

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

**IN THE MATTER OF THE DELAWARE PUBLIC)
SERVICE COMMISSION STAFF TO ESTABLISH)
REGULATIONS FOR CERTIFYING) PSC DOCKET 18-XXXX
NEW ELECTRIC TRANSMISSION UTILITIES)
IN THE STATE OF DELAWARE)**

**PETITION OF THE DELAWARE PUBLIC SERVICE COMMISSION STAFF TO
ESTABLISH CERTIFICATION REQUIREMENTS FOR NEW ELECTRIC
TRANSMISSION UTILITIES IN THE STATE OF DELAWARE**

Pursuant to the general responsibilities assigned by the Delaware Public Service Commission (“Commission”), the Commission Staff (“Staff”) respectfully submits this petition (“Petition”) requesting that the Commission open a docket for the purposes of establishing certification requirements for new electric transmission services in the State of Delaware.

BACKGROUND

1. The Federal Energy Regulatory Commission (“FERC”) approved Order 1000¹ in July 2011, a landmark ruling intended to increase competition in the electric transmission industry. Order 1000 required competitive solicitation for determining construction responsibility for transmission projects, which had been historically constructed by incumbent utilities. The competitive solicitation required by Order 1000 increases the possibility that an electric transmission company which has never built transmission facilities in the state could be assigned responsibility to build new transmission facilities in Delaware.

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utilities, Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g, Order No. 1000-A*, 139 FERC ¶ 61,132, *order on reh’g and clarif., Order No. 1000-B*, 141 FERC ¶ 61,044 (2012), *aff’d sub. nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

2. On February 14, 2018, Delaware Governor John Carney signed House Bill 127 as amended by House Amendment No. 1 (“HB 127”) into law. HB 127 requires persons or entities seeking to begin the business of an electric transmission utility in Delaware to first make application to the Commission and obtain a Certificate of Public Convenience and Necessity (“CPCN”).

3. HB 127 outlines what the Commission shall consider in determining whether to grant a CPCN application, including:

- a. whether a transmission project is approved by PJM
- b. the impact of granting the certificate of public convenience and necessity application on the State’s economy and benefits to the State ratepayers
- c. the impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public

HB 127 does not require any public utility to secure such a certificate for any construction, modifications, upgrades or extensions within the perimeter of any territory already served by it (e.g. Delmarva Power & Light Company), nor does it extend Commission authority to transmission facilities impacting the Delaware Electric Cooperative or Delaware Municipal Electric Corporation.

4. In 1999, the Commission took similar action to establish regulations for retail electric suppliers after the General Assembly approved customer choice in Delaware.² The result of that process was PSC Regulation No. 49 *Rules for Certification and Regulation of Electric Suppliers*.

² *IN THE MATTER OF THE ADOPTION OF RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF 26 DEL. C. CH. 10 RELATING TO THE CREATION OF A COMPETITIVE MARKET FOR RETAIL SUPPLY SERVICE (OPENED APRIL 27, 1999)*; PSC Order 5068, (April 27, 1999).

REQUESTED RELIEF

WHEREFORE, in furtherance of this new law, the Staff respectfully requests the Commission to open a regulation docket for the purposes of promulgating regulations establishing certification requirements for entities seeking to begin the business of an electric transmission utility in the State of Delaware. A recommended order for Commission consideration is attached, along with proposed draft regulations.

Respectfully submitted,

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