

# **Exhibit D**

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before the Commissioners:           Dwight D. Keen, Chair  
  Susan K. Duffy  
  Andrew J. French

In the Matter of the Application of NextEra )  
Energy Transmission Southwest, LLC for a )  
Certificate of Public Convenience and )           Docket No. 22-NETE-419-COC  
Necessity to Transact the Business of a Public )  
Utility in the State of Kansas.                    )

**ORDER ON EVERGY’S MOTION TO MODIFY PROTECTIVE ORDER AND NEET  
SOUTHWEST’S PETITION FOR CLARIFICATION OF, RECONSIDERATION OF  
AND REHEARING OF THE ORDER GRANTING EVERGY INTERVENTION AND  
PROTECTIVE AND DISCOVERY ORDER**

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”). Having examined its pleadings and records, the Commission finds and concludes as follows:

1.       On February 28, 2022, NextEra Energy Transmission Southwest, LLC (“NEET Southwest:”) filed an application pursuant to K.S.A. 66-131 and other applicable statutes requesting the Commission grant NEET Southwest a certificate of convenience and necessity (“CCN”) pursuant to K.S.A. 66-131 to operate as a public utility in Kansas for the purpose of constructing and operating the Wolf Creek to Blackberry Project (“Transmission Project”) as described in its Application.

2.       On March 11, 2022, Evergy filed a Petition to Intervene and Motion for Protective and Discovery Order.

3.       On March 21, 2022, NEET Southwest filed Limited Opposition to Evergy’s Intervention and Motion for Protective and Discovery Order. NEET Southwest requested that the

Commission issue a two-tier Protective and Discovery Order.<sup>1</sup> Under the requested two-tier Protective and Discovery Order, confidential materials would be classified as either “Confidential” or “Confidential-Competitive.” The “Confidential” classification would encompass information “within the usual scope of protected information in Commission proceedings,” whereas the “Confidential-Competitive” designation would apply to “information that is competitively sensitive for the purpose of future bidding on SPP and other RTO bidding events.”<sup>2</sup>

4. Under this system, Confidential information would be provided to any party that signs a standard non-disclosure agreement; Confidential-Competitive information would be provided to non-competitor parties who signed a separate non-disclosure agreement which specifically refers to Confidential-Competitive documents.<sup>3</sup> Competitor parties would be provided access to Confidential-Competitive information on an “outside counsel and outside expert eyes only basis.”<sup>4</sup>

5. NEET Southwest was selected to complete the Transmission Project by the Southwest Power Pool (“SPP”) after a competitive bidding process.<sup>5</sup> NEET Southwest was in direct competition with Evergy (through Transource Energy, LLC) for the Transmission Project and NEET Southwest expects to compete with Evergy for future competitive SPP projects.<sup>6</sup> NEET Southwest raised concerns that disclosure of competitively sensitive information to a competitor may disadvantage its ability to compete in future bids.<sup>7</sup> Under SPP’s bidding process, bidders may

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<sup>1</sup> Response in Limited Opposition to Evergy’s Intervention and Motion for Protective Order, pg. 4-5 (March 21, 2022).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* On page 2 of NEET Southwest’s Proposed Protective and Discovery Order, attached to the March 21, 2022 Response, “Competitor refers to parties to participate, or those reasonably expected to participate in the next 5 years, in a competitive bidding process sponsored by a regional transmission organization.”

