

I. Commission Authority

1. This proceeding involves an application for a siting permit under the Kansas Siting Act, K.S.A. 66-1,177, *et seq.*, to construct an electric transmission line in Kansas. The Commission must determine several issues in deciding whether to issue the siting permit. This Order addresses each issue separately, setting forth findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the Commission's discretion, as required by the Kansas Administrative Procedure Act (KAPA). K.S.A. 77-526(c). Under the Kansas Siting Act, the Commission shall issue a final Order on this Application within 120 days after the date the Application was filed. The Order in this docket must be filed by July 12, 2011. K.S.A. 66-1,178(d). After careful review and consideration of the evidentiary record, public comments, and policies benefiting the general public, the Commission grants this Application for a siting permit and approves the proposed line with inclusion of several modifications, subject to and upon the terms and conditions as discussed below.

2. The Commission has jurisdiction over ITC Great Plains, LLC's (ITC Great Plains) Application under the Kansas Siting Act. K.S.A. 66-1,177, *et seq.* Unless an exception to the Kansas Siting Act applies, all electric utilities are required to acquire a siting permit from the Commission before beginning site preparation for or construction of an electric transmission line, or before exercising the right of eminent domain to acquire any interest in land in connection with such line. K.S.A. 66-1,178. An electric transmission line is defined as "any line or extension of line which is at least five (5) miles in length and which is used for the bulk transfer of two hundred thirty (230) kilovolts or more of electricity." K.S.A. 66-1,177(b). The transmission line proposed by ITC Great Plains in this proceeding is approximately 120 miles in length, and will be used for the bulk transfer of 345 kilovolts (kV) of electricity. Application, March 14, 2011, paragraph 6 (Application, ¶ 6). Therefore, the Commission finds that the

transmission line proposed to be constructed in this proceeding falls within the definition of an electric transmission line subject to the Kansas Siting Act.

3. Any hearing conducted under the Kansas Siting Act must be in accordance with the provisions of the KAPA. The Commission must decide the necessity for and the reasonableness of the location of the proposed electric transmission line in issuing or withholding a siting permit. In its decision, the Commission must take into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas. The Commission may condition such permit as it deems just and reasonable and to best protect the rights of all interested parties and the general public. K.S.A. 2010 Supp. 66-1,180.

4. In addition to its authority under the Kansas Siting Act, the Commission has full power, authority, and jurisdiction to supervise and control electric public utilities, as defined at K.S.A. 66-101a, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. K.S.A. 66-101; K.S.A. 66-101a; K.S.A 2010 Supp. 66-104. The Commission applies a liberal construction to its grants of power, authority, and jurisdiction. Furthermore, “all incidental powers necessary to carry into effect the provisions of [the Electric Public Utilities Act, K.S.A. 66-101, *et seq.*] are expressly granted to and conferred upon the Commission.” K.S.A. 66-101g.

II. Background

5. On March 14, 2011, ITC Great Plains filed an Application for a siting permit granting ITC Great Plains the right to construct a double-circuit 345 kV transmission line consisting of a line segment of the “V Plan,” which is discussed in more detail below and

hereinafter referred to as the Y Plan.¹ ITC Great Plains' proposed line would run from the Spearville substation south to a new substation in Clark County, Kansas (Clark County substation), and continuing east to a new substation in Barber County near Medicine Lodge, Kansas (Thistle substation). Application, ¶ 6. ITC Great Plains stated that the Y Plan is one of the priority projects of the Southwest Power Pool (SPP). Application, ¶ 7. The line proposed by ITC Great Plains would cross portions of Ford, Clark, Kiowa and Barber Counties in Kansas. *See* Direct Testimony of Salvatore Falcone, March 14, 2011, Exhibit 3 (map of proposed route) (Falcone Direct, Exhibit 3).

6. On June 5, 2007, the Commission granted ITC Great Plains' request for a certificate of public convenience to transact the business of an electric public utility in Kansas to construct, own, operate, and maintain bulk electric transmission functions in Kansas. Application, ¶ 1, *citing* Order Approving Stipulation & Agreement and Addressing Application of Statutes, Docket No. 07-ITCE-380-COC, June 5, 2007 (07-380 Order). The Commission also previously granted ITC Great Plains' request for an amendment to its certificate to construct the Y Plan in Docket Nos. 08-ITCE-936-COC, 08-ITCE-937-COC, and 08-ITCE-938-COC (consolidated and referred to as the 08-936 Docket), on October 5, 2009. Application, ¶ 2. A Second Stipulation and Agreement was approved by the Commission on July 29, 2010, reflecting SPP's decision to approve construction of the Y Plan line at 345 kV and not 765 kV,

¹ ITC Great Plains refers to this project as the "V Plan." Southwest Power Pool's witness Katherine Prewitt stated: "As a point of clarification, it is important to note that for purposes of the proposed lines in Kansas, all projects in the V Plan are part of the Y Plan. The Y Plan includes a line from Woodward EHV in Oklahoma which interconnects with the V Plan in Kansas, making these proposed lines resemble a "Y" when viewed on a map, and hence the name, the Y Plan. For purposes of the proposed lines for which Prairie Wind is seeking siting authority in Docket No. 11-PWTE-600-MIS and for which ITC is seeking siting authority in this Docket, the designation of Y Plan or V Plan has no real significance, as they are both parts of the same overall plan." Direct Testimony of Katherine Prewitt, April 6, 2011, page 4, footnote 1. For the sake of consistency with Docket No. 11-PWTE-600-MIS, the project will be referred to as the "Y Plan" throughout this Order.

as contemplated by the Commission's October 5, 2009 Order. The Second Stipulation and Agreement allocated responsibility for construction of the Y Plan project. Application, ¶ 3.

7. The Commission has recognized that a method to fund this type of regional project that would spread costs over the SPP region was critical to best protect the interests of the public. The SPP is a Regional Transmission Organization (RTO) approved by the Federal Energy Regulatory Commission (FERC) with 62 members² in nine states, and administers transmission service to 48,930 miles of transmission lines in Kansas and surrounding states. Direct Testimony of Katherine Prewitt, April 6, 2011, page 3 (Prewitt Direct, p. 3). The Commission stated, "To assure construction of these proposed transmission lines, development of a regional funding mechanism is critical to the parties and to this Commission in deciding what is in the best interest of the public." Order Granting Joint Motion to Approve Stipulation and Agreement and Denying CURB's Objection, Docket No. 08-ITCE-936-COC, October 5, 2009, paragraph 4 (08-936 Order, ¶ 4). The Commission also stated that it wanted to ensure that Kansas ratepayers would not bear the cost of this proposed transmission line being built that will benefit customers far beyond the borders of Kansas. *Id.* On June 17, 2010, the FERC approved the Highway/Byway cost allocation method, which provides that base plan funded projects greater than 300 kV are allocated across the entire SPP footprint on a region-wide basis, wherein all wholesale transmission customers pay an identical rate on a pro-rata basis according to their load. Direct Testimony of Alan K. Myers, March 14, 2011, page 4 (Myers Direct, p. 4); *see* Application, Exhibits 1 and 2, page 1 (Notifications to Construct to Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC). The Commission conditions its approval of ITC Great Plains' siting permit on the costs of this project being recovered through the SPP's

² At the time of the filing of Direct Testimony of Katherine Prewitt, the SPP had 62 members; SPP now has 64 members. *See* <http://www.spp.org/section.asp?pageID=4>.

Highway/Byway cost allocation method for the transmission line, as approved by the FERC. If the SPP or the FERC reconsider or change the previously-approved cost allocation method, this Commission reserves the right to reconsider the Order in this docket. The FERC has issued a rulemaking docket concerning this issue, and is expected to issue rules on July 21, 2011. Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 131 FERC ¶ 61,253, Docket No. RM10-23-000 (June 10, 2010).

8. Parties to this proceeding include ITC Great Plains and Commission Staff (Staff), and the following parties who were granted intervention by the Commission: the Citizens' Utility Ratepayer Board (CURB); Chermac Energy Corporation (Chermac); Prairie Wind Transmission, LLC (Prairie Wind); the SPP; Sellard, Inc., Robert Sellard, Ellis Land Company LLC, James and Debbie Smiley, James Ruddy, Raymond Birney, Leroy Birney, Julie Fletcher Cowell, Stanley H. and Norma N. Seibel, The James H. Cuer Trust, The Hearne Living Trust, Lane Farms LLC, Neibling Farms, Inc., Marcia Fox, The Elden Beebe Trust, Raymond and Patricia Fisher, Homer D. Slief, The Robert and Peggy Fisher Trust, and the James and Sandra Tangeman Trust (Landowner Group); Shooting Star Power Partners, LLC (Shooting Star); Mid-Kansas Electric Company, LLC (Mid-Kansas); Westar Energy, Inc. (Westar); and Sunflower Electric Power Corporation (Sunflower).

9. As noted above, ITC Great Plains is seeking a siting permit to construct a new double-circuit 345 kV line from the Spearville substation to the new Clark County substation, and continuing east to the new Thistle substation. ITC Great Plains stated that the Thistle substation will serve as the connection point for a double-circuit 345 kV line to be built by Prairie Wind, who is also responsible for the design, construction and operation of a double-circuit 345 kV line from the Thistle substation to interconnect at the Kansas/Oklahoma border with a transmission project terminating at the Woodward substation in Oklahoma. Application, ¶

12. Carl A. Huslig (Huslig), president of ITC Great Plains, stated that these line segments constitute one of the SPP's Priority Projects, designed to relieve grid congestion, improve the delivery of power to customers, facilitate the addition of new renewable and non-renewable generation to the electric grid, make more efficient use of the transmission system and maintain electric reliability. Direct Testimony of Carl A. Huslig, March 14, 2011, pages 5-6 (Huslig Direct, pp. 5-6).

10. The Y Plan contains line segments approved by the SPP Board of Directors as a group of Priority Projects on April 27, 2010. Application, Exhibits 1 and 2. In June 2010, the FERC approved the SPP's proposal for the Highway/Byway cost allocation methodology, which provides that base plan funded projects greater than 300 kV will be allocated across the entire SPP footprint on a region-wide basis, wherein all wholesale transmission customers pay an identical rate on a pro-rata basis according to their load. Myers Direct, p. 4. The Y Plan is proposed to be constructed at 345 kV, and the vast majority of the project qualifies for the region-wide "Highway" allocation of the Highway/Byway cost allocation method. Myers Direct, p. 4. The costs of the project will be recovered through a region-wide charge determined by the annual transmission revenue requirement (ATRR), which is developed by the transmission owner of each project. Portions of ITC Great Plains' ATRR qualify for regional funding, and each pricing zone in the SPP is then responsible for its pro-rata share of the regionally-funded costs, pursuant to the SPP's Open Access Transmission Tariff (OATT). Myers Direct, pp. 3-5.

11. On June 30, 2010, the SPP issued Notifications to Construct (NTCs) to Sunflower and Mid-Kansas. Huslig Direct, p. 6; *see* Application, Exhibits 1 (NTC to Sunflower) and 2 (NTC to Mid-Kansas). Sunflower and Mid-Kansas are two of the incumbent transmission owners along the routes. Direct Testimony of Thomas B. DeBaun, April 18, 2011, page 5

(DeBaun Direct, p. 5). On September 3, 2010, Sunflower and Mid-Kansas each sent the SPP a letter accepting the NTC and giving notice that Sunflower and Mid-Kansas were designating ITC Great Plains to build the project. Huslig Direct, p. 7; *see* Application, Exhibits 3 (Sunflower letter to the SPP) and 4 (Mid-Kansas letter to the SPP).

12. ITC Great Plains' transmission line will be a double-circuit 345 kV line, which will require a 200-foot nominal right-of-way. Falcone Direct, p. 8. The line will be constructed primarily with single tubular steel poles supported on concrete drilled-pier foundations. The structures will be spaced approximately 800 to 1,500 feet apart with an average span of 900 feet, and will be adjusted if possible in cultivated fields to minimize interference with the operation of center pivot irrigation systems. The structure height will range from 120 to 160 feet depending on terrain, clearance to the ground and objects under the line, and structure spacing. Myers Direct, p. 7.

13. The line will be constructed with aluminum, steel-reinforced conductors utilizing a two-conductor bundle for each of its three phases and arranged in a vertical pattern with conductors spaced 18 inches apart. Two overhead ground wires will be located at the top of the structure to protect against lightning strikes. Myers Direct, p. 7. Wire fences, metal gates and other permanent metal objects within or near the transmission line right-of-way will be grounded to limit the electromagnetically induced levels of static charges to safe levels. Myers, p. 6.

14. Construction of the line will require clearing, structure assembly, structure erection, stringing and tensioning of conductors and shield wires, energizing the line and cleanup/restoration. All conductors and shield wires will be tension strung to ensure the conductor will not touch the ground or other objects during construction. Conductors will be handled with care to keep their surfaces smooth, which minimizes corona and associated radio-TV interference and audible noise. Application, ¶ 14. Structure assembly will occur in the field,

with structures unguyed and self-supporting. The construction crew will consist of 50 to 100 workers using equipment that includes hole diggers, cranes, stringing rigs, conductor tensioners, back hoes, trucks, cars, and other items. Application ¶ 15.

