

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Sections 203E and 209(a) (26 **Del.C.** §§203E and 209(a))

PROPOSED

PUBLIC NOTICE

3011 Rules for Certification of Electric Transmission Suppliers

IN THE MATTER OF DELAWARE PUBLIC
SERVICE COMMISSION STAFF TO ESTABLISH
REGULATIONS FOR CERTIFYING
NEW ELECTRIC TRANSMISSION UTILITIES
IN THE STATE OF DELAWARE
(OPENED March 13, 2018)

PSC DOCKET 18-0148

**NOTICE OF PROCEEDINGS BY THE PUBLIC SERVICE COMMISSION TO PROMULGATE RULES AND
REGULATIONS TO IMPLEMENT VARIOUS PROVISIONS OF HOUSE BILL 127
(81 DEL. LAWS ch. 205)**

In February 2018, the General Assembly passed, and the Governor enacted into law, the “House Bill 127,” 81 Del. Laws ch. 205 (February 14, 2018). HB 127 amended Chapter 1, Subchapter II, Title 26 of the Delaware Code by adding “§203E Certificate of public convenience and necessity for new electric transmission utilities.” Section 203E provides that no person or entity shall begin the business of an electric transmission utility providing transmission facilities, as defined in § 1001(26) of this title, without having first made application to and obtained from the Commission a certificate of public convenience and necessity (“CPCN”) approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The enactment of HB 127 recognized that, due to recent changes in federal law, certain new electric transmission utility projects will now be available to in-state and out-of-state entities. The goal of the HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN for such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant’s CPCN. The goal of HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant’s CPCN.

HB 127 charges the Public Service Commission (the “Commission”) with the duty to adopt various rules and regulations to implement the new CPCN statute and to protect the state ratepayers and the state from any impact on the State’s economy and the benefits to the State’s ratepayers and on the health, safety, and welfare of the general public. In accordance with various provisions added by the HB 127, the Commission Staff has proposed rules and regulations pertaining to:

(1) Whether PJM Interconnection, L.L.C. (or its successor) (“PJM”) has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM’s Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred: (26 **Del.C.** §203E(b)(1))

- a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company (26 **Del.C.** §203E(b)(1)a.)
- b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services (26 **Del.C.** §203E(b)(1)b.); and
- c. The engineering and technical design of any transmission facilities proposed by the applicant (26 **Del.C.** §203E(b)(1)c.);

(2) The impact of granting the certificate of public convenience and necessity application on the State’s economy and the benefits to the State’s ratepayers (26 **Del.C.** §203E(b)(2)); and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

By PSC Order No. 9193 (March 13, 2018), the Commission opened this docket to solicit comments concerning these proposed rules and regulations. The Commission intends to adopt rules and regulations pertaining to the above topics prior to implementing the CPCN requirements set forth in 26 **Del.C.** §203E.

Copies of the proposed rules and regulations are not available in the Delaware *Register of Regulations* until April 1, 2018. You may obtain a copy of the proposed rules and regulations from the Commission at its Dover office at the address

set out below during normal business hours. You may also obtain an electronic copy of the proposed rules and regulations by accessing the State of Delaware's Internet website at: <http://www.state.us.de.us/govern/agencies/pubserv/major/major1.htm>.

The Commission solicits suggestions, compilations of data, briefs, or other written materials concerning the proposed rules and regulations and any additional rules or regulations which may be necessary or desirable to implement the provisions of 26 **Del.C.** §203E. If you wish to submit such materials, you must e-mail such materials to Joseph DeLosa at Joseph.DeLosa@state.de.us on or before Tuesday, May 1, 2018. In addition, two (2) copies of all filed materials should be served upon the Division of the Public Advocate, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801.

The Commission Staff is available to answer any questions concerning this proceeding. The Commission's toll-free telephone number in Delaware is (800) 282-8574. You may also make inquiries by voice telephone at (302) 736-7500 or by Internet e-mail to Joseph.DeLosa@state.de.us.

