

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

NextEra Energy Transmission Southwest, LLC)	
)	Docket No. 24-GIME-002-CPL
In the Matter of the Annual Compliance)	
Docket for Electric Supply Line Filings.)	
)	

MOTION FOR RECONSIDERATION

NextEra Energy Transmission Southwest, LLC (“NEET Southwest”) hereby requests the Kansas Corporation Commission (“Commission”) reconsider its *Order Granting Joint Respondents’ Request to File out of Time; And Protective and Discovery Order* (“Protective & Discovery Order”), which has never been served on NEET Southwest and is not posted to the Electric Supply Line (“EL”) Compliance Docket on the Commission’s electronic library (“eLibrary”). In particular, NEET Southwest asks the Commission to reconsider the need to authorize discovery in this case and to strike the portion of the Protective & Discovery Order that does so. In support of its Motion for Reconsideration, NEET Southwest states as follows:

1. NEET Southwest understands and appreciates that the Commission often issues Protective Orders and Discovery Orders in tandem, and it appears that the Commission’s standard practice was repeated in this proceeding without consideration of how this EL Compliance Docket differs from a typical contested docket or the consequences of issuing a discovery order in an EL Compliance Docket.

2. An EL Compliance Docket is merely a repository for Commission Staff to track its ministerial review and approval of Form ELs. The Order Opening Docket in the instant proceeding explains as follows:

On November 15, 2018, in Docket No. 19-GIME-190-CPL, the Commission formalized its practices regarding Electric Supply Line (“EL”) requirements contained in K.A.R. 82-12-1, et seq. Specifically, *the Commission delegated its authority to Staff to approve EL applications during the normal course of business* and utilize an annual compliance docket to serve as a repository for such filings and such approvals.

Order Opening Docket for Fiscal Year 2024 Electric Supply Line Filings, ¶ 1 (emphasis added) (hereinafter “Order Opening Docket”).

3. On May 7, 2024, NEET Southwest filed its Form EL for the Wolf Creek to Blackberry Transmission Project (“WCB Project”). Concurrent with the filing of its Form EL, NEET Southwest filed a *Motion for Waiver or in the Alternative for Protective Order* (“Motion for Waiver”). The Motion for Waiver sought waiver of the requirement to file a “cost breakdown” with its Form EL 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 financing and costs associated with the WCB Project and issued an order requiring quarterly cost reporting, 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 Form EL.

4. Alternatively, NEET Southwest sought a Protective Order including extra protections for “Highly Confidential-Competitive” material. In absence of a waiver, the requested Protective Order is necessary to prevent competitive parties from viewing cost information that relates to the competitive bidding process at the Southwest Power Pool (“SPP”). If such cost information is disclosed to competitive parties, NEET Southwest would be competitively disadvantaged in future bidding processes because its competitors would have knowledge of

NEET Southwest’s confidential bidding strategies and raw input values used to package together bids. NEET Southwest did not anticipate discovery in this case, so the Protective Order was only necessary to protect a small portion of its Form EL.¹

5. On May 13, 2024, NEET Southwest received a letter from Commission Staff stating that NEET Southwest’s Form EL had been approved.

6. It appears that on July 9, 2024, the Commission issued its Protective & Discovery Order. However, the Protective & Discovery Order has never been served upon NEET Southwest and is not posted to the Compliance Docket on eLibrary. NEET Southwest only learned of the Protective & Discovery Order by chance, through discussions with counsel for another party to this Compliance Docket. Putting this procedural issue aside, the Protective & Discovery Order is nevertheless in error because it authorizes formal discovery procedures in a Compliance Docket that has already been resolved and —by the Commission’s own instructions—merely serves as a repository for the Commission Staff to “approve EL applications during the normal course of business.” Order Opening Docket at ¶ 1. Discovery is wholly inappropriate in an uncontested, ministerial proceeding such as this.

7. If the Commission does not reconsider and strike the portion of the Protective & Discovery Order that authorizes formal discovery procedures, this EL Compliance Docket and all future EL compliance dockets are at risk of becoming burdensome, inefficient, and potentially unending forums for discovery requests and disputes.

¹ Notably, this is not an issue unique to NEET Southwest. With the amendment to K.S.A. 66-104(e), which now requires Form EL filings by entities that opt-out of regulation by the Commission, independent power producers will likely have similar concerns regarding the submission and availability of “cost breakdowns” applicable to their facilities.

8. Commission Staff has indicated that it processes approximately 180 Form ELs per year.² That number is expected to grow since the 2021 amendment to K.S.A. 66-104(e), which now requires Form EL filings by entities that opt-out of regulation by the Commission. By issuing the Protective & Discovery Order in this Compliance Docket, every entity that has or will file a Form EL in 2024 is now subject to formal discovery. Surely that was not the intent of the Commission.

9. Notably, concerns about the submission and availability of a “cost breakdown” are not unique to NEET Southwest. With the amendment to K.S.A. 66-104(e), independent power producers will likely have similar concerns regarding the submission and availability of “cost breakdowns” applicable to their facilities. Independent power producers participate in extremely competitive wholesale energy markets and closely guard their costs from competitors.

10. Accordingly, the Commission should strike the discovery portions of the Protective & Discovery Order and issue a clean Protective Order, inclusive of the extra protections for the “cost breakdown” included with NEET Southwest’s Form EL.

² Docket No. 19-GIME-190-CPL, Order Opening an Annual Compliance Docket for Electric Supply Line Filings, Attachment A, p. 2 (Staff Report & Recommendation).

WHEREFORE, NEET Southwest requests the Commission reconsider its *Order Granting Joint Respondents' Request to File out of Time; And Protective and Discovery Order* and strike all portions authorizing discovery.

Respectfully submitted,

/s/ Andrew O. Schulte

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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
Andrew O. Schulte
August 8, 2024.

CERTIFICATE OF SERVICE

I hereby certify that on the August 8, 2024, a true and accurate copy of the above and foregoing was sent electronically to the following:

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