PUBLIC UTILITY COMMISSION OF TEXAS

REQUEST FOR PROPOSALS
FOR ASSISTANCE IN REVIEWING THE
CHANGE-IN-CONTROL FILING OF
CERTAIN INVESTOR-OWNED UTILITIES

Public Utility Commission of Texas
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78711

Closing Time and Date:
January 04, 2019
11:00 a.m., Central Time

RFP Number: 473-19-00003
Project Number: 48854
NIGP Class Item: 918-32

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SECTION 1 – INTRODUCTION

The Public Utility Commission of Texas ("PUCT" or "commission") is issuing a Request for Proposals (RFP) for a technical consultant to assist the PUCT in its review of any change-in-control filings relating to the merger and acquisition announcements made on October 18, 2018, by Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, LLC, InfraREIT, Inc., Hunt Consolidated, Inc., Sempra Energy, and Oncor Electric Delivery Company LLC (Oncor), as well as any other proceedings related to the change of control filings. At a minimum, the consultant will assist the PUCT in discharging its mandate to determine whether any proposed transactions are consistent with the public interest pursuant to sections 39.262 and 39.915 of the Public Utility Regulatory Act (PURA)(Texas Utilities Code, Title II). The consultant will also assist with any other legal or factual determinations that are necessary as part of the PUCT's review of the proposed transactions.

The work will include reviewing and evaluating any change-in-control filings ("Consulting Expert Services") and may include participating as necessary in any contested case proceedings on behalf of PUCT staff ("Contested Case Services"). This work must begin at the later date of: immediately upon contract execution or when a change-of-control proceeding is filed, and will end after all related contested case proceedings and any subsequent compliance proceedings are concluded at the PUCT.

The term of the contract resulting from this RFP is anticipated to be January 15, 2019 to May 31, 2019, or when the transaction has been finalized.

SECTION 2 – DEFINITIONS

As used in this RFP, the following terms have the meanings specified:

1) "**Commission** " means the governing body of the PUCT.
2) "**Contractor**" means the person, organization, business entity, or other entity that is selected for the contract contemplated by this RFP.
3) "**May**" means "is authorized to."
4) "**Proposer**" means "a person, organization, business entity, or other entity that submitted a proposal."
5) "**PUCT**" means "the Public Utility Commission of Texas, an agency of the state of Texas."
6) "**Subject Entities**" means any combination of the following: Sharyland Utilities L.P., InfraREIT, Inc., Sharyland Distribution & Transmission Services, LLC, Hunt Consolidated, Inc., Sempra Energy, Oncor Electric Delivery Company LLC (Oncor), or other related entities, that may file change-in-control proceedings related to the merger and acquisition announcements made on October 18, 2018, by Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, LLC, InfraREIT, Inc., Hunt Consolidated, Inc., Sempra Energy, and Oncor Electric Delivery Company LLC.

7) "**Vendor**" means "a person, organization, business entity, or other entity that has been selected for or entered into a contract with a Texas state agency."

8) "**Vendor Performance Tracking System**" means "the system the Texas Comptroller of Public Accounts is required to provide under Section 2262.055, Texas Government Code, for evaluating vendor performance." The Vendor Performance Tracking System is located at: **http://txsmartbuy.com/vpts**

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SECTION 3 – STATEMENT OF WORK

Contractor will provide technical consulting services related to any change-in-control filings that the PUCT expects Subject Entities may file, as well as any related proceedings that may be necessary as determined by the PUCT. The contractor will participate in the contested case proceedings as necessary, including evaluating the proposed transactions filed by the Subject Entities, submitting pre-filed written testimony, responding to discovery, testifying at hearings, and assisting PUCT staff with its general litigation activities in connection with any proposed transactions. Contractor's participation as an expert in contested case proceedings will be at the discretion of the PUCT Contract Administrator. The contractor must also provide technical support and evaluation services described below.

Contractor must have an understanding of the PUCT's order in PUCT Docket No. 47675, including the "ring fence" provisions of that order and the related stipulation in that docket, Commission orders relating to recent change of control applications, the governance structures, financial relationships, and operations, of the Subject Entities to analyze and properly evaluate the proposed transactions.

Contractor must anticipate and understand the potential liabilities, including but not limited to, adverse tax consequences, if any, resulting from any proposed transactions, the financial stability and financial independence of the remaining entities and ways to protect the entities' ratepayers from such effects.

Contractor must be familiar with the likely corporate and ownership structures that the Subject Entities may take, as well as the related tax attributes of each structure. Contractor must also be able to identify the financial and operational costs and benefits associated with each of the likely corporate and ownership structures.

<u>Consulting Expert Services</u>

As part of the technical consulting services related to the proceedings associated with the transactions described above, the contractor must undertake the following tasks, as requested or approved by the PUCT staff:

- review and evaluate any change-in-control filings and the proposed transactions' potential impact on the public interest, the Subject Entities and the Subject Entities' retail customers in Texas;
- provide a written evaluation of each proposed transaction with conclusions and recommendations on modifications that may be needed to protect the public interest;
- review and evaluate the change-in-control filings to determine the need for "ring fence" provisions specific to each Subject Entity;
- review and evaluate the need for any commitments made by the new owners of the Subject Entities concerning, among others, financing and reorganization;

- review the effect, if any, the proposed transactions will have on the new and remaining entities as Texas investor-owned utilities;
- review the effect, if any, of the sale of InfraREIT, as well as the resulting effect of any tax or other liabilities;
- review the proposed transactions to ensure the Texas investor-owned utilities' continued financial independence from any proposed holding companies and affiliates;
- make a determination whether each proposed transaction provides reasonable assurance that the Texas investor-owned utilities will be in compliance with PURA and the PUCT's rules relating to, among other things, the separation of competitive and regulated businesses that are under common ownership and the PUCT's code of conduct rules (*see* http://www.puc.state.tx.us/rules/subrules/electric/index.cfm)
- make a determination whether the Texas investor-owned utilities will be sufficiently capitalized based on the capital needs for providing transmission and distribution service in their service areas and managing the risks associated with providing such service;
- make a determination whether the Texas investor-owned utilities will have sufficient access to capital to permit it to provide adequate service to customers, taking into account the growth expectations for each Texas investor-owned utility's service area and other factors that may result in future capital needs; and
- perform any other tasks deemed necessary or desirable by PUCT staff to evaluate the proposed transactions.

If requested, the contractor will provide PUCT staff a written evaluation and analysis of each proposed transaction.

Contested Case Services

The contractor may also, at the discretion of the PUCT Contract Administrator, participate in any change-in-control contested case proceedings and any related proceedings at the PUCT. Work in the contested cases and subsequent compliance proceedings related to the transactions will include, but will not be limited to:

- attending open meetings at which the commissioners consider matters related to the proposed transactions;
- propounding and responding to discovery requests;
- preparing and presenting direct testimony;
- testifying at contested case hearings and in depositions;
- attending hearings, prehearing conferences, technical conferences and other meetings as deemed necessary in the course of the proceedings;
- assisting PUCT staff with its general litigation preparation and other matters as necessary during the proceeding;
- providing other technical consulting services as necessary to support PUCT staff in the proceeding; and
- assisting in preparing written pleadings as necessary, including, but not limited to: post-hearing briefs, exceptions and replies to proposals for decision, and motions.

