

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of NextEra)
Energy Transmission Southwest, LLC for a)
Certificate of Public Convenience and)
Necessity to Construct, Install, Own, Operate,)
Maintain, and Otherwise Control and Manage) File No. EA-2022-0234
a 345 kV Transmission Line and associated)
facilities in Barton and Jasper Counties,)
Missouri)

MOTION FOR PROTECTIVE ORDER

Pursuant to 20 CSR 4240-2.135(3) and -(4), NextEra Energy Transmission Southwest, LLC (“NEET Southwest”) hereby files this Motion for Protective Order prior to the grant of any applications to intervene and states as follows:

Background

1. Later today, July 7, 2022, NEET Southwest will file an application and supporting testimony pursuant to Section 393.170.1 RSMo., 20 CSR 4240-2.060, and 20 CSR 4240-20.045 requesting the Commission grant NEET Southwest a certificate of convenience and necessity (“CCN”) to operate as a public utility in Missouri for the purpose of constructing and operating the Wolf Creek to Blackberry Project, an approximately 94-mile, single-circuit 345 kV transmission line between the existing Wolf Creek Substation, owned by Evergy Kansas Central, Inc. (“Evergy”) in Coffey County, Kansas, to the existing Blackberry Substation, owned by Associated Electric Cooperative, Inc. (“AECI”) in Jasper County, Missouri (the “Project”).

2. The Project is the product of a competitive bidding process conducted by the Southwest Power Pool (“SPP”) in which NEET Southwest and other transmission providers put together confidential bid packages to compete for the Project and NEET Southwest was selected by SPP as the winning bidder. This bidding process may be one of many SPP-sponsored Requests

for Proposals (“RFPs”) for transmission lines in the region, and other regional transmission organizations (“RTOs”) are conducting similar RFPs throughout the country.

3. Pursuant to SPP’s competitive bidding process, NEET Southwest provided information it considers confidential in response to the RFP. This information was disclosed to SPP, but was kept confidential from the public and from other bidders pursuant to SPP’s tariff provisions governing the bidding process.¹

4. Earlier this year, NEET Southwest initiated its Application for a Certificate of Convenience and Necessity in Kansas.² In that docket, there were several intervenors that either participated in bidding for the Project or are expected to bid on future competitive projects.³ It is expected that these parties and/or other competitive parties may intervene in this docket as well.

5. To protect confidential information produced in discovery and in docket filings, the Kansas Corporation Commission (“Kansas Commission”) put in place a Protective Order establishing a two-tier confidentiality system, such that competitive parties were limited from viewing certain competitively sensitive documents.⁴

¹ See Exhibit A, Attachment Y to SPP’s Open Access Tariff, Dkt. ER19-224-001 at §III(1)(a)(iii) (providing that applications would be posted subject to confidentiality protections) and §III(2)(c)(v)(7) (providing that responses to RFPs could be labeled confidential); see also §III(2)(d)(iii) and §III(2)(d)(vi)(2). See also, Exhibit B, the RFP for this Project, at p. §3.12 (noting SPP will not disclose the information contained in any RFP proposal and that any information identified as confidential would be redacted from public versions of Industry Expert Panel Reports.

² See *In the Matter of the Application of NextEra Energy Transmission Southwest, LLC for a Limited Certificate of Public Convenience and Necessity to Transact the Business of Public Utility in the State of Kansas*, KCC Dkt. No. 22-NETE-419-COC.

³ The competitive parties that intervened in the Kansas docket were Evergy Kansas Central, Inc., Evergy Kansas South, Inc. and Evergy Metro, Inc. (collectively “Evergy”); Sunflower Electric Power Corporation, Southwestern Public Service Company, and ITC Great Plains, LLC. These parties and/or their affiliates are among those listed SPP’s roster of 2022 Approved SPP Qualified RFP Participants, attached hereto as Exhibit B.

⁴ See Exhibit C, “Order on Evergy Intervention and Protective and Discovery Order,” KCC Dkt. 22-NETE-419-COC (April 21, 2022); Exhibit D, “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,” KCC Dkt. 22-NETE-419-COC (May 5, 2022).

Statement of Law

6. Missouri Supreme Court Rule 56.01(c) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

7. Commission Rule 20 CSR 4240-2.135(2) provides that parties may designate certain materials, including trade secrets and competitively sensitive information, as “Confidential.” Pursuant to Commission Rule 20 CSR 4240-2.135(6), “Confidential” information shall be disclosed to attorneys of record for a party, to employees of a party who are working as subject-matter experts for the party’s counsel, to employees of a party who intend to file testimony in the case, and to designated outside experts of a party.

