’n of Texas*, No. 03-18-00666-CV, at 2 (Tex. App.-Austin June 21, 2019).

service.

Id. at 2-3.

The Amended Utilities Code, ETEC, and Entergy

44. Although ETEC is a Texas-based electric cooperative utility, the Amended Utilities Code directly damages ETEC's legally protected interests as both a transmission-owning entity and transmission customer within Texas, in several distinct and material ways.

45. First, the Amended Utilities Code seriously compromises ETEC's participation in the transmission market. As a transmission-owning member in MISO and SPP, ETEC has a direct and substantial interest in constructing, owning, and operating new transmission projects in those footprints. By limiting transmission construction within Texas to incumbent utilities that already own the end points on such projects, the Amended Utilities Code impedes ETEC's fundamental interest in building, owning, and promoting transmission.

46. More specifically, ETEC is only one of two load-serving entities inside MISO's Texas footprint that is also a transmission owner – the other being Entergy, which owns a plethora of end points throughout the Texas/MISO transmission zone in which ETEC operates. By restricting transmission expansion to incumbent utilities already owning the end points on such transmission lines, the Bill directly and effectively hinders ETEC's ability to pursue most of its transmission options within its MISO transmission zone, all while favoring Entergy's interests.

47. In a related fashion, by restricting transmission construction in Texas to those utilities with an existing in-state presence, the Amended Utilities Code aggravates the persistent congestion issues within East Texas by consolidating and perpetuating Entergy's dominance over the generation and transmission markets in the region.

48. Additionally, the Amended Utilities Code undermines ETEC's ability to enhance the reliability of its existing transmission. ETEC and its member cooperatives own several

transmission facilities in their shared transmission territory with Entergy and Southwestern Electric Power Company (“SWEPCO”) that are “radial” in nature – i.e., they terminate at an electric load. These radial lines are located behind Entergy and SWEPCO’s end points. In restricting non-end point owners from owning the transmission lines in their footprint, the Amended Utilities Code hinders ETEC from converting these radial facilities to “looped” ones – ones that can receive power from any direction – in order to better serve its customers through improved reliability. In this way, the Amended Utilities Code empowers transmission incumbents like Entergy and SWEPCO to prevent ETEC from looping its own lines and improving the reliability of the electricity it distributes to its customers.

49. ETEC has a direct, substantial, and legally-protected interest in this litigation as a transmission customer within Texas, both concerning its acquisition of power for its electrical loads from others and for its self-service and the market participation of its generation resources. Likewise, NTEC has similar interests as a transmission customer within Texas.

50. The Amended Utilities Code damages ETEC’s substantial transmission interests in yet another way. As a non-profit electric cooperative, at times ETEC enters into agreements with and partners with independent, stand-alone transmission companies (“Transcos”) – such as LS Power Transmission Holdings II, LLC (“LS Power”), and Gridliance GP, LLC – to plan and construct transmission projects. These Transcos do not own any end points in the non-ERCOT region of Texas. By limiting ETEC’s partnership choice within Texas to the local incumbent utility in any given transmission footprint, the Bill prevents ETEC from contracting and partnering with cost-friendly Transcos, detrimentally affecting ETEC’s business discretion and ability to build new transmission and to fairly compete.

51. This point is most evident when reviewing the Hartburg-Sabine Junction

Transmission Project (“Hartburg-Sabine Project”), involving a proposed 500 kV transmission line and substation facilities spanning Orange and Newton Counties in East Texas and located within Entergy’s service territory.

52. The Hartburg-Sabine Project is a Federal Energy Regulatory Commission Order No. 1000 competitive-bidding project. MISO identified the Project in 2017 as a “Market Efficiency Project” as part of its transmission planning studies process conducted that year, known as the “MISO Transmission Expansion Plan 2017” (“MTEP17”). MISO classified the Project as a “Market Efficiency Project” under its Tariff because the Project’s objective is to relieve market congestion in East Texas.

