

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

In the Matter of the Application of NextEra)
Energy Transmission Southwest, LLC for a)
Certificate of Public Convenience and Necessity) Docket No. 22-NETE-419-COC
to Transact the Business of a Public Utility in the)
State of Kansas.)

STAFF’S RESPONSE TO KIC PETITION FOR RECONSIDERATION

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), submits this Response to the Kansas Industrial Consumers Group, Inc. (“KIC”), Spirit Aerosystems, Occidental Chemical Corporation, The Goodyear Tire and Rubber Company, Associated Purchasing Services, Lawrence Paper Company, Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Bear Brands’ (collectively, “KIC”) Petition for Reconsideration (“Petition”). KIC’s Petition is not supported by Kansas law, Commission precedent, or the record as a whole. Accordingly, KIC’s Petition must be denied.

I. Introduction

1. On February 28, 2022, NextEra Energy Transmission Southwest, LLC (“NEET Southwest”) filed an application for a Certificate of Convenience and Necessity (“Certificate” or “COC”), requesting the Commission to permit it to operate as a public utility for the purpose of constructing and operating the Wolf Creek to Blackberry Transmission Project (the “Project”) pursuant to K.S.A. 66-131.¹

¹ NextEra Energy Transmission Southwest, LLC Application, p. 1 (Feb. 28, 2022) (Application).

2. The Parties to the Docket met June 1-3, 2022 to discuss possible resolution of the issues in this Docket. These discussions ultimately led to the Joint Motion to Approve Nonunanimous Settlement Agreement filed June 6, 2022.²

3. An Evidentiary Hearing in this Docket was held July 12-13, 2022. After two days of Hearing and numerous filings by eleven parties³ in this Docket, the Commission in its August 29, 2022 Order granted NEET Southwest's Application for a COC as modified by the Nonunanimous Settlement Agreement, and conditioned upon compliance with certain conditions, to operate as a public utility in the State of Kansas.⁴

4. On September 12, 2022, KIC filed its Petition alleging several errors. KIC alleges that 1) the Commission's Order is arbitrary and capricious, unreasonable, and in violation of Kansas law; 2) the Commission did not consider evidence that was material, substantial, and uncontroverted in this proceeding, and 3) expert witnesses constructed evidence on the stand.⁵

5. In its Final Order, the Commission identified and analyzed the correct legal standards governing its decision, and applied the facts to those standards.⁶ The expert witnesses in this Docket did the same in presenting their Hearing testimony. Therefore, there is no basis for reconsideration, and KIC's Petition for Reconsideration should be denied.

² See generally Joint Motion to Approve Nonunanimous Settlement Agreement (June 6, 2022) (Settlement Agreement).

³ The eleven parties that participated in this Docket are NextEra Energy Transmission Southwest, LLC ("NEET Southwest"), the Staff of the State Corporation Commission of the State of Kansas ("Staff"), Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together as "Evergy Kansas Central") and Evergy Metro, Inc. ("Evergy Kansas Metro") (collectively as "Evergy"), the Citizens Utility Ratepayer Board ("CURB"), Southwest Power Pool ("SPP"), Kansas Electric Power Cooperative, Inc. ("KEPCo"), and Sunflower Electric Power Corporation ("Sunflower"), ITC Great Plains, LLC, Southwestern Public Service Company, KIC, and Darren McGhee and Rochelle McGhee Smart (the "Landowners").

⁴ Order on Application for Certification of Convenience and Necessity, Docket No. 22-NETE-419-CCS, p. 39 (Aug. 29, 2022) (Order Granting Certificate).

⁵ Kansas Industrial Consumers Group, Inc. (KIC) Petition for Reconsideration, p. 1-2 (Sept. 12, 2022) (KIC Petition).

⁶ See generally Order Granting Certificate, at 7-35.

