

Comparison of LSP’s Motion to Intervene with NextEra’s Original Complaint

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9	Recognizing that interstate electric energy transmission and wholesale rates are a matter of federal public interest, Congress enacted the Federal Power Act in 1935, which granted the Federal Power Commission, later renamed the Federal Energy Regulatory Commission (“FERC”), the exclusive authority to regulate transmission and wholesale sales of electricity in interstate commerce.	25	Recognizing that interstate electric energy transmission and wholesale rates were a matter of federal public interest, Congress enacted the Federal Power Act in 1935, which granted the Federal Power Commission, later renamed the FERC, the exclusive authority to regulate transmission and wholesale sales of electricity in interstate commerce.
10	FERC enacted a series of reforms to promote development of competitive markets. In 1996, FERC promulgated Order No. 888, requiring each jurisdictional electric public transmission provider to unbundle its wholesale generation and transmission services.	28	FERC subsequently established a series of reforms to promote the development of competitive wholesale power markets. In 1996, FERC promulgated Order No. 888, which adopted structural reforms to functionally unbundle transmission, paving the way for competitive suppliers to access the wholesale electric grid on nondiscriminatory terms.

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11	In 1999, FERC issued Order No. 2000, which encouraged the owners of electric transmission operating in interstate commerce to cede operation of their transmission systems to grid operators, independent system operators (“ISOs”) or regional transmission organizations (“RTOs”), to coordinate transmission planning, operation, and use on a regional and interregional basis.	29	In 1999, FERC issued Order No. 2000, which encouraged the owners of electric transmission operating in interstate commerce to transfer operation of their transmission systems to ISOs or RTOs to coordinate transmission planning, operation, and use on a regional and interregional basis.
12	Most ISOs and RTOs, with the exception of one part of Texas, are federally regulated and FERC-approved non-governmental corporations that manage portions of the transmission grid and regional markets for wholesale power for much of the country. These grid operators also plan the expansion of transmission grids within their regional footprints. A key role of an ISO or RTO is to plan for the development of new transmission facilities to ensure the reliability of the system and provide transmission access to wholesale power at reasonable costs.	30	ISOs and RTOs are FERC-approved nongovernmental corporations that manage portions of the transmission grid and regional markets for wholesale power for much of the country. These entities also plan the expansion of transmission grids within their regional footprints. A key role of an ISO or RTO is to plan for the development of new transmission facilities to ensure the reliability of the system and provide transmission access to wholesale power at reasonable costs.
14	Unlike MISO, SPP, and WECC, which manage interstate grids, ERCOT operates wholly within Texas, and as such, is not subject to FERC’s jurisdiction ...	19	Unlike MISO, SPP, and WECC, which manage interstate grids, ERCOT operates wholly within Texas, and as such, is not subject to FERC’s jurisdiction...

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15	Until recently, both the ... MISO and SPP Transmission Owner Agreements and Tariffs, like the agreements or tariffs of many other federally-regulated grid operators, included provisions—referred to as rights of first refusal—through which incumbent utilities gave themselves a first right to construct any new transmission facilities in their service areas...	31	Until recently, both the MISO and SPP Transmission Owner Agreements and Tariffs, like the agreements or tariffs of many other ISOs, included provisions—referred to as rights of first refusal—through which utilities had a first right to construct any new transmission facilities in their service areas.
16	... the ERCOT Nodal Protocols contain a right of first refusal based upon ownership of transmission “end points.” Thus, the vast majority of lines in ERCOT are owned and operated by utilities that also own the transmission lines in their monopoly retail service area.	31	... ERCOT’s Nodal Protocols contain a right of first refusal based upon ownership of transmission “end points.” ... thus, the vast majority of lines in ERCOT are also owned and operated by transmission companies that have historically had a footprint in the region.

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17	In July 2011, FERC issued Order No. 1000, which, among other things, required that any provision granting a right of first refusal for certain new transmission facilities be removed from any FERC-approved tariffs and agreements. Based on their inclusion in agreements or tariffs subject to federal jurisdiction, Order No. 1000 referred to the provisions as “federal” rights of first refusal. Since then, federal courts have rebuffed numerous challenges to Order No. 1000, not only upholding FERC’s authority to eliminate rights of first refusal, but also recognizing that rights of first refusal impede competition and harm the public interest.	32	In July 2011, FERC issued Order No. 1000, which, among other things, required the removal from FERC-approved tariffs and agreements of any provision granting a right of first refusal for certain new transmission facilities. Based on their inclusion in agreements or tariffs subject to federal jurisdiction, Order No. 1000 referred to the provisions as “federal” rights of first refusal. Since then, federal courts have rebuffed numerous challenges to Order No. 1000, not only upholding FERC’s authority to eliminate rights of first refusal, but also recognizing that rights of first refusal impede competition and harm the public interest.
18	Order No. 1000: (a) seeks to foster competition in the construction of transmission facilities; (b) sets certain standards for regional cost allocation; (c) removes federal rights of first refusal from FERC-approved tariffs; (d) requires identification of the most cost effective projects; (e) requires—with exceptions—competition to select the developer for transmission projects selected for regional cost allocation; ... and (g) charges Order No. 1000 regions (generally ISOs and RTOs) with implementation.	33	Order No. 1000: (1) seeks to foster competition in the construction of transmission facilities; (2) sets certain standards for regional cost allocation; (3) removes federal rights of first refusal from FERC-approved tariffs; (4) requires identification of the most cost effective projects; (5) requires—with exceptions—competition to select the developer for transmission projects selected for regional cost allocation; and (6) charges ISOs and RTOs with implementation.

