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Missouri Public Service Commission
Morris L. Woodruff, Secretary of the Commission
PO Box 360
Jefferson City, MO 65102

SUBJECT: Case No. EX-2015-0225: In the Matter of Proposed Amendment to
Commission Rule 4 CSR 240-3.105, Filing
Requirements for Electric Utility Applications for
Certificates of Convenience and Necessity
WIND ON THE WIRES' COMMENTS

Dear Judge Woodruff:

I am writing to submit Wind on the Wires' comments in the above referenced case regarding staff's proposed amendment to the Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity ("Proposed Amendment") rule 4 CSR 240-3.105.

Wind on the Wires is a not-for-profit, collaborative organization dedicated to wind energy's fair access to the electric transmission system and market in the Midwest Region. Our Board of Directors and members are comprised of wind developers, environmental organizations, wind energy experts, tribal representatives, clean energy advocates, and businesses providing goods and services to the wind industry, some of whom have offices in or provide services within Missouri.

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I. Overview of Comments

Missouri is served by two regional transmission organizations and between them is Associated Electric Cooperative, Inc. Being split among three entities makes the development of new transmission lines across Missouri a task requiring much coordination among governmental and quasi-governmental agencies. Wind on the Wires’ submits its comments with the intent of improving and streamlining that process.

II. Clarify the Scope of Application of Section (1)(B)

The proposed amendment includes new language in section (1)(B) (4 CSR 240-3.105(1)(B)) of which we seek clarification. The opening paragraph seems to apply to three types of plans -- a generating plant, a transmission line and a gas transmission line used for a generating plant. (§3.105(1)(B)). Following the opening paragraph is a list of materials that are to be included within the application, however, the second paragraph states the following:

2. A description of [T]he plans and specifications for the complete scope of the construction project and estimated cost of the construction project [or], which also clearly identifies the operating and other features of the electric generating plant(s), electric transmission line(s), and gas transmission line(s) to facilitate the operation of the electric generating plant(s), when the construction is fully operational and used for service; (§3.105(1)(B)(2)). (emphasis added with underscore)

The use of the word ‘and’ seems to indicate that the electric and gas transmission lines that are the subject of this section of the rule are “to facilitate the operation of an electric generating plant.” That is contrary to language in sub-paragraphs 3 through 5 that use ‘or’ and indicates that each item is separate in the list -- a generating plant, a transmission line and a gas transmission line used for a generating plant.

Please clarify whether this requirement applies to three different types of plant additions or to the addition of electric generating plants and the electric transmission or gas transmission lines that serve that generating plant.

III. Expanding the Requirement to Identify Existing Utility Services to an Area Within 250’ of the Proposed Construction is Too Burdensome

In section 3.105(1)(B)(1) the proposed amendment requires utilities to list all

“electric, **gas** and telephone **utility, conduit, wires and cables** and lines of regulated and nonregulated utilities, railroad tracks and each

underground facility as defined in section 319.015 RSMo, which the proposed construction will cross **or come within 250 feet of;**". (§3.105(1)(B))

Identifying and documenting this information is overly burdensome for the level of inquiry related to a certificate of convenience and necessity. The specificity of 'within 250 feet of' the proposed construction project/route implies a level of detail that would likely require a field inspection. To collect this information the plant or transmission line owner would need to perform a detailed subsurface utility survey across a 500 foot wide swath of land along a route. This is necessary because not all underground utilities are mapped. This level of effort multiplies the cost of planning work, and depending on the length of the construction project it can mean a multi-million dollar effort. Moreover, it would require gaining approval of landowners to access their property, which may not necessarily be granted in the absence of approval of the line or construction project.

The current requirement of identifying utilities crossing the route through inspection of utility maps should be sufficient for a planning level design such as is required for approving a route alignment. If the intent of this 250 feet requirement was to have field inspections, such a requirement places an extraordinary burden on large projects or long distance transmission line projects -- to have to invest hundreds of thousands or millions of dollars for a level of inquiry not necessary for this level of regulatory review. To avoid placing an inadvertent financial hurdle on large or long distance transmission line projects the Missouri Public Service Commission ("Commission") should consider providing a field inspection exception for projects that traverse many miles.

Thus, Wind on the Wires recommends that the rule's current language for this section be maintained, which requires the identification of facilities that cross the proposed construction

project. That level of effort is commensurate with the level of construction planning needed for preparing plans necessary for determining the route of a transmission line or impact of a construction project.

