

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

In the Matter of the Annual Compliance)
Docket Supply Line Filings.) Docket No. 24-GIME-002-CPL

**RESPONSE OF 4 RIVERS ELECTRIC COOPERATIVE, INC. AND
HEARTLAND RURAL ELECTRIC COOPERATIVE, INC. OUT OF TIME
TO MOTION FOR WAIVER OR IN THE ALTERNATIVE
FOR PROTECTIVE ORDER**

COME NOW, 4 Rivers Electric Cooperative, Inc. (“4 Rivers”) and Heartland Rural Electric Cooperative, Inc. (“Heartland”) (collectively, “Joint Respondents”) and, pursuant to K.A.R. 82-1-218(d), submits their Response to the Motion for Waiver or in the Alternative for Protective Order (“Motion”) filed by NextEra Transmission Southwest, LLC (“NEET Southwest”) on May 7, 2024. Additionally, Joint Respondents respectfully request the Commission to exercise its discretion as permitted by K.A.R. 82-1-217(b) and allow Joint Respondents to submit their Response subsequent to the May 17, 2024, 10-day deadline for responsive pleadings. For their Response and request for extension of time, Joint Respondents state as follows:

I. Background

1. On July 6, 2023, the State Corporation Commission of the State of Kansas (“Commission”) opened the above-captioned docket to serve as the repository for the filing of Electric Supply Line (“EL”) applications, notices, and related submittals in Fiscal Year 2024 (July 1, 2023, to June 30, 2024).¹ Entities required by K.A.R. 82-12-1 *et seq.* to file EL applications and other documents were directed to do so in the instant docket.²

¹ See Order Opening Docket for Fiscal Year 2024 Electric Supply Line Filings, Docket No. 24-GIME-002-CPL (July 6, 2023).

² *Id.* at para. 4 and ordering para. A.

2. On May 7, 2024, NEET Southwest filed a Motion seeking a waiver of K.A.R. 82-12-3(b) of the Commission’s Wire Stringing Rules or, alternatively, requests a protective order to prevent the disclosure of its confidential information, with review of the information limited to the Commission and Commission staff. Specifically, K.A.R. 82-12-3(b) states, in pertinent part: “Each utility proposing to build a new electric supply line, or contemplating a change in an existing electric supply line located outside the corporate limits of any city, shall present an application to the commission for approval. The application shall consist of a completed application form as approved by the commission, and any other information required by the form or these regulations including: ...*a cost breakdown of the construction or extensions with unit cost of the plant.*”³

3. In its Motion, NEET Southwest argues in primary part that a waiver of K.A.R. 82-12-3(b) is appropriate because the costs for its construction of the Wolf Creek to Blackberry transmission line, for which an EL application is required, will be recovered regionally under Attachment J of the Southwest Power Pool, Inc.’s (“SPP”) Open Access Transmission Tariff (“Tariff”), which is jurisdictional to the Federal Energy Regulatory Commission (“FERC”).⁴ NEET Southwest also argues that the Wolf Creek to Blackberry construction costs have already been extensively reviewed by the Commission in other Commission processes and, therefore, to provide it again in an EL application is redundant.⁵ Finally, as an overarching premise, NEET Southwest asserts that because that the cost breakdown requirement contained in K.A.R. 82-12-

³ K.A.R. 82-12-3(b) (emphasis supplied).

⁴ Motion at paras. 5-7.

⁵ *Id.* at 5, 10, and 11.

3(b) does not fall within the purview of the Commission's jurisdiction, its request for a waiver of this provision should be granted.⁶

4. Alternatively, if the Commission denies NEET Southwest's waiver request, NEET Southwest requests that a protective order be issued in this docket, including extra protection for information deemed "Highly Confidential-Competitive," in order to protect not only its project costs, but also to limit review of its confidential cost information to the Commission and Commission staff.⁷

5. Joint Respondents have certificated service territory across which NEET Southwest intends to construct the Wolf Creek to Blackberry line. As such, Joint Respondents maintain that NEET Southwest should be required to comply with all aspects of the Commission's Wire Stringing Rules in order to protect their interests from the possibility of unreasonable interference or damage to their existing facilities and also to ensure that a breakdown of the construction costs is reasonable.⁸

II. Objection to Waiver Request

6. Joint Respondents submit that the waiver request should be denied. The Commission's Wire Stringing Rules, considered as a whole, provide that at least minimum industry standards and practices are utilized when a utility proposes to build a new electric supply line or contemplates a change in an existing electric supply line and are intended to ensure the safe installation of such electric supply lines.⁹ The Wire Stringing Rules address such issues as the operating characteristics and physical properties of the line and related

⁶ *Id.* at 12.

⁷ *Id.* at paras. 13-21.

⁸ *See* K.S.A. 66-183.