II. Analysis

- A. The Commission's Order was not arbitrary and capricious because it properly applied and analyzed Kansas law and Commission precedent when it determined the benefits of the Project outweighed speculative and unsupported assertions that western Kansas electricity prices would increase by 21%.**

6. The Commission's Order appropriately applied the facts of the case to Kansas law and Commission precedent. KIC asserts the KCC order is arbitrary and capricious, unreasonable and in violation of Kansas law because 1) the KCC has not decided an issue requiring resolution; 2) the KCC has erroneously interpreted and applied the law; and 3) the KCC's action is based on a determination of fact, made or implied by the KCC, that is not supported by evidence that is substantial when viewed in light of the record as a whole.⁷ KIC's assertions are flawed because they misunderstand the law to be applied and fail to acknowledge the evidence in the record demonstrating Kansas specific benefits. Staff will address these assertions below.

- i. The Commission decided all issues required by Kansas statute, Kansas common law, and Commission precedent. The issue of whether the Project will cause electric power prices in Kansas to increase is a subcomponent of the Merger Standards which considers the effect on customers.**

7. KIC misunderstands the legal standards to be applied in this Docket in several ways. First, KIC's Petition misstates the Procedural History when it states NEET Southwest's Application was filed pursuant to K.S.A. 66-131 *and* K.S.A. 66-1,180. Second, KIC misstates the standards to be applied in the Docket when it asserts the Commission had not decided the issue of whether the Wolf Creek to Blackberry Transmission Project will cause electric power costs in Kansas to increase up to 21%.⁸ Staff will address these misstatements in order.

8. First, despite KIC's assertion, NEET Southwest did not file its Application pursuant to K.S.A. 66-131 *and* K.S.A. 66-1,180. NEET Southwest filed its Application pursuant to K.S.A.

⁷ KIC Petition, at 1–2.

⁸ KIC Petition, at p. 9.

66-131. It makes sense, both statutorily and procedurally, that NEET Southwest did not file pursuant to K.S.A 66-1,180. K.S.A. 66-1,180 concerns electric line siting and is part of the electric line siting statutory scheme: K.S.A. 66-1,177 *et seq.*

9. K.S.A. 66-1,177 states that electric line siting statutes apply to electric utilities which meet the definition of “public utilities,” as defined by K.S.A. 66-104. K.S.A. 66-104 defines public utilities as entities that own, control, operate or manage . . . any equipment, plant or generating machinery . . . for the production, transmission, delivery or furnishing of heat, light, water or power.” For a public utility to own, control, operate or manage transmission equipment they must first be certificated to do so. Therefore, this Docket for a COC must necessarily occur before NEET Southwest can file an application for line siting of the Project.

10. Staff views COC and line siting applications as two separate processes that occur consecutively. While some issues may overlap between COC and line siting dockets, the COC and line siting applications are separate and distinct. This Docket concerns NEET Southwest’s ability to own, control, operate and manage in order to be certificated as a transmission-only public utility in the state of Kansas. This Docket is *not* concerned with the Project’s line siting.

11. In determining whether or not a COC should be granted, the Commission applies K.S.A. 66-131. K.S.A. 66-131 requires the Commission find that the public convenience and necessity will be promoted by the transaction.

12. The public convenience and necessity standard to grant a COC is an inherently subjective standard and the evidentiary support necessary to sustain a showing of public convenience is not cumbersome. A showing of absolute necessity is not required to support the

grant of a certificate of public convenience.⁹ Even a showing of necessity that is “nebulous” in nature may support the grant of a certificate.¹⁰

13. In addition to determining whether or not the public convenience and necessity is being served, the Commission relies upon the application of “Merger Standards” to evaluate the financial, technical, and managerial capability of the entity seeking to act as a public utility in the state of Kansas.

14. The Merger Standards evaluates the following eight factors:

- (a) *The effect of the transaction on customers;*
- (b) Whether the transaction maximizes the use of Kansas energy resources
- (c) Whether the transaction will reduce the possibility of economic waste;
- (d) Whether the transaction will be beneficial to state and local economies and to the communities served by the resulting public utility operations in the state;
- (e) The effect of the transaction on affected public utility shareholders;
- (f) The effect of the transaction on the environment;
- (g) What impact, if any, the transaction has on public safety; and
- (h) Whether the transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state.