- If required, the contested case services will be provided under the direction of a PUCT staff attorney, who will review proposed testimony, conduct direct and re-direct examination of the contractor's witness, and generally manage the PUCT staff case during the hearing.

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SECTION 4 – ELIGIBILITY AND EVALUATION CRITERIA

4.A. EEO and HUB Statement

The PUCT is an equal employment opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability in employment or in the provision of services. This commitment extends to proposers, vendors, and their employees as well.

The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for this award.

4.B. Minimum Eligibility Requirements

4.B.1. Each proposer must demonstrate experience in the review of acquisitions, mergers, or financial restructurings of regulated electric utilities and the effect on the electric utility of actual or potential liabilities at a holding company level. Proposers should also demonstrate their experience in connection with reviewing proposed financing, the proposed organizations of the resulting companies, and codes of conduct or other measures that ensure non-discriminatory service from a regulated entity. Specific areas of experience and competence include acquisition financing, company organization (including legal and management issues), business separation and codes of conduct, and financial independence.

In connection with Contested Case Services, proposers must demonstrate experience in participating in proceedings regarding regulated entities, including experience in providing testimony, participating in the discovery process, participating in hearings (including being cross-examined) and all other aspects of contested proceedings.

Proposers must have a minimum of 5 years' experience similar to that described in Attachment A, Statement of Work (SOW). An entity or company with fewer than 5 years' experience is eligible to submit a proposal if key personnel on the proposal team (including subcontractors) have the minimum required experience. Proposers who do not meet this requirement are not eligible for award.

Additionally, proposals must:

- meet all deadlines set out in this RFP;
- follow the appropriate process for submitting proposals (see Section 6 of this RFP, Required Components and Format);
- include all required components described in this RFP (see Section 6); and
- meet all format requirements set out in this RFP (see Section 6).

4.B.2. Under Texas law, vendors may be barred from participating in state contracts that are subject to Texas Government Code Chapter 2155, Subchapter B (General Purchasing Requirements, Procedures, and Programs). TEX. GOV'T. CODE § 2155.077. If a proposer is barred from participating in state contracts, its proposal will be disqualified and will receive no further consideration.

4.B.3. The PUCT is required to purchase goods and services that provide the best value to the state. TEX. GOV'T. CODE § 2155.074. To that end, the PUCT will review information in the statewide Vendor Performance Tracking System regarding proposers' past performance. Any of the following conditions may result in a proposer being disqualified from consideration for this RFP:

- having a score of less than a C in the Vendor Performance Tracking System;
- currently being under a corrective action plan through the Texas Comptroller of Public Accounts;
- having repeated negative Vendor Performance Reports for the same or similar reason; or
- having purchase orders that have been cancelled in the previous 12 months for non-performance (for example, late delivery or failing to meet quality standards).

4.C. Evaluation Criteria

The PUCT will make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the services described in Section 3, Statement of Work. A description of the categories under which each proposal will be judged and the percentage of weight given to each category are as follows:

- **Proposal Substance – 30%**
  - Proposal demonstrates a clear understanding of the objectives, as described in Section 3 – Statement of Work.
  - Proposed approach is both thorough and practical.
  - Proposed approach for meeting objectives is desirable.
  - Conditions included in the proposal are acceptable.
- **Competence and Knowledge – 30%**
  - Competence and experience are demonstrated by the qualifications described in the proposal.
  - Management structure is well-suited to the objectives described in Section 3 – Statement of Work.
  - The proposer has the capacity and financial resources to perform the contract and meet deadlines without delay or interference.
  - The proposal demonstrates the team's qualifications and experience, drawing on lessons learned and best practices.
- **Qualifications – 10%**
  - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3 – Statement of Work.
- **Proposed Compensation – 30%**

4.D. Texas Vendor Preference

All other factors being equal, preference will be given to a proposer who meets one or more of the following criteria:

- Proposer is incorporated in Texas;
- Proposer's principal place of business is in Texas; or
- Proposer has an established physical presence in Texas.

Proposers who may qualify for the Texas Vendor Preference should provide information establishing the applicable criteria as part of the proposal package.

4.E. References

The PUCT may check references as part of the evaluation process. Information gained through reference checks can be used as grounds for disqualification of a proposal if the information casts doubt upon the ability of the proposer to successfully meet the objectives of the RFP. However, any information obtained through a reference check that is discriminatory on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability will not be considered.

SECTION 5 – SCHEDULE AND PROCESS

5.A. Anticipated Schedule

Disclaimer: Dates are subject to change at the PUCT's discretion. Changes to proposer deadlines will be posted on the Electronic State Business Daily (ESBD) website and the PUCT's Procurement webpage, along with any other RFP modifications and addenda. It is the proposer's responsibility to periodically check the websites prior to submitting a proposal. A proposer's failure to review additional information posted on the ESBD and PUCT websites will not release the proposer from requirements described in those postings and could result in disqualification of a proposal or additional costs to meet the requirements of the contract should the proposer be selected for the contract.

PUCT Procurement Webpage:
http://www.puc.texas.gov/agency/about/procurement/Default.aspx

ESBD Website: http://www.txsmartbuy.com/sp

Event	Anticipated Date
RFP Release	December 21, 2018
Last day to submit written questions regarding the RFP	December 26, 2018(12pm)
Deadline for submission of proposals	January 4, 2019
Post-proposal interviews or presentations, if required	January 7, 2019
Staff recommendation for selection	January 11, 2019
Selection approved	January 11 2019
Contract negotiations	January 16, 2019

Contract period begins	January 16, 2019

5.B. PUCT Contact Person

Jay Stone, CTCM, CTPM, is the only permitted PUCT point of contact regarding this RFP. Contact or attempted contact with other PUCT employees, including commissioners and their staffs, may result in a proposer's immediate disqualification.

5.C. Process for Asking Questions

The PUCT will only accept written questions and requests for clarification. Requests must be sent by email to RFPCorrespondence@puc.texas.gov, attention: Jay Stone, CTCM, CTPM. Inquiries and comments must reference RFP No. 473-19-00003.

The PUCT aims to answer all questions within two business days after receipt. Answers to all questions will be provided through an addendum posted on the ESBD and agency procurement websites.

5.D. Process for Submitting Proposals

5.D.1. Proposers must file their sealed proposals in Project Number 48854 with the PUCT's Central Records Division before the stated closing date and time. Proposals will not be considered if received in the Central Records Division after 11:00 am, central time, on January 4, 2019. All required information must be provided at that time. Supplements will only be allowed if information is requested by the PUCT after the closing date of the RFP.

5.D.2. Proposals delivered by fax or email will not be accepted under any circumstances.