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19	FERC found that these reforms were needed to ensure that Commission-jurisdictional services continued to be offered at “rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.” Order No. 1000 ¶ 30.	33	FERC found that these reforms were needed to ensure that Commission-jurisdictional services continued to be offered at “rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.” Order No. 1000 at ¶ 30.
20	FERC concluded in Order No. 1000 that: [L]eaving federal rights of first refusal in place for these facilities would allow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers.	35	FERC concluded in Order No. 1000 that: [L]eaving federal rights of first refusal in place for these facilities would allow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers.
21	FERC further found that “federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development, and associated potential savings.” <i>Id.</i> ¶ 285.	36	FERC further found that “federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development, and associated potential savings.” <i>Id.</i> at ¶ 285.

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22	Order No. 1000 catalogued the numerous comments that supported the removal of federal rights of first refusal. For example: a. The Federal Trade Commission stated that the existence of a federal right of first refusal reduces capital investment opportunities for potential nonincumbent developers by increasing their risk, encourages free ridership among incumbent developers, and creates a barrier to entry. <i>Id.</i> ¶231. b. Numerous state utility commission and consumer advocate groups agreed that the right of first refusal provisions impede transmission development and removing the provisions would provide a more level playing field for incumbent and non-incumbent transmission developers. <i>Id.</i> ¶ 231.	37	Order No. 1000 catalogued the numerous comments that supported the removal of federal rights of first refusal. For example: 1) The Federal Trade Commission stated that the existence of a federal right of first refusal reduces capital investment opportunities for potential non-incumbent developers by increasing their risk, encourages free ridership among incumbent developers, and creates a barrier to entry. <i>Id.</i> at ¶ 231. 2) Numerous state utility commission and consumer advocate groups agreed that the right of first refusal provisions impede transmission development and removing the provisions would provide a more level playing field for incumbent and non-incumbent transmission developers. <i>Id.</i> at ¶ 231.
23	Conversely, numerous incumbent transmission owners ...opposed Order No. 1000 and its efforts to benefit ratepayers through transmission planning reform and competition. <i>Id.</i> ¶¶ 239-40.	38	Conversely, numerous incumbent transmission owners opposed Order No. 1000 and its efforts to benefit ratepayers through transmission planning reform and competition. <i>Id.</i> at ¶¶ 239–40.

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24	In <i>South Carolina Public Service Authority v. FERC</i> , the D.C. Circuit affirmed FERC's authority to order removal of federal rights of first refusal from tariff agreements under Section 206 of the Federal Power Act, and found: [B]asic economic principles make clear that the rights of first refusal 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. 762 F.3d 41, 74 (D.C. Cir. 2014).	40	In <i>S.C. Pub. Serv. Auth. v. FERC</i> , the D.C. Circuit Court of Appeals affirmed FERC's authority to order removal of federal rights of first refusal from tariff agreements. Under Section 206 of the Federal Power Act, and found: [B]asic economic principles make clear that the rights of first refusal 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. 762 F.3d at 74.
25 & 26	...FERC rejected rehearing requests based on transmission owner assertions of a protected contractual right to build all new transmission in an existing footprint, deferring ruling on such assertions to the regional compliance filings, see Order No. 1000-A ¶¶ 388-89, the Order No. 1000 compliance filings of numerous transmission owners contained assertions of a contractually protected federal right to exclusively build new transmission in a particular region. FERC rejected each of these assertions, leading to multiple follow-up appeals challenging FERC's rejection of the asserted protected contractual right.	41	... FERC rejected rehearing requests based on transmission owner assertions of a protected contractual right to build all new transmission in an existing footprint, deferring ruling on such assertions to the regional compliance filings. Order No. 1000-A at ¶¶ 388–389. As a result, numerous transmission owners made assertions of a contractually protected federal right to exclusively build new transmission in a particular region. FERC rejected each of these assertions leading to multiple follow-up appeals challenging FERC's rejection of the asserted protected contractual right.

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27	Thus, numerous federal courts have not only upheld FERC's authority to order the removal of rights of first refusal in FERC-approved tariffs and agreements, but recognized in no uncertain terms that rights of first refusal impede competition and harm the public interest.	41	Thus, numerous federal courts have not only upheld FERC's authority to order the removal of federal rights of first refusal in FERC-approved tariffs and agreements, but recognized in no uncertain terms that rights of first refusal impede ...competition and harm the public interest.
28	In compliance with Order No. 1000...MISO and SPP filed revisions to their Transmission Owner Agreements and Open Access Tariffs to remove the federal right of first refusal provisions. MISO and SPP also created a competitive solicitation process to select developers for new transmission projects and created rules governing system-wide cost allocation for new projects.	42	In compliance with Order No. 1000-A, MISO and SPP filed revisions to their Transmission Owner Agreements and Open Access Tariffs to remove the federal right of first refusal provisions. MISO and SPP also created a competitive solicitation process to select developers for new transmission projects and created rules governing system-wide cost allocation for new projects.
29	Following Order No. 1000, MISO developed a competitive system to propose and build transmission facilities. MISO's competitive solicitation process, in compliance with Order No. 1000, allocates the cost of new projects among MISO ratepayers, including for some projects across the entire region. Thus, through these cost allocation mechanisms, costs ... could be allocated across all or a substantial part of the MISO region.	43	Following Order No. 1000, MISO developed a competitive system to propose and build transmission facilities. MISO's competitive solicitation process, in compliance with Order No. 1000, allocates the cost of new projects among MISO ratepayers, including for some projects across the entire region. Thus, through these cost allocation mechanisms, costs ... may be allocated across all or a substantial part of the MISO region.