The Commission also evaluates the following:

- (i) The financial ability of the Applicant;
- (j) The technical operations ability of the Applicant;
- (k) The managerial ability of the Applicant;
- (l) The impact on transmission in other states; and
- (m) The historical presence of the Applicant.

15. The Commission’s Order on NextEra’s Application for a certificate thoroughly evaluated both the public convenience and necessity standard and the Merger Standards.¹¹

Because the Commission applied the facts of this Docket to those standards in the thorough manner

⁹ Central Kansas Power Co. v. State Corporation Commission, 206 Kan. 670, 676 (1971).

¹⁰ See General Communications System, Inc. v. State Corporation Commission, 216 Kan. 410, 417 (1975).

¹¹ See Order, p. 7-22.

in which it did, the Commission's grant of a COC conforms with Kansas law and Commission precedent.

16. Second, Staff believes the Commission in its analysis of the first Merger Standard *did* address the issue of whether the Project will cause electric power costs in western Kansas to increase up to 21%. The first Merger Standard addresses the effect of the transaction on customers.

When evaluating the effect of the transaction on customers, the Order stated:

At the evidentiary hearing, Justin Grady testified that the Transmission Project would “levelize” Locational Marginal Prices (“LMP”) in the system causing prices that are lower to rise and those that are higher will come down. **Attached to Justin Grady’s testimony in support of the Settlement Agreement is a document from the ITP which lists one of the benefits of the ITP is reducing market price disparity, “levelizing wholesale energy prices by 21% on average.”**

KIC uses the 21% figure to argue that the Transmission Project “could cause material cost increases in western Kansas that could be as high as a 21% increase.” However, there is no evidentiary support in the record for KIC’s theory that the Transmission Project would lead to a 21% increase in energy prices. Darren Ives testified that levelization is not a zero-sum game. Price decreases in one area do not mean the price will be equally increased somewhere else. By alleviating energy congestion and allocating cheaper energy to the surrounding region, generators are encouraged to generate more electricity at cheaper overall costs, thereby lowering the net cost of electricity for the entire region.

The evidence cited by KIC does not show the correlation between LMP and overall energy costs, let alone all-in rates or bills, which are impacted by congestion and transmission constraints. Further, when evaluating the impact of levelization on LMPs, the Commission must consider the State as a whole, rather than just specific regions. While Grady testified that LMPs in the western part of the State may go up he also testified that low LMPs are not necessarily a good thing for western Kansas. Entities like Sunflower and Midwest who operate out of western Kansas own large generation resources, and low LMPs cause those generation resources to operate at a loss. Additionally, low LMPs increase congestion and transmission costs as less expensive power is transmitted to higher LMP markets. Grady testified that removing inefficiency and removing congestion and spreading out low cost power to as much of the State as possible is a beneficial thing. Levelization also means a reduction in overall energy costs for the entire region.¹²

¹² Order, p. 10–11 (citations omitted) (emphasis added).

As can be seen, three full paragraphs of the Order discussed whether the Project will cause electric power costs in western Kansas to increase up to 21%. Based upon this discussion, it is apparent the Commission considered the impact on western Kansas when evaluating the first Merger Standard.

17. Also, notably, the Commission is not tasked with *only* considering electricity prices in western Kansas. Just as it is not tasked with *only* considering electricity prices in eastern Kansas. The Commission is tasked with considering electricity prices for *all* jurisdictional Kansans. As described in more detail below, there is no evidence in the record to support western Kansas electricity prices increasing by 21%. Furthermore, much of the evidence used to support the suggestion western Kansas electricity prices will increase by 21% depends upon a misunderstanding of the effects of levelizing local marginal prices (LMPs) in Kansas as a participant in the Southwest Power Pool (SPP) Integrated Marketplace. (This will be discussed in greater detail below.) Staff views the Commission Order as weighing all the evidence before it, giving the evidence its appropriate weight, and then considering the needs of *all* jurisdictional Kansans.