<sup>5</sup> Response in Limited Opposition to Evergy’s Intervention and Motion for Protective Order, pg. 1 (March 21, 2022).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 6.

identify information that they consider to be confidential, and such information is withheld from the public and other bidders by SPP.<sup>8</sup> NEET Southwest maintains that the two-tier Protective and Discovery Order is necessary to “prevent[] an end-run around the confidentiality measures adopted in SPP’s tariff” and such protections are in the public interest because they “maintain the integrity of the competitive bidding process.”<sup>9</sup>

6. On March 31, 2022, Evergy filed its Response to NEET Southwest’s Limited Opposition to Intervention and Motion for Protective and Discovery Order, opposing NEET Southwest’s proposed two-tier Protective and Discovery Order.<sup>10</sup>

7. On April 4, 2022, NEET Southwest filed a reply to Evergy’s March 31, 2022 response. NEET Southwest argued that SPP’s tariff provisions provide an independent basis to establish additional protections.<sup>11</sup> NEET Southwest also stated that it “seeks only to protect very limited portions of its competitive bid. Out of the hundreds of pages constituting NEET Southwest’s Application, NEET Southwest is only seeking special protections for approximately one page of direct testimony total, one exhibit (Exhibit No. DM-1), and a portion of another exhibit (Exhibit No. AF-1).”<sup>12</sup>

8. On April 21, 2022, the Commission issued an Order Granting Evergy Intervention and Protective and Discovery Order. The Commission’s Order created a two-tier Discovery and Protective Order similar to what was requested by NEET Southwest, but limited the definition of

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<sup>8</sup> Response in Limited Opposition to Evergy’s Intervention and Motion for Protective Order, pg. 3 (March 21, 2022). SPP Open Access Transmission Tariff, Sixth Revised Volume No. 1: [https://www.spp.org/documents/22187/spptariff\\_attachments%20o%20and%20y\\_effective%203-30-2014.pdf](https://www.spp.org/documents/22187/spptariff_attachments%20o%20and%20y_effective%203-30-2014.pdf), pg. 730 (accessed May 4, 2022).

<sup>9</sup> Response in Limited Opposition to Evergy’s Intervention and Motion for Protective Order, pg. 5 (March 21, 2022).

<sup>10</sup> Response of Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. to Limited Opposition to Intervention and Motion for Protective Order, pg. 6 (March 31, 2022).

<sup>11</sup> NextEra Energy Transmission Southwest, LLC’s Reply to Evergy’s Response to Its Limited Opposition to Intervention and Motion for Protective Order, pg. 3-4 (April 4, 2022).

<sup>12</sup> *Id.* at 4.



“Confidential-Competitive” to the three items specifically identified by NEET Southwest as requiring extra protection in its April 4, 2022 reply.<sup>13</sup>

9. On April 25, 2022, Evergy filed a Motion to Modify Protective Order. Evergy has received a discovery request from Commission Staff (“Staff”) which requests a copy of Evergy’s bid for the Transmission Project.<sup>14</sup> Evergy claims that, similar to NEET Southwest, their bid package contains competitively sensitive information which deserves enhanced protection. Evergy requested that definition of “Confidential-Competitive” be expanded to include the entirety of their response to Staff’s request.<sup>15</sup>

10. On April 26, 2022, NEET Southwest filed a Petition for Clarification of, Reconsideration of, and Rehearing of the Order Granting Evergy Intervention and Protective and Discovery Order. NEET Southwest requests that the Commission amend its definition of Confidential-Competitive to mean “any Confidential Information which the designating party reasonably believes, in good faith, to be so competitively sensitive that it is entitled to extraordinary protections (including Confidential Information used to make bids pursuant to a competitive bidding process conducted by a regional transmission organization).”<sup>16</sup>

11. NEET Southwest argued that the Commission’s April 18, 2022 Order did not set forth specific reasoning for limiting the definition of Confidential-Competitive and that absent an expanded definition, the proceeding will be subject to continuous motions to amend the Protective Order such as the one filed by Evergy.<sup>17</sup>

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<sup>13</sup> Order Granting Evergy Intervention and Protective and Discovery Order, pg. 10 (April 21, 2022).

<sup>14</sup> Evergy Motion to Modify Protective Order, pg. 2 (April 25, 2022).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Petition for Clarification of, Reconsideration of, and Rehearing of the Order Granting Evergy Intervention and Protective and Discovery Order, pg. 3 (April 26, 2022).