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30	<p>MISO's competitive solicitation process also removed a federal right of first refusal from the tariff. At the same time, MISO added language to its tariff to recognize state-created rights. The MISO Tariff reads:</p> <p>State or Local Rights of First Refusal.</p> <p>The Transmission Provider shall comply with any Applicable Laws and Regulations granting a right of first refusal to a Transmission Owner. The Transmission Owner will be assigned any transmission project within the scope, and in accordance with such terms, of any Applicable Laws and Regulations granting such a right of first refusal. These Applicable Laws and Regulations include, but are not limited to, those granting a right of first refusal to the incumbent Transmission Owner(s) or governing the use of existing developed and undeveloped right of way held by an incumbent utility.</p>	44	<p>MISO's competitive solicitation process also removed a federal right of first refusal from the tariff. At the same time, MISO added language to its tariff to recognize state-created rights. The MISO Tariff reads:</p> <p>State or Local Rights of First Refusal.</p> <p>The Transmission Provider shall comply with any Applicable Laws and Regulations granting a right of first refusal to a Transmission Owner. The Transmission Owner will be assigned any transmission project within the scope, and in accordance with such terms, of any Applicable Laws and Regulations granting such a right of first refusal. These Applicable Laws and Regulations include, but are not limited to, those granting a right of first refusal to the incumbent Transmission Owner(s) or governing the use of existing developed and undeveloped right of way held by an incumbent utility.</p>

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31	In ruling on MISO’s Compliance Filings, after initially rejecting MISO’s Tariff addition to recognize state laws, FERC ultimately decided to permit MISO to bind itself by state or local laws or regulations when deciding whether MISO would apply its competitive solicitation process for transmission facilities. ... FERC found that it would be inefficient for MISO to have to consider competitive proposals for projects, if, under state and local laws, the project would be automatically assigned to the existing utility. <i>Id.</i> ¶ 26.	45	In ruling on MISO’s Compliance Filings, after initially rejecting MISO’s Tariff addition to recognize state laws, FERC ultimately decided to permit MISO to bind itself by state or local laws or regulations when deciding whether MISO would apply its competitive solicitation process for transmission facilities... FERC found that it would be inefficient for MISO to have to consider competitive proposals for projects, if, under state and local laws, the project would be automatically assigned to the existing utility. <i>Id.</i> at ¶ 26.
32	However, the then-Chair of FERC, Norman Bay, filed a concurring opinion, in which he questioned the constitutionality of state rights of first refusal: I write separately to note that the Constitution limits the ability of states to erect barriers to interstate commerce. State laws that discriminate against interstate commerce—that protect or favor in-state enterprise at the expense of out-of-state competition—may run afoul of the dormant commerce clause. The Commission’s order today does not determine the constitutionality of any particular state right-of-first refusal law. That determination, if it is made, lies with a different forum, whether state or federal court. <i>Id.</i> at 61,195.	46	However, the then-Chair of FERC, Norman Bay, filed a concurring opinion, in which he questioned the constitutionality of state rights of first refusal: I write separately to note that the Constitution limits the ability of states to erect barriers to interstate commerce. State laws that discriminate against interstate commerce—that protect or favor in-state enterprise at the expense of out-of-state competition—may run afoul of the dormant commerce clause. The Commission’s order today does not determine the constitutionality of any particular state right-of-first refusal law. That determination, if it is made, lies with a different forum, whether state or federal court. <i>Id.</i> at 61,195.

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33	MISO's revised tariff also implemented regional and system-wide cost sharing for critical projects.	47	MISO's revised tariff also implemented regional and system-wide cost sharing for critical projects.
34	At the outset, the MISO tariff categorizes projects based on need, dollar value, and size. For a number of categories of projects, MISO does not require regional cost allocation. These generally small projects are also not subject to competitive bidding and are instead automatically awarded to the incumbent because, in the view of the MISO members, the cost of holding the bids was not worth any efficiency gains from competition.	48	At the outset, the MISO Tariff categorizes projects based on need, dollar value, and size. For a number of categories of projects, MISO does not require regional cost allocation. These generally small projects are also not subject to competitive bidding and are instead automatically awarded to the incumbent because, in the view of the MISO members, the cost of holding the bids was not worth any efficiency gains from competition.
35	Relevant here, two types of projects are subject to system-wide cost sharing and competitive bidding: Multi-Value Projects and Market Efficiency Projects.	49	Relevant here, two types of projects are subject to system-wide cost sharing and competitive bidding: Multi Value Projects and Market Efficiency Projects.
36	Multi-Value Projects support a range of system-wide public policies (<i>i.e.</i> , promoting renewable energy) ... The costs of Multi-Value Projects are allocated system wide. Thus, a Multi-Value Project built in Texas would be paid for by consumers across all MISO states.	50	Multi Value Projects support a range of system wide public policies (<i>i.e.</i> , promoting renewable energy). The costs of Multi Value Projects are allocated system wide. Thus, a Multi Value Project built in Texas would be paid for by consumers across all MISO States.
37	Market Efficiency Projects seek to reduce market congestion.	51	Market Efficiency Projects seek to reduce market congestion.

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38	Like MISO, SPP revised its Tariff after Order No. 1000 and developed a system of competitive bidding and regional cost allocation. Also like MISO, SPP eliminated the federally sanctioned right of first refusal from its Tariff. At the same time, the SPP Tariff—like the MISO Tariff—recognized the effect of state laws that provided for rights of first refusal.	53	SPP similarly revised its Tariff. Like MISO, SPP developed a system of competitive bidding and regional cost allocation. Also like MISO, SPP eliminated the federally sanctioned right of first refusal from its Tariff. At the same time, the SPP Tariff—like the MISO Tariff—recognized the effect of state laws that provided for rights of first refusal
39	In FERC's order approving SPP's competitive process, Chairman Bay again filed a concurring opinion, questioning the constitutionality of the state rights of first refusal, stating: I again write separately to note that the Constitution limits the ability of states to erect barriers to interstate commerce. State laws that discriminate against interstate commerce — that protect or favor in-state enterprise at the expense of out-of-state competition — may run afoul of the dormant commerce clause. The Commission's order today does not determine the constitutionality of any particular state right-of-first-refusal law. That determination, if it is made, lies with a different forum, whether state or federal court.	54	In FERC's order approving SPP's competitive process, Chairman Bay again filed a concurring opinion, questioning the constitutionality of the state rights of first refusal, stating: I again write separately to note that the Constitution limits the ability of states to erect barriers to interstate commerce. State laws that discriminate against interstate commerce — that protect or favor in-state enterprise at the expense of out-of-state competition — may run afoul of the dormant commerce clause. The Commission's order today does not determine the constitutionality of any particular state right-of-first-refusal law. That determination, if it is made, lies with a different forum, whether state or federal court.