ORDER NO. 9193

AND NOW, this 13th day of March 2018, the Commission determines and Orders the following:

1. On February 14, 2018, House Bill 127 as amended by House Amendment No. 1 ("HB 127") (81 Del. Laws ch. 205) became law. HB 127 amended Chapter 1, Subchapter II, Title 26 of the Delaware Code by adding "§203E Certificate of public convenience and necessity for new electric transmission utilities." Section 203E provides that no person or entity shall begin the business of an electric transmission utility providing transmission facilities, as defined in §1001(26)¹ of this title, without having first made application to and obtained from the Commission a certificate of public convenience and necessity ("CPCN") approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The enactment of HB 127 recognized that, due to recent changes in federal law, certain new electric transmission utility projects will now be available to in-state and out-of-state entities. The goal of the HB 127 Act was to provide the Commission the necessary authority to determine whether to grant a CPCN for such projects. HB 127 provides factors the Commission shall consider in determining whether to grant an applicant's CPCN.²

2. In several provisions, the Act obligates the Commission to adopt implementing rules and regulations in order to assess the impact that certain new electric transmission utility projects will have on the State of Delaware and on its citizens. In particular, the Commission must adopt rules and regulations pertaining to the following factors required in determining whether to grant the CPCN:

- (1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred: (26 **Del.C.** §203E(b)(1))
 - a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company (26 **Del.C.** §203E(b)(1)a.)
 - b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services (26 **Del.C.** §203E(b)(1)b.); and
 - c. The engineering and technical design of any transmission facilities proposed by the applicant (26 **Del.C.** §203E(b)(1 c.);

1. HB 127 amends 26 **Del.C.** §1001(26) as follows: "Transmission facilities" means electric facilities located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer. (Underlined language shows insertion amendment).

2. "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in § 1001 of this title), electric transmission by other than a public utility over which the Commission has no supervisory or regulatory jurisdiction pursuant to Section 202(a) or (g) of this title, water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment. (Underlined language shows insertion amendment).

- (2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers (26 Del.C. §203E(b)(2); and
- (3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

3. The Commission Staff has proposed rules and regulations pertaining to each of these areas. Consequently, the Commission opens this docket to allow interested persons to comment upon those proposed rules and regulations.

4. Interested persons may submit written comments by May 1, 2018 to Joseph DeLosa at Joseph.DeLosa@state.de.us.

NOW, THEREFORE, IT IS ORDERED:

5. That this docket is opened to adopt the rules and regulations **Exhibit "B"** required by the provisions of 26 Del.C. §203E and in furtherance of the enactment into law of House Bill 127 as amended by House Amendment No. 1 (81 Del. Laws ch. 205).

6. That the Secretary shall give public notice of this docket and Staff's proposed rules and regulations by publishing notice in the form attached as **Exhibit "A"** in the legal classified sections of *The News Journal* and the *Delaware State News* newspapers in two column format, outlined in black by the following dates:

Thursday, March 22, 2018 (*The News Journal*)

Thursday, March 22, 2018 (*Delaware State News*)

In addition, the Secretary shall forward a copy of such notice to the Delaware *Registrar of Regulations* requesting that the notice be published in the April, 2018 edition of the Delaware *Register of Regulations*. The Secretary shall promptly file proof of such newspaper publication in the record of this proceeding.

7. That Thomas D. Walsh, Esquire is designated Counsel for this matter.

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair (absent)

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner (absent)

K. F. Drexler, Commissioner

Manubhai C. Karia, Commissioner

ATTEST: Donna Nickerson, Secretary

3011 Rules for Certification of Electric Transmission Suppliers

1.0 Definitions

The following words and terms, when used in this Regulation, have the following meanings unless the context clearly indicates otherwise:

"Applicant" means a person or entity seeking to obtain an Electric Transmission Supplier Certificate.

"Business Day" means any calendar day except Saturdays, Sundays, or legal holidays as defined in 1 Del.C. §501.

"Commission" means the Delaware Public Service Commission.

"Delmarva" or **"DPL"** means Delmarva Power & Light Company or its successor(s).

"DPA" means the Delaware Division of the Public Advocate.

"Electric Transmission Facility" or **"Transmission facility"** means electric facilities that are located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts, and used to transmit and deliver electricity to customers, including any customers taking electric service under interruptible rate schedules as of December 31, 1998, up through and including the point of physical connection with electric facilities owned by DPL.