15. ITC Great Plains will apply for and secure a construction activity, National Pollutant Discharge Elimination System permit from the Kansas Department of Health and Environment (KDHE), pursuant to K.S.A. 65-164 and 65-165, and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* Application, ¶ 17. ITC Great Plains will also develop and submit a Storm Water Pollution Prevention Plan to ensure the design, implementation, management and maintenance of best management practices, in order to reduce the amount of sediment and other pollutants in storm water runoff from construction. Application, ¶ 18. ITC Great Plains will ensure the site is inspected on a regular schedule and within 24 hours after a 0.5 inch storm event, and maintenance inspections will be performed by walking, driving or flying along the line route. Application, ¶¶ 18-19.

16. As stated above, the right-of-way will be a nominal width of 200 feet, but could be more or less depending on span length, conductor sag, wind characteristics and adjacent vegetation. Application, ¶ 20. Landowners will be able to use the right-of-way for any agricultural purpose, but will not be permitted to conduct business which would be hazardous to the landowner, the line or the general public, and no foreign structures will be permitted in any part of the right-of way. Application, ¶ 21. Trees and brush in the right-of-way that intrude into clearance areas will be cut back, and herbicides will be used to control weeds unless such treatment is not desired by the landowner. *Id.*

17. Prior to the beginning of construction, easements will be procured starting in mid-2011 if the Commission approves ITC Great Plains' Application, and will continue until spring-2013. Landowners will be compensated for all damages directly attributable to construction

including crop losses. *See* Application, ¶¶ 22-23. ITC Great Plains anticipates construction of this project will be completed no later than December 31, 2014, as required by the SPP. Application, ¶ 23.

III. Procedure

A. Prefiled Testimony and Other Documents

18. The Commission approved a procedural schedule that set deadlines in this docket. Order Adopting Procedural Schedule and Granting Intervention to CURB, March 23, 2011 (March 23, 2011 Order). The following deadlines were scheduled: Staff/Intervenor direct testimony due April 18, 2011; public hearing in Greensburg, Kansas on April 20, 2011; public comment period closing on April 27, 2011; ITC Great Plains rebuttal testimony due May 2, 2011; ITC Great Plains response to public hearing comments on May 2, 2011, and response to written comments on May 4, 2011; Staff/Intervenor response to public hearing comments on May 9, 2011; ITC Great Plains rebuttal to Staff/Intervenor response to public hearing comments on May 16, 2011; list of disputed issues, prehearing motions and discovery cut-off on May 18, 2011; prehearing conference on May 20, 2011; evidentiary hearing beginning May 26, 2011 through May 27, 2011; ITC Great Plains initial brief with proposed factual findings and legal conclusions on June 9, 2011; Staff/Intervenor responsive briefs on June 17, 2011; and ITC Great Plains reply brief on June 24, 2011. March 23, 2011 Order, ¶ 3. The Commission ordered ITC Great Plains to provide notice of the Greensburg public hearing and the opportunity to file written comments to landowners, and to also provide notice in various newspapers, as required by K.S.A. 66-1,179. ITC Great Plains was required to submit an affidavit verifying proper notice was given of the Greensburg public hearing. March 23, 2011 Order, ¶¶ 3, 13.

19. At the evidentiary hearing held on May 26, 2011, the Commission ordered a second public hearing be held in this docket to give those impacted by landowner-proposed

alternative routes the opportunity to hear the details about and to present statements to the Commission regarding the alternatives. Transcript of Proceedings, May 26, 2011, pages 291-292 (Tr., pp. 291-292). The Commission noted that it would hold the second public hearing for those affected by the ITC/Landowner Group Alternative route and the Steele Alternative route, since there were a number of landowners who had not received notice. Tr., pp. 292-294. The Prehearing Officer issued an Order scheduling the second public hearing in this docket for June 27, 2011, in Dodge City, Kansas, which will be discussed in more detail below. Prehearing Officer Order Modifying Procedural Schedule and Taking Administrative Notice, June 1, 2011, paragraph 7 (PHO Order, ¶ 7).

20. ITC Great Plains prefiled direct testimony with its Application on March 14, 2011, from three witnesses: Huslig provided an overview and addressed policy issues; Myers, vice-president of technical services of ITC Great Plains, addressed the necessity for and benefits of the line as well as the routing and cost-recovery mechanism; and Falcone, senior environmental engineer and permitting manager at Black & Veatch, explained the process used to determine the proposed route for the line. Application, ¶ 4. On March 24, 2011, the SPP attached the direct testimony of Prewitt, the director of planning for the SPP, with its Petition to Intervene in support of ITC Great Plains' Application, and formally filed Prewitt's direct testimony on April 6, 2011.

21. On April 18, 2011, parties filed direct testimony according to the procedural schedule. Michael J. Wegner (Wegner), chief of energy operations; and Thomas B. DeBaun (DeBaun), senior energy engineer, filed direct testimony on behalf of Staff. The Landowner Group filed direct testimony of Robert Sellard (Sellard), a farmer and rancher who farms land near the proposed route of the transmission line of ITC Great Plains; and Daniel E. Peaco

(Peaco), president of La Capra Associates, Inc.³ On May 2, 2011, rebuttal testimony was filed on behalf of ITC Great Plains by Huslig, Myers and Falcone.

22. Myers filed a response to public hearing comments on May 2, 2011, and also filed a response to written comments on May 4, 2011. On May 9, 2011, Wegner filed a response to public hearing comments. On May 16, 2011, Myers filed rebuttal testimony to Staff's response to public hearing comments. The parties filed a Joint List of Disputed Issues on May 18, 2011.

23. The Commission conducted an Oral Argument in this docket jointly with Docket No. 11-PWTE-600-MIS (11-600 Docket) on May 11, 2011 to address Commission questions, which included: (1) whether the Commission has authority to extend the procedural schedule in these dockets beyond the 120-day statutory deadline, and any consequences that would result from doing so, (2) if there were any issues that should be considered jointly in this docket and the 11-600 Docket, which involves the Application filed by Prairie Wind requesting a siting permit for another section of the Y Plan transmission line, and (3) whether landowners affected by landowner-proposed alternative routes had sufficient opportunity to provide comments to the Commission if the procedural schedule were not extended. Order Scheduling Oral Argument, May 10, 2011, paragraph 5.

B. Evidentiary Hearing

24. An evidentiary hearing was conducted in this proceeding on May 26, 2011, with the Commission presiding. Appearances at the Evidentiary Hearing were as follows: Brett Leopold (Leopold), Susan Cunningham (Cunningham), Dan Gibb (Gibb) and Karl Zobrist (Zobrist) on behalf of ITC Great Plains; Dana Bradbury (Bradbury) and Patrick Smith (Smith) on behalf of Commission Staff and the public generally; Niki Christopher (Christopher) on behalf of

³ Peaco was not called as a witness at the Evidentiary Hearing, and therefore direct testimony filed by Peaco was not made a part of the record in this docket.

CURB; James P. Zakoura (Zakoura) on behalf of Chermac; John Wine (Wine) on behalf of the SPP; Martin J. Bregman (Bregman) and Cathryn J. Dinges (Dinges) on behalf of Westar and Prairie Wind; and Eric Steinle (Steinle) on behalf of the Landowner Group. Tr., pp. 6-7. Counsel for Shooting Star, Sunflower and Mid-Kansas did not appear at the Evidentiary Hearing. Staff reported that notice was contained in the Order Adopting Procedural Schedule and Granting Intervention to CURB on March 23, 2011. No objections were made to notice, and the Commission found that notice of the hearing as proper and the Commission had jurisdiction to hear the matter. Tr., p. 8.

25. At the beginning of the hearing, the Commission addressed preliminary matters, which are discussed in more detail below, including:

- (1) May 18, 2011 Motion by Landowner Group to Amend Procedural Schedule by Continuing Evidentiary Hearing, Directing ITC Great Plains to Notify Affected Landowners within 660 Feet of the Chermac Alternative, Scheduling a Public Hearing for Affected Landowners along the Chermac Alternative, and Extending the Order Date (LG Motion)
- (2) Reporting Requirements

26. The parties presented brief Opening Statements as follows: Leopold on behalf of ITC Great Plains, Tr., pp. 14-25; Wine on behalf of the SPP, Tr., p. 26; Christopher on behalf of CURB, Tr., pp. 26-28; Bregman on behalf of Westar and Prairie Wind, Tr., pp. 28-30; Steinle on behalf of the Landowner Group, Tr., pp. 30-33; and Bradbury on behalf of Staff, Tr., pp. 33-35. Zakoura did not present an opening statement on behalf of Chermac. ITC Great Plains witnesses testifying at the hearing included Huslig, Tr., pp. 40-83; Myers, Tr., pp. 83-208; and Falcone, Tr., pp. 244-251. The SPP witness testifying at the hearing was Prewitt, Tr., pp. 209-231. The Landowner Group witness testifying at the hearing was Sellard, Tr., pp. 251-271. Staff witnesses testifying at the hearing included Wegner, Tr., pp. 272-285; and DeBaun, Tr., pp. 286-291. Although the Landowner Group prefiled direct testimony of Peaco, the Landowner Group

did not call this witness at the Evidentiary Hearing and did not enter Peaco's prefiled testimony into the record. CURB, Prairie Wind, and Westar did not present witnesses.

27. ITC Great Plains filed its initial post-hearing brief with Proposed Findings of Fact and Conclusions of Law on June 9, 2011. On June 17, 2011, Staff and the Landowner Group filed responsive Post-Hearing Briefs. ITC Great Plains filed a Reply Brief on June 24, 2011.

28. During the evidentiary hearing, CURB objected to notice provided of landowner-proposed alternative routes. The Commission directed the parties to address these issues in briefs, and this issue will be addressed below. CURB filed a Brief in Support of Its Motions on June 9, 2011. On June 17, 2011, ITC Great Plains, Staff, and the Landowner Group filed responsive briefs in opposition to CURB's objection. CURB did not file a reply brief to the responsive briefs.

IV. Notice to Public and Landowners

29. The Kansas Siting Act contains specific requirements and procedures regarding notice. When an electric utility files its Application for a siting permit with a proposed location for an electric transmission line, the utility must submit the names and addresses of the landowners of record whose land or interest therein is proposed to be acquired or which is located within 660 feet of the center line of the easement where the line is proposed to be located in the Application. K.S.A. 66-1,178(a)(2). After an application is filed, the Commission must schedule a public hearing on the Application in one of the counties the line is proposed to traverse. K.S.A. 66-1,178(b). Notice of the time, place, and subject matter of the public hearing is required to be published "in newspapers having general circulation in every county through which the electric transmission line is proposed to traverse once each week for two consecutive weeks, the last newspaper publication to be not less than five days before such hearing date." K.S.A. 66-1,179. Additionally, written notice by certified mail of the public hearing and a copy

of the Application must be served not less than 20 days prior to the hearing date on all landowners described in K.S.A. 66-1,178(a)(2). K.S.A. 66-1,179. The Commission may require the utility to submit an affidavit of publication evidencing the dates of publication and newspapers in which notice appeared prior to the hearing. K.S.A. 66-1,179.

A. Notice Provided

30. With its Application, ITC Great Plains submitted a list with the names and addresses of landowners of record whose land or interest therein was proposed to be acquired in connection with the construction of the line proposed in the Application, or which was located within 1,000 feet of the center line of the easement where the line is proposed to be located. Application, ¶ 25, and Exhibit 5 (attached to Application). ITC Great Plains indicated that it identified landowners of record within 1,000 feet in order to accommodate minor modifications to the proposed route. Application, ¶ 25, footnote 2. In an Affidavit filed April 19, 2011, Leopold stated that legal notices were placed in newspapers having general circulation in the counties where the proposed transmission line would be constructed. Affidavit of Publication and Notice to Landowners, April 19, 2011, paragraphs 1-3 (April 19 Affidavit, ¶¶ 1-3). Each notice was published two consecutive weeks. April 19 Affidavit, Exhibit 2. Leopold by affidavit certified that on March 24, 2011, he had delivered by certified mail, return receipt requested, to owners of record of property located within 1,000 feet of the center line of the proposed route: (1) the notice of public hearing and public comment period, (2) a copy of the Application filed in this docket, and (3) a map of the proposed route. April 19 Affidavit, ¶ 4, *see* Exhibits 1 (notice of public hearing and public comment period) and 3 (list of landowners).

31. On June 24, 2011, Myers submitted an Affidavit of Notice to Landowners stating that he had delivered by certified mail, return receipt requested, on or before June 3, 2011, written notice to landowners of record of property located within 660 feet of the center line of

the ITC/Landowner Group and Steele proposed alternative routes. Affidavit of Notice to Landowners, June 24, 2011, paragraph 3 (June 24 Affidavit, ¶ 3). The written notice contained: (1) a letter, approved by the Commission's Office of Public Affairs and Consumer Protection (PACP Office), providing notice of a second public hearing to be held on June 27, 2011, in Dodge City, Kansas, and of the extended comment period through June 28, 2011; (2) a copy of the Application filed in this docket; (3) a map depicting the entire ITC/Landowner Group proposed alternative route or the entire Steele proposed alternative route, as relevant to the landowner; and (4) a map of each landowner's impacted tract or tracts portraying the filed route and the relevant landowner-proposed alternative route. *Id.* Myers also attached to the Affidavit a copy of the list of tracts and landowners for the ITC/Landowner Group proposed alternative route and a copy of the list of tracts and landowners for the Steele proposed alternative route. *Id.*, see Exhibits 1 (ITC/Landowner Group list) and 2 (Steele list).