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52	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”) from the PUCT, which allows the line owners to build, own, and operate the line.	20	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”) from the PUCT, which allows the line owners to build, own, and operate the line.
53	Historically, the PUCT has issued CCNs to new entrant transmission utilities, including to entities based out-of-state. 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. Accordingly, out-of-state utilities are subject to the same rules as their in-state counterparts.	21	Historically, the PUCT has issued CCNs to new entrant transmission utilities, including to entities based out of state. 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. Accordingly, out-of-state utilities are subject to the same rules as their in-state counterparts.

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54	<p>For example, in 2005, the Texas Legislature required the PUCT to designate certain areas as Competitive Renewable Energy Zones (“CREZ”). See Utils. Code §39.904(g). The goal of the CREZ program was primarily to ... In selecting transmission service providers (“TSPs”) for the CREZ program, the PUCT considered: several factors, including: the interested TSP’s current and expected capabilities to finance, license, construct, operate, and maintain the [CREZ Transmission Plan’s (“CTP”)] facilities in the most beneficial and cost-effective manner; the expertise of the TSP’s staff; the TSP’s projected capital costs and operating and maintenance costs for each CTP facility, the proposed schedule for development and completion of each CTP facility, financial resources, expected use of historically underutilized businesses (unless the TSP is an electric cooperative or municipally owned utility), and understanding of the specific requirements to implement the CTP facilities; and if applicable, the TSP’s previous transmission experience and historical operating and maintenance costs for existing transmission facilities.</p>	22	<p>For example, in 2005, the Texas Legislature required the PUCT to designate certain areas as Competitive Renewable Energy Zones (“CREZ”). See Utilities Code § 39.904(g). The goal of the CREZ program was largely to ... In selecting transmission service providers (“TSPs”), the PUCT considered: [S]everal factors, including: the interested TSP’s current and expected capabilities to finance, license, construct, operate, and maintain the [CREZ Transmission Plan’s (“CTP”)] facilities in the most beneficial and cost-effective manner; the expertise of the TSP’s staff; the TSP’s projected capital costs and operating and maintenance costs for each CTP facility, the proposed schedule for development and completion of each CTP facility, financial resources, expected use of historically underutilized businesses (unless the TSP is an electric cooperative or municipally owned utility), and understanding of the specific requirements to implement the CTP facilities; and if applicable, the TSP’s previous transmission experience and historical operating and maintenance costs for existing transmission facilities.</p>

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56	Nonetheless, Texas incumbents, including Texas' established transmission and distribution utilities,11 have periodically attempted to argue that Texas law forbids the PUCT from granting CCNs within the state to transmission-only utilities. In doing so, these Texas utilities have sought to effectively drive other utilities from the business of building, owning, and operating transmission facilities, by preventing the PUCT from approving anything but a traditional transmission and distribution utility—that is, companies that both transmit high-voltage electricity and deliver low-voltage electricity to end users—from owning facilities.	23	Nonetheless, Texas incumbents, including Texas' established transmission and distribution utilities,6 have periodically attempted to argue that Texas law forbids the PUCT from granting CCNs within the state to transmission-only utilities. In doing so, these Texas utilities have sought to effectively drive other utilities from the business of building, owning, and operating transmission facilities, by preventing the PUCT from approving anything but a traditional transmission and distribution utility—that is, companies that both transmit high-voltage electricity and deliver low-voltage electricity to end users—from owning facilities.

