

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 8<sup>th</sup> day of  
December, 2022.

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 a 345 kV Transmission Line )  
and associated facilities in Barton and )  
Jasper Counties, Missouri )

**File No. EA-2022-0234**

**ORDER APPROVING SETTLEMENT**

Issue Date: December 8, 2022

Effective Date: December 18, 2022

On July 7, 2022,<sup>1</sup> NextEra Energy Transmission Southwest, LLC (NEET Southwest) filed an application (Application) for a certificate of convenience and necessity (CCN) regarding a 345 kV transmission line and associated facilities in Barton and Jasper Counties, Missouri. NEET Southwest also requested waiver of certain Commission rules. NEET Southwest filed direct testimony contemporaneously with its Application.

The Commission provided notice and approved the intervention requests of Evergy Missouri Metro (EMM), Evergy Missouri West (EMW), The Empire District Electric Company d/b/a Liberty (Liberty), and the Southwest Power Pool (SPP). The Commission also directed its Staff to review the Application and provide its recommendation. At the request of the parties, a procedural schedule was established and additional testimony was filed. Upon later request, the procedural schedule was suspended.

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<sup>1</sup> All dates refer to 2022.

On November 7, an *Unopposed Settlement Agreement* (Agreement) was filed. The signatories are NEET Southwest, Staff, EMM, EMW, and SPP (Signatories). The Signatories agree that NEET Southwest should receive the requested CCN, subject to the conditions set out in the Agreement. The Agreement states that non-signatories OPC and Liberty do not oppose the Agreement.

Based on the Commission's review of the application, testimony, and the Agreement, the Commission finds NEET Southwest is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use. Thus, NEET Southwest is an electrical corporation and a public utility in Missouri, and the Commission has jurisdiction over NEET Southwest and the proposed transmission line.

The Commission may grant an electrical corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."<sup>2</sup> The Commission may also impose such conditions as it deems reasonable and necessary upon its grant of permission and approval.<sup>3</sup>

The Commission has stated five criteria, known as the *Tartan* criteria, which it will use when considering an application for a CCN:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;

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<sup>2</sup> Section 393.170, RSMo (Supp. 2021).

<sup>3</sup> Section 393.170.3, RSMo (Supp. 2021).

- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.<sup>4</sup>

NEET Southwest was selected through SPP's competitive Transmission Owner Solicitation Process as the Designated Transmission Owner for the Wolf Creek-Blackberry 345 kV Transmission Project, which will be constructed as an approximately 94-mile, single-circuit 345 kV transmission line between the existing Blackberry Substation, owned by Associated Electric Cooperative, Inc. (AECI) in Jasper County, Missouri, to the existing Wolf Creek Substation, owned by Evergy Kansas Central, Inc. in Coffey County, Kansas. The Missouri portion (Missouri Project) of the transmission line is expected to span two counties in Missouri (Barton and Jasper counties) for nine miles. The Kansas portion (Kansas Project, and together with the Missouri Project, "the Combined Project") is expected to span five counties in Kansas (Coffey, Anderson, Allen, Bourbon, and Crawford counties) for 85 miles.<sup>5</sup> Under consideration by this Commission is the Missouri Project.

The need for this transmission line was identified by SPP in its 2019 Integrated Transmission Planning Assessment Report ("2019 ITP"). The 2019 ITP identified this proposed transmission line as a project that was required to address multiple needs, and in particular, an economic need to increase the transmission capability and relieve transmission congestion from west to east within SPP.<sup>6</sup> Pertinent here, the 2019 ITP stated this transmission line project ". . . will help to levelize system [locational marginal prices ("LMP")], low generator LMPs in the west and high load LMPs in the east, and

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<sup>4</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C.3d 173, 177 (1994).

<sup>5</sup> Application, filed June 7, para. 7; Staff Report, filed September 22, p. 2.

<sup>6</sup> Application, filed June 7, para. 9; and Staff Report, filed September 22, pp. 7-8.

overall system congestion while providing market efficiencies and benefits to ratepayers and transmission customers.”<sup>7</sup> Staff supported the conclusion that the proposed transmission line would provide needed reliability, subject to its recommended conditions.<sup>8</sup>

NEET Southwest is qualified to build the Missouri Project due to its status as a direct, wholly-owned subsidiary of NextEra Energy, a Fortune 200 company.<sup>9</sup> NEET Southwest will draw upon the extensive technical and managerial expertise of NextEra Energy and its affiliates.<sup>10</sup> Additionally, NEET Southwest has been in business since 2014, was created to own and operate transmission assets, and was selected by the SPP as the Designated Transmission Owner for the Combined Project.<sup>11</sup>