32. The Commission concludes that ITC Great Plains complied with the requirement to send notice to all landowners of record whose land or interest therein is proposed to be acquired in the Application in connection with the construction of the line. K.S.A. 66-1,179. In fact, ITC Great Plains exceeded the requirements of K.S.A. 66-1,178(a)(2) by including landowners within 1,000 feet of the center line of the easement of the proposed line, which is greater than the 660 feet required in the Kansas Siting Act. The Commission also approves of the form of notice provided to those who were newly affected by the ITC/Landowner Group and Steele proposed alternative routes, and finds that the notice is appropriate to this proceeding. Additionally, the Commission concludes that the steps ITC Great Plains took to notify landowners of record within 660 feet of the center line of those two landowner-proposed alternative routes that it found to be viable gave adequate notice to landowners, and provided

affected landowners the opportunity to be heard and provide comments to the Commission through the extended public comment period.

33. The Commission finds that ITC Great Plains also met the statutory requirement to publish notice of the Greensburg public hearing conducted on April 20, 2011, as required by K.S.A. 66-1,179 and ordered by the Commission. ITC Great Plains was required to publish notice of the Greensburg public hearing in newspapers having general circulation in every county through which the electric transmission line is proposed to traverse. K.S.A. 66-1,179.

34. In Docket No. 10-ITCE-557-MIS (10-557 Docket), the Commission found that an applicant's obligation to notify landowners does not end with the initial Application. The Commission held that the Legislature adopted notice provisions in K.S.A. 66-1,178(a)(2) and 66-1,179 to ensure landowners received notice that a proposed transmission line might impact their interests, and to give these landowners an opportunity to address the Commission about the proposed route before a decision was made on an application for a siting permit. The Commission held that comments from landowners and members of the public provide important input when considering a request for a siting permit, and that public input may lead to developing a landowner-proposed alternative route that the Applicant finds viable and that should be considered in evaluating the location of the transmission line. The Commission also stated in the 10-557 Docket that if the applicant determines there is a viable landowner-proposed alternative route to its proposed route which is developed in response to public comments, the applicant shall give notice to those landowners who are newly impacted by the landowner-proposed alternative route. Order Granting Siting Permit, Docket No. 10-ITCE-557-MIS, June 30, 2010, paragraph 25 (10-557 Siting Order, ¶ 25).

B. CURB's Objection

35. At the Evidentiary Hearing, CURB expressed two objections to the Commission.

CURB's objections request the Commission:

- (1) Find it has no jurisdiction to consider alternative proposals where affected landowners have not received the requisite notice under the Transmission Siting Act; and
- (2) Strike information contained in column 5 of ITC Exhibit 4 as hearsay, speculation and irrelevant to the proceeding.

CURB's Brief in Support of Its Motions, June 9, 2011 (CURB Brief). At the Evidentiary Hearing, the Commission denied CURB's objection to the information contained in ITC Exhibit 4, and does not find it necessary to readdress that ruling. Tr., p. 96.

36. In its brief, CURB stated that the Commission has no jurisdiction to consider alternative proposals that affect landowners who did not receive statutory notice of ITC Great Plains' Application. CURB Brief, p. 14. CURB stated that the notice ITC Great Plains provided was ineffective to protect the due process rights of those landowners affected by landowner-proposed alternative routes, and therefore the Commission is deprived of jurisdiction to hear evidence on those proposed routes. *Id.* CURB also stated that proper notice of the public hearing to landowners is essential so that they may exercise their right to be heard, and that statutory notice is required to be provided to those landowners affected by landowner-proposed alternative routes. CURB Brief, p. 18.

37. ITC Great Plains, Staff, and the Landowner Group each filed responsive briefs stating the Commission should deny CURB's request for the Commission to find it has no jurisdiction. ITC Great Plains stated that statutory notice is not required for landowners impacted by alternate routes, and these landowners can be provided legally sufficient due process via other forms and methods of notice that may not comport with statutory requirements for the

first public hearing addressing the filed route. ITC Great Plains' Response in Opposition to CURB's Motion Requesting the Commission Find It Has No Jurisdiction, June 17, 2011, paragraph 17 (ITC Great Plains Brief in Response to CURB, ¶ 17). Staff stated that the statutory notice requirement applies to the route proposed by the utility in its siting application, and that notice of the additional public hearing and comment period are sufficient for accommodating landowner concerns arising after the first public hearing. Staff's Responsive Brief on Notice, June 17, 2011, paragraphs 3-4 (Staff Brief in Response to CURB, ¶¶ 3-4). The Landowner Group stated that the Commission's decision to hold a second public hearing and extend the public comment period gives all affected parties the opportunity to be heard at a meaningful time and in a meaningful manner, and allows affected parties the opportunity to present their objections to the proposed line including landowner-proposed alternative routes so the Commission can consider any objections prior to issuing its final order. The Landowner Group's Memorandum in Opposition to CURB's Brief in Support of Its Motions, June 17, 2011, pages 12-13, 15 (Landowner Group Brief in Response to CURB, pp. 12-13, 15).

38. The Commission finds that ITC Great Plains has given adequate notice and an opportunity to be heard has been provided to those landowners affected by the landowner-proposed alternative routes. The Commission ordered a second public hearing be held to provide landowners with an opportunity to be heard and to make comments to the Commission regarding the landowner-proposed alternative routes, and the public comment period was extended for the same reason. The Commission also ordered ITC Great Plains provide notice of the second public hearing to landowners located within 660 feet of the center line of the ITC/Landowner Group and Steele Alternative routes. ITC Great Plains by affidavit certified that it mailed not only a letter providing written notice of the Dodge City public hearing, but also included a copy of the Application, a map depicting the entire landowner-proposed alternative route, as relevant

to the particular landowner, and a map of each landowner's individual tract or tracts portraying the filed route compared to the relevant landowner-proposed alternative route. As noted below, the Commission received several comments from those landowners affected by landowner-proposed alternative routes, both at the Dodge City public hearing and during the extended public comment period. The Commission finds that ITC Great Plains provided sufficiently-detailed information to those newly affected landowners regarding the landowner-proposed alternative routes and has worked with landowners to make the impact of the proposed transmission line less intrusive, and finds that landowners were provided an adequate opportunity to provide comments to the Commission. The objection of CURB that the Commission is without jurisdiction to consider the landowner-proposed alternative routes is not well taken, and is overruled. The only legislative directive regarding notice is the general publication with regard to the filing of the Application and the public hearing, and the mailing to those landowners whose property is within 660 feet of the center line of the location of the proposed transmission line. Beyond that, and in compliance with fundamental due process, the Commission has determined that, where a landowner-proposed alternative route is determined by the Applicant to be viable, notice of the proceeding and an opportunity to be heard should be accorded the landowners whose property is located beyond the boundaries of the route proposed in the filed Application. The nature of the notice to the landowners and their opportunity to be heard is reasonably adapted to the nature of the proceeding envisioned by the Legislature in the Kansas Siting Act, and is elsewhere in this Order approved by the Commission.

V. Public Hearing and Public Comment

A. Statutorily-required Public Hearing

39. On April 20, 2011, the Commission conducted a public hearing in this docket in the city of Greensburg, Kansas, located in Kiowa County, as required by K.S.A. 66-1,178, to

determine the necessity for and the reasonableness of the location of the proposed electric transmission line. K.S.A. 66-1,178(b). The purpose of the public hearing was to give landowners whose land or interest therein was proposed to be acquired within 660 feet of the center line of the easement the opportunity to learn about the line and provide comments to the Commission. At the public hearing, notice was examined and found sufficient. Transcript of Public Hearing, April 20, 2011, page 6 (April 20 Transcript, p. 6). Twenty public comments were received during the Greensburg public hearing. April 20 Transcript, pp. 7-45.

40. The public comment period set by the procedural schedule in this docket ended on April 27, 2011. The Commission's PACP Office filed a report summarizing comments received about this proceeding on April 28, 2011, stating 91 comments had been received by email or by telephone as of April 27, 2011.

B. Second Public Hearing

41. As discussed above, at the Greensburg public hearing and through comments submitted to the Commission's PACP Office, several landowner-proposed alternative routes were developed and submitted to the original proposed location of the line in ITC Great Plains' Application. At the Evidentiary Hearing on May 26, 2011, the Commission ordered a second public hearing be held to give those impacted by the ITC/Landowner Group and Steele proposed alternative routes the opportunity to hear the details about and present statements to the Commission regarding the alternatives. Tr., pp. 291-294. The Prehearing Officer issued an Order scheduling the second public hearing on June 27, 2011, in Dodge City, Kansas. PHO Order, ¶ 7. The Prehearing Officer required ITC Great Plains to provide written notice to all landowners within 660 feet of the ITC/Landowner Group and Steele proposed alternative routes of the time, place, and subject matter of the Dodge City public hearing, and file an Affidavit on or before June 24, 2011, verifying notice of the public hearing has been given. PHO Order, ¶ 8.

42. The Prehearing Officer also established an extended public comment period to give those landowners newly affected by the ITC/Landowner Group and Steele proposed alternative routes the opportunity to provide comments to the Commission. The public comment period was extended through June 28, 2011, at 5:00 p.m. PHO Order, ¶ 9.

43. The second public hearing was held on June 27, 2011, in the city of Dodge City, Kansas, located in Ford County. At the public hearing, Staff reported that notice was contained in the Prehearing Officer's Order Modifying Procedural Schedule, issued June 1, 2011. Staff also reported that an affidavit of actual notice to landowners within 660 feet of the center line of the two proposed alternative routes was filed on June 24, 2011. Based on the two forms of notice described, Staff recommended that notice was proper and the Commission had jurisdiction to conduct the public hearing. CURB reiterated its objection that was stated in its brief, as described above. The Commission found that notice was proper and the Commission had jurisdiction to hear the matter. Transcript of Public Hearing, June 27, 2011, pages 6-7 (June 27 Transcript, pp. 6-7). Four public comments were received during the Dodge City public hearing. June 27 Transcript, pp. 8-21.

44. The Commission's PACP Office filed a second report summarizing comments received about this proceeding during the extended public comment period. The report dated June 29, 2011, stated 24 comments had been received by email, telephone or mail from April 29 through June 28, 2011.

45. The Commission notes that many of these comments will be discussed more fully in evaluating the reasonableness of the proposed route. Even if not specifically addressed in this Order, the Commission has reviewed all comments submitted to the PACP Office and made during the Greensburg public hearing on April 20, 2011, and the Dodge City public hearing on

June 27, 2011. These comments have been made a part of the record of public comments received from landowners and other members of the public.

VI. Necessity

46. In issuing a siting permit, the Commission must determine the necessity for the proposed transmission line. In deciding necessity, the Commission must consider “the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.” K.S.A. 2010 Supp. 66-1,180. The Commission is required to “issue or withhold the permit applied for and may condition such permit as the commission may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.” *Id.*

47. The Commission notes that the Kansas Legislature did not define what the Commission was to consider in determining necessity for a transmission line. In its evaluation of the necessity for a proposed transmission line, the Commission reviewed case law regarding the grant of a certificate of convenience. The Commission previously found that the broad overriding factor the Commission must consider in determining the necessity for a proposed electric transmission line is whether the facility promotes the public interest. Order Granting Siting Permit, Docket No. 09-ITCE-729-MIS, July 13, 2009, paragraph 39 (09-729 Siting Order, ¶ 39), *citing General Communications System v. State Corporation Comm’n*, 216 Kan. 410, 418, 532 P.2d 1341, 1348 (1975), and *Central Kansas Power Co. v. State Corporation Comm’n*, 206 Kan. 670, 676-677, 482 P.2d 1, 7 (1971).

48. ITC Great Plains stated that construction of the project will facilitate access to substantial wind generation resources and is designed to connect eastern and western Kansas to improve electric reliability, enable energy developers to tap into the transmission grid, and further establish a competitive energy market in Kansas. Myers Direct, p. 2. This project will

contribute to a stronger transmission grid that will benefit the entire region and that will increase reliability. Myers Direct, p. 3. Construction of the project will provide for more efficient use of existing generation resources and also will reduce line losses. Myers Direct, p. 3. The proposed line will address the lack of high-voltage transmission in central and western Kansas, which causes inefficiencies in the grid and does not allow power to flow in the most efficient manner. Huslig Direct, p. 7.