18. KIC's argument is also problematic because in essence it argues the Commission should let distorted market conditions persist for the benefit of western Kansas and to the detriment of eastern Kansas. Staff disagrees with that argument. The Commission should not be expected to permit distorted market conditions in eastern Kansas (high LMPs) to persist so distorted market conditions in western Kansas (very low LMPs) can persist. The Commission should not pick winners and losers as KIC asks it to do. Especially when the assertion that electricity prices increasing by 21% in western Kansas is based on a flawed understanding of LMP levelization and is not substantiated by evidence.

ii. The evidence does not support the Project will increase electric power costs in western Kansas by 21%.

19. KIC's assertion that "If the WC / BB project – as it is designed to do – will increase prices of electric power in western Kansas by up to 21%" is not supported by the record.¹³ To make this assertion, KIC relies upon a Southwest Power Pool document that states: "The recommended transmission projects will facilitate delivery of lower-cost generation throughout the region. Market-price disparity will be reduced, levelizing wholesale energy prices by 21% on average."¹⁴ Staff notes this does not mean that electricity prices in western Kansas will increase by 21%. As well, no party—including KIC—has provided any western Kansas specific evidence that the Project will increase electricity prices in western Kansas by 21%.

20. Instead, there is substantial competent evidence in the record describing why this is not true. For example, Mr. Allen's response to Hearing questioning regarding the effects of levelization:

(REDIRECT EXAMINATION BY HEATHER STARNES)

Q. . . . [T]he issue arose of, does levelization mean that if some LMPs go down, other LMPs may go up. Isn't it possible, though, that all the LMPs could end up meeting at a lower -- at the lowest level rather than the higher level?

A. There is a potential for that, yeah. I think the point to remember about levelization of LMPs is that it reduces overall energy costs for the entire region. And the point of transmission planning is to weigh that benefit against the cost of new transmission.¹⁵

In other words, levelizing LMPs on average by 21% does not guarantee western Kansas electricity prices will increase by 21%. Instead, some SPP rate zones may have high LMPs go down more

¹³ KIC Petition, p. 10.

¹⁴ Direct Testimony of Justin Grady, 22-419 Docket, p. 29, (June 7, 2022) (Grady Direct Testimony).

¹⁵ Tr., Vol. 2, 386:21–386:1–5.

than low LMPs go up. This is Staff's expectation for western Kansas, and is supported by the SPP's 2019 Integrated Transmission Planning Assessment Report (2019 ITP).

21. It should be noted that LMPs are not the same as retail electricity prices. Even if a 21% increase in LMPs does occur—there is no evidence that there will be—that does not equate to a 21% increase in retail electricity prices. This fact is borne out by data contained in the 2019 ITP. The 2019 ITP provides monthly rate impacts for average retail residential ratepayers in each of SPP's rate zones.¹⁶ Western Kansas rate zones are expected to have a monthly net rate impact increase between \$0.71 and \$1.36;¹⁷ while eastern Kansas rates zones are expected to have a net monthly rate impact decrease between \$0.30 and \$0.44.¹⁸ A net rate impact increase between \$0.71 and \$1.36 for western Kansas rate zones does not equate to a 21% electricity price increase.

iii. Substantial competent evidence in the record supports the Commission's determination of Kansas specific benefits. The Kansas specific benefits include increased reliability and operational benefits at the Wolf Creek Nuclear Power Station, reduced transmission congestion, levelization of locational marginal prices, and reduced electricity rates.

22. The KCC's determination that there are Kansas specific benefits is supported by substantial competent evidence when viewed in light of the record as a whole. KIC asserts there is no substantial competent evidence in the record to support the KCC's determination that there are Kansas specific benefits.¹⁹ KIC makes this assertion by disregarding the vast amount of Kansas specific benefit evidence in the record and pointing generally to SPP witness Kelsey Allen's

¹⁶ SPP 2019 Integrated Transmission Planning Assessment Report, p. 144 (Nov. 6, 2019) (2019 ITP).