NEET Southwest has the financial ability due to the equity or capital injections that will be made if needed by a NextEra Energy affiliate, NextEra Energy Capital Holdings, Inc. (NEECH). NEECH commits that, for the first forty years of operation of the transmission line, NEECH will provide or secure equity capital injections, if needed, to maintain the financial integrity of the Missouri Project consistent with an investment-grade credit profile.<sup>12</sup>

The transmission line is economically feasible as NEET Southwest will have a reasonable opportunity to recover its costs.<sup>13</sup> Additionally, NEET Southwest submitted an

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<sup>7</sup> Application, filed June 7, para. 11.

<sup>8</sup> Staff Report, filed September 22, p. 8.

<sup>9</sup> Staff Report, filed September 22, pp. 8-10.

<sup>10</sup> Staff Report, filed September 22, pp. 8-10.

<sup>11</sup> Staff Report, filed September 22, pp. 8-10.

<sup>12</sup> Staff Report, filed September 22, pp. 10-11; Agreement, filed November 7, para. 11.

<sup>13</sup> Staff Report, filed September 22, pp. 11-13.

economic feasibility analysis in its bid to the SPP; however, the details of that analysis are confidential and will not be restated in this order.<sup>14</sup>

Finally, the proposed Missouri Project, as conditioned by the terms of the Agreement, is in the public interest because “SPP identified the need for the [Combined] Project as a new transmission line to relieve congestion and improve transmission capacity between western Kansas and major SPP load centers in the eastern portion of the SPP region, including in western Missouri. . .”<sup>15</sup>

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement.<sup>16</sup> If no party timely objects, the Commission may treat the settlement as unanimous.<sup>17</sup> More than seven days have passed since the Agreement was filed and no party objected. Thus, the Commission will treat the Agreement as unanimous.

The Commission finds that the proposed Missouri Project is necessary and convenient for the public service, and that NEET Southwest has satisfied the *Tartan* criteria. The Commission has considered the conditions set out in the Agreement<sup>18</sup> and finds that they are reasonable and necessary. The Commission will approve the Agreement, order NEET Southwest to comply with these conditions in exercising the authority granted by this order, and grant the Application.

NEET Southwest requested waivers of certain Commission Rules, and the Agreement lists those waivers supported by the Signatories, with certain conditions or

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<sup>14</sup> Staff Report, filed September 22, pp. 11-13.

<sup>15</sup> Walding Direct, p. 28.

<sup>16</sup> 20 CSR 4240-2.115(2)(B).

<sup>17</sup> 20 CSR 4240-2.115(2)(C).

<sup>18</sup> Agreement, filed November 7, paras. 10-22, and 26-30.

exceptions.<sup>19</sup> The waiver of the first two rules requires a finding of good cause.<sup>20</sup> Because NEET Southwest will not provide retail service to end-use customers and will not be rate-regulated by the Commission, the Commission finds good cause to waive the depreciation study requirement of 20 CSR 4240-3.175; and the reporting requirements of 20 CSR 4240-3.190(1), (2), and 3(A)-(D) with certain exceptions.

The requested variance<sup>21</sup> of the affiliate transaction rule was initially challenged.<sup>22</sup> However, the Agreement provides for suitable conditions to the variance, including revocation of this variance if NEET Southwest or an affiliate request authority to become a rate-regulated utility.<sup>23</sup> The Commission again finds good cause based on the particular facts and circumstances regarding the present case to authorize the affiliate transaction rule variance subject to conditions, as NEET Southwest will not provide retail service to end-use customers and will not be rate-regulated by the Commission.

Lastly the parties agreed to the requested waiver of the rate schedule filing requirement of 20 CSR 4240-20.105.<sup>24</sup> The Federal Energy Regulatory Commission (FERC) will have exclusive jurisdiction over NEET Southwest's rates.<sup>25</sup> Again, based on the particular facts and circumstances the Commission finds the unopposed request for a waiver of 20.105 appropriate and will grant it.

NEET Southwest has requested that a Commission order be effective by December 28, 2022. No party has opposed this request. In order to meet NEET

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<sup>19</sup> Agreement, filed November 7, paras. 23-26.

<sup>20</sup> See 20 CSR 4240-3.175(2); and 3.190(10).

<sup>21</sup> 20 CSR 4240-20.015(10).

<sup>22</sup> Ives Direct, filed October 6, p. 11.