53. As part of its competitive solicitation process, MISO issued requests for proposals to construct the Hartburg-Sabine Project on February 6, 2018. MISO received twelve bids from various in-state and out-of-state companies, including Entergy; Plaintiff NextEra Energy Transmission Midwest, LLC (“NEET Midwest”), a subsidiary of NextEra Energy, Inc.; and ETEC, who partnered with Verdant Plains Electric, LLC (“Verdant Plains”), a LS Power subsidiary, in submitting a bid.

54. Critically, Entergy freely participated in MISO’s competitive bidding process for the Project and did not formally protest MISO’s solicitation for bids to construct a transmission project in its service territory.

55. As a result of this competitive solicitation process, in November 2018 MISO designated NEET Midwest to construct, own, and operate the Hartburg-Sabine Project. NEET Midwest’s bid won over that of ETEC/Verdant Plains, which strongly competed in the bidding process. The cost of Entergy’s bid for the Project, on the other hand, finished below NEET Midwest’s and ETEC/Verdant Plains’ in the bidding results.

56. NEET Midwest is a non-incumbent transmission developer and does not own any end points within Texas. As a direct result of the newly Amended Utilities Code, it will have to forfeit its ownership of the Hartburg-Sabine Project.

57. Importantly, Entergy lobbied the State of Texas to pass the Amended Utilities Code shortly after losing its bid to construct the Hartburg-Sabine Project, for evident reasons. Because Entergy owns the end points on the Hartburg-Sabine Project, it is the only entity under the new legislation that qualifies to construct it.

58. As a result, ETEC consequently will face one of two unfavorable outcomes. One possibility is that Entergy will not construct the Hartburg-Sabine Project at all, which would conform with its prior behavior and allow the congestion problems that engendered the Hartburg-Sabine bidding process to remain in place – to ETEC’s detriment. The other possibility is that Entergy eventually constructs the Project, and ETEC will thus pay more for transmission in MISO because (1) Entergy’s losing bid for the project was significantly higher than NEET Midwest’s and (2) Entergy’s bid lacks the cost caps that were included in NEET Midwest’s bid.

59. As noted, MISO’s MTEP17 identified the Hartburg-Sabine Project as a Market Efficiency Project to relieve congestion in East Texas. Because the Hartburg-Sabine Project was then awarded in 2018, and because MISO assumes the Project will get built for prospective modelling purposes, subsequent MISO transmission studies (i.e. MTEP18, MTEP19 and beyond) will fail to identify any new Market Efficiency Projects in East Texas because the modeling will reflect the congestion relief supposedly garnered by the Hartburg-Sabine Project. The Amended Utilities Code, by complicating and delaying the Project’s construction (and possibly jeopardizing it altogether), thus hinders MISO’s ability to identify other possible competitively bid Market Efficiency Projects to be built to relieve congestion in East Texas in the near future. This confusion

and uncertainty in transmission planning damages ETEC in yet another way.

60. More broadly, the Amended Utilities Code, if enforced, would magnify Entergy's anti-competitive dominance in the MISO area within Texas in both the generation and transmission markets. The result of this enhanced market dominance would be increased congestion, increased delivered power costs for wholesale electricity purchasers like ETEC, and increased transmission costs for the generation self-supply and power markets which ETEC engages in. With the amplified power that the Amended Utilities Code provides Entergy, it is overwhelmingly probable that Entergy would continue to favor its own transmission interests, while diminishing those of its competitors.

61. Thus, by discriminating against foreign utilities and thereby restricting transmission construction in Texas to incumbent utilities already owning end points, the Amended Utilities Code impairs ETEC's legally protected rights and interests in the imminent future.

CLAIMS

COUNT I

THE UTILITIES CODE VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION 42 U.S.C. §§ 1983 and 1988

62. ETEC re-alleges paragraphs 1 through 61 of this Complaint as though fully set forth herein.

63. The United States Constitution provides that Congress shall have the power “[t]o regulate Commerce . . . among the several States.” U.S. Const. Art. I, §8, cl. 3.

