



STATE OF DELAWARE
THE PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD, SUITE 100
CANNON BUILDING
DOVER, DELAWARE 19904
TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

October 20, 2015

House Energy Committee

Representative Paradee
Representative Lynn
Representative Collins
Representative Heffernan
Representative Kowalko
Representative Mulrooney
Representative Smyk

Senate Energy & Transit Committee

Senator McDowell
Senator Cloutier
Senator Poore
Senator Richardson
Senator Sokola

Reference: Public Service Commission Electric Transmission Statutory Authority

Dear Legislators:

I write to call your attention to Federal Energy Regulatory Commission (FERC) changes that were made in 2012 that will likely have a serious impact on the high voltage electric transmission system in Delaware. Prior to 2012, new lines, upgrades and improvements to most of the state's transmission system were the sole responsibility of Delmarva Power & Light Company. However, under FERC Order 1000, transmission systems in the United States were open to new competitive processes in which independent transmission companies or other utilities could qualify and be selected to build high voltage electric transmission lines in any state.

In our interpretation of Title 26 of the Delaware Code, it appears that an independent transmission company or other utility would be classified as a "Public Utility" as defined in 26 *Del. C.* §102(2). As such, they would need to secure a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC) to operate in the State of Delaware (26 *Del. C.* §203(A)(1)). However, under the current PSC statutory authority, it

appears that any independent transmission company or other utility may seek public utility status and a CPCN from the PSC without meeting any set of qualifications or criteria. There are no criteria under which the PSC may evaluate a company's ability to provide the necessary safe, economic, and reliable transmission enhancements and, where necessary, deny approval of a CPCN. The PSC supports the new competitive process as established by FERC Order 1000, as it may lead to lower costs and improved reliability for the electric transmission system. The Commission is, however, concerned that our regulatory authority over these new entities is severely limited and, without statutory change, will become a mere "rubber stamp" formality.

The PSC is seeking your assistance in revising Delaware Code, Title 26, to establish criteria under which the Commission may assess electric transmission providers who may be requesting a CPCN to operate in the State. Establishing appropriate criteria for approval of a CPCN request will ensure that the safety, operating integrity and reliability of the electric transmission system in Delaware can be effectively maintained, consistent with new federal regulations.

Attached is a draft of suggested changes to 26 *Del. C.* §203A to incorporate criteria that must be considered by the Commission prior to issuing a CPCN to any independent transmission company or other utility to provide transmission service in Delaware. Also attached is a draft of a suggested definition change to 26 *Del. C.* §1001 to include offshore transmission facilities interconnecting with Delaware transmission facilities. If you have further questions, my staff would be happy to meet and discuss this proposal. Thank you for your consideration of this request.

Sincerely,

Dallas Winslow, Chairman
Delaware Public Service Commission

cc: Jeffrey W. Bullock, Secretary of State
Rick Geisenberger, Deputy Secretary of State
Gary Stockbridge, President, Delmarva Power Region, Pepco Holdings, Inc.
Robert J. Howatt, Executive Director, Delaware Public Service Commission
Lori Murphy Lee, Manager, Regulatory & Legislative Affairs, PJM Interconnection

Attachment: Draft Legislative Change

Sponsor:

House of Representatives
148th General Assembly

House Bill No. xxx

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATED TO PUBLIC UTILITIES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

CPCN for New High Voltage Electric Transmission Facilities

Amend Title 26 Chapter 1, Subchapter II, § 203A, Certificate of public convenience and necessity; abandonment or discontinuance of business, operations or service, of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 203A. Certificate of public convenience and necessity; abandonment or discontinuance of business, operations or service.

(a)(1) Subject to the provisions of subsection (b) of this section and §§ 102, 201, 202 and Chapter 10 of this title, and excluding electric suppliers, no individual, copartnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall begin the business of a public utility nor shall any public utility begin any extension of its regulated public utility business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such regulated public utility business or extension.

(2) Notwithstanding any other provision of law, no Commission approval shall be required for any transfer of a certificate of public convenience between public utility companies providing telecommunications services that operate under common ownership.

(3) This section shall not be construed to require any public utility, within the perimeter of any territory already served by it, to secure such a certificate for any new transmission facilities or extensions, modifications, or upgrades to existing transmission facilities, as “transmission facilities” is defined in 26 Del. C. §1001(26).

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(4) A public utility, providing transmission services as defined in 26 Del. C. §1001(27) must have a certificate of public convenience and necessity for the construction and operation of any new electric transmission facilities. In granting such certificate, the Commission shall consider:

a. the need for the proposed transmission facilities;

b. the impact of the transmission facilities on service reliability;

c. the long term viability of the public utility proposing the transmission facilities;

d. the technical engineering and operating expertise of the public utility;

e. the technology and design proposed for the new transmission facilities;

f. the impact of the transmission facilities on the State’s economy and the cost and benefits to the State’s ratepayers; and

g. the impact of the transmission facilities on the health, safety and welfare of the general public.

(5) The Commission, after hearing, on the complaint of any public utility claiming to be adversely affected by any proposal made pursuant to this Section, may make such order and prescribe such terms and conditions with respect to the proposal as may be required by the public convenience and necessity.

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Revised Transmission Facilities Definition

Amend Title 26, Chapter 10, §1001. Definitions of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 1001 Definitions.

As used in this chapter, unless the context otherwise requires:

(26) "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.

SYNOPSIS

This bill updates Title 26, Chapter 1, Subchapter II by recognizing the potential for new transmission companies to construct transmission facilities within the State, requiring a certificate of public convenience and necessity ("CPCN") to construct new high voltage transmission facilities, and defining the criteria that must be considered in approving new transmission CPCN applications. This bill also updates Title 26, Chapter 10 by expanding the definition of transmission facilities to include those transmission facilities that are constructed off shore but interconnected with onshore electric facilities.