<sup>23</sup> Agreement, filed November 7, para. 26.

<sup>24</sup> Agreement, filed November 7, paras. 23-24.

<sup>25</sup> Application, filed June 7, para. 27; see also Ives Direct, p. 10.

Southwest's requested deadline, the Commission will make this order effective in less than 30 days.

**THE COMMISSION ORDERS THAT:**

1. The Agreement filed on November 7, 2022, is approved. The Signatories are ordered to comply with its terms. The Agreement is incorporated into this order as if set forth herein. A copy of the Agreement is also attached to this order.

2. NEET Southwest's Application for a CCN regarding a 345 kV transmission line and associated facilities in Barton and Jasper Counties, Missouri, is granted subject to conditions. The conditions are as follows:

a) NEET Southwest shall commit that its FERC formula rate filings for the Combined Project will include caps and conditions consistent with NEET Southwest's bid to SPP for the Combined Project.

b) NEET Southwest's indirect parent company, NEECH, commits that, for the first forty years of operation of the Combined Project, NEECH shall provide or secure equity capital injections up to \$10 million per year, as needed to maintain the financial integrity of the Combined Project consistent with an investment-grade credit profile. Following the initial 40-year period, NEET Southwest and NEECH will review and assess whether this financial commitment remains necessary to maintain the financial integrity of the Combined Project, consistent with an investment-grade credit profile, for the remaining depreciable life of the Combined Project. NEET Southwest provided a record of such financial commitment as Schedule R-BW-1, attached to Becky Walding's Rebuttal Testimony.

c) Throughout the right-of-way acquisition process for the Missouri Project, NEET Southwest shall use all reasonable efforts to follow the route depicted in Schedule DW-2 attached to the Direct Testimony of NEET Southwest witness Dusty E. Werth (Final Proposed Route). NEET Southwest shall be allowed to deviate from the depicted route in two scenarios:

i) First, if surveys or testing do not necessitate a deviation from the Final Proposed Route for the Missouri Project, NEET Southwest may deviate from the Final Proposed Route for the Missouri Project on a particular parcel if NEET Southwest and the landowner on which the deviation will run agree. Either NEET Southwest or the landowner may initiate such a request to deviate so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.

ii) Second, if NEET Southwest determines that surveys or testing require a deviation on the Missouri Project from the Final Proposed Route, NEET Southwest will negotiate in good faith with the affected landowner and if agreement can be reached, NEET Southwest may deviate from the depicted route on that parcel, as agreed with the affected landowner so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.



d) With respect to any parcel other than the identified parcels on the Final Proposed Route on the Missouri Project where NEET Southwest desires to locate the line, whether because testing or surveys necessitate acquisition of an easement on that parcel or for other reasons (e.g., a request from adjacent landowners), NEET Southwest shall negotiate in good faith with the landowner of the affected parcel over which NEET Southwest has determined an easement is needed or desired and, if agreement is reached, may deviate from the Final Proposed Route by locating the line on the affected parcel, but shall notify the Commission of the deviation and parcels affected prior to construction on that parcel. If testing or surveys necessitate acquisition of an easement on such other parcel and agreement is not reached, despite good faith negotiations, NEET Southwest shall file a request with the Commission to allow it to deviate from the Final Proposed Route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to NEET Southwest by the owner(s). NEET Southwest shall fully explain in that request why NEET Southwest determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the

issue of whether the change in route should be approved is given to the owner, Staff, and OPC, as well as given an opportunity to respond, the Commission will grant or deny the request.

e) Absent a voluntary agreement for the purchase of the property rights on the Missouri Project, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring, for electrical code compliance purposes, the owners to move or relocate from the property.

f) Prior to the commencement of construction of the Missouri Project on a parcel, NEET Southwest shall secure an easement that will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for such affected parcel. In addition, NEET Southwest shall track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the Missouri Project, NEET Southwest shall file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet shall include a unique indicator that allows the Commission to see where on the map that parcel is located.

g) NEET Southwest shall construct the Combined Project consistent with SPP's design criteria contained in the SPP Request for Proposals ("RFP") and consistent with the construction specifications in NEET

Southwest's bid. This includes the use of two optical ground wires ("OPGW") to facilitate lightning shielding and provide the primary and redundant communication paths for line protection.

h) If there are any material changes in the design and engineering of the Missouri Project from what is contained in the Application or if there are any material changes in the design and engineering to the Kansas portion of the transmission line that result in material impacts to the Missouri Project, NEET Southwest shall file an updated application subject to further review and determination by the Commission. For the purposes of this paragraph, line siting modifications to the transmission line in Kansas, including the potential for double-circuiting a portion of the transmission line in Kansas, do not, by themselves, constitute "material impacts to the Missouri Project" unless they would cause impact to the design, engineering, or operation of the Missouri Project.