¹⁷ *Id.* at Table 8.14. These price ranges represent Future 1 2029 Retail Residential Rate Impacts. The rate zones in Table 8.14 that represent western Kansas are MIDW, MKEC, and SUNC. *Id.* In the Future 1 scenario, MIDW residential customers are estimated to experience a \$0.71 monthly rate increase; MKEC residential customers a \$1.36 monthly rate increase; and SUNC residential customers a \$0.74 monthly rate increase. *Id.*

¹⁸ *Id.* These price ranges represent Future 1 2029 Retail Residential Rate Impacts. The rate zones in Table 8.14 that represent eastern Kansas are WERE and KCPL. *Id.* In the Future 1 scenario, KCPL residential customers are estimated to experience a \$0.44 monthly rate decrease; and WERE residential customers a \$0.30 monthly rate decrease. *Id.*

¹⁹ KIC Petition, p. 11–12.

Hearing testimony that the 2019 ITP benefits were “calculated system wide for the entire 14 state SPP region, and that benefits to Kansas have not been identified by SPP.”²⁰ In fact, KIC states: “On this point, there is no dispute. There is *no evidence* in the record as to Kansas specific benefits.”²¹ This is simply not true. There is substantial competent evidence in the record demonstrating Kansas specific benefits.

23. Kansas specific benefits are set forth in the Commission’s Order.²² To summarize, the Project’s Kansas specific benefits include, but are not limited to:

- Relieving congestion and diverting bulk power transfers away from the Wolf Creek Waverly-LaCygne 345kV line, Wolf Creek/69kV transformer and downstream 69kV lines;
- Allowing system bulk power transfers to continue to flow east to major SPP load centers, which levelizes system LMPs;
- By paralleling three major contingencies near Wolf Creek, the Project relieves congestion on the Neosho-Riverton 161kV line for line outages on the Neosho-Blackberry 345kV and Blackberry-Jasper 345kV;
- Increases system reliability by adding a fourth 345kV outlet at Wolf Creek Nuclear Power Station; and
- Adds transmission capacity which results in increased transfer capability to local, i.e., Kansas, long-term transmission service customers.²³

24. These reliability and congestion benefits are all *Kansas specific* benefits that are uncontroverted, and that do not require calculation. In and of themselves they are substantial and warrant approval of the Project. However, there are also Kansas specific economics benefits and they also justify the Project. The 2019 ITP projects a benefit cost ratio of between 5.9 and 7.1 for Evergy Kansas Central, Inc. and 4.1 to 6.9 for Evergy Kansas Metro, Inc. service areas. While the transmission rate component of customers’ bills will likely increase by approximately 1.42%—which is roughly \$0.04 or \$0.05 a month—that increase will occur if the Project fails to create *any*

²⁰ *Id.* at 11.

²¹ *Id.* at 12 (emphasis added).

²² Order, p. 11-13.

²³ Order, p. 11-13.

economic benefits in the form of reduced congestion, lower wholesale power prices, or increased reliability of the Wolf Creek Nuclear Power Station. In other words, Kansas customers will experience a \$0.04 to \$0.05 increase if there are *zero* economic benefits—which is highly unlikely. In fact, Staff believes the estimated \$0.04 to \$0.05 increase in the transmission rate component of bills is high given it is based on SPP’s estimated cost of \$142.6 million. The actual cost of the Project is now estimated to be \$85.2 million in 2021 dollars.

25. These reliability, congestion, and economic benefits are *Kansas specific*. As a result, KIC’s assertion that there is “no evidence in the record as to Kansas specific benefits” is simply false. There is substantial competent evidence in the record, and the Commission’s action *is* supported to the appropriate standard of proof when viewed in light of the record as a whole.

B. Staff witness Grady’s testimony is/was based on facts and data in the record, the product of reliable principles and methods, and the result of reliably applying principles and method to the facts of the case.

