

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

Before Commissioners: Shari Feist Albrecht, Chairwoman
Jay S. Emler
Dwight D. Keen

In the Matter of the Application of FreeState Electric)
Cooperative, Inc. for a Certificate of Convenience and) Docket No. 19-FSEE-098-COC
Authority to Transact the Business of a(n) Electric Public)
Utility in the State of Kansas. Osage County)

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND AUTHORITY

NOW, the above-captioned matter comes on for consideration and determination by the Kansas Corporation Commission (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On September 6, 2018, FreeState Electric Cooperative, Inc. (FreeState) filed an application requesting a Certificate of Convenience and Authority to transact the business of an electric public utility in a portion of Osage County, Kansas; Westar Energy, Inc. is the current provider in the territory described below. FreeState is an electric public utility as defined by K.S.A. 66-104. A public hearing was neither requested nor held.

2. FreeState requests that it be certificated as an electric public utility for the purpose of providing electric public utility service in following described territory:

OSAGE COUNTY

**Territory West ½ of Northeast ¼ and Northwest ¼ of the Southeast ¼ of Section 4,
Township 14 South, Range 16 East in Osage County, Kansas.**

3. On October 30, 2018, Commission Staff (Staff) submitted its Report and Recommendation, dated October 26, 2018, recommending the Commission grant FreeState's

application and issue the company a Certificate of Authority to transact the business of an electric public utility in the territory described in paragraph 2 above.

II. LEGAL STANDARDS AND DISCUSSION

4. Pursuant to K.S.A. 2017 Supp. 66-131, the Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas. K.S.A. 66-1,170 et seq., the Retail Electric Suppliers Act (RESA), requires the State of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. Notwithstanding the mandated single electric provider service territories, RESA also provides that retail electric suppliers may enter into agreements to amend boundaries between their facilities. The agreements are subject to Commission approval, and if so approved, the Commission shall issue a certificate accordingly.

5. Staff indicates that FreeState and Westar Energy, Inc. (Westar) share a boundary line through a landowner's property in Section 4, Township 14 South, Range 16 East, in Osage County. The landowner wishes to build a new house and barn, with the barn currently being built in FreeState's certified territory, and the house to be built within Westar's certified territory. Prior to construction of the barn, the landowner contacted both Westar and FreeState, with Westar ultimately agreeing to cease service in the above-mentioned area because of the added cost of installing underground power requested by the landowner. Because of the rocky terrain and a large pond Westar would need to traverse, the trenching would increase the cost to the customer another \$70,000. FreeState has already provided the customer with power to his barn and the cost to extend power to the house would be minimal.

6. On April 26, 2018, Westar filed a companion Application in Docket No. 19-WSEE-166-CCS requesting to cease operating as an electric service provider in the above

described territory. Staff has reviewed the applications of both FreeState and Westar, determining that the legal descriptions and maps provided with both applications are accurate. Concluding, Staff determines that the public convenience will be promoted by the requested territory exchange and recommends the Commission grant the Applications of both FreeState Electric Cooperative, Inc. and Westar Energy, Inc.

III. FINDING AND CONCLUSION

7. The Commission adopts Staff's analysis and recommendation of October 26, as stated in its Report and Recommendation, attached hereto and incorporated by reference, and finds that FreeState's application should be granted and that the public convenience and necessity will be promoted by issuing FreeState the requested Certificate of Convenience and Authority to transact the business of an electric public utility in the territory described in paragraph 2.

IT IS, THEREFORE, BY THE COMMISSION CONSIDERED AND CERTIFIED:

A. The Application filed by FreeState Electric Cooperative Inc., on September 6, 2018, is hereby granted and a Certificate of Convenience and Authority to transact the business of an electric public utility in the territory described in paragraph 2 above is granted.

B. The parties have fifteen (15) days, plus three (3) days if service of this Order is by mail, from the date of this Order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/06/2018



Lynn M. Retz
Secretary to the Commission

PZA

STATE OF KANSAS



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SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight D. Keen

FROM: Jason Kerr, Electric Utility Engineering Technician
Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: October 26, 2018

SUBJECT: 19-WSEE-166-CCS
In the Matter of the Application of Westar Energy, Inc. for Authority to Cease Transacting the Business of an Electric Public Utility Specifically, in Portions of Section 4, Township 14 South, Range 16 East, Osage County, Kansas.

19-FSEE-098-COC
In the Matter of the Application of FreeState Electric Cooperative, Inc. for a Certificate of Public Convenience and Authority to transact the business of an Electric Public Utility in the State of Kansas.

EXECUTIVE SUMMARY:

Westar Energy, Inc. (Westar) is seeking the approval of the Commission to cease operating as an electric utility in a small tract of land in Osage County, Kansas. FreeState Electric Cooperative, Inc. (FreeState) seeks a Certificate of Public Convenience and Authority in this tract of land.

Staff recommends that the Commission grant these Applications and find that public convenience will be promoted by this transaction.

BACKGROUND:

On October 24, 2018, Westar filed an Application to Cease in Docket 19-WSEE-166-CCS. In Docket 19-FSEE-098-COC, FreeState filed an Application for a Certificate of Public Convenience and Authority on September 06, 2018.

Westar and FreeState share a boundary line through a landowner’s property in Section 4, Township 14 South, Range 16 East, in Osage County. The landowner wishes to build a new house and barn. The barn which is currently being built is located within FreeStates current certified territory¹. The house the landowner wishes to build is located within Westars certified territory.

Prior to construction of the barn, the customer had been in contact with Westar and FreeState. Westar ultimately agreed to cease in this area because of the added cost of installing underground power that the customer requested. Because of the rocky terrain and large pond Westar would need to traverse, the trenching would increase the cost to the customer another 70,000.00.

FreeState has already provided the customer with power to his barn, the cost to extend power to his house would be minimal.

K.S.A. 66-1,170 et seq. the Retail Electric Suppliers Act (RESA) requires the State of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. Notwithstanding the mandated single electric provider service territories, RESA also provides that retail electric suppliers can enter into agreements to amend boundaries between their facilities. The agreements are filed in the form of Certificates and, if approved by the Commission, Certificates to amend territory are issued.

The Commission has authority to grant a Certificate of Convenience and Necessity to any public utility seeking to transact business in the State of Kansas.²

ANALYSIS:

Staff has reviewed the Applications and determined that the legal descriptions and maps provided with the Applications are accurate. Staff has also confirmed that the attached legal description, marked attachment A, is not in conflict with the Commission’s Certificate records.

Staff recommends that the Commission find that public convenience will be promoted by the granting of this Application.

The Commission action date is May 16, 2019.

RECOMMENDATION:

Staff recommends that the Commission grant this Application. Upon approval, the updated territory descriptions will be reflected in the Commission’s certified territory map.

¹ EL 39485

² K.S.A. 66-131.

ATTACHMENT A

Legal Description of Territory Trade Between
Westar Energy, Inc. and FreeState Electric Cooperative, Inc.
Docket No. 19-WSEE-166-CCS and 19-FSEE-098-COC

OSAGE COUNTY

A tract of land that is the West 1/2 of the Northeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 4, Township 14 South, Range 16 East, Osage County Kansas.

CERTIFICATE OF SERVICE

19-FSEE-098-COC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 11/06/2018.

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