i) NEET Southwest shall coordinate with any local utilities as needed regarding line crossings and paralleling of any right-of-way owned by that utility.

j) NEET Southwest shall coordinate with SPP and SPP members, as appropriate, and complete any studies required related to the Combined Project and interconnections to the Combined Project. NEET Southwest shall provide Staff a copy of any completed studies related to the Combined Project and interconnections to the Combined Project.

k) In the design and construction of the Combined Project, NEET Southwest shall seek to limit galloping issues that result in potential outages for the transmission line by incorporating mitigation methods.

l) When the Combined Project becomes operational, NEET Southwest shall maintain sufficient personnel (employees or local contractors) in the region of the facilities such that it can provide adequate emergency response to any portion of its operations consistent with NEET Southwest's bid to SPP.

m) Future certificate applications filed with the Missouri Public Service Commission filed by NEET Southwest must explain: (1) why the project is necessary; (2) why current facilities could not address the same needs as the proposed project; (3) why the proposed project avoids imposing unreasonable costs; (4) the estimated cost of the project; (5) economic and environmental impacts of the project; and (6) the identification of any alternative solutions proposed by affected stakeholders. To the extent NEET Southwest determines that any of the information otherwise required by this paragraph is inapplicable or not necessary with respect to a future project, it shall include in its application an explanation as to why such information is not applicable or is unnecessary. NEET Southwest shall confer and work with Staff and other parties to determine if NEET Southwest has provided sufficient information to allow Staff and other parties to conduct its review of any future application. This condition is not

intended to replace any rule requirements related to CCN applications or the standards by which the Missouri PSC reviews CCN applications.

n) If NEET Southwest is granted a waiver exempting NEET Southwest from compliance with subsections (3)-(7) of 20 CSR 4240-20.015 (the Commission's affiliate transaction rules), such waiver is subject to the following:

i) NEET Southwest shall file a list of affiliate contracts specific to operations, maintenance and reliability of the Combined Project in a compliance docket established for this proceeding, including a summary of any material changes to such contracts since the granting of the CCN;

ii) NEET Southwest shall still comply with the asymmetrical pricing rule at 20 CSR 4240-20.015(2); and

iii) If NEET Southwest or an affiliate requests authority to become a rate-regulated utility in Missouri, the waiver shall expire automatically with no further action required by any party to this Settlement or action by the Commission.

o) Pre-Construction filing. Prior to the commencement of construction, NEET Southwest shall file with the Commission:

i) All required government approvals and permits—*e.g.*, any applicable land disturbance permits, Missouri State Highway Commission permits, or US Army Corps of Engineers permits, and applicable county assents—before beginning construction on that

part of the Missouri Project where the approvals and permits are required.

ii) Standard construction, clearing, maintenance, repair, and right-of-way practices that NEET Southwest shall follow throughout the duration of the Missouri Project.

p) Quarterly Construction Reporting. NEET Southwest shall file a quarterly report with the Commission covering safety, cost, schedule, quality, and landowner issues and resolutions including but not limited to:

i) Percent of the Combined Project completed to date;

ii) The amount spent to date compared with the amount previously expected to have been spent to date;

iii) The total budget and expenditures of the Combined Project to the date of the report (including explanations of increases and decreases in budgeted amounts);

iv) Information concerning SPP agreements, invoices, and agreements with other Missouri jurisdictional public utilities during the reporting period; and

v) FERC filings during the reporting period, including the status of all cost containment measures contained in NEET Southwest's SPP bid.

q) Post-Construction filing. Upon Completion of the Combined Project, NEET Southwest shall file in this docket:

- i) Documents that demonstrate that NEET Southwest has met the construction requirements of the RFP;
  - ii) Final Operations and Maintenance Plan(s) for the project;
  - iii) Final 345 kV Transmission Line Restoration Plan;
  - iv) Final Storm Outage and Emergency Response Plan;
  - v) Final Communications Plan; and
  - vi) Contracts for vendor support services including but not limited to any contract with vendor(s) providing response to unplanned outages.
  - vii) Contract for Brink Constructors (or other similarly qualified vendor) providing unplanned outage response times and equipment availability specifications for the Missouri Project.
  - viii) As built drawings.
- r) Annual Reporting. NEET Southwest shall file an annual report with the Commission in a compliance docket detailing the following:
- i) Unplanned outage reports providing start and end time of any outage, time elapsed before a first responder is on site, cause of the outage, comments on how the outage was resolved, a summary of actions taken to mitigate future occurrences of similar outages, and any rapid damage assessment prioritization reports associated with the outage;
  - ii) Documentation of transmission line maintenance activities and inspections;

- iii) Results of inspections conducted for poles, conductor, and insulators;
- iv) Any modifications to any contract between NEET Southwest and an emergency response contractor and any updates to the Emergency Response Contact List for NEET Southwest and its control center; and
- v) NEET Southwest shall file with the Commission the annual report it files with FERC.

