

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

In the Matter of the Proposed Amendments to)	
4 CSR 240-3.105, Filing Requirements for Electric)	Case No. EX-2015-0225
Utility Applications for Certificates of Convenience)	
And Necessity)	

COMMENTS OF GRIDLIANCE HEARTLAND, LLC

GridLiance Heartland LLC (GridLiance) submits these comments on the Commission's proposed amendments to 4 CSR 240-3.105, Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity (Proposed Amendments).

INTRODUCTION

GridLiance is the nation's first competitive transmission company focused on collaborating with municipal utilities, cooperative utilities, and joint action agencies (Public Power). Through its subsidiary transmission companies formed to operate in each Regional Transmission Organization (RTO),¹ GridLiance will jointly plan, develop, own and operate transmission assets with Public Power entities. GridLiance's mission is to provide its Public Power partners with opportunities to invest in regulated transmission development projects, enabling the utilities to earn margins from regionally funded projects to offset transmission rate increases, as well as receive other benefits, including lower energy and delivery costs and increased reliability to their customers, while providing greater access to alternative energy sources.

GridLiance has offices in Kansas City, Missouri; Chicago, Illinois; Austin, Texas; and Washington, D.C. GridLiance seeks to establish long-term agreements with all interested Public Power utilities. It currently has 30-year joint development agreements with the Missouri Joint Municipal Electric Utility

¹ South Central MCN LLC and Midcontinent MCN LLC are GridLiance's wholly owned subsidiaries operating in the Southwest Power Pool, Inc. (SPP) and Midcontinent Independent System Operator, Inc. (MISO) regions, respectively.

Commission (MJMEUC) and the Oklahoma Municipal Power Authority (OMPA). South Central MCN LLC is in the process of purchasing transmission assets from the City of Nixa and has an Application for a Certificate of Convenience and Necessity (CCN) pending before the Commission. *See, File No. EA-2016-0036, In the Matter of the Application of South Central MCN, LLC for Approval of Transfer of Assets and a Certificate of Convenience and Necessity.*

As a transmission developer, the Proposed Amendments could affect GridLiance in several ways, so it has a keen interest in seeing that the Commission's final rule is fair and provides a level playing field for all transmission developers that plan to construct transmission projects in Missouri. GridLiance, thus, respectfully asks that the Commission consider revising the Proposed Amendments in two respects. First, the Commission should exempt from the proposed competitive solicitation requirement any transmission projects that have been approved through a RTO's competitive planning process. Second, the Commission should further codify other aspects of Missouri Law and Practice that are not currently reflected in the Proposed Amendments' definition of the term "construction."

DISCUSSION

The Proposed Competitive Solicitation Requirement Should Be Deemed Satisfied If The Project Has Been Approved Via A Competitive Transmission Planning Process (e.g., Order No. 1000)

Section (1)(B)6 of the Proposed Amendments requires an applicant to provide facts showing "the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for [selecting] the design, engineering, procurement, construction management, and construction contracts for the construction" of electric plant. However, applying such a requirement to transmission projects that have been approved previously by a RTO's competitive planning process would not benefit—and may in fact harm—Missouri customers. GridLiance, therefore, respectfully submits that an exemption should be established for any project that has been awarded to a developer through a RTO's competitive development process.

FERC Order No. 1000 opened the door to the benefits of competition in transmission ownership, encouraging the development of new transmission facilities through competitive processes by requiring RTOs to eliminate from FERC-approved tariffs and agreements provisions that granted incumbent utilities a right of first refusal for certain transmission facilities selected in regional transmission plans.² Competitive forces drive down ratepayer costs and promote more robust engineering design and plans. In compliance with FERC's mandate, both of the RTOs in Missouri—MISO and SPP—have established procedures and criteria to facilitate the competitive bidding and selection of various transmission projects. While these procedures are not perfect and will continue to be fine-tuned in the RTO stakeholder processes pursuant to FERC oversight, the competitive processes administered by MISO and SPP already achieve the apparent purpose of the Commission's Proposed Amendments.

In order to merely bid on a project, qualifying developers must submit detailed proposals that describe, among other things, specific information about the proposed project's design, cost, and route, as well as the proponent's ability to finance, construct, operate, and maintain the facilities in question.³ The requisite bids additionally must include legal analyses demonstrating that the developer has a viable strategy for obtaining the requisite licenses and regulatory approvals, and for acquiring the necessary property rights. Preparing such a proposal often requires developers to contract with teams of engineers, consultants, environmental firms, attorneys and other professionals. Moreover, the competition to develop such projects is vigorous. 11 developers submitted competing bids for SPP's Walkemeyer-North Liberal

² Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (2011).