5.D.3. The PUCT's Central Records Division is open to the public for filing Monday through Thursday from 9:00 a.m. to 5:00 p.m., and Friday from 9:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., excluding state holidays. If there is an Open Meeting of the PUCT on a Friday, the Central Records Division will not close between noon and 1:00 p.m. on that day.

5.D.4. The following addresses may be used for delivery to the Central Records Division:

In Person Delivery Address

Public Utility Commission, Central Records Division
William B. Travis Building
1701 North Congress Avenue
Room 8-100
Austin, Texas 78701

Mailing Address

Public Utility Commission, Central Records Division
Project No. 48854
P.O. Box 13326
Austin, Texas 78711-3326

5.D.5. The PUCT will **only** accept the time and date stamp of its Central Records Division as evidence of timely submission. The PUCT will **not** accept the following as evidence of timely submission: a U.S. Postal Service postmark, a mail receipt indicating the date of mailing, a dated shipping label, an invoice or receipt from a commercial carrier, or any other documentation other than the time and date stamp of Central Records on the proposal filing.

5.D.6. Confidential filing is required because this RFP is conducted using a sealed bid process. Confidential filing does not guarantee confidentiality after the RFP has ended and a contract has been executed. Any portion of the proposal considered to be confidential (for example, competitively sensitive information or trade secrets) must be marked with the word, "**CONFIDENTIAL**" in all-caps and bold on each page considered to contain confidential information.

5.D.7. Proposers are advised to seek legal counsel regarding the best way to protect any trade secrets or other proprietary information.

5.D.8. For more information about how the PUCT will respond to PIA requests relating to this RFP, please see Section 7.C. of this RFP, Public Information Act Notice.

5.E. PUCT's Standard Process for Selecting Vendors

5.E.1. The PUCT will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually based on the factors of Proposal Substance and Competence and Knowledge, described under Section 4.C. of this RFP, Evaluation Criteria. The purchaser will calculate scoring for compensation. Evaluation team members will not have access to compensation information while they are reviewing and scoring the proposals.

5.E.2. After individual scoring, the evaluation team will email their scoring sheets to the purchaser. The purchaser will review the individual scoring sheets and compile a summary scoring sheet combining all evaluation team scoring and including the compensation scoring. The evaluation team, with guidance from the purchaser, will then take one of the following actions: recommend selection of a specific proposer, gather more information before selecting a specific proposer; or recommend that the RFP be withdrawn or reposted.

5.E.3. If the evaluation team needs more information to make a decision, the PUCT may request any of the following from one or more respondents: additional information or clarification, an oral presentation, or a best and final offer.

5.E.4. The PUCT may require selected proposers to participate in conference calls, attend meetings in Austin, Texas, give presentations, or participate in all of these activities to provide additional information about their proposals. Any cost associated with any such call, meeting, or presentation will be borne solely by the proposer.

5.E.5. If clarification, presentations, or best and final offers are requested, the evaluation team may request the clarification, presentations, or best and final offers from the top-ranked proposer or proposers only, or all of the proposers, at the discretion of the evaluation team.

5.E.6. Final recommendations will be presented to the Executive Director of the PUCT. The Executive Director may do one of the following: approve the recommended selection in whole or in part; disapprove the recommendation; or defer action on the selection.

5.E.7. The PUCT will begin contract negotiations shortly after the Executive Director approves a recommendation to select a specific proposer. The PUCT may negotiate all portions of any proposal, including, but not limited to: the proposed fee, a final schedule for performance to be incorporated into the contract, and any terms of the contract.

5.E.8. The PUCT will notify each proposer of the final action taken upon execution of the contract with the selected proposer.

5.E.9. No questions about the status of the proposals will be answered while proposals are under evaluation.

5.E.10. The PUCT may reject any and all proposals, amend this RFP, or cancel this RFP at any time. After the proposal due date, the PUCT will only notify proposers who submitted a proposal prior to the proposal submission deadline of amendments to the RFP.

SECTION 6 – REQUIRED COMPONENTS AND FORMAT

6.A. Components

Proposals must include all required attachments and certifications. The PUCT will not accept attachments or certifications submitted after the proposal deadline. Proposals that do not include all required information will be considered non-responsive and will be disqualified.

Proposals must include the contents described in 6.A.1 through 6.A.10 with each section marked with an index tab. (Index tabs may be affixed directly to the first page of each section or included as part of a divider.)

6.A.1. Statement of the Requirements

In this section, each proposer must succinctly state its understanding of the RFP's requirements and describe how it would perform the tasks described in Section 3, Statement of Work.

6.A.2. Competence and Knowledge

Each proposer must provide a detailed work plan to demonstrate how it intends to fulfil the requirements identified in Section 3, Statement of Work. The proposal must include an organizational chart identifying functions and reporting relationships of the personnel who will be assigned to this work. The proposer should also describe any prior experience proposer's organization has in providing similar services.

6.A.3. Qualifications

For each person a proposer identifies to perform the work described in this RFP, the proposer must provide a detailed resume that describes the services they would perform, their qualifications, and their experience.

6.A.4. Compensation

Each proposer must propose pricing to provide the services identified in Section 3, Statement of Work.

Compensation for the services identified in Section 3, Statement of Work may be proposed as a firm fixed price or a per-unit price with an estimated total.

Unless otherwise approved in writing by the PUCT, payments will be made based upon the invoicing and payment terms of the resulting contract. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution.

Proposer must demonstrate how elements of the price correspond to elements of the proposed work plan.

6.A.5. References

Each proposer must provide at least three references. Proposers must include a phone number and email address for each reference.

The PUCT prefers references from clients for whom the proposer has performed similar work, including other state commissions or boards.

Proposers must not use the PUCT or any individuals employed by the PUCT as a reference.

6.A.6. Conflicts Statement

Proposers must be neutral and impartial, must not be an entity that has a specific interest in the PUCT's regulation, and must not have a direct financial interest in the provision of electric, telephone, water, or sewer service in the state of Texas.

Proposers having a conflict of interest, as determined by the PUCT will not be eligible for contract award. Proposers may also be disqualified if there are facts that would create an appearance of impropriety, even if no actual conflict exists.

The PUCT will determine whether a conflict of interest or an appearance of impropriety exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The PUCT is the sole arbiter of whether a conflict or an appearance of impropriety exists.

The requirements for the conflicts statement are as follows:

- It must be signed and notarized by the highest-ranking officer of proposer's entity having responsibility for vetting corporate conflicts of interest.
- It must identify any personal or business relationships of proposers, including all employees and subcontractors of proposers, with: any electric, telecommunications, water, or sewer utility, or any utility affiliate operating in Texas; any entity having a pending application at the PUCT to enter the Texas retail electric market, telecommunications market, water utility market, or sewer utility market; and any entity likely to have a direct interest or be a participant in the anticipated change-in-control proceedings that are the subject of this RFP. It must identify the extent, nature, and time aspects of those relationships.