3. The recommended rule waivers are granted. The rules waived are as follows:

- 20 CSR 4240-3.175 – Providing a depreciation study;
- 20 CSR 4240-3.190 (1) and 20 CSR 4240-3.190 (2) – Reporting Requirements for Electric Utilities, *with the exception of*:
  - 1) 20 CSR 4240-3.190 (1) (C) – Net System Input (“NSI”); and
  - 2) 20 CSR 4240-3.190 (2) – Using a spreadsheet format in reporting NSI.
- 20 CSR 4240-3.190 (3) A.-D. – Reporting certain power plant information;
- 20 CSR 4240-20.015 (3)-(7) – Affiliated transaction rule, *subject to the following conditions*:
  - a. NEET Southwest must file a list of affiliate contracts specific to operations, maintenance and reliability of the combined project in a compliance docket established for this proceeding, including a summary of any material changes to such contracts since the granting of the Certificate;
  - b. NEET Southwest must still comply with the asymmetrical pricing rule at 20 CSR 4240-20.015(2); and



c. If NEET Southwest or an affiliate requests authority to become a rate-regulated utility in Missouri, the waiver will expire automatically with no further action required by any party to this Agreement or action by the Commission.

- 20 CSR 4240-20.105 – Schedule of Rates.

4. This order shall become effective on December 18, 2022.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and  
Kolkmeier CC., concur.

Hatcher, Senior Regulatory Law Judge

**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 ) Case No. EA-2022-0234  
a 345 kV Transmission Line and associated )  
facilities in Barton and Jasper Counties, )  
Missouri )

**UNOPPOSED SETTLEMENT AGREEMENT**

NextEra Energy Transmission Southwest, LLC (“NEET Southwest”), Staff of the Missouri Public Service Commission (“Staff”), Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively, “Evergy”), and Southwest Power Pool, Inc. (“SPP”), and collectively, the “Settling Parties”, hereby file their Unopposed Settlement Agreement resolving all contested issues (“Settlement”) relating to NEET Southwest’s application seeking a certificate of convenience and necessity (“CCN”) to construct, install, own, operate, maintain and otherwise control and manage approximately nine miles of a 345 kV transmission line and associated facilities in Barton and Jasper Counties, Missouri (“Application”).<sup>1</sup>

The Settling Parties hereby move that the Commission adopt the settlement terms included in this Settlement and state as follows:

**Background**

1. On July 7, 2022, NEET Southwest filed its Application to construct, install, own, operate, maintain, and otherwise control and manage nine miles of a 345 kV transmission line and

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<sup>1</sup> Office of the Public Counsel (“OPC”) and The Empire District Electric Company d/b/a Liberty (“Liberty”) are the only other Parties to the case and both have indicated that they do not oppose the Settlement. Accordingly, the Commission may treat the Settlement as unanimous pursuant to 20 CSR 4240-2.115.

associated facilities in Barton and Jasper Counties, Missouri (the “Missouri Project”) as a part of a 94-mile, single-circuit 345 kV transmission line between the existing Blackberry Substation, owned by Associated Electric Cooperative, Inc. (“AECI”) in Jasper County, Missouri, and the existing Wolf Creek Substation, owned by Evergy Kansas Central, Inc. in Coffey County, Kansas (the combined Missouri and Kansas portions of the line are hereinafter referred to as the “Combined Project”). The Combined Project is expected to span two counties in Missouri (Barton and Jasper counties) for nine miles and five counties in Kansas (Coffey, Anderson, Allen, Bourbon, and Crawford counties) for 85 miles, for a total of approximately 94 miles.

2. Evergy, SPP, and Liberty have each been granted intervention in this matter.

3. NEET Southwest filed direct testimony in support of the Application from Becky Walding, LaMargo Sweezer-Fischer, Sarah Nettles, Daniel Mayers, David G. Loomis, Ph.D., Amanda Finnis, and Dusty Werth.