57	<p>In January 2007, Electric Transmission Texas, LLC (“ETT”) sought approval from the PUCT under Utilities Code §§37.056 and 37.154 to become an electric utility “whose activities would be limited to acquiring, constructing, owning, and operating transmission facilities” in ERCOT. <i>Pub. Util. Comm’n of Tex. v. Cities of Harlingen</i>, 311 S.W.3d 610, 614 (Tex. App.—Austin, no pet. 2010). The PUCT approved the ETT application. Nonetheless, the City of Harlingen (and others) argued that the PUCT had no authority to approve a transmission-only utility—effectively claiming that only traditional, integrated transmission and distribution utilities with defined service areas could operate in Texas. A Texas lower court agreed... This decision was eventually overturned on appeal, with the appellate court concluding that a transmission-only utility was fully consistent with the PUCT’s authority under existing Texas law. <i>Cities of Harlingen</i>, 311 S. W.3d at 620-21. In the time between the lower court’s decision and the eventual reversal, the Texas legislature intervened, passing laws specifically addressing the ETT transaction and clarifying that a transmission-only utility could operate within ERCOT. See 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).</p>	24	<p>In January 2007, Electric Transmission Texas, LLC (“ETT”) sought approval from the PUCT under Utilities Code §§ 37.056 and 37.154 to become an electric utility “whose activities would be limited to acquiring, constructing, owning, and operating transmission facilities” in ERCOT. <i>Pub. Util. Comm’n of Texas v. Cities of Harlingen</i>, 311 S.W.3d 610, 614 (Tex. App.—Austin, no pet. 2010). The PUCT approved the ETT application. Nonetheless, the City of Harlingen (and others) argued that the PUCT had no authority to approve a transmission-only utility—effectively claiming that only traditional, integrated transmission and distribution utilities with defined service areas could operate in Texas. A Texas lower court agreed... This decision was eventually overturned on appeal, with the appellate court concluding that a transmission-only utility was fully consistent with the PUCT’s authority under existing Texas law. <i>Cities of Harlingen</i>, 311 S.W.3d at 620-21. Nonetheless, in the time between the lower court’s decision and the eventual reversal, the Texas Legislature intervened, passing laws specifically addressing the ETT transaction and clarifying that a transmission-only utility could operate within ERCOT. See 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).</p>
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58	Following the implementation of Order No. 1000 in SPP and MISO, Texas transmission owners outside of ERCOT asserted that, despite the decision on <i>Cities of Harlingen</i> , Texas law granted them an absolute right to build transmission facilities in their service areas.	55	Following Order No. 1000's implementation in SPP and MISO, Texas transmission and distribution owners outside of ERCOT tried to argue that, despite the decision on <i>Cities of Harlingen</i> , Texas law granted them an absolute right to build transmission facilities in their service areas.
59	These arguments first came to a head in SPP in late 2016 when Southwestern Public Service Company's ("SPS") argued it had the exclusive right under Texas law to build an SPP planned transmission line within its service area and therefore claimed that that SPP could not hold a competitive process for the project.	56	These arguments first came to a head in the SPP. In late 2016...SPS, however, argued it had the exclusive right to build transmission lines within its service area under Texas law and, therefore, claimed that no competitive process should take place.
60	On February 28, 2017, SPS and SPP filed a joint request for a declaratory ruling from the PUCT, asking whether "SPS ha[d] the exclusive right to construct and operate new, regionally-funded transmission facilities in areas of Texas that lie within SPS's certificated service area."	58	On February 28, 2017, SPS and SPP filed a joint request for a declaratory ruling from the PUCT. The parties asked the PUCT whether "SPS ha[d] the exclusive right to construct and operate new, regionally-funded transmission facilities in areas of Texas that lie within SPS's certificated service area."

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61	The PUCT found that SPS did not have an exclusive right ...because “[n]owhere does [Texas utility law] explicitly grant [incumbent transmission and distribution] utilities an exclusive right to provide transmission service—including the right to construct transmission facilities—within their certificated service areas.” ... The PUCT cited the <i>Cities of Harlingen</i> decision in reaching this determination.	59	The PUCT found that SPS did not have such exclusive rights, because “[n]owhere does [Texas utility law] explicitly grant [incumbent transmission and distribution] utilities an exclusive right to provide transmission service—including the right to construct transmission facilities—within their certificated service areas.” ... The PUCT cited the <i>Cities of Harlingen</i> decision in reaching this determination.
62	The PUCT’s decision was appealed by SPS and Entergy Texas, Inc. (“Entergy”), two entities that already owned and operated lines in Texas, and the Texas Industrial Energy Consumers. The state district court affirmed, and the case is currently pending before the Third Court of Appeals in Austin.	60	The PUCT’s decision was appealed by SPS and Entergy Texas, Inc. (“Entergy”), two entities that already owned and operated lines in Texas, and the Texas Industrial Energy Consumers. The state district court affirmed, ¹⁰ and the case is currently pending with the Third Court of Appeals in Austin
63	After the PUCT determined that Texas law did not insulate Texas transmission owners from competition ..., those same Texas utilities turned to the Texas legislature in early 2019 to attempt to gain the protection that the PUCT and the Texas courts had not given them.	61	After the PUCT determined that Texas’ existing law did not insulate Texas transmission and distribution line owners from competition..., those same Texas utilities turned to the Legislature to gain that very protection, which the PUCT and the Texas courts had not given them.

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64	In March 2019, lawmakers in the Texas House and Senate introduced Senate Bill 1938 and the companion House Bill 3995, 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.	62	In March 2019, lawmakers in the Texas House and Senate introduced Senate Bill 1938 and the companion House Bill 3995, 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...
65	On April 2, 2019, the Texas Senate Committee on Business & Commerce heard testimony on Senate Bill 1938. A number of large Texas utilities spoke in favor of the bill. The Texas utilities were clear about why they supported the bill. As a representative for Oncor Electric, CenterPoint Energy, AEP Texas, and Texas New Mexico Power explained, the bill was not about determining whether a project would go forward, but rather was about determining who would build the projects. To the representative, Senate Bill 1938 was clear on this point: “The end point owners of an existing facility will build any extensions that come off that facility, that’s what this bill does.	63	On April 2, 2019, the Texas Senate Committee on Business & Commerce heard testimony on Senate Bill 1938. A number of large Texas public utilities spoke in favor of the bill. The Texas public utilities were clear about why they supported the bill, as a representative for Oncor Electric, CenterPoint Energy, AEP Texas, and Texas New Mexico Power explained, the bill did not determine whether a project went forward, but was about determining who built the projects. To the representative, Senate Bill 1938 was clear on this point, “[t]he end point owners of an existing facility”, “will build any extensions that come off that facility, that’s what this bill does.”

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66	The House Report plainly stated: “[t]he bill <i>limits</i> the persons to whom the Public Utility Commission of Texas (PUC) may grant a certificate to build, own, or operate a new electric transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility <i>to the owner of that existing facility</i> and requires, for a new transmission facility that will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity to be certificated to build, own, or operate the new facility in separate and discrete equal parts unless they agree otherwise.” Representative Phelan, the sponsor of the House Bill was even clearer about the protectionist purposes of the bill, explaining that “transmission operations are best managed by accountable companies <i>with boots on the ground in our communities.</i> ”	64	The House Report ... plainly stating that: “[t]he bill <i>limits</i> the persons to whom the Public Utility Commission of Texas (PUC) may grant a certificate to build, own, or operate a new electric transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility <i>to the owner of that existing facility</i> and requires, for a new transmission facility that will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity to be certificated to build, own, or operate the new facility in separate and discrete equal parts unless they agree otherwise.” Representative Phelan, the sponsor of the House bill was even clearer about the protectionist purposes of the bill, explaining that “transmission operations are best managed by accountable companies <i>with boots on the ground in our communities.</i> ”
71	The enacted statute begins by requiring that before any utility provides any service in Texas, it must receive a certificate from the PUCT. Utils. Code §37.051.	67	The enacted statute begins by requiring that before any utility provides any service in Texas, it must receive a certificate from the PUCT. Utilities Code § 37.051.