49. The Commission transferred authority to the SPP for transmission planning in Docket No. 06-SPPE-202-COC (06-202 Docket), which was an Application made by the SPP for a certificate of convenience and authority for the purpose of managing and coordinating the use of transmission facilities in Kansas. The 06-202 Docket was a Joint Application with Docket No. 06-WSEE-203-MIS (06-203 Docket), where Kansas utilities filed for authority to transfer functional control of certain transmission facilities to the SPP. The Commission found in those dockets that the SPP RTO would benefit Kansas retail electricity customers and was in the public interest, approved the transfer of functional control of the transmission facilities to the SPP, and approved the SPP's request for certificate of convenience and authority for the limited purpose of managing and coordinating the use of said transmission facilities. Order Adopting Stipulation and Agreement and Granting Applications, Docket No. 06-SPPE-202-COC and Docket No. 06-WSEE-203-MIS, September 19, 2006, paragraph 40.

50. The Commission notes that the SPP's approval of the Y Plan is an important consideration, but that the Commission must independently analyze the record developed in this proceeding to determine whether substantial evidence exists in light of the record as a whole to support a finding of necessity for the proposed electric transmission line has been established. K.S.A. 77-526; K.S.A. 77-621(c)(7). As stated above, the SPP filed testimony of witness Prewitt in this docket on April 6, 2011.

51. The SPP identified ITC Great Plains' proposed transmission line as part of the Y Plan, which is one of the Priority Projects of the SPP, and provided details concerning the benefits of the Priority Projects to the SPP footprint as a whole and to Kansas specifically. Through its analysis of the Priority Projects, the SPP determined that ITC Great Plains' proposed line as a portion of the Y Plan will provide benefits which include reducing congestion of the grid and improving generation interconnection queues to provide additional transfer capability across the SPP footprint, which will allow for additional transmission service requests to be granted. Prewitt Direct, p. 13. The Priority Projects also increase the ability to transfer power in an eastward direction by connecting the western and eastern areas of the SPP region. Prewitt Direct, p. 14. The construction of the line will provide both quantitative and qualitative benefits across Kansas and the SPP footprint, which includes additional wind revenue benefits based on wind level analyses, enabling future markets, storm hardening, improving operating practices/maintenance schedules, lowering reliability margins, improving dynamic performance and grid stability during extreme events, and other societal economic benefits, all which result in a robust transmission system for the region. Prewitt Direct, pp. 14-17. The SPP also stated that there were economic benefits resulting from additional jobs related to the manufacture, installation, and operation of the Priority Projects, and that the SPP had quantified economic impacts in: (1) the number of jobs created in the region, (2) the resulting personal income earned by employees in the region, and (3) the economic activity generated in the region. Prewitt Direct, p. 17. Finally, the SPP stated that economic output and employment effects in Kansas would result from the new wind construction and operation, which contributes to greater resource source diversity and greater utilization of renewable resources that would stem from construction of the Priority Projects. Prewitt Direct, pp. 18-22.

52. As noted above, the SPP Board of Directors approved the Priority Projects, including this line proposed by ITC Great Plains, with costs recovered as part of the Highway/Byway region-wide cost allocation method, which has been approved by the FERC. Myers Direct, p. 4. ITC Great Plains estimated that its portion of the Y Plan will cost approximately \$300.2 million to construct. This estimated cost could change based on a number of factors including commodity, equipment and labor cost fluctuations, as well as costs to procure rights-of-way, among other variables. Huslig Direct, p. 8.

53. Staff stated that the need for the ITC Great Plains project is largely driven by social policy intended to increase utilization of renewable energy resources located considerable distances from loads served, and that the transmission line is necessary because, without it, renewable generation will not be built and select Kansas property owners will not receive income associated with wind leases. DeBaun Direct, p. 7. Additionally, Staff stated that ITC Great Plains' proposed transmission line would provide benefits to at least some consumers, and that The Brattle Group conducted rather extensive economic development studies on behalf of the SPP related to the Priority Projects. DeBaun Direct, p. 8. Staff stated that a consideration of costs and benefits was important in determining necessity, and pointed out that stand-alone studies for individual line segments of ITC Great Plains' proposal compared to the larger project of both the Y Plan and the Priority Projects could be inconclusive. DeBaun Direct, pp. 8-9.

54. After reviewing the record, the Commission finds substantial evidence in the record as a whole supports a finding of necessity for building ITC Great Plains' proposed electric transmission line at 345 kV voltage. The Commission finds evidence in the record establishes the need for this line to increase reliability of the transmission infrastructure and to facilitate access to substantial wind generation resources, to reduce congestion in the SPP region, to facilitate the regional transfer of power, to provide economic benefits which include the creation

of jobs within Kansas and throughout the region. Additionally, the Commission has previously approved several siting permits for other SPP-approved transmission lines, and in these prior dockets the Commission approved the specific line locations for what the SPP has demonstrated is necessary, if not critical. These previous approvals for siting permits, and the findings and conclusions therein regarding necessity and economic benefits, are considered cumulatively with the proposal in this docket. No parties disputed the necessity for ITC Great Plains' proposed project.

VII. Reasonableness

55. In deciding whether to issue a siting permit, the Commission also must determine the reasonableness of the location of the proposed electric transmission line. K.S.A. 2010 Supp. 66-1,180. The Commission may condition a siting permit as it “may deem just and reasonable, and as may, in its judgment, best protect the rights of all interested parties and those of the general public.” *Id.* Kansas courts have held that a condition is reasonable if it is based on substantial, competent evidence. *See Kansas Electric Power Coop., Inc. v. State Corporation Comm'n*, 235 Kan. 661, 665, 683 P.2d 1235, 1239 (1984) (Commission imposed lawful, reasonable conditions on a certificate of convenience).

56. ITC Great Plains submitted its Application for a siting permit to construct a line from the Spearville substation to the Clark County substation, and from the Clark County substation to the Thistle substation. Application, ¶ 6. With its Application, ITC Great Plains submitted maps showing where the proposed line would traverse through the four counties located in south central Kansas. *See* Falcone Direct, Exhibit 3.

57. Several landowner-proposed alternative routes have been presented for the Commission's consideration during the 120-day period the Commission has to examine ITC Great Plains' Application. As stated above, the Commission has the ability to condition the

siting permit as the Commission finds best protects the rights of interested parties and the general public. K.S.A. 2010 Supp. 66-1,180. The Commission finds that it has the authority, within the discretion granted it by the Legislature, to consider the landowner-proposed alternative routes to the extent the Commission determines it necessary to do so to protect the interests of the public and in particular the interests of landowners upon whose property the transmission line is proposed to traverse. The Commission does not believe the intent of the Kansas Siting Act was to restrict the Commission from consideration of potential landowner-proposed alternative routes; such interpretation would be nonsensical in light of the opportunity provided to the public and landowners to submit comments for the Commission's consideration through the public hearing process. *See* K.S.A. 66-1,178(b); K.S.A. 66-1,179. While the Applicant is required to provide notice to those landowners of record whose property is proposed to be acquired in the Application, the Commission has recognized previously that notice provided to landowners of landowner-proposed alternative routes will not be the same as that afforded landowners initially notified of the Applicant's preferred route when the Application was filed.

A. Overview of ITC Great Plains' Process

58. In its Application, ITC Great Plains described the process it used to select the preferred route for the transmission lines. ITC Great Plains' goal was to develop alternatives that would provide economical routes with minimal adverse social and environmental impacts. ITC Great Plains hired the consulting firm of Black & Veatch to assist it with the routing study. Myers Direct, p. 5.

59. The Route Selection Study covered an area of approximately 2,500 square miles and included parts of Ford, Clark, Comanche, Kiowa, Barber and Pratt Counties in Kansas. The routing process began with gathering and evaluating information concerning land uses, environmental features, historic and cultural resources, and other concerns that may be relevant

to the construction of an overhead electric transmission line. Black & Veatch reviewed public domain aerial photography, topographical maps, land use databases and agency environmental resource sites in their process to determine two or three technically and environmentally feasible preliminary routes. The following objectives were used in the Route Selection Study to develop the preferred route: (1) avoid proximity of the line to residences, businesses and public facilities; (2) avoid crossing over center pivot irrigation systems; (3) parallel existing utilities, roads or railroads when practical; (4) avoid wetlands, riparian areas and conservation lands; (5) avoid placing the line directly over tanks and oil, gas, or water wells; and (6) maintain reasonable length with as few angles as possible to minimize costs. Falcone Direct, p. 3.

60. After potential route alternatives were selected, employees of Black & Veatch drove the routes. Falcone accompanied a routing specialist and a senior biologist and drove approximately 900 miles in the study area. Preliminary route locations were evaluated, noting where residences, buildings and sensitive habitats were located, observing wildlife in the study area, and adjusting routes accordingly. Falcone Direct, p. 4.

61. Black & Veatch also sent letters with study area maps to various state and federal agencies, as well as the Nature Conservancy, to get input and comments on resources and concerns, and asked these agencies to provide information on federal, state or local permits that may be required to construct the line. The agencies included: Kansas Department of Agriculture, KDHE, Kansas Department of Transportation, Kansas Department of Wildlife and Parks, Kansas State Historical Study, United States Army Corps of Engineers, United States Department of Agriculture's Natural Resources Conservation Service, and the United States Department of the Interior – Fish and Wildlife Service. Falcone Direct, p. 4.

62. Route alternatives were offered to the public for comment at public open houses in Dodge City, Medicine Lodge, and Greensburg, Kansas. ITC Great Plains used property

ownership data from each county to identify the landowners within 1,000 feet of the center line of each of the potential routes. ITC Great Plains mailed letters to those landowners advising them that ITC Great Plains was proposing to construct a new high voltage line near the landowner's property, identified the dates, times and locations of the open houses and invited the landowners to attend. ITC Great Plains also issued news releases prior to the open houses. Falcone Direct, p. 5.

63. The route selection process utilized public input to identify issues that had not been identified through the field reconnaissance, agency contacts and aerial mapping, and resulted in modifications required to address: (1) homes in the study area that were not identified or located initially, (2) future residential and commercial development, (3) new oil or gas wells not installed as of the date of the aerial photography, and (4) center pivot irrigation systems that were not shown on aerial photos. Black & Veatch refined the routing options and employed a quantitative analysis of land use data, public input and engineering criteria to perform final evaluation of route alternatives. Falcone Direct, pp. 5-6.

64. Established and refined criteria were used in the evaluation of route alternatives to avoid occupied structures and sensitive resources. The primary routing concerns were residences, businesses, wells (gas, oil, or water), towers, center pivot irrigation systems, parks, cemeteries and protected species and their habitats. Falcone Direct, p. 6. Black & Veatch used weighted score values to quantify land use along each route; low scores are better than high scores and the proposed route is usually the route which is scored the lowest, or best. For the preferred route selected from the Clark County substation to the Thistle substation, the preferred route was the best-scoring, technically viable route. Falcone Direct, p. 7. ITC Great Plains' proposed route is a combination of 15 individual route segments that was developed after public meetings and in consideration of the input received from landowners. Falcone Direct, p. 8.

65. ITC Great Plains stated that it took steps to minimize exposure to electromagnetic fields, which are invisible lines of force that surround any electrical device or power line. ITC Great Plains stated that based on conclusions of national and international health authorities, ITC Great Plains does not consider electromagnetic fields to be a health threat. Myers Direct, p. 5.

66. Staff stated that finding a balanced solution to all the inputs of the reasonableness of a line is difficult and complex. Direct Testimony of Michael J. Wegner, April 18, 2011, page 6 (Wegner Direct, p. 6). Reasonableness is determined using a process that involves landowner input, a clear understanding of the use of the land, length of the line, environmental concerns and impact, and finding a balanced solution to the needs of those directly affected by the line, which largely depends on the point of view of the individual, group, or organization making the decision. While no universally ideal route is possible, Staff pointed out that the Commission may decide that the route selected is the most acceptable solution in terms of providing the necessary transmission service in the least offensive manner with respect to varied interests, while not incurring unwarranted costs. One significant factor Staff considers in reviewing reasonableness is the length of the line; as the length of the line increases, so do the line-losses, reliability concerns, and costs. Wegner Direct, p. 5.

67. Staff found ITC Great Plains' route selection methodology to be logical and thorough, and found the preferred route to be reasonable based on the Route Selection Study, testimony of Falcone, ITC Great Plains' responses to data requests, and Staff's reconnaissance of the preferred route. Wegner Direct, pp. 6, 9-10. To support its conclusion, Staff reviewed the six criteria used to develop the routes and minimize the adverse social and environmental impacts, as summarized above. *Infra*, ¶ 59; Wegner Direct, p. 7-8. The Route Selection Study used specific subjects that were assigned a weighting factor based on Black & Veatch's experience with transmission line projects, and weighted scores were applied to each route to

produce a composite score. ITC Great Plains selected a preferred route based on a combination of segments that resulted in the lowest composite score. Wegner Direct, p. 8. ITC Great Plains organized a community action group to provide advice, and sought public input during public workshops held in January 2011 in Dodge City, Medicine Lodge, and Greensburg, Kansas, where routing details were presented to landowners and other interested parties. Wegner Direct, p. 9. Staff found that ITC Great Plains' selection of the preferred route was a rigorous undertaking which considered both technical requirements and subjective personal preferences, and that the process was reasonable and resulted in a reasonable location of the preferred line. Wegner Direct, pp. 9-10. Staff stated that some inconvenience will result with respect to individual interests along the route of any proposed transmission line, and that the interests of those inconvenienced along that proposed line must be balanced against the benefits of the route pertaining to all other stakeholders along the line and others benefiting from its construction. Wegner Direct, pp. 19.

