

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

IN THE MATTER OF DELAWARE PUBLIC)
SERVICE COMMISSION STAFF TO ESTABLISH)
REGULATIONS FOR CERTIFYING)
NEW ELECTRIC TRANSMISSION UTILITIES) PSC DOCKET 18-0148
IN THE STATE OF DELAWARE)
(OPENED March 13, 2018))

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

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).

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

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).

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.

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 April 30, 2018 to Joseph DeLosa at Joseph.DeLosa@state.de.us.

NOW, THEREFORE, IT IS ORDERED:

1. That this docket is opened to adopt the rules and regulations 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).

2. 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 on the following dates:

Wednesday, March 14, 2018 (The News Journal)

Thursday, March 15, 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.

4. That Thomas D. Walsh, Esquire is designated Counsel for this matter. Participants are notified that the costs of this proceeding will be assessed under the provisions of 26 Del C. § 114(b)(1) and 26 Del. C. § 1012(c)(2).

5. 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:

/s/ _____
Chairman

/s/ _____
Commissioner

/s/ _____
Commissioner

/s/ _____
Commissioner

/s/ _____
Commissioner

ATTEST:

/s/ _____
Secretary

E X H I B I T "A"

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**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. 9xxx (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. 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/pubservc/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 Monday, April 30, 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.