

In the Matter of the Amendment of the )  
Commission's Rule Regarding Applications ) **Case No. EX-2018-0189**  
for Certificates of Convenience and Necessity. )

**/s/ Kevin A. Thompson**

**COMMENTS OF THE STAFF OF THE  
MISSOURI PUBLIC SERVICE COMMISSION**

**I. Overview**

As part of its review of Commission rules in compliance with Executive Order 17-03, Staff recommended the CCN filing requirements be moved to Chapter 20 – Electric Utilities. Therefore, with this rulemaking, Staff is proposing to rescind 4 CSR 240-3.105 – Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity (CCN) and replace it with a new rule at 4 CSR 240-20.045 – Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity. This change is designed to simplify the existing Commission rules by combining most, if not all, electric-only rules into the electric utility chapter.

Staff supports the rescission as proposed. Staff will address the individual provisions of the proposed new rule below.

**II. Summary of key differences between 4 CSR 240-3.105 and proposed 4 CSR 240-20.045**

**A. General Formatting Changes**

**Definitions**

Rule 4 CSR 240-3.105 contains no definitions; however, general definitions, applicable to the entire Chapter 3, are found in 4 CSR 240-3.010. The proposed rule includes CCN-specific definitions, such as “acquisition” and “construction.”

Staff supports a definition section specific to the CCN rule as proposed.

**Restructure of rules**

Rule 4 CSR 240-3.105 contains subparts for an application for a service area and an application for transmission lines or electrical production facilities. The proposed rule contains subparts for an application for a service area, an application to acquire assets, an application to construct assets, and an application to acquire or construct an electric transmission line.

Staff supports the restructure of the CCN rule because it reduces repetitive language and provides greater clarity.

**B. Substantive Changes**

**Definition of Asset - Subsection (1)(B) and Construction - Subsection (1)(C)** – The definition of asset includes various defined plant, regardless of whether the item to be acquired or constructed is located inside the electric utility’s certificated service area or outside the electric

utility's certificated service area, but used to serve Missouri customers and paid for by Missouri retail ratepayers.

If an electric utility is seeking to acquire or construct an asset located outside its certificated service area, and that asset will be used to service Missouri customers and will be paid for by Missouri retail ratepayers, it is Staff's opinion that the utility should be required to seek Commission authorization for that acquisition/construction.

The proposed rule clarifies, through definition (1)(C) "construction", that a CCN is not required for construction of new facilities constructed in the electric utility's Missouri certificated service area; for periodic, routine or preventative maintenance; or for transmission projects where the only relationship to Missouri ratepayers is through the regional transmission organization/independent system operator cost allocation process. In other words, between the two definitions, if a utility is constructing or acquiring facilities that are directly related to serving Missouri customers and paid for by Missouri retail ratepayers, the utility should seek a CCN.

Staff is not aware of any statute or case law that limits the requirement of Section 393.170 for a CCN for the construction of electric plant by an electrical corporation providing retail electric service in Missouri to electric plant located in Missouri.

Staff supports this provision of the rule as proposed.

**Decisional prudence - Subsection (2)(E)** – The proposed rule includes a provision to allow the Commission to make a determination of decisional prudence as part of its order granting the CCN. The prudence determination will only be made as to whether the decision to acquire/construct was prudent. Parties would still have the ability to challenge, and the Commission would have the ability to decide prudence related to the construction timeline, costs, etc. This proposal is consistent with Staff's recommendation in its Report in File No. EW-2016-0313, *In the Matter of a Working Case to Consider Policies to Improve Electric Utility Regulation*. In its Report, Staff stated:

Staff recommends the Commission incorporate a decisional pre-approval process in its CCN rule (4 CSR 240-3.105), with a post-construction review of the costs and timeline to complete the project. This process will provide the utility some assurance of recovery, while maintaining the Commission's authority to review the implementation details of the project.

