

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

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NEXTERA ENERGY CAPITAL  
HOLDINGS, INC.,  
NEXTERA ENERGY TRANSMISSION,  
LLC, NEXTERA ENERGY  
TRANSMISSION MIDWEST, LLC,  
LONE STAR TRANSMISSION, LLC, and  
NEXTERA ENERGY TRANSMISSION  
SOUTHWEST, LLC,

Civil No. 1:19-cv-00626

Plaintiffs,

v.

DEANN T. WALKER,  
Chairman, Public Utility Commission of Texas,  
ARTHUR C. D'ANDREA, Commissioner,  
Public Utility Commission of Texas, and  
SHELLY BOTKIN, Commissioner, Public  
Utility Commission of Texas, each in his or her  
official capacity,

Defendants.

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**PLAINTIFFS' OMNIBUS OPPOSITION TO ENTERGY TEXAS, INC.'S,  
ONCOR ELECTRIC DELIVERY COMPANY LLC'S,  
SOUTHWESTERN PUBLIC SERVICE COMPANY'S, AND TEXAS INDUSTRIAL  
ENERGY CONSUMERS' MOTIONS FOR LEAVE TO FILE**

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COMES NOW Plaintiffs NextEra Energy Capital Holdings, Inc.; NextEra Energy Transmission, LLC; NextEra Energy Transmission Midwest, LLC; Lone Star Transmission, LLC; and NextEra Energy Transmission Southwest, LLC, (collectively, “NextEra”) and files this, its Omnibus Opposition to the Motions For Leave to File of Entergy Texas, Inc. [ECF 91]; Oncor Electric Delivery Company, LLC [EFC 90, 92]; Southwest Public Service Company [ECF 89]; and Texas Industrial Energy Consumers [ECF 93] (collectively, “Prospective Intervenors”) and, in support thereof, would show as follows:

The Prospective Intervenors have not received this Court’s permission to intervene, but have now proceeded to seek leave both to file motions to dismiss as well as to file papers in the pending preliminary injunction proceeding. These putative filings only underscore what NextEra argued in its Oppositions to Intervenors’ Motions to Intervene [ECF 70, 85]: intervention by multiple incumbent utilities seeking to preserve a state law that locks out competition from NextEra and others should be permitted, if at all, with conditions requiring coordination on briefs. Moreover, this Court already indicated at its earlier status conference that it did not anticipate allowing Prospective Intervenors to participate in the preliminary injunction proceeding, which seeks to preserve the *status quo ante* Senate Bill 1938 pending completion of the litigation. The Court stated:

[T]he intervenors may not get to participate in the preliminary injunction hearing. The preliminary injunction hearing is between the parties that are before me. The plaintiffs that claim they are aggrieved and the State of Texas, the Attorney General that represents the entities affected by the new statute, are the ones I am most interested in for purposes of preliminary relief. And when we get past that one way or the other, then I’m going to worry about what I’m going to do with intervenors. So don’t believe that I’m going to allow testimony or participation by intervenors at this stage. And whatever they do or whatever interventions they make, they can go ahead and make, but I’m dealing with you-all at this point.

(Tr. of July 9, 2019 Status Conference at 16:17-17:5.)

As Prospective Intervenors' proposed filings show, this case raises a significant specter of "redundant briefing on substantially overlapping issues," which can cause "undue delay and confusion." *Waterkeeper All., Inc. v. Wheeler*, 330 F.R.D. 1, 10 (D.D.C. 2018). In these circumstances "courts have used their discretion to impose conditions that help to promote the fair and expeditious resolution of the action[,]" *id.*, often by requiring aligned intervening parties to file joint briefs. *See, e.g., State v. U.S. Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106, 1113 (N.D. Cal. 2017); *Earthworks v. U.S. Dept. of Interior*, CIV.A. 09-01972 (HHK), 2010 WL 3063139, at \*2 (D.D.C. Aug. 3, 2010). That approach should be followed here: if Prospective Intervenors are allowed to intervene at all, their intervention should be subject to requirements that they not delay the process, not participate in the preliminary injunction process, and coordinate in filing a single brief in support of their aligned interests.

Finally, if Prospective Intervenors' motions are granted, NextEra requests that the parties who have asked to intervene to oppose Texas' unconstitutional law (LSP Transmission Holdings II, LLC ("LSP") and East Texas Electric Cooperative, Inc.) be given an equal opportunity to express their views.<sup>1</sup>

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<sup>1</sup> On this point, we have been given permission to note that LSP has refrained from filing substantive papers thus far out of respect for the Court's process in ruling on its pending motion to intervene.

Dated: August 27, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2019, a true and correct copy of the foregoing document was served via ECF on all counsel of record who have accepted ECF filing and via first-class to the following non-CM/ECF participants:

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