

3. K.A.R. § 82-12-3(b) requires the applicant to submit “a cost breakdown of the construction or extensions with unit cost of the plant” with the Wire-Stringing Application.

4. In its Order opening the instant docket, the Commission directed utilities to use the Official Form “EL” – a template document used by utilities as the base of their Wire-Stringing Applications.¹ The form references the inclusion of a “cost breakdown of ‘cost estimate’ by units of property,” in line with the requirement listed in K.A.R. § 82-12-3(b).

REQUEST FOR WAIVER

5. NEET Southwest requests waiver of K.A.R. § 82-12-3(b) with respect to the Project’s cost breakdown information because: 1) the Federal Energy Regulatory Commission (“FERC”) has exclusive jurisdiction over transmission rates, in which the costs will be reflected; 2) the Commission has already performed an extensive review of the costs and financing associated with this Project and issued an order requiring quarterly cost reporting, which NEET Southwest has been submitting each quarter; and 3) the requirement does not independently pertain to the “danger or possibility of unreasonable interference with or damage to the wires or service of one utility by those of another utility and with respect to the support, maintenance, repair and reconstruction thereof,” which is the statutory basis for requiring the Wire-Stringing Application.

6. The construction costs for Project will be recovered *via* the region-wide cost allocation methodology administered by the Southwest Power Pool (“SPP”), consistent with FERC-approved Attachment J of the SPP Tariff that requires regional funding on a load ratio share basis for all ITP upgrades operated above 300 kV.² NEET Southwest’s costs of the Project will

¹ Order Opening Docket for Fiscal Year 2024 Electric Supply Line Filings, Dkt. 24-GIME-002-CPL (July 6, 2023).

² Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, Dkt. 22-NETE-419-COC, Feb. 28, 2022 at ¶ 25.

be recovered through NEET Southwest’s FERC-accepted formula rate and associated customer review and challenge protocols, and the prudence of NEET Southwest’s project expenditures and the applicability of NEET Southwest’s cost containment commitments to such expenditures will be subject to FERC oversight, consistent with FERC’s exclusive jurisdiction over transmission in interstate commerce under the Federal Power Act.³

7. Thus, NEET Southwest will not seek cost recovery through rates or charges set by the Commission, and NEET Southwest’s rates are entirely regulated by FERC.⁴

8. The Commission recognized in its Order approving the CCN for the Project that “NEET Southwest proposes to build will transmit energy and capacity at wholesale at a rate regulated by FERC.”⁵ The Commission also acknowledged FERC’s jurisdiction over transmission rates applicable to NEET Southwest.⁶

9. Given that construction costs will not be recovered by rates or charges set by the Commission, and that review of such costs is under FERC’s jurisdiction, reporting such detailed cost information to the Commission does not correspond with the Commission’s jurisdiction over the Project.⁷

10. Further, the Commission, through NEET Southwest’s CCN application process, has already performed an extensive review of the construction costs associated with the Project

³ *Id.*

⁴ *Id.* at ¶ 45.

⁵ Order on Application for Certificate of Convenience and Necessity, Dkt. 22-NETE-419-COC, Aug. 29, 2022 at p. 8.

⁶ *Id.* at ¶ 74.

⁷ It is unclear how reporting price-per-unit information is relevant to the engineering-focused purpose of K.S.A. 66-183. Most likely, it serves an independent purpose of documenting costs of construction for projects that do not require pre-approval and that will be recovered through Commission-approved rates. Since this Project was pre-approved and rates are not recovered via a Commission-approved rate, this independent purpose is not relevant to the Project.

and continues to receive cost updates through quarterly reporting by NEET Southwest. Per the CCN Order, the Commission examined construction costs as part of its cost-benefit analysis and concluded that the benefit-to-cost ratio had a net positive impact on Kansas customers.⁸ The Commission has also implemented reporting requirements on Project budgeting and costs sufficient to track information relevant to the Commission's interests.⁹ Therefore, the cost breakdown requirement is redundant of other requirements to which NEET Southwest is subject.

11. Finally, the cost breakdown requirement is not independently significant to the Commission's review of whether line construction may cause danger or the possibility of unreasonable interference with or damage to the wires or services of other utilities. At most, project costs could provide a frame of reference for the scale of a certain project or provide the Commission with information sufficient to show that a utility placed adequate investment behind a planned construction. Here, after thorough CCN and Siting Application processes, the Commission and Commission Staff are fully briefed on the scale of the Project and the investment that NEET Southwest has put behind the Project. Therefore, a cost-per-unit breakdown of a project of this scale would not add to the Commission's analysis of potential dangers, interference or damage to wires or services of other utilities.

12. Given that the cost breakdown requirement does not support the Commission's jurisdictional considerations, NEET Southwest requests waiver from K.A.R. § 82-12-3(b) for the Wire-Stringing Application for the Project. Further, granting waiver would avoid the need to issue and enforce a Protective Order.