- If a proposer does not have any known or potential conflict of interest or appearance of impropriety, the conflicts statement must include a statement that there is no known or potential conflict of interest or appearance of impropriety. Failure to provide either a statement describing potential conflicts of interest or appearances of impropriety or a statement that no potential conflict or appearance of impropriety exists will automatically disqualify the proposer.
- The conflicts statement must address how the proposer intends to address any known conflicts of interest or appearance of impropriety.
- The conflicts statement must address how the proposer intends to ensure that no interest may arise as a result of its activities or those of its parent, affiliate, or other related entity that will conflict with the proposer's duty should it be selected to provide the services described in Section 3, Statement of Work.
- The conflicts statement must identify a proposer's lobbyists who are registered or required to register with the Texas Ethics Commission and their compensation. The conflicts statement must also describe any involvement the proposer's lobbyists will have in connection with this engagement or electric utility, telecommunication utility, water utility, or sewer utility legislation or policy.
- The conflicts statement must identify any owner, executive, board member, employee, or subcontractor of proposer who has been employed by the PUCT or another state agency in Texas fewer than four years ago. If any individual is identified under this provision, the conflicts statement must disclose: 1) the former PUCT or state agency employee's name and current position with proposer; 2) the name of the state agency; 3) the nature of the previous employment with the state agency; and 4) the dates the employment ended with the state agency and began with proposer. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ these individuals under some circumstances. *See* Texas Government Code Section 669.003.
- The conflicts statement must certify either that the proposer does not employ an individual who has been employed by the PUCT or another agency of the State of Texas at any time during the two years preceding the submission of the proposal or that it has disclosed in its proposal the following: (i) the nature of the previous employment with the PUCT or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ certain individuals under some circumstances. *See* Texas Government Code Sections 2254.033 and 2252.901.
- If the circumstances described by a proposer change or additional information is obtained subsequent to the submission of proposals, the proposer must supplement its conflicts statement as soon as reasonably possible upon learning of any change to their statement. If a supplement to the conflicts statement is required after the deadline for submission of

proposals, the supplement is exempt from the requirement that all proposal documents must be submitted before the deadline in order for the proposal to be considered.

- The PUCT encourages proposers to provide complete disclosure of any matters that might be considered a conflict of interest or appearance of impropriety. The PUCT may consider completeness of disclosure in evaluating whether a conflict of interest or an appearance of impropriety exists.

6.A.7. Historically Underutilized Business (HUB) Certification and HUB Subcontracting Plan (HSP)

Any proposer that is HUB certified by the Statewide Procurement Division (SPD) of the Comptroller of Public Accounts (CPA) or one of its predecessors must submit a copy of its HUB certificate.

Additionally, the PUCT has determined that subcontracting opportunities may be available under this contract. Therefore, all proposers, including State of Texas certified HUBs, must complete and submit a State of Texas HSP with their proposal if the total dollar amount of the proposal response is $100,000 or more.

Proposers can find HSP forms and instructions on the Texas CPA website at: https://comptroller.texas.gov/purchasing/vendor/hub/forms.php

Responses that do not include a completed HSP will be rejected as required by Texas Government Code Section 2161.252(b).

6.A.8. Certifications

Each proposal must contain a signed statement with the following certifications:

- The proposer has made a good faith effort to ensure all statements and information proposer submitted in response to this RFP are current, complete, and accurate.
- The proposer has not given nor offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this proposal.
- The proposer is not currently delinquent in the payment of any franchise tax owed to the State of Texas.
- The proposer, the firm, corporation, partnership, institution, or other legal entity represented by the proposer, and anyone acting for such a firm, corporation, partnership, institution, or other legal entity, have not, in connection with this RFP:
    - Violated the antitrust laws of this state or federal antitrust laws;
    - Communicated directly or indirectly the bid made to any competitor or other person engaged in such line of business; or
    - Otherwise violated 15 U.S.C. Section 1, *et. seq.*, or Texas Business and Commerce Code Section 15.01, *et.seq*,

- Under Texas Government Code Section 2155.004, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

  (A proposer is ineligible to receive a contract award if the proposer is " a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based." *See* Texas Government Code Section 2155.004(a).

- The proposer is in compliance with Texas Government Code Section 669.003, relating to contracting with the current or former executive head of a state agency.

- Under Texas Government Code Section 2155.006, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that any contract may be terminated and payment withheld if this certification is inaccurate.

  (A proposer is ineligible to receive a contract award if the proposer has violated certain laws or been subject to certain penalties in connection with hurricane relief, recovery, or reconstruction efforts. *See* Texas Government Code Section 2155.006.)

- Under Texas Family Code Section 231.006, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive payment under the proposed contract and acknowledges that any contract resulting from this proposal may be terminated and payment may be withheld if this certification is inaccurate.

  (A child support obligor who is more than 30 days delinquent in paying child support, or a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent, is not eligible to receive payments from state funds under a contract to provide property, materials, or services. *See* Texas Family Code Section 231.006(a).)

- If a proposer includes a Texas address in its proposal, the proposer must certify whether or not it qualifies as a Texas Resident Bidder, as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

6.A.9. Evidence of Financial Capability

Proposer must provide evidence of financial capability. The preferred evidence of financial capability is an audited financial statement, if proposer has a current audited financial statement available or if it is practicable to obtain one for the proposal. If no audited financial statement is available, proposer must demonstrate its financial capability in whatever manner it deems appropriate. Evidence of financial capability will be considered in evaluating the competence of the proposer.

6.A.10. Other Required Items

- Any proposer incorporated in Texas must include a copy of its current franchise tax Certificate of Good Standing, issued by the Texas State Comptroller's Office, and the corporation's charter number, issued by the Texas Secretary of State's Office.
- Each proposer must provide its 9-digit Federal Employer's Identification Number (EIN) or its 5-digit State of Texas Vendor's Identification Number (VIN).
- Each proposer must provide the name and social security number of each of the following, as applicable: an individual or sole proprietor; or each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the proposal.

  Proposers may decline to provide social security numbers at the time of submission, but will be required to provide the information before the contract is executed.

6.B. Format Requirements

6.B.1. Information Sheet – The first page of the proposal submission must be an information sheet that clearly states: the name of the proposer, the name address, and telephone number of the proposer's point of contact, the project number, and the RFP title and number. The information sheet will be the only portion of the proposal that is not filed under seal. Information sheets must be filed publicly in Project No. 48854.

6.B.2 Copies and Price Information – Proposers must submit one copy of their proposal clearly marked "Original" with an original signature and four additional hard copies of their proposal. Proposers must also submit one electronic copy of the complete proposal on a USB drive in Microsoft Word and PDF. The PDF version must include all required signatures and notarized statements.

Price information required by Section 6.A.4, Compensation, must be included only in the original proposal and the electronic copy. It must be excluded from the remaining four copies. This requirement is to allow the evaluation team to review proposals for the evaluation factors of Proposal Substance and Competence and Knowledge only. Each proposal will separately be given a score for pricing and that score will be applied to the scoring matrix to ensure that price does not inadvertently influence the evaluation of the other factors.

The four paper copies of the proposal must be identical to the original except for the omission or redaction of the price information.