<sup>17</sup> *Id.* at 4-5.

12. The Commission's standard protective order language already contains a prohibition against using confidential information "for any purpose other than ...preparation for and litigation of this proceeding."<sup>18</sup> Taking into account the concerns of Evergy and NEET Southwest, the Commission must also balance the interests of all parties as well as the public at large. While the Commission has used a two-tier protective order in the past, it is not common practice and should be used sparingly as it carries the potential for abuse by the parties and can limit substantive inquiry.

13. Evergy is correct that it should be entitled to the same protection as was afforded to NEET Southwest with respect to its confidential bid. However, Evergy's motion requests a much broader protection than NEET Southwest actually received in the Commission's April 21, 2022 Order. While NEET Southwest requested protection for only some of its bid, Evergy requests that the entire bid be classified as "Confidential-Competitive."

14. Respect for SPP's confidentiality provisions was one of the reasons that NEET Southwest requested, and the Commission granted, the two-tier Protective Order. In order to maintain that goal the Commission will expand the definition of "Confidential-Competitive" to include information previously submitted to SPP as part of a bid that the parties indicated to SPP should be marked as "confidential."

15. The Commission's April 21, 2022 Order shall be amended, as follows, in Paragraph 22, the definition of Confidential-Competitive information shall be:

"Confidential-Competitive Information" means Confidential Information:

- a. Identified by NEET Southwest in Paragraph 11 of its April 4, 2022, *Reply to Evergy's Response to its limited Opposition to Intervention and Motion for Protective Order.*

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<sup>18</sup> See, Docket No. 21-EPDE-444-RTS, Order Granting CURB's Petition to Intervene and Motion for Protective and Discovery Orders, pg. 8 (July 8, 2021), Docket No. 21-VICE-412-TAR, Order Granting Discovery Order and Protective Order, pgs. 9-10 (May 25, 2021).

Specifically “one page of direct testimony total, one exhibit (Exhibit No. DM-1), and a portion of another exhibit (Exhibit No. AF-1).”<sup>19</sup>

or

- b. Submitted to SPP as part of a competitive bid process and marked as confidential, and is so competitively sensitive as to warrant additional protections.

or

- c. Otherwise so designated by the Commission.

16. All other aspects of the Commission’s April 21, 2022 Discovery and Protective Order remain the same. Parties are reminded that Paragraph 30 of that Order provides a method to challenge a confidentiality designation or limit disclosure of information.

**THEREFORE, THE COMMISSION ORDERS:**

- A. The Commission’s April 21, 2022 is amended as specified in Paragraph 15.

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 05/05/2022



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Lynn M. Retz  
Executive Director

DGC

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<sup>19</sup> NextEra Energy Transmission Southwest, LLC’s Reply to Evergy’s Response to its Limited Opposition to Intervention and Motion for Protective Order, pg. 4 (April 4, 2022).

## CERTIFICATE OF SERVICE

22-NETE-419-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 05/05/2022.

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May 4, 2022

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Re: May 3, 2022 Kansas Open Records Act Request #1651618019

Ms. Chen,

On May 3, 2022, we received your request for records pursuant to the Kansas Open Records Act (KORA), K.S.A. 45-215, as follows:

“Emails between Mayor Tyrone Garner, Interim County Administrator Cheryl Harrison-Lee and Public Information Officer Krystal McFeders....”

Pursuant to the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq*, the Kansas Corporation Commission does not have any records responsive to your request. The Kansas Corporation Commission regulates various public utilities and transportation in the State of Kansas.

This constitutes completion of this request under the facts understood and considered to date in compliance with K.S.A. 45-218. This does not prohibit any subsequent filing that may clarify, revise or amend the current request. However, such subsequent filing will be treated as a new request.

Respectfully,

Lynn M. Retz  
Official Custodian of Records  
Executive Director