26. Staff witness Justin T. Grady is an expert witness whose testimony was based upon the facts in the record and the result of reliably applying principles and methods. KIC asserts witnesses, including Mr. Grady, “attempted to construct evidence on the witness stand,” made “back of the envelope analysis,” and “invented fact[s].” While KIC was not specific about which evidence was “constructed” by Staff witness Grady, the testimony provided by Mr. Grady conformed with Kansas law, Kansas regulation, and Commission precedent.

27. Regulations governing rules of evidence before the Commission are set forth in K.A.R. 82-1-230. K.A.R. 82-1-230(a) states the rules of evidence “in article four of the Kansas code of civil procedure shall be applied by the commission at all of its hearings.” K.S.A. 60-456 through 60-458 of article four of the Kansas code of civil procedure pertain to expert witnesses. K.S.A. 60-458 states:

The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible into evidence in order for the opinion or inference to be admitted.

Additionally, expert witnesses may testify in the form of an opinion or otherwise if:

(1) The testimony is based on sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has reliably applied the principles and methods to the facts of the case.

28. Mr. Grady is the Chief of Revenue Requirements, Cost of Service and Finance. Mr. Grady holds a Master of Business Administration degree with a concentration in General Finance which includes emphases in Corporate Finance and Investment Management from the University of Kansas.²⁴ Mr. Grady also holds a Bachelor of Business Administration degree with majors in Finance and Economics.²⁵ Mr. Grady has been employed by the KCC in various positions in the Utilities Division since 2002.²⁶ Mr. Grady has been a Section Head in the Utilities Division since May 2012, and has been employed in his current capacity since August 2020.²⁷ Mr. Grady is a dedicated public servant and his expertise in his field of practice is well-known and well-respected. Mr. Grady is an expert witness.

29. Mr. Grady's testimony at Hearing was based upon facts and data presented through a multitude of discovery requests and filed pleadings in this Docket. The information contained within the discovery requests and pleadings in this Docket are of the type reasonably relied upon by experts in his field in forming opinions or inferences upon the subject matter of this Docket. This Docket contains thousands of pages of information, hundreds of discovery requests, and pleadings submitted by eleven parties. Mr. Grady reviewed all of it and applied reliable principles

²⁴ Grady Direct Testimony, at p. 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

and methods to it to generate his analysis in Staff's Report & Recommendation filed May 18, 2022, Testimony in Support of the Nonunanimous Settlement Agreement filed June 7, 2022, and Hearing testimony on July 13, 2022. Mr. Grady's testimony at Hearing complies with Kansas law.

30. KIC alleging Mr. Grady "constructed evidence on the stand" or made "back of the envelope analysis" or "invented fact[s]" mischaracterizes Mr. Grady's expert witness testimony and demonstrates a misunderstanding of the legal standards regarding expert witness testimony.

31. The Commission and other parties to this Docket either conducted or had the opportunity to conduct extensive cross examination of Mr. Grady during the hearing. Notably, this included KIC. If the Commission felt Mr. Grady "constructed evidence on the stand" or improperly made "back of the envelope analysis" then the Commission was free to give that testimony the weight that it was due. However, the Commission cited extensively to Mr. Grady's testimony in the development of the Order. Staff insists this was proper and would direct KIC and the Commission to Section II.A of this Response which contains a sampling of the Kansas specific facts Mr. Grady relied upon for his Hearing testimony.

III. Conclusion

32. KIC's Petition is not supported by Kansas law, Commission precedent, or the record as a whole. The Commission Order in this Docket identified and analyzed the correct legal standards governing its decision and applied the facts to those standards. Therefore, the Commission's Order is supported by Kansas law, Commission precedent, and the record as a whole. Accordingly, KIC's Petition must be denied.

WHEREFORE, Staff requests the Commission deny KIC's Petition for Reconsideration in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

22-NETE-419-COC

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to KIC Petition for Reconsideration was served via electronic service this 21st day of September, 2022, to the following:

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