68. Additionally, Staff conducted a visual inspection of the preferred transmission route filed in ITC Great Plains' siting Application, to the extent possible on a two-day route inspection on March 16 and 17, 2011. Portions of the route in areas that were not able to be viewed from public access roadways were reviewed utilizing Google Earth, an aerial photography tool. In examining the route, Staff observed proximity to residences, position of homes with respect to the line and any groves separating homes from the preferred route, cemeteries, terrain features, public parks and recreation areas, areas sensitive to wildlife and prairie vegetation native to area woodlands, line construction challenges, and impacts in the segments of the new 200 foot rights-of-way. Wegner Direct, pp. 10-11. Staff noted that the majority of the preferred line is located parallel to existing transmission lines, and in areas where

the line is not parallel to an existing transmission line, it appears to be routed through uninhabited areas. Wegner Direct, p. 6.

69. Staff suggested two alternative routes for the Commission's consideration. The first alternative was a segment near Spearville, Kansas. Staff recommended the Commission consider routing the line on the northwest and west side of Spearville, as opposed to the southeast side, since there is already an existing line for part of the route on the northwest and west side. Wegner Direct, p. 12. ITC Great Plains stated that while this alternative results in a potential net decrease in line mileage and provides cost savings, the alternative impacts 20 landowners that did not receive notice of the public hearing.⁴ Rebuttal Testimony of Alan K. Myers, May 2, 2011, pages 2-3 (Myers Rebuttal, pp. 2-3).

70. The second alternative would route the new line parallel to an existing line in sections S9-T26S-R23W, S10-T26S-R23W, S3-T26S-R23W, and S2-T26S-R23W. Wegner Direct, p. 13. ITC Great Plains stated that while this alternative results in a net decrease in line mileage and provides cost savings, the filed route was selected to avoid Walking in Hunting Area (WIHA) and Conservation Reserve Program (CRP) lands, where some of the potential cost savings could be consumed by landowner negotiations and compensation associated with impacting land in these programs. Myers Rebuttal, p. 3; Wegner Direct, p. 13. The second alternative would also require notifying 13 landowners, 10 of whom received notice by certified mail of the public hearing.⁵ Myers Rebuttal, pp. 3-4.

71. Staff recognized that ITC Great Plains will need to obtain additional permits and endorsements, and may need to complete additional studies for other agencies, if the preferred

⁴ Myers corrected testimony at the Evidentiary Hearing from 33 landowners to 20 landowners, 10 of whom received notice by certified mail of the public hearing.

⁵ Myers corrected testimony at the Evidentiary Hearing from 16 landowners to 13 landowners, 10 of whom received notice by certified mail of the public hearing.

route is approved by the Commission. Staff noted that it is important for the public, and specifically landowners that are affected by the route, to be able to provide input so the project decision makers can understand the use of the land. Although not required by law, ITC Great Plains conducted informational meetings (public workshops) to receive comments from the public before filing its Application. Wegner Direct, pp. 15-16. Staff noted that ITC Great Plains had worked toward resolving issues presented through public feedback as the preferred route was finalized for its Application. Staff's opinion was that ITC Great Plains worked with the public to make small adjustments to the route presented at public workshops. Wegner Direct, p. 17. After evaluating the Application, the routing process, landowner concerns, geography, and environmental and other concerns, Staff concluded that ITC Great Plains' study of the possible routes was comprehensive and the preferred route proposed in the Application was reasonable, but also requested ITC Great Plains consider the two alternative routes discussed above. Wegner Direct, p. 18.

72. In testimony filed May 2, 2011, Myers responded to comments made at the Greensburg public hearing to address route modifications proposed by landowners, including a determination as to whether the proposed modification represents a viable reroute alternative. Testimony of Alan K. Myers in Response to Comments at April 20, 2011 Public Hearing, May 2, 2011, page 1 (Myers Hearing Response, p. 1). Myers provided maps depicting two of the landowner-proposed alternative routes, and provided an estimate of the difference in cost between ITC Great Plains proposed route and each of the landowner-proposed alternative routes. Myers Hearing Response, pp. 13-16, *see* Attachments 1 and 2. Staff also responded to comments made at the Greensburg public hearing and discussed the reasonableness of the landowner-proposed alternative routes. Testimony of Michael J. Wegner in Response to Comments at April 20, 2011 Public Hearing, May 9, 2011 (Wegner Response).

73. In testimony filed May 4, 2011, Myers responded to written comments received by the Commission during the public comment period. Testimony of Alan K. Myers in Response to Written Comments Submitted to the Kansas Corporation Commission, May 4, 2011 (Myers Written Response). At the Evidentiary Hearing, Myers addressed public input received after the filing of responsive testimony, including comments from landowners that will be discussed in more detail below. Tr., pp. 88-110.

74. ITC Great Plains responded to public comments received on the landowner-proposed alternative routes received both at the Dodge City public hearing and through the extended comment period as ordered by the Commission. Response of ITC Great Plains, LLC, to Public Comments on Reroute Alternatives, June 30, 2011 (ITC Great Plains Comments Response). Staff also filed a Response to Public Hearing and Written Comments received through the Commission's PACP Office and at the Dodge City public hearing. Staff's Response to Public Hearing and Written Comments, June 30, 2011 (Staff Comments Response).

75. As noted above, in response to comments received at the Greensburg public hearing and written comments submitted to the Commission's PACP Office, ITC Great Plains developed a number of landowner-proposed alternative routes for consideration to accommodate landowner concerns with ITC Great Plains' proposed route, and addressed these landowner-proposed alternative routes through live testimony at the evidentiary hearing and in filings in this docket. ITC Great Plains recommended approval of some of these landowner-proposed alternative routes and recommended the Commission not approve other alternative routes; to the extent ITC Great Plains did not recommend approval of a landowner-proposed alternative route as viable, the Commission will not address such route.

76. The Commission has previously found that in deciding whether an alternative route is reasonable, additional cost directly related to the alternative route is a consideration. The

mere fact that an alternative route is estimated to cost more than the Applicant's preferred route does not preclude a finding that an alternative route is reasonable and should be adopted. Additional cost is one of several factors the Commission should take into account when balancing the interests of those impacted by the route selected for an electric transmission line. 09-729 Siting Order, ¶ 58. Other factors to consider include benefits gained by choosing the alternative route and the harm that will be avoided by moving the preferred route. 10-557 Siting Order, ¶ 47. The Commission has also previously found that viable landowner-proposed alternative routes are not rare or isolated incidents in siting proceedings, and has allowed members of the public to address the location so the Commission can make a better informed decision that is in the public interest. The Commission has held that in proceedings under the Kansas Siting Act, an applicant must give notice to landowners newly impacted by landowner-proposed alternative routes developed by the Applicant in response to public comments that are found to be viable. The Commission recognized that this additional notice will not be the same as that afforded landowners initially notified of the applicant's preferred route when the Application was filed. 09-729 Siting Order, ¶ 63.

77. The Commission finds that ITC Great Plains worked diligently to evaluate landowner-proposed alternative routes, promptly reported its conclusions regarding those alternatives, and provided notice to landowners located within 660 feet of the ITC/Landowner Group and Steele proposed alternative routes, as directed by the Commission, which ITC Great Plains concluded were viable. ITC Great Plains provided written notice to those landowners impacted and continued to work with landowners after the evidentiary hearing, at the Dodge City public hearing, and through the extended public comment period. The Commission finds that the notice ITC Great Plains provided landowners potentially impacted by landowner-proposed

alternative routes complied with the Commission's expectations, and these landowners were afforded an opportunity to comment through the extended public comment period.

78. The Commission has reviewed all comments received from members of the public at the Greensburg public hearing, at the Dodge City public hearing, and all comments submitted to the Commission's PACP Office during the public comment period and the extended public comment period. Because it would unnecessarily extend the length of this Order, the Commission will not specifically address every comment received from the public. The Commission finds Myers reviewed concerns expressed by each member of the public and responded to each of these issues, including generally: decrease in property value, Myers Hearing Response, p. 3; effect of transmission lines on radio, television, cell phones, and GPS equipment, Myers Hearing Response, p. 4, Myers Written Response, p. 27; wildlife concerns, Myers Hearing Response, p. 5; impact of proposed line on farming operations, Myers Hearing Response, pp. 6-8; and adequate compensation for landowners, Myers Written Response, p. 12; to name a few.

79. The Commission finds that Myers' testimony has sufficiently addressed concerns expressed by members of the public and declines to discuss these issues further in this Order. The Commission will review comments received from members of the public that suggested a landowner-proposed alternative route to ITC Great Plains' preferred route that ITC Great Plains found to be viable, and will evaluate those viable alternatives.

B. Westar Alternative

80. In 2010, Westar purchased wind generation development rights to the Ironwood Wind Farm near Spearville, Kansas, and has recently entered into power purchase agreements to purchase wind generation located at Ironwood. Petition of Westar Energy, Inc. to Intervene, April 19, 2011, paragraph 3 (Westar Petition, ¶ 3). Westar stated that because the proposed

location of ITC Great Plains' transmission line would pass very closely to Ironwood, Westar proposed to interconnect to the line at the Ironwood site, but the SPP indicated Westar will need to connect at the Spearville substation. Westar stated that this would require it to build a generator lead of approximately 1.5 miles, which would be a single-circuit 345 kV transmission facility running parallel to ITC Great Plains' proposed line, and would have the capacity to add a second 345 kV circuit. Westar Petition, ¶ 4; Tr., p. 45. Westar proposed to build a substation at Ironwood and a line from Ironwood to Spearville suitable to be incorporated into ITC Great Plains' proposed line to eliminate two lines located in close proximity to each other. Westar Petition, ¶ 5.

81. At the Evidentiary Hearing, Westar provided a map of its proposed Westar Alternative route. Westar Exhibit 1. Westar's proposal would add approximately a half mile to the length of the line, and would add approximately \$1,000,000 in cost. Tr., p. 46. Huslig stated that the impact of this alternative on landowners would be favorable, as they would only have one transmission line crossing their land instead of two, and stated that Westar's proposal was acceptable to ITC Great Plains. Tr., pp. 46-47. No notice is required for landowners impacted by the Westar Alternative route, since Westar already acquired the rights-of-way with assignable easements necessary to build a 345 kV generator lead from Ironwood to the existing Spearville substation. Post-Hearing Brief of ITC Great Plains, LLC, with Proposed Findings of Fact and Conclusions of Law, June 9, 2001, paragraph 81 (ITC Great Plains Initial Brief, ¶ 81). Staff supports the Westar Alternative route because it reduces the number of transmission lines in the immediate area of the wind farm and thus minimizes landowner impacts. Tr., p. 274; Staff's Responsive Post-Hearing Brief to ITC Great Plains, LLC's Post-Hearing Brief with Proposed Findings of Fact and Conclusions of Law, June 17, 2011, paragraph 3 (Staff Brief, ¶ 3).

82. Having reviewed the proposal by Westar and the recommendation of ITC Great Plains and Staff to approve the Westar Alternative route, the Commission finds the Westar Alternative route is reasonable and approves this alternative.

C. *Stockwell Alternative*

83. ITC Great Plains addressed the alternative route proposed by Kelly Stockwell, who provided comments to the Commission both at the Greensburg public hearing and to the Commission through its PACP Office. Myers reviewed the comments and stated that the line that most directly impacts Mr. Stockwell's plans to construct a home is the line proposed by Prairie Wind in the 11-600 Docket. Myers stated that Prairie Wind proposed to move its proposed route north of the 138 kV line that already exists on the Stockwell property. Myers Written Response, pp. 43-44.

84. The Stockwell Alternative is located in the vicinity north of Medicine Lodge, and was proposed because ITC Great Plains' proposed route would run very close to a new home site on the Stockwell property for which he has already obtained a building permit. The alternative in this Docket would result in approximately \$21,000 in additional costs due to a slight addition to the length of the line, and does not impact any landowners that have not previously received notice. Myers Written Response, p. 44. Based upon evaluation and review, both ITC Great Plains and Staff recommended approval of the Stockwell Alternative route. ITC Great Plains Initial Brief, ¶ 79; Wegner Response, p. 5.

85. Having reviewed the facts associated with this proposed alternative route, and the recommendation of ITC Great Plains and Staff to approve the Stockwell Alternative route, the Commission finds that the Stockwell Alternative route is reasonable and approves this alternative. The Commission also notes that it approved the Stockwell Alternative route

proposed by Prairie Wind in the 11-600 Docket. Order Granting Siting Permit, Docket No. 11-PWTE-600-MIS, June 28, 2011, paragraph 95.

D. Shooting Star Alternative

86. As noted above, Shooting Star petitioned to intervene in this docket to protect its interest in the development of a 105 MW wind energy project in Kiowa County that is in the final stages of negotiations for sale of power output from the project, and where project development is nearly completed. Petition of Shooting Star Power Partners, LLC to Intervene, April 15, 2011, paragraph 2 (Shooting Star Petition, ¶ 2). Shooting Star stated that it believed portions of ITC Great Plains' proposed line would be located within the fall-down distance from at least 12 turbine locations of the Shooting Star Project. Shooting Star Petition, ¶ 3.