64. The Commerce Clause includes a “dormant” limitation on the authority of the states to enact legislation affecting interstate commerce.

65. The doctrine “is driven by concern about economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Dep't of Revenue v. Davis*, 553 U.S. 328, 337-38 (2008) (internal quotation marks

and citations omitted).

66. A state statute that discriminates against out-of-state goods or nonresident economic actors is unconstitutional unless it is narrowly tailored to “advance[e] a legitimate local purpose.” *Tennessee Wine & Spirits Retailers Assoc. v. Thomas*, No. 18-96, slip op. at 10 (U.S. June 26, 2019) (citations omitted).

67. The Amended Utilities Code discriminates against nonresident economic actors by restricting transmission construction in Texas to those incumbent utilities that already maintain an in-state presence.

68. The Amended Utilities Code is not narrowly tailored to advance any legitimate local, non-protectionist purpose. Instead, its purpose was primarily to consolidate and perpetuate the power of in-state utilities over the Texas transmission market.

69. ETEC has a “concrete and particularized” legally protected interest in constructing transmission projects within Texas. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

70. ETEC also has a “concrete and particularized” legally protected interest, *id.*, in purchasing “reliable and low-cost wholesale power” within Texas, which it can use to supply its own power needs and that of its wholesale and indirect retail customers. *Orangeburg, S.C. v. Fed. Energy Regulatory Comm’n*, 862 F.3d 1071, 1074 (D.C. Cir. 2017).

71. The Amended Utilities Code will imminently damage and injure ETEC by, among other things, exacerbating the congestion issues it confronts in East Texas, by inhibiting its ability to participate in the Texas transmission construction market, and by foreseeably inflating the cost of wholesale power it will purchase on the Texas transmission services market.

72. By discriminating against foreign utilities and thereby restricting transmission construction in Texas to incumbent utilities with an existing in-state presence, the Amended

Utilities Code directly “authorizes” the PUCT to impair ETEC’s legally protected rights and interests in the imminent future. *Id.* at 1080 (citing *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 440 (D.C. Cir. 1998) (en banc)).

73. This unconstitutional legislation, as enacted and as applied, should be nullified as unconstitutional and/or its enforcement should be enjoined as it threatens ETEC with irreparable injury for which there is no adequate remedy at law.

74. ETEC also is entitled to attorneys’ fees pursuant to 42 U.S.C. § 1988.

COUNT II
DECLARATORY RELIEF
28 U.S.C. §2201

75. ETEC re-alleges paragraphs 1 through 74 of this Complaint as though fully set forth herein.

76. “In a case of actual controversy . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. §2201(a).

77. The Amended Utilities Code violates the Commerce Clause because it discriminates against nonresident economic actors without a legitimate local purpose.

78. Enforcement of the legislation creates a genuine, credible, and immediate threat of harm to ETEC’s business and interstate commerce by preventing nonresident transmission developers from entering the Texas market.

79. ETEC seeks a declaration that the Amended Utilities Code is void under the Commerce Clause of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Intervenor-Plaintiff East Texas Electric Cooperative, Inc. prays that judgment be entered in its favor, and respectfully requests the Court grant the following relief:

- a. An order pursuant to 28 U.S.C. §2201 declaring that amended Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 are unconstitutional because they violate the Commerce Clause and are therefore invalid and unenforceable to the extent they grant in-state transmission owners the exclusive right to build or acquire transmission lines in Texas;
- b. An order enjoining Defendants from enforcing the unconstitutional provisions of Utilities Code §§ 37.051, 37.056, 37.057, 37.151, and 37.154;
- c. An order awarding ETEC the costs and expenses incurred in the instant litigation, including its reasonable attorneys' fees pursuant to 42 U.S.C. §1988(b); and
- d. An order for such other relief, including preliminary injunctive relief, and further relief that the Court deems necessary or appropriate.

Dated: August 19, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing documents was served by the Court's CM/ECF system to all counsel of record on this 19th day of August, 2019.

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