6.B.3. Physical Format Requirements:

- Proposals must be bound in a three-ring binder.
- Proposals must be printed on 8 ½" x 11" white paper using double or 1.5 spacing and 12-point or larger font. Font must be Times New Roman or its equivalent.
- Proposals must include index tabs separating the sections, as described in Section 6.A. Components, above.
- Pages must be consecutively numbered. Numbering must be continuous throughout the proposal.

6.B.4. Proposers are prohibited from using the Texas State Seal or the PUCT Seal in or on the proposal.

6.B.5. Proposals must not contain any extrinsic items, such as promotional items or other things not contemplated in this Request for Proposals.

6.B.6. Page Limit – Proposals must be limited to 75 pages, including all attachments and certifications, but excluding financial capability submittal, section tabs, or dividers. The PUCT may reject any proposals longer than 75 pages without review. In any case, evaluation team members will not be provided any pages past the 75th page.

SECTION 7 – CONDITIONS

7.A. Irrevocable Offer

Proposals may be withdrawn in writing before the deadline for receipt of proposals. After the deadline, a proposal becomes an irrevocable offer to provide the services described in Section 3, Statement of Work, with the terms and conditions specified in Attachment A, for the shorter of: a period of 90 days from the RFP closing date or until a contract resulting from this RFP is signed. The PUCT will not return withdrawn proposals.

7.B. Proposals are the Property of the PUCT

All proposals and copies of proposals, as well as any best and final offer, and any records provided to the PUCT by the proposer associated with the evaluation of the proposal, will become the property of the PUCT after receipt and will be retained in accordance with the PUCT's records retention schedule.

7.C. Public Information Act Notice

Following the award of a contract, all proposals are public information and subject to release. If the PUCT receives a request for any information submitted to the PUCT in connection with this RFP, the PUCT will follow the requirements of the Texas Public Information Act (Texas Government Code Chapter 552). This includes notifying proposers and the Office of the Attorney General if information that the PUCT knows proposer considers to be confidential is requested under the Texas Public Information Act. The PUCT assumes no obligation to assert legal arguments on behalf of a proposer. The PUCT may release portions of proposals and other information provided by a proposer without notifying the proposer if the information is not conspicuously marked "confidential" on each page.

A copy of the contract resulting from this RFP will be posted on the PUCT's public website. Information in PUCT contracts is public information unless it is made confidential by law. *See* Texas Government Code Section 552.022(a)(3).

7.D. Publicity

Proposers are prohibited from making any public disclosures or news releases pertaining to this RFP, any resulting contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFP or resulting contract. This prohibition may only be waived by prior written approval of the PUCT for the specific disclosure or news release.

7.E. No Proposal Costs Reimbursed

Neither the PUCT nor the State of Texas will reimburse any proposer for any costs related to: preparing a response to this RFP, preparing a best and final offer, providing additional information requested as part of the evaluation of proposals, or making any presentation requested as part of the evaluation of proposals.

7.F. Contract Terms and Conditions

Any contract resulting from this RFP will use the standard general terms and conditions found in Attachment A to this RFP unless changes are negotiated in advance. Many of the terms and conditions are required by law and the PUCT will not negotiate when a term or condition is required by law. Proposers must include any requested changes to the terms and conditions in their proposals.

7.G. Vendor Performance Tracking System

At the end of any contract resulting from this RFP, the PUCT will input required information into the Vendor Performance Tracking System regarding the contractor's performance and whether the contractor satisfied the best value standard for this contract. This information is public and other state agencies seeking goods or services are required, under most circumstances, to use the information in the Vendor Performance Tracking System to determine whether or not a particular vendor will meet the best value standard for the purchase of the goods or services.

ATTACHMENT A – PUCT's Standard General Terms and Conditions

Article 1. DEFINITIONS

When used in this contract, the following terms have the following meanings:

1.1 "**PUCT**," means the Public Utility Commission of Texas, an agency of the state of Texas, acting through its Executive Director and the agency's designated Contract Administrator.

1.2 "**Commission**" means the governing body of the PUCT.

1.3 "**Contractor**" includes NAME, and any successors, heirs, and assigns.

1.4 "**May**" means "is authorized to."

1.4 "**Services**" means any and all services performed and any and all goods and products delivered by Contractor as specified in the Statement of Work.

1.5 "**Statement of Work**" means the description of goods and services to be provided under this contract found in Exhibit 1 to this contract.

1.6 "Subject Entities" means any combination of the following: Sharyland Utilities L.P., InfraREIT, Inc., Sharyland Distribution & Transmission Services, LLC, Hunt Consolidated, Inc., Sempra Energy, Oncor Electric Delivery Company LLC (Oncor), or other related entities, that may file change-in-control proceedings related to the announcements made on October 18, 2018, by Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, LLC, InfraREIT, Inc., Hunt Consolidated, Inc., Sempra Energy, and Oncor Electric Delivery Company LLC.

1.7 "**Parties**" means PUCT and Contractor. "**Any Party**" means PUCT or Contractor.

Article 2. COMPENSATION

2.1 **Compensation.** Contractor agrees to provide all Services (including labor, expenses, and any other services) described in the Statement of Work, as follows: [insert summary of payment terms]. Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding this amount.

If Contractor believes that changes in the scope of Services to be performed will require Contractor to increase its fee, it must request the PUCT's written authorization to increase its fee. Contractor must document the changes in the scope of Services and why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this contract before Contractor performs any Services or may invoice the increased fee.

2.2 **Payment Process.** Contractor must submit an invoice to the PUCT Contract Administrator no later than the final day of the month after the month that all the Services have been performed and completed. The invoice must contain the name of the person performing Services and a brief description of work performed. No payment will be made for administrative overhead, overtime, etc

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the Services performed and the Services were performed in compliance with the contract. The statement or invoice must include the vendor identification number issued by the

Texas Comptroller or Contractor's federal taxpayer identification number, a description of the Services provided, and the name and division of the PUCT Contract Administrator.

Contractor must submit the invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

Or by mail to: Accounts Payable
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

2.3 **Release of Claims.** Contractor's acceptance of payment releases the PUCT of all claims for compensation owed in connection with this contract.

2.4 **Payments Made to Subcontractors.** Contractor must pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor's payment is overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor (see Section 5.1 of this contract).

2.5 **Records.** Contractor and its subcontractors, if any, must maintain records and books of account relating to Services provided under this contract. Contractor must, for a period of seven (7) years following the expiration or termination of this contract, maintain its records (electronic and paper) of the work performed under this contract. Records include, but are not limited to correspondence concerning the subject of this contract between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor must make all records that support the performance of Services and payment available to PUCT and its designees or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT Contract Administrator.

2.6 **Sole Compensation.** Payments under this Article are Contractor's sole compensation under this contract. Contractor must not incur expenses not contemplated under the Statement of Work, with the expectation that the PUCT or any other agency of the state of Texas will pay the expense.

Article 3. CONTRACT ADMINISTRATION

3.1 **PUCT Contract Administration.** The PUCT designates Darryl Tietjen to serve as its primary point of contact and contract administrator throughout the term of this contract. Contractor acknowledges that the PUCT contract administrator does not have any authority to amend this contract on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission exercising its authority through a vote in an open meeting, or the Executive Director of the PUCT as the Commission's authorized designee.