87. Andrew Goldstone, development project manager for Shooting Star, appeared at the Greensburg public hearing to provide comments concerning the proposed route. He indicated the proposed route was within the internal setback standard for siting wind turbines, which is at least tip height, with the tip of the blade at the highest point being typically 450 feet. April 20 Transcript, pp. 22-26; Myers Hearing Response, p. 14. Goldstone stated that easements have been acquired from landowners affected by the project. April 20 Transcript, p. 23; Myers Hearing Response, p. 14. Steve Stark, counsel for Shooting Star, also appeared at the Greensburg public hearing. April 20 Transcript, p. 27.

88. ITC Great Plains stated that modifications to the proposed route affecting the location of 12 turbines was needed, and that the Shooting Star Alternative route would increase the length of the line by approximately 0.36 miles and require the addition of two light angle structures and four medium angle structures. The additional cost of the Shooting Star Alternative route is approximately \$1,100,000, and Myers provided a map of the Shooting Star Alternative route attached to testimony. Myers Hearing Response, pp. 15-16, *see* Attachment 1

to Myers Testimony to Public Hearing Comments; *see also* ITC Exhibit 5 (map of Shooting Star Re-Route). ITC Great Plains recommends approval of the Shooting Star Alternative route. Myers Hearing Response, p. 16; ITC Great Plains Initial Brief, ¶ 80. Staff reviewed this alternative and also recommended approval. Staff Brief, ¶ 2.

89. At the Dodge City public hearing, Rick Sherer (Sherer) offered comments on the Shooting Star Alternative route, indicating that the alternative would cross through the center of one of his fields and would create more liability for him. Sherer stated he spoke with a representative from ITC Great Plains who indicated it might be a minor adjustment to move the proposed line to the edge of his field. June 27 Transcript, pp. 18-19. Sherer is not the landowner of the property he identified, but rather farms the same as a tenant, and the landowner in fact previously granted wind generation rights on the property to Shooting Star, thereby impacting Sherer's rights of tenancy. ITC Great Plains notes that Sherer failed to acknowledge that the Shooting Star Alternative route was developed at the request of Shooting Star to accommodate sited turbine locations, including at least two turbine locations on Sherer's adjoining property. ITC Great Plains Comments Response, ¶ 23.

90. Having reviewed comments submitted to the Commission and the recommendation of ITC Great Plains and Staff to approve the Shooting Star Alternative route, the Commission finds that the Shooting Star Alternative route is reasonable and approves this alternative. Concerning comments offered by Sherer, the Commission approves of minor adjustments, as discussed further below, to the location of the line as necessary to minimize landowner impact, but requires that material, major adjustments, and any such adjustment for which landowners would not have received reasonable notice, be approved by the Commission before being implemented.

E. Steele Alternative

91. Alan Steele provided comments to the Commission through its PACP Office about his property in Ford County where he expressed concern with the proximity of the filed route to an existing oil well, existing tank batteries, and a future center pivot irrigation system that he had already contemplated on his property. Myers Written Response, pp. 70-73; Staff Brief, ¶ 6. Myers described the Steele Alternative route in detail and attached a map of this landowner-proposed alternative route. Myers Written Response, pp. 70-73, *see* Attachment 2 – Myers Response to Written Comments Steele/Zimmerman Alternative; *see also* ITC Exhibit 6 (map of Steele Re-route). The Steele Alternative route would add 0.66 miles in length to the filed route and would cost approximately an additional \$1,650,000. The center line of this alternative would be located within 660 feet of 19 tracts of land in which the landowners of 10 tracts received statutory notice of the filed route. ITC Great Plains Initial Brief, ¶ 82; Tr., p. 146.

92. Pursuant to a Commission order, ITC Great Plains provided notice of the Dodge City public hearing to landowners located within 660 feet of the Steele Alternative route. June 24 Affidavit. The Commission also extended the public comment period to provide landowners affected by the Steele Alternative route the opportunity to provide comments to the Commission concerning this alternative. PHO Order, ¶ 9. At the Dodge City public hearing, Wesley Slattery (Slattery) offered comments on the Steele Alternative route, indicating that if the alternative were proposed, he would prefer that the line not go on the west side of 118 Road due to the four center pivot irrigation systems located there, and that he would prefer the line go on the north side of Upland Road due to a sprinkler located on the south side. June 27 Transcript, pp. 20-21.

93. During the extended comment period, Steele provided further evidence of a quote he received demonstrating his plan and financial commitment to build a new center pivot irrigation system. ITC Great Plains Comments Response, ¶ 25. After reviewing the Steele

Alternative route, ITC Great Plains recommends approval of the Steele Alternative route. Myers Written Response, pp. 70-73; ITC Great Plains Initial Brief, ¶¶ 83-84. Staff reviewed this alternative and also recommended approval. Staff Brief, ¶ 6. Staff's approval was conditioned on ITC Great Plains installing its pole line on the east side of 118 Road in S6-T28S-R23W and S7-T28S-R23W and on the north side of Upland Road in S7-T28S-R23W. Staff Comments Response, Attachment A, ¶ 5.

94. Having reviewed comments submitted to the Commission and the recommendation of ITC Great Plains and Staff to approve the Steele Alternative route, the Commission finds that the Steele Alternative route is reasonable and conditionally approves this alternative. This approval is conditioned on ITC Great Plains locating the line on the east side of 118 Road in S6-T28S-R23W and S7-T28S-R23W and on the north side of Upland Road in S7-T28S-R23W, to accommodate the concerns expressed by Slattery.

F. ITC/Landowner Group Alternative

95. As noted above, the Landowner Group was granted intervention by the Commission in this docket to give the landowners who are members of the group the opportunity to participate as their interests might be substantially affected in these proceedings. A number of individuals in the Landowner Group appeared at both the Greensburg and Dodge City public hearings and also submitted comments to the Commission's PACP Office. The Landowner Group owns or farms several parcels of land located near Bucklin, Kansas, in Kiowa and Clark Counties. Amended Petition to Intervene, April 7, 2011, paragraphs 1-20 (LG Amended Petition, ¶¶ 1-20).

96. Sellard provided testimony on behalf of the Landowner Group as noted above, and offered comments to the Commission at the Greensburg public hearing. April 20 Transcript, pp. 31-38. Sellard stated that the Landowner Group was not opposed to the location of a

transmission line in the region, or across certain parcels owned or controlled by the Landowner Group, but believed that there were alternatives that would minimize interference with landowners' rights while still meeting the needs of ITC Great Plains. Direct Testimony of Robert Sellard, April 18, 2011, pages 11-12 (Sellard Direct, pp. 11-12).

97. ITC Great Plains worked with the Landowner Group to develop the ITC/Landowner Group Alternative route. See ITC Exhibit 1 (map of ITC/Landowner Group Re-route). Myers described the ITC/Landowner Group Alternative route in detail, noting that it would decrease the length of the line by 0.73 miles compared to the filed route, would cost approximately \$1,900,000 less than the filed route, and scored better in the Black & Veatch routing study. ITC Great Plains Initial Brief, ¶ 43; ITC Great Plains Comments Response, ¶ 10; Tr., p. 93. Myers stated that the center line of the ITC/Landowner Group Alternative route would be located within 660 feet of 61 landowners, 23 of whom received statutory notice of the filed route. Tr., p. 145.

98. Pursuant to a Commission order, ITC Great Plains provided notice of the Dodge City public hearing to landowners located within 660 feet of the ITC/Landowner Group Alternative route. June 24 Affidavit, ¶ 3. The Commission also extended the public comment period to provide landowners affected by the ITC/Landowner Group Alternative route the opportunity to provide comments to the Commission concerning this alternative. PHO Order, ¶ 9. At the Dodge City Public Hearing, Sellard offered further comments on the ITC/Landowner Group Alternative route. June 27 Transcript, pp. 8-17. Several landowners provided comments to the Commission's PACP Office during the extended comment period.

99. ITC Great Plains recommends approval of the ITC/Landowner Group Alternative route. ITC Great Plains Initial Brief, ¶ 43. Staff also reviewed this alternative and recommended approval. Staff Brief, ¶ 5; Staff Comments Response, Attachment A, ¶ 3.

100. Having reviewed comments submitted to the Commission demonstrating the lesser impact on landowners in general from the ITC/Landowner Group Alternative route, and taking into consideration the recommendation of ITC Great Plains and Staff to approve the ITC/Landowner Group Alternative route as well as testimony submitted by Sellard, the Commission finds that the ITC/Landowner Group Alternative route is reasonable and approves this alternative.

101. The Landowner Group filed a motion, as listed above in paragraph 25. The Motion was to amend the procedural schedule and continue the evidentiary hearing, requested the Commission direct ITC Great Plains to notify affected landowners within 660 feet of the Chermac Alternative and schedule a public hearing for affected landowners along the Chermac Alternative, and extend the statutory deadline of July 12, 2011, by which the Commission is required to issue a final Order on the Application. Due to the agreement reached between ITC Great Plains and Landowner Group concerning the proposed alternative route, and Staff's recommendation to approve this alternative, the Commission finds that the Landowner Group Motion is moot.

G. Finding of Reasonableness

102. The Commission has evaluated each alternative proposed by members of the public and reviewed by ITC Great Plains and Staff. The Commission states that it has an obligation to balance both the interests of landowners to minimize impact on their property with the costs associated with a project. As noted above, Staff found ITC Great Plains' preferred route to be reasonable, as well as several of the landowner-proposed alternative routes.

103. The Commission concludes the preferred route proposed by ITC Great Plains in its Application is reasonable. However, after considering comments from landowners and members of the public, the Commission finds that certain modifications to ITC Great Plains'

preferred route are reasonable and their inclusion as part of this line is in the public interest. To this end, the Commission approves the following modifications to the preferred route: (1) Westar Alternative, (2) Stockwell Alternative, (3) Shooting Star Alternative, (4) Steele Alternative, and (5) ITC/Landowner Group Alternative. As noted above, the Commission conditions its approval of the Steele Alternative route on recommendations of Staff to locate the line to address concerns expressed by Slattery. Any other routes considered by ITC Great Plains were not addressed at the Evidentiary Hearing or given approval by ITC Great Plains or Staff, and are not approved by the Commission.

VIII. Reporting Requirements

104. Staff originally recommended the Commission monitor the status of construction budgets and scheduling for the ITC Great Plains project as it proceeds, and suggested the Commission require ITC Great Plains to submit quarterly project tracking reports on the status of the project, including information about actual expenditures in comparison with planned expenditures and construction schedule and milestones, until such time as the project is in service. DeBaun Direct, pp. 17-21. ITC Great Plains stated that it provides quarterly status reports to the SPP, and that it will begin incurring significant project construction costs at approximately the same time that the SPP's new system of tracking costs will be in place. ITC Great Plains stated that Staff's recommendation could impose an unnecessary and inconsistent reporting requirement. Rebuttal Testimony of Carl A. Huslig, May 2, 2011, pages 3-4 (Huslig Rebuttal, pp. 3-4).

105. As noted above, the reporting requirements were raised as a preliminary matter at the beginning of the Evidentiary Hearing. ITC and Staff presented an agreement made on reporting requirements, which is as follows:

“ITC is willing to provide quarterly updates to the Commission Staff on the status of the project including information regarding actual expenditures in comparison with planned expenditures and construction schedule deviation and milestones with sufficient detail to allow meaningful review by Staff. ITC requests that such information be treated as confidential as certain information could be non-public insider information, and in addition the public release of some information could lead to higher project costs for easement acquisition, materials and labor.”

106. Staff also recommended the Commission request a final report after line construction is complete, indicating the specific route with any modifications from the proposed route, the original cost provided to the Commission, and the final cost of the project. Wegner Response, p. 6. ITC Great Plains agreed it could provide the Commission with a final report. Rebuttal Testimony of Alan K. Myers to Staff & Intervener Response to Public Hearing Comments, May 16, 2011, page 5 (Myers Responsive Rebuttal, p. 5).

107. The Commission finds that quarterly reports on the status of the project, including information regarding actual expenditures in comparison with planned expenditures, and construction schedule deviation and milestones, are important in understanding the complete impact of an electric transmission line. The Commission approves of the agreement, as quoted above in paragraph 105, made between ITC Great Plains and Staff, and directs its Staff to treat such information as confidential. The Commission also requires ITC Great Plains to submit a final report to the Commission after line construction is complete.

IX. Conclusion

108. In its Application, ITC Great Plains proposed a route for its transmission line, and it is for the Commission to decide whether the proposed line is reasonable. The Commission finds that the proposed transmission line will provide benefits to the Kansas economy by improving and expanding the transmission system, and will provide benefit to both consumers inside and outside of the state. The Commission finds that, based upon a review of the record as a whole in this proceeding, the electric transmission line that ITC Great Plains proposed in its

Application is necessary, and the location of ITC Great Plains' preferred route is reasonable, and the Commission approves of certain landowner-proposed alternative routes as discussed above. The Commission conditions its approval of ITC Great Plains' siting permit on the costs of this project being recovered through the SPP's Highway/Byway cost allocation, as approved by the FERC, and as discussed above in paragraph 7.