4. Staff issued its Report recommending approval of the Application with certain recommendations on September 22, 2022.

5. Darrin Ives, of Evergy, filed Direct Testimony with certain recommendations on October 6, 2022.

6. NEET Southwest filed Rebuttal Testimony from Becky Walding on October 14, 2022. Also on October 14, 2022, Staff filed its Rebuttal Testimony from witnesses Seoug Joun Won, Ph.D., Sarah L.K. Lange, and Claire M. Eubanks, PE.

7. The Parties participated in a settlement conference on October 21, 2022 at which they reached preliminary agreement to resolve all contested issues relating to the Application.

8. NEET Southwest filed a Motion to Suspend the Procedural Schedule on October 25, 2022 to allow the Settling Parties time to prepare this Settlement, which was granted by the Commission on the same day.

### **Settlement Terms**

9. The Settling Parties agree to the following settlement terms (“Settlement Terms”). Except where clearly stated, the commitments expressed below apply only to the Missouri Project and not the Combined Project. The Settling Parties acknowledge that the Kansas portion of the project is regulated by the Kansas Corporation Commission (“KCC”), which has adopted its own conditions in the Kansas CCN proceeding<sup>2</sup> and may adopt further conditions in the upcoming siting proceeding for the Kansas portion of the Combined Project. Subject to the Commission’s approval and adoption of these Settlement terms, the Settling Parties recommend that the Commission issue a CCN under Section 393.170.2, RSMo (Supp. 2022) to construct the Missouri Project, subject to the reasonable and necessary conditions identified in this Unopposed Settlement Agreement and imposed by the Commission under Section 393.170.3, RSMo.

10. NEET Southwest will commit that its Federal Energy Regulatory (“FERC”) formula rate filings for the Combined Project will include caps and conditions consistent with NEET Southwest’s bid to SPP for the Combined Project.

11. NEET Southwest’s indirect parent company, NextEra Energy Capital Holdings, Inc. (“NEECH”), commits that, for the first forty years of operation of the Combined Project, NEECH will provide or secure equity capital injections up to \$10 million per year, as needed to maintain the financial integrity of the Combined Project consistent with an investment-grade credit profile. Following the initial 40-year period, NEET Southwest and NEECH will review and assess

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<sup>2</sup> See Order on Application for Certificate of Convenience and Necessity, Dkt. No. 22-NETE-419-COC (August 29, 2022).

whether this financial commitment remains necessary to maintain the financial integrity of the Combined Project, consistent with an investment-grade credit profile, for the remaining depreciable life of the Combined Project. NEET Southwest provided a record of such financial commitment as Schedule R-BW-1, attached to Becky Walding's Rebuttal Testimony.

12. Throughout the right-of-way acquisition process for the Missouri Project, NEET Southwest will use all reasonable efforts to follow the route depicted in Schedule DW-2 attached to the Direct Testimony of NEET Southwest witness Dusty E. Werth (Final Proposed Route). NEET Southwest will be allowed to deviate from the depicted route in two scenarios:

a. First, if surveys or testing do not necessitate a deviation from the Final Proposed Route for the Missouri Project, NEET Southwest may deviate from the Final Proposed Route for the Missouri Project on a particular parcel if NEET Southwest and the landowner on which the deviation will run agree. Either NEET Southwest or the landowner may initiate such a request to deviate so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.

b. Second, if NEET Southwest determines that surveys or testing require a deviation on the Missouri Project from the Final Proposed Route, NEET Southwest will negotiate in good faith with the affected landowner and if agreement can be reached, NEET Southwest may deviate from the depicted route on that parcel, as agreed with the affected landowner so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.

13. With respect to any parcel other than the identified parcels on the Final Proposed Route on the Missouri Project where NEET Southwest desires to locate the line, whether because testing or surveys necessitate acquisition of an easement on that parcel or for other reasons (*e.g.*, a request from adjacent landowners), NEET Southwest will negotiate in good faith with the landowner of the affected parcel over which NEET Southwest has determined an easement is needed or desired and, if agreement is reached, may deviate from the Final Proposed Route by locating the line on the affected parcel, but will notify the Commission of the deviation and parcels affected prior to construction on that parcel. If testing or surveys necessitate acquisition of an easement on such other parcel and agreement is not reached, despite good faith negotiations, NEET Southwest will file a request with the Commission to allow it to deviate from the Final Proposed Route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to NEET Southwest by the owner(s). NEET Southwest shall fully explain in that request why NEET Southwest determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff, and OPC, as well as an opportunity to respond, the Commission will grant or deny the request.