72	<p>New subsections codified in Utilities Code §37.056 give current transmission line owners the exclusive right to build new transmission lines that interconnect with their existing projects by limiting who the PUCT can issue certificates to, providing: (e) A certificate to build, own, or operate a new transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility may be granted only to the owner of that existing facility. If a new transmission facility will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity shall be certificated to build, own, or operate the new facility in separate and discrete equal parts unless they agree otherwise. (f) Notwithstanding Subsection (e), if a new transmission line, whether single or double circuit, will create the first interconnection between a load-serving station and an existing transmission facility, the entity with a load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility at the load-serving station shall be certificated to build, own, or operate the new transmission line and the load-serving station. The owner of the existing transmission facility shall be certificated to build, own, or operate the station or tap at the existing transmission facility to provide the interconnection, unless after a reasonable period of time the owner</p>	68	<p>New subsections codified in Utilities Code § 37.056 give current transmission line owners the exclusive right to build new transmission lines that interconnect with their existing projects by limiting who the PUCT can issue certificates to, providing: (e) A certificate to build, own, or operate a new transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility may be granted only to the owner of that existing facility. If a new transmission facility will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity shall be certificated to build, own, or operate the new facility in separate and discrete equal parts unless they agree otherwise. (f) Notwithstanding Subsection (e), if a new transmission line, whether single or double circuit, will create the first interconnection between a load-serving station and an existing transmission facility, the entity with a load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility at the load-serving station shall be certificated to build, own, or operate the new transmission line and the load-serving station. The owner of the existing transmission facility shall be certificated to build, own, or operate the station or tap at the existing transmission facility to provide the interconnection, unless after a reasonable period of time the owner of</p>
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	of the existing transmission facility is unwilling to build, and then the entity with the load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility may be certificated to build the interconnection facility.		the existing transmission facility is unwilling to build, and then the entity with the load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility may be certificated to build the interconnection facility.
73	The statute goes on to grant current Texas utilities the right to choose—but only among the pool of existing utilities that are already certified within a power region—which entity will operate a new line in the event the line’s owner chooses to pass up the project, stating: (g) Notwithstanding any other provision of this section, an electric utility or municipally owned utility that is authorized to build, own, or operate a new transmission facility under Subsection (e) or (f) may designate another electric utility that is currently certificated by the commission within the same electric power region, coordinating council, independent system operator, or power pool or a municipally owned utility to build, own, or operate a portion or all of such new transmission facility, subject to any requirements adopted by the commission by rule.	69	The statute goes on to grant current Texas utilities the right to choose—but only among the pool of existing utilities that are already certified within a power region—which entity will operate a new line in the event the line’s owner chooses to pass up the project, stating: (g) Notwithstanding any other provision of this section, an electric utility or municipally owned utility that is authorized to build, own, or operate a new transmission facility under Subsection (e) or (f) may designate another electric utility that is currently certificated by the commission within the same electric power region, coordinating council, independent system operator, or power pool or a municipally owned utility to build, own, or operate a portion or all of such new transmission facility, subject to any requirements adopted by the commission by rule.
74	Next, the statute provides that a CCN holder “shall serve every consumer in the utility’s certificated area.” <i>Id.</i> §37.151.	70	Next, the statute provides that a CCN holder “shall serve every consumer in the utility’s certificated area.” Utilities Code § 37.151.

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75	Finally, the statute limits the entities to which an electric utility that holds a CCN can transfer its CCN, providing: An electric utility or municipally owned utility may sell, assign, or lease a certificate or a right obtained under a certificate if the purchaser, assignee, or lessee is already certificated by the commission to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool, or if the purchaser, assignee, or lessee is an electric cooperative or municipally owned utility.	71	Finally, the statute limits who an electric utility that holds a CCN can transfer their CCN to, providing ...: An electric utility or municipally owned utility may sell, assign, or lease a certificate or a right obtained under a certificate if the purchaser, assignee, or lessee is already certificated by the commission to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool, or if the purchaser, assignee, or lessee is an electric cooperative or municipally owned utility.
76	The statute therefore limits the right to build and operate approved transmission lines in Texas to those entities that already have a Texas transmission and distribution footprint, and excludes any out-of-state entities from building these lines, regardless of whether the lines cross Texas' state boundaries, whether costs for the lines are allocated to ratepayers outside of Texas, or whether the lines were approved by an interstate organization such as MISO, SPP, or WestConnect.	72	The statute, therefore, limits the right to build and operate approved transmission lines in Texas to those entities that already have a Texas transmission and distribution footprint, and excludes any out-of-state entities from building these lines, regardless of whether the lines cross Texas' state boundaries, whether costs for the lines are allocated to ratepayers outside of Texas, or whether the lines were approved by an interstate organization such as MISO, SPP, or WECC.