109. The Commission approves of the agreement made between ITC Great Plains and Staff for ITC Great Plains to provide quarterly reports to keep Staff and the Commission informed on the progress of the construction of the line and associated costs, and directs ITC Great Plains to submit a final report once construction is complete. The Commission specifically conditions the siting permit approved in this Order on ITC Great Plains' continued flexibility in working with all affected landowners. The Commission approves of minor adjustments to the location of the line as necessary to minimize landowner impact, but requires that material, major adjustments, and any such adjustment for which landowners would not have received reasonable notice, be approved by the Commission before being implemented. Finally, the Commission emphasizes the importance of, to the extent reasonably possible, the duty of ITC Great Plains to restore affected land to the condition which existed prior to the construction once construction of the line is complete. K.S.A. 66-1,183. This Order is designated by this Commission as precedent and may be used as precedent in any subsequent adjudication. *See* K.S.A. 2010 Supp. 77-415, as amended by 2011 House Bill No. 2027.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission finds the electric transmission line proposed in ITC Great Plains' Application is necessary and reasonable, as modified by certain landowner-proposed alternative routes specifically approved in this Order. The Commission grants ITC Great Plains'

Application for a siting permit to construct an electric transmission line as proposed in its preferred route, conditioned on the inclusion of certain landowner-proposed alternative routes approved in this Order. All other alternative proposals are rejected as unreasonable.

B. The Commission conditions its approval of ITC Great Plains' siting permit on the costs of this project being recovered through the SPP's Highway/Byway cost allocation method, as approved by FERC. If the SPP or the FERC reconsider or change the previously-approved cost allocation method, this Commission reserves the right to reconsider the Order in this docket.

C. The Commission approves of the agreement for ITC Great Plains to provide quarterly reports detailing the progress and costs of the project, and notes that the information shall be maintained as confidential as agreed. The Commission also directs ITC Great Plains to submit a final report, as discussed above. The Commission approves of minor adjustments to the location of the line as necessary to minimize landowner impact, but requires that material, major adjustments, and any such adjustment for which landowners would not have received reasonable notice, be approved by the Commission before being implemented.

D. The Commission designates this Order as precedent that may be used in any subsequent adjudication.

E. This Order will be served by electronic mail. Parties have 15 days from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman, concurring; Loyd, Commissioner; Wright, Commissioner

Dated: **JUL 12 2011**



ORDER MAILED JUL 12 2011
ELECTRONIC

Patrice Petersen-Klein
Executive Director

mrd

JUL 12 2011

Chairman Sievers, concurring:

This matter involves the proposed construction of a 345 kV electric transmission line by ITC Great Plains, LLC (ITC). It is approximately 120 miles long and intended to connect Kansas wind power generators to the electric grid. It passes through scores of parcels of private property and has out-of-pocket construction costs estimated to be about \$300.2 million.¹

Given the size of the proposed line and investment in this matter, I believe it is important that the parties be provided with insight into Commissioners' analyses.

THE COASE THEOREM

I am an economist, so my analyses start from that perspective. Nobel Prize winning economist Ronald Coase turned 100 in December 2010 (he is still alive). He wrote the most frequently cited economics article of all time,² an article that applies directly to this matter, commonly cited as the Coase Theorem. The Coase Theorem is very simple. It holds that if arms-length bargaining in conflicting land use matters (or externalities) is possible and transaction costs are minimal, such bargaining between the affected parties will lead to an economically efficient outcome. That is, the most socially valuable activity will be undertaken. Such an efficient result will occur regardless of the initial allocation and form of enforcement of legal rights. A Coase Theorem analysis directs regulators to focus on reducing transaction costs and facilitating arms-length bargaining so that the most efficient land use will emerge.

The Coase Theorem is often explained with a simple model that parallels this case. Assume that a railroad wishes to build and operate a train that runs through a farmer's field. The train emits sparks and burns the crops near the tracks. Thus, land occupied by the railroad tracks and the field near the train tracks can either be used by the railroad or the farmer, but not by both.

Should the farmer have the right to be free from the sparks or should the railroad have the right to build the railroad? The "legal" question can be variously cast as: (1) Is the railroad negligent for emitting sparks; (2) Are the farmer's losses caused by planting crops too close to the tracks; (3) Should the farmer have an absolute right to exclude others from his land; and/or, (4) Should the railroad have the right to build and operate a facility that will benefit the public?

The Coase Theorem holds that so long as arms-length bargaining between the affected parties is allowed and transaction costs³ are low, the most efficient/valuable use of the land will prevail

¹ Application, March 14, 2011, pp. 3-4.

² Coase, R., *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960).

³ Transaction costs are the costs of making an exchange or participating in a market. They include: the costs of negotiating and bargaining, search and information costs, the costs of assessing the value of an activity, the costs of forming a coalition of landowners, policing and enforcement costs, etc.

(farming or the railroad).⁴ Coase Theorem analyses also distinguish between how conflicting rights should be protected, which is directly relevant to this matter as Kansas statutes allow the Commission to condition a siting permit based on how the Commission, in its judgment, deems will “best protect the rights of all interested parties and those of the general public.”⁵ Coase Theorem analyses distinguish between property rules and liability rules as the mechanisms for protecting rights of the affected parties.⁶

A property rule gives an individual an absolute right to exclude others from using or infringing on his or her private property. Infringement of rights protected by a property rule may only happen if the parties voluntarily reach agreement between them and only the parties may determine the price of such infringement. The role of the regulator or court in a property rule scenario is to strictly enjoin any involuntary infringements of that right. In the farmer/railroad model, if the railroad may operate only with prior explicit permission of the farmer, then the farmer’s rights are protected with a property rule.

A liability rule, on the other hand, allows for infringement of rights, but the infringer pays damages for that infringement. The regulator or court in a liability rule environment decides who is the “victim” (*i.e.*, who has the initial allocation of rights) and determines damages to be paid by the infringer. If the railroad may operate but must pay damages to the farmer, then the farmer’s rights are protected with a liability rule.

The allocation and enforcement of rights in a Coase Theorem framework is often presented in terms of the matrix below:

Who Possesses the Initial Entitlement?	Property Rule Enforcement Mechanisms	Liability Rule Enforcement Mechanisms
<i>Farmer</i>	Rule 1: Court enjoins the railroad from infringing on the farmer’s land. The railroad must pay the farmer for any infringement. Payment is solely determined by the farmer.	Rule 2: The farmer holds the property right, but if the railroad operates it must pay damages or “just compensation” to the farmer. Compensation is set by the regulator if the parties cannot agree.
<i>Railroad</i>	Rule 3: Regulator finds that operation of the railroad is absolutely permitted. The farmer must pay railroad for right to be free from the train. Payment is solely determined by the railroad.	Rule 4: The railroad may operate and the farmer must compensate railroad for any damages the farmer causes to the railroad’s operations. Compensation is set by the regulator if the parties cannot agree.

⁴ It is important to note that the Coase Theorem makes no representation about the equity or fairness of the initial allocations or rights or the results. It is strictly focused on the efficiency of the outcome – was the most valuable activity undertaken.

⁵ K.S.A. 2010 Supp. 66-1,180.

⁶ These rules and classification draws from Calabresi, G. & A. D. Melamed, *Property Rules, Liability Rules and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972) and Krier, J. & S. Schwab, Stewart, *Property Rules and Liability Rules: The Cathedral in Another Light*, 70 N.Y. L. REV. 440 (1995).

Under a Coase Theorem analysis, if transaction costs are low, then rights should be protected with property rules (Rules 1 or 3 apply depending on how rights are initially allocated). The parties will negotiate with each other and the most valuable use of the land (farming or the railroad) will emerge through the negotiations.

If transaction costs are significant, then Coase Theorem analyses direct that rights should be protected with a liability rule (Rules 2 or 4, depending on how rights are initially allocated). Again, if there is arms-length bargaining between the affected parties, the most valuable land use will emerge (farming or the railroad). In the face of significant transaction costs, the Coase Theorem is generally modified by urging regulators to initially allocate rights to the party or parties with the highest transaction costs. This would allow the party with the lower transaction costs to “buy out” the other party at a lower total costs if the initial allocation of rights was inefficient.

In this matter, the Kansas statutory structure for siting analyses applies Rule 2: the transmission project developer must compensate landowners for damages. Thus, the Kansas statutory structure applies the recommended Coase structure in conflicting land use matters – the initial allocation of property rights is to the landowners (the parties with the highest transaction costs), protected by a liability rule.

Is farming or transmission the most efficient land use? In a Coase Theorem context, the answer will emerge if arms-length bargaining between the affected parties occurs. Indeed, bargaining between affected landowners and ITC is at the heart of this case and the core of the statutory structure governing transmission siting. Bargaining between the affected landowners and ITC happened throughout the process and even days before the evidentiary hearing. In my view, such bargaining is healthy and promotes the development of the most efficient outcome by virtue of the Coase Theorem.

The characteristics of regulation and electric transmission, however, introduce significant inefficiencies and distortions to healthy, arms-length bargaining between the affected parties.

First, the regulatory process introduces parties who are not privy to the transaction and invites them to substitute their judgment for that of the affected parties. Proposals to re-route the proposed line fall into this category. Likewise, the basic statutory requirement that the Commission review and approve the proposal invites the Commission to substitute its judgment for an agreement that may have been voluntarily reached by the affected parties (ITC and affected landowners) regarding the appropriate route. Irrespective of expertise or good intentions, it seems unlikely that interveners or the Commission are in a position to best determine use of land in which they have no personal stake.

Second, because ITC is a regulated electric utility and because it seeks Commission approval of the proposed route, it will secure certain rights to condemn and “take” private property using the coercive power of government.⁷ In theory, condemnation establishes just compensation in takings cases, and minimizes the monopoly power of “hold-outs” who could use their position to block an

⁷ “No electric utility may begin site preparation for or construction of an electric transmission line, or exercise the right of eminent domain to acquire any interest in land in connection with the site preparation for a construction of any such line without first acquiring a siting permit from the commission.” K.S.A. 66-1,178(a).

otherwise socially beneficial project once construction of the project is underway.⁸ But, in practice, condemnation (or the threat of condemnation) also introduces the possibility of property being undervalued in abstract legal hearings driven by what parties spend (or can afford to spend) on lawyers rather than on market factors (*i.e.*, an objective comparison of what the transmission project is worth versus what the farming operations are worth). Whether, in the real world, condemnation (or the threat of condemnation) results in an efficient price is an open question.

The distortion of the legal/regulatory process to otherwise mutually acceptable deal-making is significant. Under Kansas statutes, the utility must show that the proposed route is necessary and reasonable and, when such a finding is made, the utility garners condemnation and rate averaging rights. In Coase Theorem terms, the landowners may be awarded compensation but must individually bear the costs of “buying out” the utility if they wish to block the project.

For example, at the June 27th public hearing held in Dodge City, landowner Robert Sellard testified that he spent approximately \$110,000 in legal fees defending his property from ITC’s proposed route. In addition, he testified that if the proposed route were placed on his property, the net present value of the diminution of his property value would be \$5,164,700.⁹ I found his testimony to be very articulate and compelling. Likewise, at the same public hearing, landowners Rick Sherer and Wesley Slattery testified that the Shooting Star reroute would adversely affect their land use.¹⁰ In written comments submitted in this matter, landowners Chuck and Tammy Imel noted that their insurance carrier told them they would be liable for any damage their farming operations did to transmission facilities, and they expected to incur additional costs to obtain adequate additional liability insurance to cover such exposure.

Third, transmission planning and pricing is performed by a quasi-governmental agency, the Southwest Power Pool, Inc. (SPP). The costs of ITC’s transmission project are spread among members of the SPP and their customers in conformance with the tariffs filed by the SPP with the Federal Energy Regulatory Commission (FERC). In this case, in June 2010, the SPP received approval of its Highway/Byway cost allocation.¹¹

⁸ Posner, R. THE ECONOMIC ANALYSIS OF LAW §3.5 (2d 1977).

⁹ Transcript of Public Hearing, June 27, 2011, pages 12-17 (Robert Sellard statements) (June 27 Transcript, pp. 12-17 (Sellard statements)).

¹⁰ June 27 Transcript, pp. 18-20 (Sherer and Slattery statements).

¹¹ *Southwest Power Pool, Inc.*, Order Accepting Tariff Revisions, 131 FERC ¶ 61,252, Docket ER10-1069-000 (June 17, 2010). The FERC described the cost allocation method as follows:

(1) the costs of facilities operating at 300 kV and above will be allocated 100 percent across the SPP region on a postage stamp basis; (2) the costs of facilities operating above 100 kV and below 300 kV will be allocated one-third on a regional postage stamp basis and two-thirds to the zone in which the facilities are located; and (3) the costs of facilities operating at or below 100 kV will be allocated 100 percent to the zone in which the facilities are located. SPP proposes to eliminate the MW-mile analysis for costs allocated to zones. Additionally, SPP proposes to allocate the costs of certain upgrades that operate at two different voltages (*e.g.*, transformer equipment) based on the facilities’ lower operating voltage.