In *State ex rel. Ag Processing Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003), the Commission failed to address the acquisition premium issue, asserting it was a rate case issue, not a merger case issue. The Court found the Commission erred in failing to decide a necessary and essential issue. The Court held the Commission needed to decide the reasonableness of the merger premium in deciding whether the proposed merger was detrimental to the public, even if rate recovery of the merger premium is a rate case issue. It is Staff's position, therefore, that a determination of decisional prudence is similar to the acquisition premium issue in the *Ag Processing* case. The Commission cannot use the escape that it has no

jurisdiction to issue pre-approval or advisory opinions. Additionally, there is an open question if the Commission has granted pre-approval previously in Case No EO-2005-0329 by approving a non-unanimous stipulation and agreement for Kansas City Power and Light Company's ("KCPL") to begin an Experimental Regulatory Plan, which provided for the construction of the Iatan 2 generation facility. Although not an application for convenience and necessity under Section 393.170, the signatories to the stipulation agreed to pre-approve certain investments, by agreeing not to argue in future cases that the proposed investments were not necessary or timely, or that alternative technologies or fuels should have been used, so long as KCPL implements the Resource Plan and the continuous monitoring of the Resource Plan in accordance with the Stipulation's provisions. The Commission approved the construction of Iatan 2 (along with 100 MWs of wind that did not come to fruition). The Commission also approved amortizations and prudent expenditures for the proposed investments to be included in future rate cases, but did not require KCPL to apply for a certificate of convenience and necessity or otherwise seek additional approval regarding the decision to construct the proposed investments

Staff supports this provision of the rule as proposed.

#### **Authorization to Construct - Section (5)**

**For non-incumbent providers - Subsections (5)(G) & (5)(H)** – The CCN application must include an overview of the plans for operating and maintaining the asset and an overview of plans for restoration of safe and adequate service after significant, unplanned outages.

These requirements ensure non-incumbent providers, much like incumbent providers, have the ability to operate, maintain and restore the asset(s) in order to provide safe and adequate service.

Staff supports these subsections as proposed.

**Evidence of a non-discriminatory, fair and reasonable process - Subsections (5)(I), (5)(J), & (5)(K)** – The CCN application must include:

- (I) an evaluation as to whether distributed energy resources, energy efficiency or renewable energy resources would be reasonable in lieu of construction;
- (J) an evaluation as to whether purchased power capacity or suppliers of alternative energy would be reasonable in lieu of construction; and
- (K) evidence related to the bidding process for contracts to design, engineering, procurement, construction management and construction of project.

These provisions are applicable to CCN applications to construct assets. Subsections (5)(I) and (5)(J) are designed to ensure the utility has considered all options in lieu of construction – distributed energy resources, energy efficiency, renewable energy resources, purchased power, alternative energy. Subsection (5)(K) is designed to ensure the utility has employed a competitive bidding process related to the construction project(s).

Staff supports these subsections as proposed.

Staff further supports Section (5) in its entirety as proposed.

**Authorization to acquire or construct an electric transmission line - Section (6)**

**For non-incumbent providers - Subsections (6)(G) & (6)(H)** – The application must include an overview of the plans for operating and maintaining the asset and an overview of plans for restoration of safe and adequate service after significant, unplanned outages.

These provisions are applicable to entities such as GrainBelt Express Clean Line LLC and Ameren Transmission Company of Illinois, and are consistent with Staff’s recommendations in their applicable CCN cases. The requirements ensure non-incumbent providers, much like incumbent providers, have the ability to operate, maintain and restore the asset(s) in order to provide safe and adequate service.

Staff supports these subsections as proposed.

**A non-discriminatory, fair and reasonable process - Subsection (6)(I)** – The application must include evidence of a non-discriminatory and reasonable bid process for contracts to design, engineering, procurement, construction management and construction of project.

This provision is applicable to CCN applications to acquire or construct an electric transmission line, and is designed to ensure the utility has employed a competitive bidding process related to the construction project(s).

Staff supports this subsection as proposed.

**Notice to landowners - Subsection (6)(J)** – The proposed rule includes various landowner notice requirements.

This provision was largely a result of concerns raised by landowners in previous electric transmission CCN cases. Staff worked with interested stakeholders to develop notice requirements that provided sufficient notification to landowners while not being overly burdensome to the utility.

Staff supports this subsection as proposed.

Staff further supports Section (6) in its entirety as proposed.

**Waiver provision - Section (7)** – The proposed rule allows provisions of the rule to be waived for good cause shown.

Staff supports this rule provision as proposed.

**County assents** – Current Rule 4 CSR 240-3.105(D) states, “When approval of the affected governmental bodies is required, evidence must be provided...” documenting the consent or approval of the applicable governmental bodies. This requirement has been removed from the

proposed rule due to potential inconsistency with statutory requirements, and consistent with Executive Order 17-03 guidance to not duplicate statutory requirements in regulations unless clarification or instruction is needed.

Staff supports this deletion.