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77	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” even in the rare cases when a facility owner decides not to build a given facility or wishes to transfer an existing facility, the statute still prevents out-of-state entities from entering the Texas market by requiring the facility owner to transfer their rights to another entity that is already operating in Texas.	73	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” even in the rare cases when a facility owner decides not to build a given facility or wishes to transfer an existing facility, the statute still prevents out-of-state entities from entering the Texas market by requiring the facility owner to transfer their rights to another entity that is already operating in Texas.
79	The justifications the Texas legislators gave for the bill were unwarranted and pretextual. For example, some legislators argued that the bill was needed to protect the PUCT’s rate jurisdiction. But the week before the Committee hearings on the bill, the PUCT took the exact opposite position, arguing in a brief filed in Texas appellate court that allowing new, transmission-only companies in Texas does nothing to divest the PUCT of jurisdiction. As the PUCT explained: “If a transmission-only electric utility provides service in the non-ERCOT areas of Texas, FERC will still have jurisdiction over the wholesale transmission rates and the Commission will continue to set retail rates for these areas; there will be no relinquishment of jurisdiction.”	75 & 76	The justifications the Texas legislators gave for the bill were unwarranted and pretextual...For example, some legislators argued that the bill was needed to protect the PUCT’s rate jurisdiction. But the week before the Committee hearings on the Bill, the PUCT took the exact opposite position, arguing in a brief filed in Texas appellate court that allowing new, transmission-only companies in Texas does nothing to divest the PUCT of jurisdiction. As the PUCT explained: “If a transmission-only electric utility provides service in the non-ERCOT areas of Texas, FERC will still have jurisdiction over the wholesale transmission rates and the Commission will continue to set retail rates for these areas; there will be no relinquishment of jurisdiction.”

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80	Legislators also worried that out-of-state transmission companies might be less reliable than in-state companies. But there is no basis for the concern. As noted, the small number of out-of-state companies brought into ERCOT to run CREZ lines have successfully shown that out-of-state new entrant transmission service providers are just as reliable as in-state traditional transmission and distribution utilities. Moreover, for an out-of-state company to run transmission lines in Texas, even without the bill, the out-of-state company would need to demonstrate that it could provide reliable service in order to obtain a CCN from the PUCT and to win a competitive bid from MISO or SPP. Additionally, transmission facilities are uniformly required to comply with the North American Electric Reliability Corporation's standards, ensuring that all lines are operated reliably.	77	Legislators also worried that out-of-state transmission companies might be less reliable than in-state companies. But there is no basis for the concern. As noted, the small number of out-of-state companies brought into ERCOT to run CREZ lines have successfully shown that out-of-state new entrant transmission service providers are just as reliable as in-state traditional transmission and distribution utilities. Moreover, for an out-of-state company to run transmission lines in Texas, even without the Bill, the out-of-state company would need to demonstrate that it could provide reliable service in order to obtain a CCN from the PUCT and to win a competitive bid from MISO or SPP. Additionally, transmission facilities are uniformly required to comply with the North American Electric Reliability Corporation's standards, ensuring that all lines are operated reliably.
81	LSP and its affiliates and subsidiaries have a long history of active development of new electric transmission solutions.	78	NextEra and its subsidiaries have a long history of active development of new electric transmission solutions.
83	Indeed, the PUCT has previously recognized LSP affiliate CTT's superior service by selecting CTT ... to construct, own, and operate ... new transmission infrastructure under the CREZ program	80	Indeed, the PUCT has previously recognized NextEra's superior service by selecting Lone Star to build, own, and operate lines as part of the CREZ program

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89	Given its history, LSP and its affiliates and subsidiaries are well-positioned to build, own, and operate high-quality, low-cost transmission lines in Texas.	86	Given this history, NextEra and its affiliates are positioned to provide high-quality, low-cost transmission lines in the State of Texas.
92	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.	91	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.
93	The Commerce Clause includes a “dormant” limitation on the authority of the States to enact legislation affecting interstate commerce.	92	The Commerce Clause includes a “dormant” limitation on the authority of the States to enact legislation affecting interstate commerce.
94	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.” <i>Dep’t of Revenue v. Davis</i> , 553 U.S. 328, 337-38 (2008) (internal quotation marks and citations omitted).	93	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.” <i>Department of Revenue v. Davis</i> , 553 U.S. 328, 337–38 (2008) (internal quotation marks and citations omitted).
95	A state statute that discriminates against interstate commerce in favor of in-state commerce is unconstitutional. That is true whether the discrimination is found on the face of the statute, in its effect or its purpose.	94	A state statute that discriminates against interstate commerce in favor of in-state commerce is unconstitutional. That is true whether the discrimination is found on the face of the statute, in its effect or its purpose.

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96	Texas is regulating activities in the interstate market, because it is applying its exclusive right to build law to projects ... approved through a federally mandated planning process in MISO and SPP and will be connected to or form a part of multi-state transmission grids or systems (and indeed, even to lines that run across state lines).	95	... Texas is regulating activities in the interstate market, because it is applying its exclusive right to build law to projects approved through a federally mandated planning process in MISO and SPP, even to lines that run across state lines. In addition, projects in these ISOs are eligible for regional (<i>i.e.</i> , multi-state) cost allocation, even though the footprint of the project does not cross state lines.
97	Texas also is regulating the provision of services in the nation-wide market to provide transmission services.	96	Texas also is regulating the provision of services in the nation-wide market to provide transmission services.
98	...Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 facially discriminate against Intervenor-Plaintiff by effectively prohibiting Intervenor-Plaintiff and its affiliates, as well as other out-of-state, new entrant market participants, from building transmission lines in Texas, including those lines approved through a federally mandated planning process.	97	Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 facially discriminate against Plaintiffs by effectively prohibiting Plaintiffs, as well as other out-of-state, new entrant market participants, from building transmission lines in the State of Texas, including those lines approved through a federally-mandated planning process.