If the Commission deems it appropriate to add the 250 foot requirement, Wind on the Wires recommends the amendment be limited to 250 feet total -- which would be 125 feet on either side of the transmission line. Moreover, the Commission should clarify in the order that it is not requiring a field inspection, but is requiring a level of engineering diligence to be exercised appropriate for approving a route alignment and for the size of the project.

If the Commission determines that a field inspection is needed to identify locations of utilities, Wind on the Wires recommends that an exception be granted for large projects or long distance transmission line projects. In addition, the field inspection requirement should be a condition of the approval of the line, so it would be conducted by the survey team after the project has received approval by the Commission and in preparation of the construction plans and specifications.

IV. The Competitive Bidding for Services Should be Limited to Electric Utilities that Sell Electricity to End Use Customers

In section 3.105(1)(B)(6)(a) the proposed amendment would require entities applying for a certificate of convenience and necessity to utilize a competitive bidding process for the services used to design and build a project, as stated in the following:

6. The Facts showing (a) the utilization of a non-discriminatory, fair and reasonable competitive bidding process for identifying: the design, engineering, procurement, construction management, and construction contracts for the construction of electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s).

Competitive bidding helps assure the utility is using the least cost, competent service provider. This provision most directly benefits and protects ratepayers when the provision is applied to utilities that directly serve the end use customer, but does not necessarily provide the same protection when applied to utilities who sell their product to other utilities. Utilities selling a product to other utilities are likely selected through a competitive bidding process or approved through this certificate of convenience and necessity process -- and those processes are used to protect Missouri ratepayers.

Thus, Wind on the Wires recommends that the proposed amendment in section 3.105(1)(B)(6)(a) be limited to projects that are owned or operated by utilities that directly sell the electric service to end use customers and not to utilities that sell a product to utilities.

V. WOW Supports a Competitive Bidding Process for Procuring Electric Capacity or Energy and Suggests Additional Language to Better Define the Process to be Used

In section 3.105(1)(B)(6)(b) the proposed amendment would require the utility to show that it used a competitive bidding process to collect bids for capacity and energy from sources or alternative suppliers instead of the utility building a new project or line. It appears that this is intended to establish a process through which the Commission can review and approve a utility's purchase of capacity or energy from an alternative supplier. Wind on the Wires supports this process with some suggested changes.

To ensure the process is non-discriminatory, fair and reasonable the Commission should establish more specific guidelines for this process. Wind on the Wires recommends that an independent third party be used to select the winning bid, and that standards be set for the

independent third party to apply in selecting the winning bid and by which the Commission can use to approve the independent third parties selection.

Using an independent third party to select the winning bid(s) removes potential for bias in the selection process. Since a utility's construction project is going to be competing against an offer from an alternative supplier, the utility has a bias or vested interest in its project and should not be the decision-making entity.

Standards for comparing alternative suppliers needs to be defined in the rule. Those standards would be used by the independent third party in selecting the winning bid. The Commission would review the independent third parties application of the standards and either affirm or reject the independent third party's selection. If the Commission rejects the independent third party's selection, the Commission should be allowed to approve one of the other proposals, the utility construction project, or deny the certificate.

PROPOSED REPLACEMENT LANGUAGE:

To accomplish the changes suggested in (IV) and (V), above, Wind on the Wires suggests the following replacement language:

6. An electric utility that serves end use customers shall present~~The facts showing (a)~~ the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for entering into, identifying, and/or being the projected process for identifying: the design, engineering, procurement, construction management, and construction contracts for the construction of electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), and

~~7.(b) the~~ That utilization of a non-discriminatory, fair, and reasonable competitive bidding process was used to select the most cost effective and reasonable proposal when for purchasing electric power capacity of more than fifty (50) megawatts or and energy from alternative suppliers, through a contract of more than one year reviewed by the electric utility at an identified time(s) as a possible resource(s) in lieu of the construction of

electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s).

(a) Before an electric utility may apply for a certificate a request for proposals process shall be held.

(b) An independent third party shall manage and administer the request for proposal process, and shall select the most cost effective and reasonable proposal. The independent third party shall simultaneously give public notice of the request for proposals and post the information on a website for public review.

(c) Proposals must be submitted simultaneously to the electric utility and the independent third party decision-maker not more than ninety (90) days after notice is first published.