³ See, e.g., Duff-Coleman Proposal Instructions, Midcontinent Independent System Operator, Inc. (2016), available at https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=215833. GridLiance has provided in **Attachment 1** a copy of the Duff-Coleman Proposal Instructions for the Commission's convenient reference.

115kV project,⁴ and MISO has qualified 48 developers to participate in its upcoming competitive solicitation for the Duff-Coleman 345 kV project.⁵ Following a comprehensive analysis of the submitted proposals by the RTO's Staff or a panel of independent experts, the process culminates with the approval by the relevant RTO's board of directors.

Critically, competition may have already yielded millions of dollars in savings for SPP ratepayers. SPP's Walkemeyer-North Liberal 115kV project was SPP's very first Order No. 1000 competitive solicitation. The winning bid reduced the engineering and construction cost of a 115-kV transmission line project from an estimated \$17.5 million to approximately \$8.3 million—a reduction of nearly 50 percent.⁶ While potentially a tremendous ratepayer benefit, in this case the winning bidder did not cap its engineering and construction costs, and the SPP rules do not impose a cap, which means the potential ratepayer costs savings may not materialize. The treatment of non-capped versus capped bids⁷ in the SPP process is one of the areas where further refinement is needed. Nonetheless, interested parties are already committing their resources to working within the RTO and FERC competitive bidding framework and creating the additional refinements needed to ensure the processes produce the desired ratepayer benefits. Requiring the winning developer to additionally undergo the Commission's proposed competitive solicitation process would be redundant and would divert resources away from this ongoing stakeholder process.

Further, doing so can only serve to *diminish* these benefits for ratepayers in Missouri and beyond. To satisfy the strictures of the Proposed Amendment, developers would be required to potentially breach

⁴ See Industry Expert Panel Recommendation Report, 4 (April 12, 2016), http://www.spp.org/documents/37708/iep%20recommendation%20report%20with%20process%20and%20appendix%20public%20redacted%20041216_redacted.pdf.

⁵ Qualified Transmission Developer List, Midcontinent Independent System Operator, Inc. (April 7, 2016), <https://www.misoenergy.org/Planning/Pages/QualifiedTransmissionDevelopers.aspx>.

⁶ See Industry Expert Panel Recommendation Report at 4 (April 12, 2016), http://www.spp.org/documents/37708/iep%20recommendation%20report%20with%20process%20and%20appendix%20public%20redacted%20041216_redacted.pdf. As presented in the public report, there were several respondents that bid engineering and construction costs in this lower cost range.

⁷ Notably, three bidders on the Walkemeyer-North Liberal project submitted cost capped bids that were lower than the selected winner.

the same contractual arrangements that enabled them to prepare the winning bid in the first place. Developers would then incur the cost of performing another competitive solicitation, which would ultimately be borne by ratepayers. At best, this additional solicitation may lead the developer to reconfirm that the winning bid identified through the RTO's competitive process remains the superior combination of alternatives. However, after terminating the agreements underlying the bid proposed to the RTO, the developer could find itself unable to negotiate an equal or better alternative. Under either scenario, the cost to ratepayers would increase if for no other reason that the costs of bidding in two solicitation processes would be higher if not double than the cost of participating in one.

The fact that a developer has already completed a rigorous competitive bidding process at the RTO level should be adequate to satisfy the requirements of Section (1)(B)6. Thus, an exemption should be provided for electric transmission projects that have been approved through the RTO competitive bidding process.

Definition of "Construction" Should Be Clarified To Codify Additional Aspects of Missouri Law

Section (E)(2) interprets the term "construction" provided in section 393.170, RSMo,⁸ which in effect determines the scope of transmission projects that require a CCN. The Proposed Amendments only specify that an incumbent utility need not seek a CCN to construct a new transmission project in its own service territory. Specifically, Section (E)(2)(B) provides that the term construction:

Includes construction in Missouri of new electric transmission line(s) or new gas transmission line(s) to facilitate the operation of electric generating plant(s) in Missouri; however, a separate certificate of convenience and necessity is not needed for the construction of new electric transmission line(s) or for the construction of new gas transmission line(s) to facilitate the operation of electric generating plant(s) if the line(s) to be constructed is(are) in the electric utility's certificated service area[.]