14. Absent a voluntary agreement for the purchase of the property rights on the Missouri Project, the transmission line shall not be located so that a residential structure currently

occupied by the property owners will be removed or located in the easement requiring, for electrical code compliance purposes, the owners to move or relocate from the property.

15. Prior to the commencement of construction of the Missouri Project on a parcel, NEET Southwest will secure an easement that will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for such affected parcel. In addition, NEET Southwest will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the Missouri Project, NEET Southwest will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

16. NEET Southwest will construct the Combined Project consistent with SPP's design criteria contained in the SPP Request for Proposals ("RFP") and consistent with the construction specifications in NEET Southwest's bid. This includes the use of two optical ground wires ("OPGW") to facilitate lightning shielding and provide the primary and redundant communication paths for line protection.

17. If there are any material changes in the design and engineering of the Missouri Project from what is contained in the application or if there are any material changes in the design and engineering to the Kansas portion of the transmission line that result in material impacts to the Missouri Project, NEET Southwest will file an updated application subject to further review and determination by the Commission. For the purposes of this paragraph, line siting modifications to the transmission line in Kansas, including the potential for double-circuiting a portion of the transmission line in Kansas, do not, by themselves, constitute "material impacts to the Missouri

Project” unless they would cause impact to the design, engineering, or operation of the Missouri Project.

18. NEET Southwest will coordinate with any local utilities as needed regarding line crossings and paralleling of any right-of-way owned by that utility.

19. NEET Southwest will coordinate with SPP and SPP members, as appropriate, and complete any studies required related to the Combined Project and interconnections to the Combined Project. NEET Southwest will provide Staff a copy of any completed studies related to the Combined Project and interconnections to the Combined Project.

20. In the design and construction of the Combined Project, NEET Southwest will seek to limit galloping issues that result in potential outages for the transmission line by incorporating mitigation methods.

21. When the Combined Project becomes operational, NEET Southwest will maintain sufficient personnel (employees or local contractors) in the region of the facilities such that it can provide adequate emergency response to any portion of its operations consistent with NEET Southwest’s bid to SPP.

22. Future certificate applications filed with the Missouri Public Service Commission filed by NEET Southwest must explain: (1) why the project is necessary; (2) why current facilities could not address the same needs as the proposed project; (3) why the proposed project avoids imposing unreasonable costs; (4) the estimated cost of the project; (5) economic and environmental impacts of the project; and (6) the identification of any alternative solutions proposed by affected stakeholders.

To the extent NEET Southwest determines that any of the information otherwise required by this Paragraph 22 is inapplicable or not necessary with respect to a future project, it shall include



in its application an explanation as to why such information is not applicable or is unnecessary. NEET Southwest shall confer and work with Staff and other parties to determine if NEET Southwest has provided sufficient information to allow Staff and other parties to conduct its review of any future application. This condition is not intended to replace any rule requirements related to CCN applications or the standards by which the Missouri PSC reviews CCN applications.

23. The Settling Parties do not oppose NEET Southwest's request for waiver for:

- a. 20 CSR 4240-3.175 – Providing a depreciation study
- b. 20 CSR 4240-3.190 (3) A.-D. – Reporting certain power plant information
- c. 20 CSR 4240-20.105 – Schedule of Rates

24. The Settling Parties do not oppose NEET Southwest's request for waiver of 20 CSR 4240-3.190 (1) and 20 CSR 4240-3.190 (2) with the exception of:

- a. 20 CSR 4240-3.190 (1) (C) – Net System Input (“NSI”)
- b. 20 CSR 4240-3.190 (2) – Using a spreadsheet format in reporting NSI

25. The Settling Parties do not oppose NEET Southwest's request for waiver from certain rules regarding affiliate transactions, 20 CSR 4240-20.015 (3)-(7), subject to the conditions in Paragraph 26 below.

26. If NEET Southwest is granted a waiver exempting NEET Southwest from compliance with subsections (3)-(7) of 20 CSR 4240-20.015 (the Commission's affiliate transaction rules), such waiver is subject to the following:

- a. NEET Southwest must file a list of affiliate contracts specific to operations, maintenance and reliability of the Combined Project in a compliance docket established for this proceeding, including a summary of any material changes to such contracts since the granting of the Certificate;

b. NEET Southwest must still comply with the asymmetrical pricing rule at 20 CSR 4240-20.015(2); and

c. If NEET Southwest or an affiliate requests authority to become a rate-regulated utility in Missouri, the waiver will expire automatically with no further action required by any party to this Settlement or action by the Commission.