⁸ *Id.* at ¶ 15 and see ¶ 61 (noting that 83.5% of costs were being paid by other SPP states); ¶ 79 (noting that for every dollar spent by Evergy ratepayers, there will be a savings of \$4 to \$7 over the life of the Transmission Project);

⁹ *Id.* at ¶ 93 (requiring quarterly reports on amounts spent, total budget and expenditure, SPP agreements, invoices, and agreements with other utilities, and FERC filings).

ALTERNATIVE REQUEST FOR A PROTECTIVE ORDER

13. If the Commission denies NEET Southwest’s waiver request, NEET Southwest requests the issuance of a Protective Order in this docket, including extra protections for “Highly Confidential-Competitive” material. The protection is particularly critical because the service list in this Docket includes over 50 individuals from nearly as many organizations, including cooperatives, municipalities, investor-owned utilities, and independent transmission developers.

14. In both the CCN Docket and the Siting Docket for this Project, the Commission issued protective orders after finding that project cost information disclosed in those dockets qualified for enhanced protection not offered by the Commission’s standard protective order because they concern information related to SPP’s competitive bidding process.¹⁰ In those dockets, parties requested “Highly Confidential-Competitive” protection for information relating to the SPP’s competitive bidding process, through which NEET Southwest was awarded the rights to construct the Project.

15. The detailed cost information that would need to be shared to comply with K.A.R. § 82-12-3(b) is similar to the information that was protected under the CCN and Siting Dockets because it would reveal sensitive cost information used to form NEET Southwest’s bid, and which would likely be the basis of NEET Southwest’s future SPP bids.

16. If such information is disclosed, NEET Southwest will be competitively disadvantaged in future bidding processes because its competitors would have knowledge of

¹⁰ See Order Granting Every Intervention and Protective and Discovery Order, (April 21, 2022) (“CCN Protective Order”) as modified by Order on Every’s Motion to Modify Protective Order and NEET Southwest’s Petition for Clarification of, Recosideration of, and Rehearing of the Order Granting Every Intervention and Protective and Discovery Order, (May 5, 2022) (“Amended CCN Protective Order”) 22-NETE-419-COC; and Protective and Discover Order, 23-NETE-585-STG, (Feb. 21, 2023).

NEET Southwest's confidential bidding strategies and raw input values used to package together bids.

17. The Commission has authority to issue protective orders to limit disclosure of confidential information under K.S.A. 66-1220a and K.A.R. 82-1-221a. The Commission has substantial latitude in deciding the degree of protection that is required.

18. Under K.S.A. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. In addition to the Commission's general authority to limit disclosure of confidential business information, the Commission and presiding officer may impose conditions upon an intervener's participation in the proceedings, including limiting the intervener's use of discovery. K.S.A. 77-521.

19. NEET Southwest requests the Commission adopt a protective order that allows NEET Southwest to submit information responsive to K.A.R. § 82-12-3(b) under a "Highly Confidential-Competitive" designation and restrict recipients of this information to the Commission and Commission Staff.

20. Neither K.S.A. 66-183 nor the Wire Stringing Regulations establish due process rights entitling the public or other utilities to access to the information requested in K.A.R. § 82-12-3(b). At most, interested parties are provided the opportunity to object or file a complaint regarding whether wires are properly placed or not adequately supported (K.S.A. 66-184), and certain nearby utilities are owed advance notice of construction and the opportunity to object (*see generally* Wire Stringing Regulations). None of these interests are advanced through access to price-per-unit information supplied to the Commission.

21. There is also no need to establish a separate non-disclosure agreement process, as was created in the CCN and Siting Docket Protective Orders. There, cost information was relevant

to the Commission’s analysis of the Merger Standards and the “necessity and convenience” of the Project, so there was some value in allowing interested parties to access and review sensitive cost-information after signing NDAs. Here, the Commission is not called to engage in a cost analysis in its review of the Wire-Stringing Application and is limited only to monitoring whether a project presents a danger or the possibility of unreasonable interference with or damage to the wires or services of other utilities. Therefore, there is no goal is served in allowing access to cost information to other parties.

WHEREFORE, NEET Southwest requests the Commission:

- 1) Grant NEET Southwest waiver of compliance with K.A.R. § 82-12-3(b) for purposes of filing a Wire-Stringing Application for the Wolf Creek to Blackberry Transmission Line, as identified and approved in 22-NETE-419-COC (CCN Proceeding) and Docket 23-NETE-585-STG (Siting Proceeding).
- 2) In the alternative, issue a Protective Order allowing NEET Southwest to file competitively sensitive cost information responsive to K.A.R. § 82-12-3(b) as “Highly Confidential-Competitive,” and restrict recipients of Highly Confidential-Competitive information to the Commission and Commission Staff.

Respectfully submitted,

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VERIFICATION

I, Andrew O. Schulte, do solemnly, sincerely and truly declare and affirm that I am counsel to NextEra Energy Transmission Southwest, LLC, that I have read the foregoing pleading and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief, and this I do under the pains and penalties of perjury.

By: /s/ Andrew O. Schulte

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May 7, 2024

CERTIFICATE OF SERVICE

I hereby certify that on the May 7, 2024, a true and accurate copy of the above and foregoing was sent electronically to the following:

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