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99	...Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 also discriminate in purpose and effect by imbuing transmission developers with a Texas footprint with rights well beyond a right of first refusal. They unequivocally grant a select few utilities with the absolute right to construct all transmission projects within their geographic footprint, to the exclusion of out-of-state developers, including those approved through a federally mandated planning process, who otherwise could qualify as public utilities under Texas law	98	Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 also discriminate in purpose and effect by imbuing transmission developers with a Texas footprint with rights well beyond a right of first refusal. They unequivocally grant a select few utilities with the absolute right to construct all transmission projects within their geographic footprint, to the exclusion of out-of-state developers, including those approved through a federally-mandated planning process, who otherwise could qualify as public utilities under Texas law.
100	The legislative history shows that the law was not enacted for a legitimate, nonprotectionist purpose. Many other methods would allay any concerns regarding cost and reliability of service, such as requiring new entrants to become public utilities and imposing other permit obligations on the new entrants to ensure reliability of service. <i>See Cities of Harlingen</i> , 311 S.W.3d at 617 (noting that under Texas law an entity must become a utility to provide transmission services).	99 & 100	The legislative history shows that the law was not enacted for a legitimate, nonprotectionist purpose...Many other methods would allay any concerns regarding cost and reliability of service, such as requiring new entrants to become public utilities and imposing other permit obligations on the new entrants to ensure reliability of service. <i>See Cities of Harlingen</i> , 311 S.W.3d at 617 (noting that under Texas law an entity must become a utility to provide transmission services).
101	Thus, the burden on interstate commerce caused by Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 is not justified by valid public welfare, consumer protection, or other legitimate public purpose unrelated to economic protectionism.	101	Thus, the burden on interstate commerce caused by Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 is not justified by valid public welfare, consumer protection, or other legitimate public purpose unrelated to economic protectionism.

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102	In addition...Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 unduly burden interstate commerce by restricting entry to the transmission market in Texas, thus walling off the state from new market participants. <i>See Pike v. Bruce Church, Inc.</i> , 397 U.S. 137, 142 (1970).	102	In addition, Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 unduly burden interstate commerce by restricting entry to the transmission market in Texas, thus walling off the state from new market participants. <i>See Pike v. Bruce Church, Inc.</i> , 397 U.S. 137, 142 (1970).
103	The purported local benefits of the Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 are insignificant and illusory, and are a mere pretext for discrimination against out-of-state transmission developers. As numerous courts have found, basic economic theory leads to the conclusion that wholesale transmission competition benefits the markets and consumers. Accordingly, the burden on interstate commerce is clearly excessive in relation to any purported local benefits.	103	The purported local benefits of amended Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 are insignificant and illusory, and are a mere pretext for discrimination against out-of-state transmission developers. As numerous courts have found, basic economic theory leads to the conclusion that wholesale transmission competition benefits the markets and consumers. Accordingly, the burden on interstate commerce is clearly excessive in relation to any purported local benefits.
104	This legislation has injured and will continue to injure Intervenor-Plaintiff by preventing its entry to the Texas transmission-development marketplace as regulated utilities, and interfering with its ability to plan, invest in, and conduct their business operations as MISO, SPP, and WestConnect qualified entities.	104	The statute has injured Plaintiffs by preventing their entry to the Texas transmission-development marketplace as regulated utilities, and interfering with their ability to plan, invest in, and conduct their business operations as MISO, SPP, ERCOT, and WECCqualified entities.

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105	This unconstitutional legislation, as enacted and as applied, should be stricken as unconstitutional and/or its enforcement should be enjoined as it threatens Intervenor-Plaintiff with irreparable injury for which there is no adequate remedy at law.	105	This unconstitutional legislation, as enacted and as applied, should be stricken as unconstitutional and/or its enforcement should be enjoined as it threatens Plaintiffs with irreparable injury for which there is no adequate remedy at law.
106	Intervenor-Plaintiff also seeks attorneys' fees pursuant to 42 U.S.C. §1988.	105	Plaintiffs also seeks attorneys' fees pursuant to 42 U.S.C. § 1988.
108	"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).	113	"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).
109	...Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 violate the Commerce Clause because they discriminate on their face and in purpose and effect against interstate commerce in order to benefit in-state competitors.	114	Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 violate the Dormant Commerce Clause because they discriminate on their face and in purpose and effect against interstate commerce in order to benefit in-state competitors.
110	The legislation was enacted for purely protectionist purposes, and there are no local benefits that justify its continued enforcement.	115	The statute was enacted for purely protectionist purposes, and there are no local benefits that justify the continued enforcement of the statute.

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111	Enforcement of the legislation creates a genuine, credible, and immediate threat of harm to Intervenor-Plaintiff s business and interstate commerce, by preventing new transmission development entities from entering the Texas market.	116	Enforcement of these laws create a genuine, credible, and immediate threat of harm to Plaintiffs' business and interstate commerce, by preventing new transmission development entities from entering the Texas market.
112	Intervenor-Plaintiff seeks a declaration that amended Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154 are void under the Commerce Clause of the United States Constitution.	117	Plaintiffs seeks a declaration that Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 are void under the Dormant Commerce Clause of the United States Constitution.
Prayer (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.	118	An order declaring pursuant to 28 U.S.C. § 2201 that Utilities Code § 37.051, § 37.056, § 37.057, § 37.151, and § 37.154 are unconstitutional because they violate the Dormant 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 the state of Texas ...
Prayer (b)	An order enjoining Defendants from enforcing the unconstitutional provisions of Utilities Code §§37.051, 37.056, 37.057, 37.151, and 37.154.	119	An order enjoining Defendants from enforcing the unconstitutional provisions of Utilities Code § 37.051, § 37.056, § 37.057, § 37.151 and § 37.154.
Prayer (c)	An order awarding Intervenor-Plaintiff the costs and expenses incurred in the instant litigation, including its reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b).	120	An order awarding Plaintiffs the costs and expenses incurred in the instant litigation, including its reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b).

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Prayer (d)	An order for such other relief, including preliminary injunctive relief, and further relief as may be just and appropriate under the circumstances.	121	An order for such other relief, including preliminary injunctive relief, and further relief as may be just and appropriate under the circumstances.