27. Pre-Construction filing. Prior to the commencement of construction, NEET Southwest shall file with the Commission:

a. All required government approvals and permits—*e.g.*, any applicable land disturbance permits, Missouri State Highway Commission permits, or US Army Corps of Engineers permits, and applicable county assents—before beginning construction on that part of the Missouri Project where the approvals and permits are required.

b. Standard construction, clearing, maintenance, repair, and right-of-way practices that NEET Southwest will follow throughout the duration of the Missouri Project.

28. Quarterly Construction Reporting. NEET Southwest shall file a quarterly report with the Commission covering safety, cost, schedule, quality, and landowner issues and resolutions including but not limited to:

a. Percent of the Combined Project completed to date;

b. The amount spent to date compared with the amount previously expected to have been spent to date;

c. The total budget and expenditures of the Combined Project to the date of the report (including explanations of increases and decreases in budgeted amounts);

- d. Information concerning SPP agreements, invoices, and agreements with other Missouri jurisdictional public utilities during the reporting period; and
- e. FERC filings during the reporting period, including the status of all cost containment measures contained in NEET Southwest's SPP bid.

29. Post-Construction filing. Upon Completion of the Combined Project, NEET Southwest will file in this docket:

- a. Documents that demonstrate that NEET Southwest has met the construction requirements of the RFP;
- b. Final Operations and Maintenance Plan(s) for the project;
- c. Final 345 kV Transmission Line Restoration Plan;
- d. Final Storm Outage and Emergency Response Plan;
- e. Final Communications Plan; and
- f. Contracts for vendor support services including but not limited to any Contract with vendor(s) providing response to unplanned outages.
- g. Contract for Brink Constructors (or other similarly qualified vendor) providing unplanned outage response times and equipment availability specifications for the Missouri Project.
- h. As built drawings.

30. Annual Reporting. NEET Southwest shall file an annual report with the Commission in a compliance docket detailing the following:

- a. Unplanned outage reports providing start and end time of any outage, time elapsed before a first responder is on site, cause of the outage, comments on how the outage was resolved, a summary of actions taken to mitigate future occurrences

of similar outages, and any rapid damage assessment prioritization reports associated with the outage;

- b. Documentation of transmission line maintenance activities and inspections;
- c. Results of inspections conducted for poles, conductor, and insulators;
- d. Any modifications to any contract between NEET Southwest and an emergency response contractor and any updates to the Emergency Response Contact List for NEET Southwest and its control center; and
- e. NEET Southwest shall file with the Commission the annual report it files with FERC.

#### **Miscellaneous Terms**

31. This Settlement has resulted from extensive negotiations among the Settling Parties and the terms hereof are interdependent. If the Commission does not approve this Settlement unconditionally and without modification, then this Settlement shall be void, and no Party shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

32. If the Commission does not unconditionally approve this Settlement without modification, and notwithstanding the provision herein that it shall become void, neither this Settlement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080, RSMo., or Article V, Section 18 of the Missouri Constitution, and the Settling Parties shall retain all procedural and due process rights as fully as though this Settlement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Settlement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as

part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

33. In the event the Commission unconditionally accepts the specific terms of this Settlement without modification, the Settling Parties waive the following rights only as to the issues resolved herein: 1) their respective rights to present oral argument and written briefs pursuant to §536.080.1, RSMo.; 2) their respective rights to seek rehearing, pursuant to §536.500, RSMo.; and 3) their respective rights to judicial review pursuant to §386.510, RSMo. This waiver applies only to a final unappealed Commission order issued in this proceeding unconditionally approving this Settlement and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding or any matters not explicitly addressed by this Settlement.

## **Conclusion**

WHEREFORE, as set forth above, the Settling Parties request that the Commission approve the Application subject to the Settlement Terms listed in Paragraphs 9-30 of this Settlement Agreement. The Settling Parties request such additional relief as is just and proper under the circumstances.

Respectfully submitted,

*/s/ Anne E. Callenbach* \_\_\_\_\_

**NextEra Energy Transmission Southwest,  
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**/s/ Ron Irving**

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## **CERTIFICATE OF SERVICE**

I hereby certify that the above document was filed in EFIS on this 7th day of November, 2022, and electronically delivered to all counsel of record.

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*/s/ Anne E. Callenbach*

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**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8<sup>th</sup> day of December, 2022.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**December 8, 2022**

**File/Case No. EA-2022-0234**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.