As described in SPP's and ITC's testimony, in accordance with the SPP Highway/Byway filing, the majority of the \$300.2 million costs of the project are expected to be allocated to the entire SPP region and the costs of a transformer at the Thistle substation would be allocated 1/3^d to the entire SPP region and 2/3^ds to the Mid-Kansas Electric Company, LLC pricing zone.¹² Under a postage stamp rate design, all transmission service "customers" in a region pay a uniform rate per unit of service, typically the transmission customer's proportion of total load in the SPP system.¹³ Thus, if a customer's load in southern Arkansas was 10% of the total load in the SPP region, that customer would pay for 10% of the costs of the ITC transmission facility even if none of the ITC transmission facility was actually used by that customer. Stated differently, averaged "postage stamp" rates are recovered from customers irrespective of whether the lines: (1) actually carry any electricity; and (2) are used by or benefit a particular customer. The "postage stamp" pricing averaged over the entire SPP footprint also means that customers who will ultimately be affected by this project may not be represented at all in this case. In a sense, transmission lines are like interstate highways that are financed with taxes paid by a broad base of taxpayers irrespective of whether any traffic actually travels over the roads and whether or not individual taxpayers actually use the roads they helped pay for.

While the Highway/Byway cost allocation has not been tested on appeal, the FERC's regional transmission cost allocation methodology was rejected the 7th Circuit Court of Appeals, by none other than Judge Richard Posner. Generally, the rejection was based on a conclusion that regional transmission costs should be allocated to the cost causers and not socialized or shared by the entire system. Judge Posner's observations are worth noting at length:

"The Commission said that it would be inclined to defer to 'regional consensus,' but acknowledged there was none; the Midwestern utilities are part of PJM's region but did not agree to the eastern utilities' cost-sharing proposal. As we shall see, the fact that one group of utilities desires to be subsidized by another is no reason in itself for giving them their way. ...

FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members.... We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars. If it cannot quantify the benefits to the Midwestern utilities from the new 500 kV lines in the East ... but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine; the Commission can approve PJM's proposed pricing scheme on that basis.

...

¹² Prewitt Direct Testimony, p. 15; Huslig Direct Testimony, p. 6, lines 3-17.

¹³ A good description of transmission rate designs for regional transmission systems like the SPP is in *PJM Interconnection, L.L.C.* Opinion 494, 119 FERC ¶ 61,063 Docket Nos. EL05-121-000, EL05-121-002 Opinion and Order on Initial Decision (April 17, 2007).

[While the FERC] can presume that new transmission lines benefit the entire network by reducing the likelihood or severity of outages. But it cannot use the presumption to avoid the duty of ‘comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.’”¹⁴

The FERC has approved the Highway/Byway transmission cost allocation proposed by ITC, but based on my reading of Judge Posner’s decision, it is not clear to me whether the Highway/Byway system-wide, postage stamp pricing would survive a challenge on appeal.

The FERC recognized that its cost allocation methods do not comport with the cost-causation principles set out by Judge Posner and on June 17, 2010 – 7 days after it approved the Highway/Byway cost allocation – the FERC opened a rulemaking docket to consider changes in its cost allocation rules for transmission projects (specifically the SPP pricing methodology) and is expected to issue final rules at its open meeting on July 21, 2011.¹⁵ Since the FERC has not yet issued final rules in that proceeding, it is unclear how that might affect who pays for transmission projects in Kansas and/or whether it will affect the ITC proposal.

However, the rates charged and cost allocation of ITC’s proposed system are not before the Commission, nor are they among the specific statutory factors to be considered by the Commission when reviewing a siting request but they will obviously affect the benefits and costs that flow to Kansans. In this case, the benefits of the ITC project accrue to Kansas and are paid for by consumers in the SPP footprint. In future cases, the burden could easily be reversed where Kansans are asked to pay for transmission facilities in, say, Oklahoma or Arkansas.

Fourth, as an electric utility, ITC participates in the market and recovers its expenditures in a manner unlike competitive firms. In a competitive environment, a firm makes an investment in facilities and “gambles” that consumers will buy sufficient product to allow the firm to recoup its investment. A competitive firm’s owners/investors bear the risk of loss from insufficient demand for its goods or services. In contrast, in a traditional regulated environment, generally whatever a utility spends is rolled into its revenue requirement and the utility’s economic risk is not a market risk that consumers will not buy its product(s), but a regulatory or political risk that regulators will disallow some portion of the revenue requirement as imprudently incurred.¹⁶

ITC’s economic decision to build a transmission project is not made on the basis of an individual firm’s market studies and analyses, as would be the case with a competitive firm. The SPP determines the priority of proposed transmission projects based on an “expert” analysis made from afar based on its assessment of regional and system-wide needs. As described in testimony,¹⁷ the

¹⁴ *Illinois Commerce Commission*, 576 F.3d 470 at 476-77 (7th Cir. 2009), cites omitted.

¹⁵ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 131 FERC ¶ 61,253, Docket No. RM10-23-000 (June 10, 2010).

¹⁶ There is a rich literature about how traditional rate-base, rate-of-return regulation creates incentives for utilities to inflate expenses and “gold plate” their investments. See, for example, Averch, H. & L. L. Johnson, *Behavior of the Firm Under Regulatory Constraint*, 52 AM. ECON. REV. 1053 (1962).

¹⁷ Prewitt Direct Testimony, p. 3, lines 5-28.

SPP is an Arkansas non-profit corporation that is a regional transmission organization charged with administering transmission services and facilities over a broad area.¹⁸

The process employed by the SPP is that it issues a Notification to Construct directing one or more of its members (Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC, in this case) to build the network upgrades and to be the Designated Network Owner. In turn, these two SPP members designated ITC to build their portions of the network as directed by SPP.¹⁹ ITC's costs are allocated and recovered over the SPP footprint using the Highway/Byway scheme described above. While the SPP membership is broad, its intentions are laudable and the work efforts genuine, the SPP process is fundamentally a form of collective, centralized planning that is the antithesis of individual, market-driven, cost-based, economic decision making.

Theoretically, ITC could build its project as a private developer rather than as a public electric utility.²⁰ In such a business model, it would negotiate private agreements with power generators, electric utilities and landowners and avoid the regulatory process altogether. But, if it were to do so, it would give up the condemnation powers of an electric utility and the ability to spread its costs over the SPP footprint and would bear the business risk that its facilities would be underutilized.

These introduce significant economic distortions to arms-length bargaining. If a utility is guaranteed payment of its costs (including the costs of acquiring land and participating in the regulatory process), it can spread those costs over the SPP footprint and get paid for its investment whether it is actually used or not, and thus it has no economic incentive to minimize its costs. Thus, the comparative economic value of a transmission project built by a public utility cannot be accurately weighed against the economic value of alternative uses of the land.

STATUTORY NOTICE AND HEARING REQUIREMENTS

The statutory structure for transmission line siting recognizes that private negotiations are preferred to litigated decision making. For example, notice to affected landowners identified in a utility's Application of public hearings is required.²¹ In contrast, an evidentiary hearing before the Commission is optional,²² implying that meetings between affected landowners and the transmission

¹⁸ The SPP operates in Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma and Texas. Its members include 14 investor owned utilities, 11 municipal systems, 12 generation and transmission cooperatives, 4 state agencies, 7 independent power producers, 10 power marketers and 6 independent transmission companies. It has several committees and subcommittees charged with assessing various transmission projects and components of transmission projects in the SPP footprint.

¹⁹ Huslig Direct Testimony, pp. 6-7, lines 18-22 & 1-7.

²⁰ K.S.A. 66-1,177(a) defines "Electric utility" for purposes of the siting statutes to include "*every public utility, as defined by K.S.A. 66-104, which owns, operates or manages any equipment, plant or generating machinery for the production, transmission, delivery or furnishing, of electricity or electric power.*" K.S.A 66-104, in turn, excludes from the definition of public utility facilities for "private use."

²¹ K.S.A. 66-1,178(b).

²² K.S.A. 66-1,178(c).

company are more important in the statutory scheme than evidentiary proceedings before the Commission.

A Coase Theorem approach favors mechanisms to promote bargaining between the parties rather than decisions by the Commission that substitute its judgment for voluntary agreements between affected parties. For that policy reason alone, I support the Commission's decision to require formal notice to and a public hearing for the landowners newly affected by the landowner-proposed alternative routes identified by ITC.

K.S.A. 66-1,178(b) requires that the Commission set a public hearing date "*not more than 90 days after the date of the application was filed.*" K.S.A. 66-1,179 requires that written notice of the public hearing be sent by certified mail together with a copy of the application to landowners with property located within 660 feet of the center line of the line proposed in the Application no less than 20 days prior to the public hearing.

There are obvious equitable, not to mention Constitutional, issues associated with whether private land owners should have to defend the continued use of their property and conversion to use by a public utility. But, the process is far from complete with this proceeding. After a route is approved, the utility begins negotiations with individual landowners and they can agree to the route, suggest minor adjustments, and agree to compensation for granting an easement over their property or go through a condemnation proceeding where a court will determine the value of the diminution of their property. That legal process helps ensure that the process is fair.

SUBSTANTIVE STATUTORY MATTERS

The substantive statutory standard to be applied by the Commission is plainly set out in K.S.A. 2010 Supp. 66-1,180 that requires the Commission to determine five things:

1. Is the location of the proposed line necessary?
2. Is the location of the proposed line reasonable?
3. What benefits does the proposed line provide to consumers in Kansas and outside of Kansas?
4. How does the proposed line affect economic development in Kansas?
5. Are there any conditions the Commission should impose to protect the rights of the interested parties and the general public?

It is important to understand what the statute does not direct the Commission or the Applicant to do. First, the statute does not direct the Commission to select the best route for the transmission line, but to evaluate the necessity for and reasonableness of the location of the proposed transmission line.

Second, the statute does not presume that there is only one "necessary" or "reasonable" route. There may be many such routes – indeed, there are an infinite number of routes between two points – but the only one that matters is the one proposed by the Applicant. Likewise, the existence of an alternative route does not necessarily imply that a proposed route is unnecessary or unreasonable.

Third, the statute does not require (or authorize) the Commission to set compensation for land “taken” under a utility’s powers of eminent domain. Such matters are left to future private negotiations and legal proceedings should the negotiations between affected parties break down.

Finally, I do not read the statute to restrict the Applicant to propose a single route, but merely to require that the Commission meets the deadlines and notice requirements for any routes that are proposed. If the Applicant were prohibited from changing or modifying the route and/or proposing alternatives, the process of soliciting public input, providing notice to affected landowners would be moot and asking the Commission to rule on the route would likewise be moot.

The statutory structure for transmission line assessment also mandates substantive notice requirements to affected landowners²³ and imposes deadlines on Commission action.²⁴ I interpret these deadlines to be designed to protect the rights of affected parties by affording them an opportunity to be heard and to prevent delay in regulatory proceedings that can distort efficient outcomes.

In past siting decisions, the Commission has interpreted “necessity” consistent with the meaning of “necessity” as typically used in the phrase “public convenience and necessity.” Generally, I understand that standard to be summarized as follows: a project is considered necessary if the public would be significantly disadvantaged, inconvenienced or handicapped by its absence.²⁵

In past transmission cases, the Commission has defined a condition as reasonable simply if it is based on substantial, competent evidence,²⁶ but I believe an inquiry into reasonableness is broader than simply asking whether the evidence is substantial and competent. In my view, reasonableness includes an inquiry into whether the condition is just or fair, rational, appropriate under the circumstances, ordinary, customary or usual.

In this matter, the evidence clearly suggests that the process by which the proposed route was selected and modified was just, fair, rational and appropriate under the circumstances. It was developed through an objective analysis of transmission needs throughout the SPP footprint that identified and prioritized proposed transmission projects. The selected route was designed to minimize costs to the greatest extent possible while addressing location specific issues.

The proposal was not developed to favor one group of individuals over another. ITC went to great lengths to notify affected landowners of the project and to modify the project when possible to accommodate individual landowners’ issues.

²³ K.S.A. 66-1,179.

²⁴ K.S.A. 66-1,178 & 66-1,180.

²⁵ See, e.g., In the Matter of the Application of ITC Great Plains, LLC for a Siting Permit for the Construction of a 345 kV Transmission Line in Edwards, Ellis, Ford, Hodgeman, Pawnee and Rush Counties, Kansas, Order Granting Siting Permit, Docket 09-ITCE-729-MIS, July 13, 2009, paragraph 39.

²⁶ Id. at ¶ 48.

The evidence – or lack thereof – of the benefits to consumers contained in the record in this matter is particularly troubling to me. The statute focuses the Commission’s inquiry on the benefits to consumers – not on the electric grid as a whole or on electric service providers, but on consumers (“taking into consideration the benefit to both consumers in Kansas and consumers outside the state” K.S.A. 2010 Supp. 66-1,180). This is fundamentally an economic question – does the proposed line make consumers better off? In future cases, however, I would like to see and hear evidence of the specific economic development impacts on Kansas.



Chairman Mark Sievers

CERTIFICATE OF SERVICE

JUL 12 2011

11-ITCE-644-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Granting Siting Permit was served by electronic mail this 12th day of July, 2011, to the following parties who have waived receipt of follow-up hard copies:

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