"Electric Transmission Supplier Certificate" means a certificate of public convenience and necessity under 26 Del.C. §203E granted by the Commission to an Applicant which fulfilled the Commission's certification requirements and which authorizes the Applicant to construct, operate, own and maintain transmission facilities. The Commission Order approving an Applicant's application for certification as an Electric Transmission Utility shall serve as the Electric Transmission Supplier Certificate.

"Electric Transmission Utility" means a person or entity granted an Electric Transmission Supplier Certificate by the Commission, or otherwise exempt under 26 Del.C. §203A(a)(3), which owns and/or physically operates an Electric Transmission Facility in Delaware.

"Person" means a natural person, a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a

municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent, or employee of such agency.

"PJM Interconnection, L.L.C." or "PJM" means the Regional Transmission Organization ("RTO") with functional control over Electric Transmission Facilities throughout a multi-state area including Delaware, or its successor(s).

"Public Utility" means every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale, or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in §1001 of this title), water, wastewater (which shall include sanitary sewer charge), telecommunications, (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

"Regional Transmission Expansion Plan" or "RTEP" means the process by which PJM approves new transmission projects.

"Regulations" means the Commission's Regulations for Certification of an Electric Transmission Utility. (26 DE Admin. Code 3011, et seq.)

"Secretary" means the Secretary of the Commission, or any employee of the Commission designated as such by the Secretary and authorized by the Executive Director.

"Staff" means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

"State" means the State of Delaware.

2.0 Certification of Electric Transmission Suppliers

- 2.1 Before an Applicant may begin the business of providing Electric Transmission Facilities, such Applicant must obtain an Electric Transmission Supplier Certificate from the Commission.
- 2.2 Certification Requirement. All Applicants shall file with the Commission an original and five (5) copies of an application for an Electric Transmission Supplier Certificate or comply with the electronic filing requirements of 26 DE Admin. Code 1001. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws. Applications shall contain at least the following information:
 - 2.2.1 Identifying Information. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant or its Affiliated Interests have previously done business in Delaware;
 - 2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
 - 2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 Del.C. §401, within the State upon whom service of any notice, order or process may be made;
 - 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
 - 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicants and the regulatory contact person responsible for the Applicant's Delaware operations;
 - 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
 - 2.2.9 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Applicant's and its Agent's activities in the State;
 - 2.2.10 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers

and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution.

2.2.11 Project Description. A complete description of any projects that the Applicant intends to develop in Delaware to include:

2.2.11.1 A detailed description of the Electric Transmission Facilities for which the applicant seeks a Certificate

2.2.11.2 One-line diagrams showing all Electric Transmission Facilities to be constructed

2.2.11.3 A description of the construction design to include a pictorial representation of design type;

2.2.11.4 An aerial map showing the proposed location and route of planned Electric Transmission Facilities;

2.2.11.5 A cost estimate for the project;

2.2.11.6 Copies of any analysis undertaken by the Applicant or of which Applicant is aware that demonstrates the reliability-based or economics-based need for the Electric Transmission Facilities and any impacts on electricity costs, including transmission, energy, capacity, and ancillary services charges within Delaware.

2.2.12 Entity Designation. A copy of documentation certifying the Applicant as the PJM entity designated to construct new Electric Transmission Facilities. If the Applicant is not a PJM designated entity, the Applicant must submit additional information under subsections 2.2.13, 2.2.14 and 2.2.15.

2.2.13 Financial Information. If the Applicant is not a PJM Designated Entity, evidence of long-term financial viability of the Applicant to provide service in the State, including:

2.2.13.1 If publicly traded, the Applicant's: (1) certified financial statements current within twelve (12) months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website);

2.2.13.2 If not publicly traded, the Applicant's accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns or other indicia of financial capability, or, if applicable, the certified financial statements of a publicly traded parent;

2.2.13.3 Applicants submitting European-style financial statements shall include a statement of similarity;

2.2.13.4 Staff may request other indicia of financial capability.

2.2.14 Bankruptcy. If the Applicant is not a PJM Designated Entity, the Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months;

2.2.15 Operational Experience. If the Applicant is not a PJM Designated Entity, evidence of technical and operational fitness to construct and operate Electric Transmission Facilities, including:

2.2.15.1 A description of the entity's experience:

2.2.15.1.1 A description of the entity's experience in constructing and operating electric transmission facilities in other states and an assessment of its long-term viability as an Electric Transmission Utility; and

2.2.15.1.2 A description of the entity's experience with any transmission project in the PJM region.

2.2.15.2 Documentation on the need for and the impact of the proposed transmission facility on the safe, adequate and reliable operation or delivery of electric supply services; and

2.2.15.3 Detailed information on the engineering and technical design of the proposed transmission facility.

2.2.15.4 Staff may request other indicia of technical or operational fitness.

2.2.16 Economic Impact. The Applicant's assessment of the impact of granting the Electric Transmission Supplier Certificate on the State's economy and the benefits to the State's ratepayers.

2.2.17 The Applicant's assessment of the impact of granting the Certificate of Public Convenience and Necessity on the health, safety and welfare of the general public.

2.2.18 Other Proceedings.

2.2.18.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:

2.2.18.1.1 Been denied approval to construct or operate electric transmission;

2.2.18.1.2 Been found to be in violation of a state's laws, rules, or regulations;

2.2.18.1.3 Had its electric transmission authority revoked, modified, or suspended; or

2.2.18.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of electric transmission, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv)

- any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
- 2.2.18.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its electric transmission construction or operation in which the entity agreed to pay a civil penalty, provide any restitution, or make changes to operations;
- 2.2.19 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.18;
- 2.2.20 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in electric transmission projects;
- 2.2.21 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.2.22 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.2.23 Notice. Each Applicant shall publish notice of the filing of its application in two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.2.24 Application Fee. An Applicant for a Certificate of Public Convenience and Necessity to operate as a Public Utility shall submit a non-refundable application fee of \$750 with the application.
- 2.2.25 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.2.26 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 Del.C. §1001 et seq.
- 2.2.27 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny a Certificate of Public Convenience and Necessity to an Applicant where it finds that doing so is in the public interest. The application may be denied if the Commission finds the applicant is unwilling or unable to provide safe, adequate and reliable services.
- 2.2.28 Timing of Application Decision. The Commission shall act on an application within ninety (90) Business days of the submission of a completed application as defined by PSC Staff. At Commission discretion, the application time period may be extended an additional ninety (90) Business days.
- 2.2.29 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.
- 2.2.30 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of the application. Nothing in this section shall preclude the Commission or the State of Delaware from undertaking any action to address the provision of false information in an application.
- 2.2.31 Terms of Electric Transmission Supplier Certificate are valid until revoked by the Commission or relinquished by the Applicant after the requisite notice to the Commission.
- 2.2.31.1 The transfer of an Electric Transmission Supplier Certificate to other than a Delaware approved Public Utility is prohibited. Any requested transfer to a Delaware approved Public Utility requires application, notice and approval of the Commission.
- 2.2.31.2 No Electric Transmission entity shall cease operation of its facilities within the State without providing at least sixty (60) days Written Notice to the Commission.
- 2.2.32 Revocation or Suspension. The Commission may, for good cause, undertake to suspend or revoke an Electric Transmission Supplier Certificate held by an Electric Transmission Utility. Good cause includes:
- 2.2.32.1 Material noncompliance by the holder of the Certificate with any conditions imposed by the Commission or any Commission order or rule; or

- 2.2.32.2 A finding by the Commission that the holder of the Certificate failed in a material manner to provide safe, adequate and reliable transmission service; or
- 2.2.32.3 A finding by the Commission that the Certificate is resulting in material adverse impacts on the State's economy, ratepayers, health, safety, or welfare.

3.0 **Reports to be Provided to the Commission and DPA**

If an Applicant is granted an Electric Transmission Supplier Certificate, the Applicant shall provide semi-annual reports to the Commission and the DPA regarding the status of construction of the Applicant's projects in the State of Delaware until such projects are placed in service. Such updates shall include budgeted vs. actual costs and the expected in-service date of the project.

4.0 **Other General Rules**

These regulations shall not be construed to require any public utility to secure an Electric Transmission Supplier Certificate for any construction, modifications, upgrades, or extensions within the perimeter of any territory already served by it.

21 DE Reg. 793 (04/01/18) (Prop.)