8. The Commission has previously noted that, “Commission rules provide for the issuance of protective orders when necessary to protect information from discovery more rigorously than would be provided from a confidential designation.”⁵ The Commission has further explained that, “The Commission may order such greater protection by a party explaining what information must be protected, the harm to the disclosing party that might result from disclosure of the information, and how the information may be disclosed while protecting the interests of the disclosing party.”⁶

Argument

9. At this time, NEET Southwest is uncertain whether any competing transmission providers will seek to participate in this proceeding. However, to the extent that they do, NEET

⁵ “Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4 *citing* Commission Rule 4 CSR 240-2.135(3) (now 20 CSR 4240-2.135(3)).

⁶ Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4 *citing* Commission Rule 4 CSR 240-2.135(4) (now 20 CSR 4240-2.135(4)).

Southwest is concerned that any such parties could, through participation, attempt to access confidential information used in the SPP bidding process and that would be used in future bidding processes. This type of competitively sensitive information would include NEET Southwest's negotiated cost structures, cost containment measures, financing commitments, and engineering designs.

10. If such information is disclosed, NEET Southwest will be competitively disadvantaged in future bidding processes because its competitors would have knowledge of NEET Southwest's confidential bidding strategies used to package together bids.

11. Because NEET Southwest reasonably expects the intervention of competitive parties, NEET Southwest is requesting that a Protective Order be granted now to prevent disclosure of confidential information beyond the protections offered via the electronic docketing system.

12. The "Confidential" designation under Rule 2.135 will not provide adequate protection for categories of information protected under the SPP tariff, as the "Confidential" designation would require NEET Southwest to produce competitively sensitive information to employees of competitive parties who are working as counsel or subject-matter experts and to employees of competitive parties who intend to file testimony in the case.

13. The requested relief listed below is substantially similar to the relief granted by the Kansas Commission earlier this year⁷ and similar to protective orders issued by this Commission.⁸

14. NEET Southwest therefore requests the Commission issue of Protective Order as follows:

⁷ See Exhibit C, "Order on Evergy Intervention and Protective and Discovery Order," KCC Dkt. 22-NETE-419-COC (April 21, 2022); Exhibit D, "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," KCC Dkt. 22-NETE-419-COC (May 5, 2022).

⁸ See "Protective Order," File No. EA-2019-0118 (issued December 18, 2018).

a. Confidential information may be designated in one of two categories: (1) a “Confidential” category of information encompassing the usual scope of protected information in Commission proceedings⁹ and (2) a “Highly Confidential”¹⁰ category of information limited to information that is competitively sensitive for the purpose of future bidding on SPP and other RTO bidding events.

b. Information designated as “Confidential” would be subject to the standard protocols included in Commission Rule 20 CSR 4240-2.135.

c. For information designated as Highly Confidential, non-competitive parties (Office of Public Counsel, Commission Staff, and customer groups) will receive unredacted Highly Confidential documents without any additional action beyond the standards in place for Competitive information.

d. For competitive parties (those who participate in, or those reasonably expected to participate in bidding in an SPP or other RTO RFP in the next five years, and any of their affiliates), the Highly Confidential information will be treated as “outside-counsel-and-outside-expert-eyes-only” and will be withheld from in-house attorneys and employees. Outside counsel and outside experts may receive and review Highly Confidential information after executing a certification meeting the requirements of Commission Rule 20 CSR 4240-2.135(7) or a similar Commission nondisclosure agreement. No Highly Confidential information shall be provided directly or indirectly to any employee of a competitive party.

e. Persons afforded access to materials or information designated Highly Confidential shall neither use nor disclose such materials or information for purposes of

⁹ Including information covered under Commission Rule 20 CSR 4240-2.135(2).

¹⁰ In the Kansas proceeding, the “Highly Confidential” category was termed “Confidential-Competitive.”

business or competition or any other purpose other than in regard to the case referenced above, and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the Protective Order.

f. All material and information designated as “Highly Confidential,” as well as any notes pertaining to such information, shall be returned to NEET Southwest or destroyed upon the conclusion of the referenced case, with certification of same to NEET Southwest.

g. If any party disagrees with the Highly Confidential designation of any information, that party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If these dispute resolution procedures are exhausted without resolution, the party may file a motion challenging the designation.

15. NEET Southwest requests the grant of this motion and the issuance of a protective order prior to the effective date of any orders granting intervention in this matter.

WHEREFORE, NEET Southwest pursuant to Commission Rule 20 CSR 4240-2.135(3) and -(4), respectfully requests the issuance of a protective order herein. NEET Southwest requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Anne E. Callenbach

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ATTORNEYS FOR NEXTERA ENERGY
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed below by email or U.S. mail, postage prepaid, this 7th day of July, 2022.

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/s/ Anne E. Callenbach
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