3.2 **Contractor Contract Administration.** Contractor designates its contract administrator as follows: [Insert Designee(s) Here]

3.3 **Reporting.** Contractor must report directly to the PUCT contract administrator and must perform all activities in accordance with the reasonable instructions, directions, and requests conveyed to Contractor by the PUCT contract administrator.

3.4 **Cooperation.** The Parties' contract administrators must handle all communications between them in a timely and cooperative manner. The Parties must timely notify each other by email or other written communication of any change in designee or contact information.

3.5 **Inquiries and Prompt Referral.** Contractor understands that the PUCT does not endorse any vendor, commodity, or service. Contractor, its employees, representatives, other agents, or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this contract or the Services or project to which this contract relates or which mentions the PUCT without the prior approval of the PUCT. Contractor will promptly refer all inquiries regarding this contract received from state legislators, other public officials, the media, or anyone else not a Party to this contract to the PUCT contract administrator.

Article 4. REPORTS AND RECORDS

4.1 **Written Reports.** Contractor will provide written reports to the PUCT in the form and with the frequency specified in the Statement of Work, or as otherwise agreed in writing between the Parties.

4.2 **Distribution of Consultant Reports.** Contractor agrees the PUCT has the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. The PUCT will also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that the PUCT may assert for the report or any portion thereof.

Article 5. SUBCONTRACTING PARTIES

5.1 **Use of Subcontractors.** The Parties acknowledge and agree that, at the time of execution of this contract, Contractor intends to perform the Services required under this Contract using its own employees [or intends to perform the Services required under this Contract using the following subcontractors:]. Contractor will notify the PUCT contract administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any subcontract not contemplated at the initiation of this contract and any subsequent substitution of a subcontractor must be approved by an amendment according to the terms of Article 7.

5.2 **Sole Responsibility.** Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this contract.

5.3 **Prime Vendor Contract.** The Parties expressly agree that this Contract is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Contract, notwithstanding the engagement of any subcontractor to perform an obligation under this Contract.

Article 6. TERM AND TERMINATION

6.1 **Term.** The term of this Contract will begin on [date OR "the date signed by the last signatory to sign"] and will continue in effect until [date] unless sooner terminated under Sections 6.2 or 6.3 of this Contract.

6.2 **Termination for Cause by the PUCT.** If Contractor fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any terms or conditions of the Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this contract for default and will have all rights and remedies provided by law and under this contract. If the PUCT terminates Contractor for a violation of Section 18.12, of this contract, the PUCT need not provide any notice or opportunity for curing the default.

6.3 **Termination for the Convenience of the PUCT.** The PUCT may, upon thirty (30) days written notice to Contractor, terminate this contract whenever the interests of the PUCT so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided or expenses approved in writing, prior to Contractor incurring those expenses, for the purpose of wrapping up the contract. The PUCT will not be liable for any damages or loss to Contractor as a result of termination for convenience.

6.4 **Transfer of Duties.** In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the contract to another entity without disruption to the provision of Services.

6.5 **Remedies for Breach.** All remedies available to the PUCT for breach or anticipatory breach of this contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. Actual damages, cost projections, and injunctive relief may also be invoked either separately or combined with any other remedy in accordance with applicable law.

6.6 **Survival.** In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it will end; provided that the provisions of Sections 2.3 through 2.6, 3.5, 4.2, 6.5, 6.6. 7.5, 9.2, 9.4 through 9.6, 17.2 and 19.1 through 19.5, 19.9 and Articles 1, 10, 11, 12, 14, 15, 16, 20, 21, 23, 28, and 29 will survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS

7.1 **Material Change Requests**. The PUCT may propose changes to the Statement of Work. Upon receipt of a written request from the PUCT for a change to the Statement of Work, Contractor must, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustments to this contract. No changes to the Statement of Work, will occur without the Parties' written consent as provided in accordance with the terms stated in this contract.

7.2 **Changes in Law, Rules, or Rulings.** Changes in federal or state legislation, rules and regulations or rulings by the PUCT after the effective date of this contract may require modification of the terms of this contract, including an increase or decrease in Contractor's duties or compensation. In the event of changes to statutes, rules, or regulations affecting the terms of this contract, the PUCT and Contractor must negotiate the terms of a contract modification in good faith and incorporate the modification into this Contract by written amendment.

7.3 **No Assignment of Duties.** This contract will be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided, however, that Contractor may not otherwise, without the prior written consent of the PUCT, assign or transfer this contract or any obligation incurred under this contract. Any attempt by Contractor to assign or transfer this contract or any obligation incurred under this contract, in contravention of this article, will be voidable at the PUCT's sole discretion.

7.4 **Amendments and Modifications.** This contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this contract.

7.5 **Binding on Successors.** The terms of this contract will be binding on any successor organization of any of the Parties.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 **Warranty of Performance.** Contractor represents, warrants, and covenants that it will perform the Services outlined in the Statement of Work, in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

8.2 **Warranty of Services.** Contractor warrants that the Services will be rendered by the qualified personnel named in Section 19.8 of this contract. If Services provided under this contract require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly licensed personnel.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS

9.1 **Risk of Loss**. The risk of loss for all items to be furnished hereunder will remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss will pass to the PUCT.

9.2 **Ownership.** Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights remain the property of the third

party, all finished materials, conceptions, or products created or prepared for or on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of Services hereunder, will be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the contract. Notwithstanding the foregoing, materials created, prepared for, or purchased exclusively by the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this contract.

9.3 **Licensed Software.** With PUCT's advanced written consent, Contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing Services under this contract. Contractor must provide the PUCT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing Services under this contract.

9.4 **Prior Works.** Except as provided herein, all previously owned materials, conceptions, or products remain the property of Contractor and nothing contained in this contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

9.5 **Trademarks.** The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this contract, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this contract does not give the PUCT any rights of ownership in the trademark or the software.

9.6 **Program Information.** Program information, data, and details relating to Contractor's Services under this contract must be maintained separately from Contractor's other activities. Contractor must undertake all reasonable care and precaution in the handling and storing of this information.

9.7 **Provision to be Inserted in Subcontracts.** Contractor must insert a provision containing Sections 9.2 and 9.6 of this contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this contract.

Article 10. PUBLIC INFORMATION

10.1 **Texas Public Information Act. (Texas Government Code Chapter 552).** The Parties acknowledge that notwithstanding any other provisions of this contract, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the PUCT. The PUCT will notify Contractor of requests for Contractor's information as required under the PIA.

10.2 **Agreement Not Confidential.** The Parties acknowledge that not all terms of this contract may be confidential under the PIA, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

10.3 **Contractor's Duty to Provide Public Information.** Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public any information created or exchanged with the state pursuant to this contract. For the purpose of Section 10.3 of this contract, paper documents, Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html) files will be considered "accessible by the public," unless another format is specified by the PUCT, at the PUCT's sole discretion. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the PIA, Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT's provision of the information to the Texas Attorney General for a decision on the information's confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor's information or data; it will be Contractor's sole responsibility to do so.