(d) A request for proposals must include the following:

- (1) specification of the size and operating parameters of the project;
- (2) milestones, in service dates and contract terms;
- (3) price mechanism;
- (4) service and performance obligations;
- (5) dispatchability options;
- (6) conditions of termination or default;
- (7) description of weighted selection criteria and methodology to be used to evaluate the criteria;
- (8) fuel price forecasts that would be used for evaluation of winning bid prices.
- (9) Other factors the electric utility considers necessary for the type of project.

(b) The independent third party shall select the most cost effective and reasonable proposal using the following criteria evaluated over a twenty year period, except as noted:

- (1) total bid price, including the rate of return the utility could earn;
- (2) the background, experience, and finances of the bidders;
- (3) economic benefits, including, but not limited to, tax payments to Indiana and local government, royalties, production-based payments, land leases and land use payments, income from local sourcing of products and materials, income from consumption of local goods, short-term employment from construction through the first three years of operation;
- (4) direct jobs created in Indiana by bid facility from construction through the first three years of operation;
- (5) life cycle cost of facility;
- (6) fuel price volatility and risk;
- (7) reliability;
- (8) financial impacts on the utility;

- (9) transmission planning and congestion;
- (10) energy diversity in relation to the utilities total generation portfolio;
- (11) energy conservation;
- (12) emission reductions;
- (13) air quality;
- (14) water quality and conservation;
- (15) risk of potential federal carbon prices;
- (16) other criteria established by the commission.

(e) The commission shall determine whether a non-discriminatory, fair, and reasonable competitive bidding process was implemented and that the independent third party decision-maker selected the most cost effective and reasonable proposal. The commission shall either approve the proposal recommended by the independent third party, approve another proposal as being the most cost effective and reasonable proposal, approve the utility's construction project, or deny the certificate.

(f) The most cost effective and reasonable proposal is not necessarily the least or lowest cost proposal.

(g) An electric utility, including an affiliate of the electric utility, may submit a proposal in response to the request for proposals.

VI. Seeking clarification and providing a recommendation regarding which local government approvals be considered by the Commission in its CCN process.

The staff should clarify section 3.105(1)(D). That section requires an electric utility to include in its application a certified copy of an assent or franchise agreement in instances when such consent or agreement is required. The underlying statute that prescribes this rule, however, is limited to municipal authorities and does not include county governments. Specifically, section 393.170.2, RSMo., requires that

[b]efore such certificate [CCN] shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the **proper municipal authorities** (emphasis added through bold text).

It is beyond the scope of Chapters 386 and 393, RSMo. to require applicants to provide copies of county assents within the application. Further, Missouri case law draws a clear

distinction between service area certifications and transmission line certifications. Transmission line certifications are approved or disapproved pursuant to Section 393.170.3. This rule should not codify section 229.100, RSMo., because it is clearly outside of the authority set forth in Chapters 386 and 393, RSMo.

If the Commission deems it necessary to obtain a certified copy of the county assents, Wind on the Wires seeks further clarification regarding sections 3.105(3) and (4), and would like to provide a recommendation. The proposed amendment to the rule enables the Commission to “grant the certificate subject to the condition that the unavailable items be filed before authority under the certificate is exercised.” (§3.105(3)). The Commission or staff should clarify the legal authority it can grant an applicant under a conditional CCN that is pending county consent.

Additionally, Wind on the Wires encourages the Commission to clarify its authority in an instance where local government consents are not able to be acquired. Wind on the Wires does not believe the legislative intent of section 229.100 was to grant county commissions a de facto veto over utility infrastructure projects which the Commission deems to be in the public interest of the state. Rather, Wind on the Wires believes the intent of section 229.100 was to grant counties the enforcement authority over engineering and technical specifications of utility infrastructure projects which intersect with county roads.

Thus, Wind on the Wires recommends the Commission require the applicant provide a record of all of the good-faith attempts it made to negotiate with the local government. In an instance where the applicant has made significant attempts to negotiate in good faith to reach an agreement with a local government body and the applicant is unable to reach an agreement, the Commission should rescind any condition that may have been placed on the applicant’s

certificate to provide a certified copy of the assent and the Commission should enable the project to proceed.

VII. Conclusion

The comments Wind on the Wires has provided are intended to improve and streamline the certificate of convenience and necessity process. Wherefore, Wind on the Wires respectfully requests that the Commission make changes to the Proposed Amendment consistent with our comments, clarifications, recommendations and proposed language revisions provided herein.

Sincerely,

_____/s_____
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