⁹ K.A.R. 82-12-2 (adoption by reference of the National Electric Safety Code) and 82-12-3.

appurtenances, maps and plats of the location of the line, notice to railroads and other utilities within ½ mile of the contemplated construction, and inductive coordination, to name a few.¹⁰

7. In addition to the emphasis on utility coordination and avoiding interference with and damage to existing facilities, the Wire Stringing Rules require that a utility considers cost in its construction methods, promoting least cost planning efforts.¹¹ As such, review of the cost information in the context of an EL application is very different than a review of costs for rate recovery under the SPP Tariff, the Commission's certificate and transmission line siting processes, or the type of project cost information provided in SPP's competitive bidding process.¹² In fact, coordination with the Joint Respondents could assist NEET Southwest in minimizing its construction costs by reducing the possibility of interference with or damage to their existing facilities. Thus, it would be inappropriate to divorce the installation of new lines with the cost to install, and the Commission should reject NEET Southwest's request for a waiver of the breakdown of its project costs required under K.A.R. 82-12-3(b).

III. Objection to Limiting Review of Confidential Cost Information

8. While Joint Respondents appreciate the sensitive nature of NEET Southwest's project costs, Joint Respondents believe that the appropriate recourse is the issuance of a protective order, which NEET Southwest also suggests.¹³ However, Joint Respondents object to the request for extra protection for information deemed "Highly Confidential-Competitive," wherein only the Commission and Commission staff are eligible to review the information. The purpose of a protective order is to protect confidential commercial information and trade secrets

¹⁰ See generally K.A.R. 82-12-1 *et seq.*

¹¹ See *id.*

¹² Motion at paras. 6-11, 14.

¹³ *Id.* at 13-17.

from the harm of disclosure,¹⁴ including the sensitive cost information described by NEET Southwest.¹⁵ Neither NEET Southwest's description of its sensitive cost information or the harm of competitive disadvantage in future strategic endeavors justifies the need for heightened protection and such information is adequately protected under the Commission's standard protective order and nondisclosure certificate process.

9. Joint Respondents are in the process of coordinating with NEET Southwest to ensure that NEET Southwest constructs the Wolf Creek to Blackberry line across their service territories in a manner that complies with all of the Commission's Wire Stringing Rules and industry standards in order to prevent interference with and damage to Joint Respondents' existing facilities and at a reasonable cost. Thus, the breakdown of construction costs required by K.A.R. 82-12-3(b) on the EL application must be made available to Joint Respondents. In turn, Joint Respondents will comply with all of the requirements of the Commission's standard protective order, including filing nondisclosure certificates.

IV. Good Cause for Extension of Time to Submit Response

10. Pursuant to K.A.R. 82-1-218(d), responsive pleadings are due 10 days after service of an application, petition, notice, and similar filings.¹⁶ As noted above, NEET Southwest's Motion was filed on May 7, 2024, and thus, Joint Respondents' response was due May 17, 2024. Joint Respondents respectfully request the Commission to exercise its discretion as permitted by K.A.R. 82-1-217(b) and allow Joint Respondents to submit their Response subsequent to the May 17, 2024, deadline. K.A.R. 82-1-217(b) provides that when an act is required to be done at or within a specified time, the Commission may exercise its discretion and

¹⁴ See K.A.R. 82-1-221a.

¹⁵ See, e.g., Motion at para. 15.

¹⁶ See K.A.R. 82-1-218(d).

extend the time for good cause. Since the filing of NEET Southwest's May 7, 2024, Motion, there has been no reported activity in this docket. Additionally, the Commission has not issued a procedural order in this docket, so Joint Respondents' request does not interfere with an existing procedural schedule and future filing dates. As a result, the orderly and prompt conduct of this proceeding will not be impaired by allowing Joint Respondents to submit their Response out of time.

11. While NEET Southwest's Motion was initially reflected on the Commission's website under the instant docket, as of this date, the Motion no longer appears. Thus, Joint Respondents have been uncertain as to the status of the Motion. Nonetheless, out of an abundance of caution, Joint Respondents seek to submit their Response.

12. Therefore, Joint Respondents assert good cause in making their request for an extension of time by which to submit their Response to NEET Southwest's Motion.

WHEREFORE, Joint Respondents respectfully request that the Commission (1) deny NEET Southwest's request for a waiver of K.A.R. 82-12-3(b); (2) deny NEET Southwest's request to limit review of the breakdown of its project costs required to be provided on its EL application and, alternatively, issue a standard protective order; (3) allow Joint Respondents to submit their Response out of time; and (4) for such other relief that the Commission deems just and proper.

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Respectfully submitted,

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Dated this 7th day of June, 2024.

VERIFICATION
(K.S.A. 53-601)

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

I, Mark Scheibe, verify under penalty of perjury that I have caused the foregoing Response to be prepared on behalf of 4 Rivers Electric Cooperative, Inc. and Heartland Rural Electric Cooperative, Inc; that I have read and reviewed the Response; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

/s/ Mark Scheibe

Mark Scheibe
CEO, Heartland Rural Electric Cooperative

Executed on this 7th day of June, 2024.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Response of 4 Rivers Electric Cooperative, Inc. and Heartland Rural Electric Cooperative, Inc. was electronically served on this 7th day of June, 2024, to the following named persons appearing on the Commission's service list as last modified on June 28, 2024.

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