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION

11.1 **No Conflicting Relationships.** Contractor certifies to the PUCT that no existing or contemplated relationship exists between Contractor and the PUCT that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the PUCT.

11.2 **Prohibition on Transactions with Parties Adverse to the PUCT.** Contractor agrees that during the term of this contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the PUCT or that has interests that are directly or indirectly adverse to those of the PUCT. The PUCT may waive this provision in writing if, in the PUCT's sole judgment, such activities of the Contractor will not be adverse to the interests of the PUCT.

11.3 **Notice of Conflict.** Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. If Contractor fails to do so, it will be grounds for termination of this contract for cause, pursuant to Section 6.2 of this contract.

11.4 **Revolving Door.** Contractor agrees that it will not hire current or former PUCT employees whose employment with Contractor would violate any of the revolving door provisions in the Texas Government Code or the Public Utility Regulatory Act (Title II, Texas Utilities Code.).

Article 12. INDEMNIFICATION

Contractor must indemnify, defend and hold harmless the PUCT, the State of Texas, and their officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third

party and occurring in any way incident to, arising out of, or in connection with acts or omissions of Contractor, its agents, employees and subcontractors, committed in the conduct of this contract. Contractor will have the obligation to undertake the defense of any such claim, process, or legal proceeding at Contractor's expense; provided, however, that the PUCT may participate in the defense with counsel of its own choosing. Any defense must be coordinated by Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining concurrence from the Office of the Attorney General. Contractor and the PUCT agree to furnish timely written notice to each other of any claim.

If all or any part of the deliverables of this contract is the subject of any claim, suit, or proceeding for infringement or misappropriation of any intellectual property right, Contractor may, and in the event of any adjudication that the deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the deliverables or any part thereof is enjoined, Contractor must, at its expense do one of the following things: (i) procure for PUCT the right under such patent, trademark, copyright or trade secret to fully use the deliverables or the affected part thereof; or (ii) replace the deliverable or affected part thereof with another non-infringing deliverable; or (iii) suitably modify the deliverable or affected part thereof to make it non-infringing.

Article 13. INSURANCE

13.1 **Contractor Responsibility.** Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas will be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance or workers' compensation or any benefit available to a state employee.

13.2 **Minimum Insurance.** Contractor must, at its sole cost and expense, secure and maintain as a minimum, from the effective date of this contract and thereafter during the term of this contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT and the State of Texas:

a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - $1,000,000 limit per occurrence, $2,000,000 aggregate, (ii) medical expense - $5,000 limit per person, (iii) personal injury and advertising liability - $1,000,000 limit, (iv) products or completed operations – $2,000,000 aggregate, (v) damage to premises rented - $50,000 limit;

b) automobile liability coverage for vehicles driven by Contractor's employees ($500,000 per occurrence); and

c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - $1,000,000 each incident, (ii) disease - $1,000,000 each employee and $1,000,000 policy limit.

The PUCT and the State of Texas must be named an additional insured on the commercial liability and automobile policies.

Insurance coverage must be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

13.3 **Certificates of Insurance.** Contractor must furnish to the PUCT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the effective date of this contract, and upon request thereafter. Contractor must provide the PUCT Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, will constitute a material breach of this Contract. Contractor must provide thirty (30) days written notice of any notice for renewal or cancellation of insurance.

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this contract through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

Article 15. SOVEREIGN IMMUNITY

The State of Texas and the PUCT do not waive sovereign immunity by entering into this contract and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this contract, this contract will be deemed entered into in the State of Texas and will be governed by, construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this contract. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this contract.

Article 17. COMPLIANCE WITH LAW

17.1 **General.** Contractor must comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all Services sold hereunder will have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 **Taxes.** Contractor agrees to comply with any and all applicable state tax laws that may require any filing with or payment to the State of Texas as a result of any action taken as a result of this contract.

17.3 **Workers' Compensation.** Contractor agrees that it will be in compliance with applicable state workers' compensation laws throughout the term of this contract and any renewals or extensions thereof.

17.4 **Conflicts.** Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the PUCT. In the event that Contractor becomes aware of inconsistencies between this Contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this contract as necessary.

17.5 **Compliance with Deceptive Trade Practices Act.** Contractor must comply with Texas Business and Commerce Code Chapter 17.

17.6 **Compliance with Americans with Disabilities Act.** Contractor must comply with the Americans with Disabilities Act, 42 U.S.C. Chapter 126.

17.7 **Prohibited Use of Appropriated or Other Funds.** Contractor must comply with Texas Government Code Sections 556.005 and 556.0055 related to prohibited uses of appropriated and other funds.

17.8 **Certificate of Interested Parties Form.** At the time Contractor submits a signed contract to the PUCT, Contractor must submit a "Certificate of Interested Parties" form to the PUCT and file the form with the Texas Ethics Commission. The form and instructions for filing the form can be found at: https://www.ethics.state.tx.us/tec/1295-Info.htm. Contractor must not perform any work under the contract, nor receive any compensation prior to filing the form with the Texas Ethics Commission.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this Contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and agrees that a false certification may lead to termination of this contract for cause.

18.1 **Prohibitions on Gifts.** Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract.

18.2 **Delinquent Obligations.** Contractor is not currently delinquent in the payment of any franchise or sales tax owed to the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

18.3 **Terrorist Financing.** The PUCT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing –

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing proposers or vendors with the Federal General Services Administration's System for Award Management (SAM), https://www.sam.gov/, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: https://www.sam.gov/

Contractor further certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

18.4 **Antitrust.** Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this state, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

18.5 **Family Code.** Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

18.6 **Prohibited Compensation.** Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this contract.

18.7 **Government Code.** Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated or payment may be withheld if this certification is inaccurate.

18.8 **Outstanding Obligations.** Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

18.9 **Contracting with Executive Head of State Agency.** Contractor certifies this contract is in compliance with Texas Government Code Section 669.003 relating to contracting with the executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will provide the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

18.10 **Buy Texas.** Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the state of Texas.

18.11 **Hurricane Recovery.** Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

18.12 **E-Verify.** Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons hired to perform duties within Texas, during the term of the contract; and

2. All persons (including subcontractors) hired by the proposer to perform work pursuant to the contract, within the United States of America.

The Contractor must provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor will also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

18.13 **Debarred Vendors List.** Contractor certifies that it is not on the Debarred Vendors List located at http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.

18.14 **Does Not Boycott Israel.** As required by Texas Government Code Section 2270.002, Contractor certifies that Contractor does not, and will not during the term of this contract, boycott Israel. Contractor further certifies that no subcontractor of Contractor boycotts Israel, or will boycott Israel during the term of this contract.

Article 19. GENERAL PROVISIONS

19.1 **Relationship of Parties.** Contractor is and will remain at all times an independent contractor, and nothing in this contract will be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Except as expressly provided to the contrary elsewhere in this contract, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances will the relationship of employer and employee be deemed to arise between the PUCT and Contractor's personnel.