(emphasis added). Two additional clarifications of the proposed definition are necessary to accurately reflect and codify Missouri law.

⁸ All statutory references are to the Revised Statutes of Missouri (2000), as subsequently amended.

First, the proposed definition of “construction” in Section (E)(2) should be further clarified to more accurately codify what constitutes a “new” transmission line when a CCN is required under Missouri law and practice, which appears to be consistent with the intent of the Proposed Amendments. For example, if a storm severely damages or destroys a certificated transmission line, current practice in Missouri is that a new CCN is not needed to perform major repairs or to rebuild the facility. To make the definition of “construction” more complete and to more accurately reflect current law and practice in Missouri, such activities on existing transmission lines should be expressly excluded from the definition of “construction” to that effect that an electric utility will not have to apply for a new CCN whenever it rebuilds, refurbishes, renovates, improves, or upgrades its existing transmission facilities. . Alternatively, the Commission could clarify that such activities do not result in a “new” transmission line necessitating a CCN.

Second, the Proposed Amendments should be modified to expressly exclude the development of facilities owned in whole or in part by Public Power entities in Missouri, over which this Commission has very limited jurisdiction.⁹ Under current law, these Public Power entities have their own eminent domain authority, and could construct and operate transmission facilities in their own service territories without a CCN from the Commission.

Missouri customers served by many Public Power entities face pressing infrastructure challenges. Regional planning studies, in general, do not effectively model or study transmission assets below 100 KV—the majority of the Public Power grid. Public Power entities are often served by single line and/or low-

⁹ The Commission, except in limited circumstances, has no statutory authority to regulate public utilities that are owned and operated by governmental entities. *City of Columbia v. Pub. Serv. Comm'n*, 329 Mo. 38, 43 S.W.2d 813, 817 (1931). For example, the Commission has jurisdiction over municipally owned electrical utilities wishing to serve customers outside their service territories, Section 386.800, and over the territorial agreements entered into by rural electric cooperatives, electrical corporations and municipally owned utilities, Section 394.312. In addition, Section 394.160.1 provides that Commission jurisdiction over rural electric cooperatives is limited to “the construction, maintenance and operation of the physical equipment of such cooperative to the extent of providing for the safety of the public and the elimination or lessening of induction or electrical interference, including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules.”

voltage connections to the high-voltage grid. The existing infrastructure is also aging: 70% of transmission lines are 25 years or older; 70% of transformers are 25 years or older; and 60% of circuit breakers are 30 years or older. Transmission investment by Public Power entities in MISO, on average, lags far behind their investor owned utility counterparts in terms of dollars and as a percentage of net plant, and annual capital expenditure by municipal owned utilities tends not to cover depreciation. Furthermore, many Public Power entities lack the resources to meaningfully participate in the RTO transmission planning processes (which are estimated to require four full-time employees and cost approximately \$500,000 annually) or develop competitive bids.

Applying the proposed definition of “construction” to new transmission facilities owned in whole or in part by Public Power entities—which are largely unregulated by this Commission—would impose an additional and unnecessary burden on such entities and impair their ability to address their transmission needs in what they determine to be the most efficient and cost-effective means. As described above, GridLiance seeks to improve the reliability of facilities serving Public Power customers and to enable Public Power utilities to offset rising transmission rates by investing in much-needed new infrastructure. However, requiring GridLiance and its Public Power partners to obtain a CCN for projects that are co-developed and co-owned by Public Power entities and relying on the Public Power partner’s eminent domain authority would, in effect, regulate indirectly entities that would not otherwise be expected to obtain a CCN. While applying the Proposed Amendment to Public Power entities may not require them to appear before the Commission provided Public Power develops and co-owns the transmission projects in question with a partner like GridLiance, from a practical perspective, the co-owned projects would remain subject to the additional cost, delay and risk associated with obtaining a CCN. Such costs, delay and risk are unnecessary when the Public Power entities are building new transmission projects within their own service

territories. Under these circumstances, GridLiance believes it would be appropriate for the Commission to clarify the definition of “construction” to expressly carve out such transmission lines.

CONCLUSION

GridLiance would like to thank the Commission for the opportunity to provide comments in this rulemaking docket, and hopes that these comments will assist the Commission in developing the final rule.

Respectfully submitted,

A handwritten signature in black ink that reads "Terry M. Jarrett". The signature is written in a cursive, flowing style.

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