

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NEXTERA ENERGY CAPITAL
HOLDINGS, INC., et al.,
Plaintiffs,

v.

KEN PAXTON, Attorney General of the
State of Texas, et al.,
Defendants.

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CIVIL ACTION NO. 1:19-cv-00626

TEXAS’S OPPOSITION TO INTERVENTION BY LSP

LSP Transmission Holdings II, LLC (“LSP”) asks to join this challenge to Texas law. Texas opposes for two reasons. First, LSP claims entitlement to participate because it has “subsidiaries and affiliates” that do or wish to compete in Texas. (Doc. 33 at 2). LSP lists but does not explain its relationship with those “subsidiaries and affiliates.” If those entities have any claim of entitlement, they, not LSP, should participate directly. LSP¹ is currently litigating in the Eighth Circuit after a Minnesota federal district court rejected its dormant commerce clause argument. Its additional arguments belong in the Eighth Circuit, not this lawsuit. Second, and more importantly, LSP has nothing to add to this lawsuit that will benefit the Court. LSP, like NextEra, wishes to challenge the Texas law limiting transmission lines to incumbent utilities. LSP’s arguments—and its pleadings—are substantially identical to NextEra’s.

Further, Texas proposed to NextEra that the parties consent to interested intervenors, believing cooperation might spare the Court unnecessary disputes. For example, Entergy, the incumbent provider named in NextEra’s original complaint, can reasonably be expected to seek to

¹ Technically, the Minnesota litigant is “LSP Transmission Holdings, LLC,” as opposed to intervenor “LSP Transmission Holdings II.”

intervene. NextEra declined to consent, articulating its position that each side should be permitted a single intervenor. Because four separate entities are charged with transmission planning for various areas of Texas, each area containing incumbent utility providers with different interests, that position would deprive the Court of a full perspective. But it is particularly illogical where, as here, the intervening participant opposing the statute has nothing useful to add.

LSP essentially regurgitates NextEra's arguments. *See* Exhibit A, comparing LSP's proposed intervention pleading to NextEra's original complaint. Paragraphs are reordered, but largely identical. For example, paragraphs 17, 19-22, 24, 27, 30-35, 39, 52-53, 56-57, 62, 64, 66, 71-75, 77, 79, 80, and 100-103 are copied verbatim. Most other paragraphs are differentiated merely by minor word changes, like changing "statute" to "legislation," as LSP did in several other paragraphs. Whole pages are almost verbatim duplicated. (Doc. 33, Exhibit 1 at 7, 11, 18, 19, 21, 24, 32-34). LSP cannot reasonably claim it must intervene, as a matter of right, because NextEra does not "adequately represent [its] interest" when it simultaneously quotes an existing party. Fed. R. Civ. P. 24(a)(2). Evaluating the pleadings by the requisite "practical yardstick," LSP's intervention adds nothing to this lawsuit beyond the complications of an additional participant. *See Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996) (cited in Doc. 33 at 3).

Texas is mindful that the Court has discretion to allow *anyone* to intervene, provided the would-be participant has some common question of law or fact. Fed. R. Civ. P. 24(b). Basically, LSP wants to make the exact same argument as NextEra. Texas does not agree LSP's participation would be useful to the Court. But if the Court believes LSP's participation would benefit the case, Texas requests merely that the Court embrace a similar "big tent" approach to allow the participation of various incumbent utility providers—entities that, unlike LSP, have additional arguments and unique interests to advance.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2019, a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record. A courtesy copy was emailed to counsel for LSP.

/s/ John R. Hulme
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