Contractor will be solely responsible for achieving the results contemplated by this contract, whether performed by Contractor, its agents, employees or subcontractors.

19.2 **Non-Exclusivity.** Nothing in this contract is intended nor will be construed as creating any exclusive arrangement between Contractor and PUCT. This contract will not restrict PUCT from acquiring any similar, equal, or like goods or services from other entities or sources.

19.3 **Taxes and Statutory Withholdings.** Contractor acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor must defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

19.4 **Notice.** Except as otherwise stated in this contract, all notices provided for in this contract must be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this contract), (c) sent by FedEx, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice in the U.S. Mail.

IF TO THE PUCT:
ATTENTION: Executive Director
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With copies to the PUCT Contract Administrator, and Jay Stone, CTPM, CTCM, at the same address.

IF TO CONTRACTOR:
ATTENTION:
ADDRESS
CITY, STATE, ZIP CODE

19.5 **Headings.** Titles and headings of articles and sections within this contract are provided merely for convenience and must not be used or relied upon in construing this contract or the Parties' intentions with respect thereto.

19.6 **Export Laws.** Contractor represents, warrants, agrees and certifies that it (a) will comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) will not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Contractor during the course of this contract in violation of any such laws, rules or regulations.

19.7 **Preprinted Forms.** The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

19.8 **Specific Personnel.** Contractor has identified the personnel for this assignment ("Team"), as follows: [list]

Contractor warrants that it will use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor must provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor must remove from the project any individual whom the PUCT finds unacceptable for any reason in the PUCT's sole discretion. Contractor must replace such individual with another individual satisfactory to the PUCT as soon as practicable.

19.9 **Publicity.** Contractor understands and agrees that the PUCT does not endorse any vendor, commodity, or service. Contractor understands and agrees that Contractor, its employees, representatives, other agents, or subcontractors may not issue any public disclosure, media release, advertisement, or publication without prior written approval of the PUCT: which pertains to this contract or any services or project to which this contract relates; or which pertains to any results or findings based on information provided, created, or obtained to fulfill the requirements of this contract; or which mentions the PUCT.

Article 20. NO IMPLIED WAIVER

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

Article 21. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between the provisions of this contract and any attachments or exhibits, the following are given preference in the order listed below:

1) The terms and conditions of this contract;

2) The Statement of Work, including any exhibits;

3) The Request for Proposals;

4) The Contractor's proposal.

Article 22. FORCE MAJEURE

Neither the PUCT nor Contractor will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve either party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, either party thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other party.

Article 23. SEVERABILITY

If any provision of this contract is held unlawful or otherwise unenforceable, that provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if the provision had never existed.

Article 24. FUNDING OUT CLAUSE

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of Section 6.3 of this contract will apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. See Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2014-2015 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

Article 25. DRUG FREE WORKPLACE POLICY

Contractor must comply with the applicable provisions of the Drug-Free Work Place Act of 1988, 41 U.S.C. § 8102, et seq., and 48 CFR § 52.223-6 Drug-Free Workplace) and maintain a drug-free work environment. The requirements of the Drug Free Workplace Act and the rules interpreting it are incorporated by reference and Contractor must comply with the relevant provisions thereof, including any amendments that may hereafter be issued.

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT.

Article 27. RIGHT TO AUDIT

Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

Article 28. SIGNATORIES

The undersigned signatories represent and warrant that they have full authority to enter into this contract on behalf of the respective parties.

Article 29. ENTIRE AGREEMENT

This contract, including the Statement of Work, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these Services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this contract by specific reference.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of [DATE].

The Public Utility Commission of Texas	**Contractor**
By:	By:
_____	_____
John Paul Urban Executive Director	Name Title
Date Signed: _____	Date Signed: _____

ADDENDUM 1

RFP 473-19-00003

REQUEST FOR PROPOSALS FOR ASSISTANCE IN REVIEWING THE CHANGE-IN-CONTROL FILING OF CERTAIN INVESTOR-OWNED UTILITIES

Introductory Note:

The Public Utility Commission of Texas ("PUCT" or "commission") has issued a Request for Proposals (RFP) for a technical consultant to assist the PUCT in its review of any change-in-control filings relating to the merger and acquisition announcements made on October 18, 2018, by Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, LLC, InfraREIT, Inc., Hunt Consolidated, Inc., Sempra Energy, and Oncor Electric Delivery Company LLC (Oncor), as well as any other proceedings related to the change of control filings.

Questions (in black} and Answers (in red):

RFP page 5:

- Contractor will provide technical consulting services related to any change-in-control filings that the PUCT expects Subject Entities may file, as well as any related proceedings that may be necessary, as determined by the PUCT provide a written evaluation of each proposed transaction

Have the subject entities filed any change of control filings to date?

Please see Docket No. 48929 located on the PUCT interchange for the "Joint Report and Application of Oncor Electric Delivery Company LLC, Sharyland Distribution & Transmission Services LLC, Sharyland Utilities LP, and Sempra Energy for Regulatory Approvals Under PURA 14.101, 37.154, 39.262 and 38.915." The docket provides the information that Staff has to date regarding the details of the transactions.

It is our understanding that the various transactions envisioned here are linked.

From the October acquisition announcement: ***As a condition to Oncor's acquisition of InfraREIT***, InfraREIT's subsidiary, Sharyland Distribution & Transmission Services, L.L.C. ("SDTS"), and Oncor also signed a definitive agreement with SDTS's tenant, Sharyland Utilities, L.P. ("Sharyland") to ***exchange, immediately prior to Oncor's acquisition***, SDTS's South Texas assets for Sharyland's Golden Spread Electric Cooperative interconnection ("Golden Spread Project") located in the Texas Panhandle, along with certain development projects in the Texas Panhandle and South Plains regions, including the Lubbock Power & Light interconnection ("LP&L Project").

Are we correct in assuming that the Oncor acquisition of InfraREIT, if approved by the PUCT, can and will only take place after the other transactions have been consummated?

Please see the answer to the question immediately preceding this one regarding Docket No. 48929.

RFP page 6:

- make a determination whether the Texas investor-owned utilities will be sufficiently capitalized based on the capital needs for providing transmission and distribution service in their service areas and managing the risks associated with providing such service;

- make a determination whether the Texas investor-owned utilities will have sufficient access to capital to permit it to provide adequate service to customers, taking into account the growth expectations for each Texas investor-owned utility's service area and other factors that may result in future capital needs

Capital adequacy and sufficient access to capital are largely a function of rate-setting as determined by the PUCT (and/or in certain cases the FERC). If regulators allow competitive returns on debt and equity, investor owned public utilities have traditionally enjoyed better access to the capital markets than virtually any other industry class. Under Docket No. 47675, Sempra is already required to insure that Oncor credit ratings do not fall below the level as of June 30, 2017.

Are we correct in assuming that that requirement remains in effect through the InfraREIT transaction?

All requirements ordered in Docket 47675 remain in effect.