SPONSOR: Rep. Paradee & Sen. McDowell
Reps. Baumbach, Carson, Heffernan, Hensley, J. Johnson, Keeley, Kowalko, Wilson; Sens. Hansen, Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 127
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 1, Subchapter II, Title 26 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 203E Certificate of public convenience and necessity for new electric transmission utilities.

(a) Except as provided in §203A(a)(3) of this title, 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 obtained from the Commission a certificate that the present or future public convenience and necessity requires, or will be served by, the operation of such business.

(b) A person or entity seeking to begin the business of an electric transmission utility in this State shall first make application to the Commission for a certificate of public convenience and necessity approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The application for a certificate of public convenience and necessity shall be in writing, shall be in such form as determined by the Commission, and shall contain such information as the Commission may prescribe. In determining whether to grant the certificate, the Commission shall consider:

(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:

a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company;

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; and

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Released: 01/23/2018 05:00 PM

c. The engineering and technical design of any transmission facilities proposed by the applicant.

(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; and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

(c) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days.

(d) Notwithstanding any other provision of this section, a certificate of public convenience and necessity for an electric transmission utility will not be granted if the Commission finds that the applicant is unwilling or unable to provide safe, adequate and reliable transmission services, or is currently subject to a Commission finding that the applicant is unwilling or unable to provide safe, adequate and reliable transmission services.

(e) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by an electric transmission utility. Good cause shall consist of:

(1) A finding by the Commission of material noncompliance by the holder of the certificate with any conditions imposed in the certificate by the Commission, or with any order or rule of the Commission related to the same; or

(2) A finding by the Commission that the holder of the certificate has failed in a material manner to provide safe, adequate, and reliable transmission services.

(f) Any proceedings under this section involving a certificate of public convenience and necessity shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

Section 2. Amend §203A(a)(3), Title 26 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(a)(3) This section shall not be construed to 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.

Section 3. Amend §1001(26), Title 26 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows and redesignating accordingly:

§ 1001 Definitions.

As used in this chapter, unless the context otherwise requires:

(26) "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.

Section 4. Amend §102(2), Title 26 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows and redesignating accordingly:

§ 102 Definitions.

As used in this title, unless the context otherwise requires:

(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.