

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

In the Matter of the Investigation into the )  
Principles and Priorities to be Established for )  
Evaluating the Reasonableness of the Location ) Docket No. 24-GIME-102-GIE  
of a Proposed Transmission Line in Future )  
Line Siting Proceedings )

**EVERGY-POST WORKSHOP REPLY COMMENTS**

COMES NOW, Evergy Kansas Central, Inc. and Evergy Kansas South (together as “Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Kansas Metro”) (collectively, “Evergy”), and for its reply comments in response to the Staff of the State Corporation Commission of the State of Kansas’ (“Staff” and “Commission,” respectively) Kansas Line Siting Principles and Priorities Proposal (“Staff’s Proposal”) regarding the initial post-workshop comments of parties in the docket, states as follows:

**I. REPLY COMMENTS**

After discussing Staff’s Proposal at the technical conference held at the Commission on November 1, 2024, Staff has asked all parties to provide comments on and a redline of the Proposal. Staff’s Proposal contains four parts, definitions and three recommendations.

On November 8, 2024, parties filed their initial comments to Staff’s Proposal. Evergy will not respond to every single comment or issue raised by each party and the absence of a specific response should not be interpreted as Evergy’s agreement/endorsement with the party or comment.

**A. Definitions**

After reading comments made by the other parties concerning definitions and the changes suggested to be made, Evergy offers the following comments:

- *Center Pivot Irrigation* – Evergy agrees with NextEra Energy Transmission Southwest, LLC (“NEET”) the definition should reflect direct impacts to center pivot irrigation systems only and should not include “the area of right of way within a center pivot irrigation system.” Utilities can micro-site to span or avoid direct impacts. The definition as it is now could allow overcounting actual impacts.
- *Agricultural Structure Impact* – Evergy agrees with Grain Belt Express LLC (“Grain Belt Express”) that the definition should be clarified to mean existing agricultural structures while not including abandoned or derelict structures, temporary structures, or easily relocatable structures.

## **B. Routing Principles**

Evergy reiterates its comments in the Reply to Staff’s Proposal that routing principles should flexible guidelines and not mandatory requirements allowing utilities to be flexible in the line siting process.

Evergy agrees with Grain Belt Express in that the principles should acknowledge transmission applicants are subject to various federal and state environmental, cultural, and historical preservation requirements.

Evergy is against the recommendation made by Eastern Kansas Oil & Gas Association (“EKOGA”) and Kansas Independent Oil and Gas Association (“KIOGA”) who suggest adding principles to avoid oil, gas, injection, disposal wells and notice of intent to drill locations; and minimizing crossing through active oil and gas fields. Similar to Evergy’s recommendation to remove the principle for avoiding communication towers and wind turbines, Evergy believes these instances should governed by the business-business relationship between the utility and the oil and gas company and can be handled in the easement negotiation phase.

As mentioned above Evergy agrees with NEET's suggestion of adding "avoid direct impact" to the center pivot irrigation arms principle. Utilities can micro-site or span over to avoid direct impact.

### **C. Standard Criteria and Weighting**

Evergy echoes the sentiment of many of the other parties in that the list of criteria in Staff's Proposal should not be considered an exhaustive list. Evergy supports Staff's attempt to determine at least some universally supported criteria, but line siting involves many more factors than those listed by Staff.

Evergy is supportive of KAMO Electric Cooperative, Inc., ("KAMO Power") and its recognition that the criteria "length along existing transmission lines" should be a weighted criterion. Evergy believes the utilizing criteria like length along existing transmission lines, using existing right-of-way, and co-locating is good transmission siting practice and lowers the overall impact of all other criteria while maximizing opportunities and adhering to the routing principles.

### **D. Required Documentation**

Evergy disagrees with the suggestion made by some parties that the Commission should require filing and enforce agricultural impact mitigation, landowner, and oil and gas industry protocols. As discussed in Evergy's Comments on Staff's Proposal, Staff's suggestion to require utilities to file protocol documents strays into the scope of easement design and negotiation. Many suggestions made by the Kansas Farm Bureau ("KFB") and EKOGA and KIOGA are specific easement clauses typically negotiated between individual landowners and the utility. Requiring utilities to file Commission approved protocols invites new disputes between landowners and utilities that are not normally brought before the Commission. The protocol provisions provided by some parties in this docket are extremely broad and vague. Many provision are subjective

viewpoints that would be difficult for the Commission or any court to determine whether the provision has been violated.

Again, as discussed in Evergy's Comments on Staff's Proposal, it is unclear how the Commission would have jurisdiction to enforce protocols concerning easement negotiation through a line siting permit. Evergy agrees with ITC Great Plains ("ITC") and the concern of whether interaction with landowners and other interest holders is jurisdictionally relevant to the Commission.

#### **E. Mineral Rights vs. Land Rights**

EKOGA and KIOGA comments recommend that utilities be required to provide notice of line siting applications to all mineral rights interest holders. EKOGA and KIOGA state that mineral rights owners are the same as landowners under K.S.A. 66-1,178. Evergy disagrees with this assertion and recommendation. The severance of surface and mineral rights creates two separate, distinct estates.<sup>1</sup> Evergy agrees with NEET's comments in that mineral rights owners do not have the right to govern the surface rights owner's use of the land so long as the mineral rights are not impeded.

EKOGA and KIOGA's interpretation of K.S.A. 66-1,179 and 66-1,178 conflates the land rights of mineral rights with surface rights, which are separate estates. Evergy agrees, mineral rights owners do have an interest in the land to make reasonable use of the land in order to explore and develop the mineral estate.<sup>2</sup> However, as NEET points out, this interest does not prevent surface owners from entering into easements. Transmission easements do not acquire any interest held by the mineral rights owner and surface owners are free to enter into these easements without approval of mineral rights owner.

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<sup>1</sup> *J.R. Crowe Coal & Mining Co. V. Atkinson*, 85 Kan. 357, 360 116 P. 499 (1911).

<sup>2</sup> *Mai v. Youtsey*, 231 Kan. 419, 424, 646 P.2d 475 (1982).

This purported issue raised by EKOGA and KIOGA has not existed in any of the most recent line siting dockets. EKOGA or KIOGA did not intervene in 23-NETE-585-STG, 24-GBEE-790-STG, or 17-WSEE-063-STG. Even in this investigation docket, this issue was not raised until the day of the technical conference. EKOGA and KIOGA have not shared any examples of issues between utilities and mineral rights owners. There is no material reason for the Commission to impose new requirements on utilities.

## **II. CONCLUSION**

Evergy appreciates the opportunity to participate in the Commission’s investigation into line siting principles and hopes the establishment of guidelines of land use parameters and construction practices will send a clear signal to the SPP regarding what would be expected for competitive projects approved in the annual ITP process. The standards for any such projects in Kansas should influence the assumptions and directives in the Request for Proposals (“RFPs”) SPP issues for competitive bids and the standards by which the Independent Expert Panel (“IEP”) would review and score such bid packages submitted by entities wishing to construct and operate transmission lines in Kansas.

The issues presented in this docket have great importance to a process that occurs every year in the SPP. The establishment of standards that support reliable, sufficient, and efficient transmission development in Kansas prior to the next ITP approval would benefit Kansas landowners, utilities, customers, and potential future transmission owners.

**WHEREFORE**, Evergy submits these Reply Comments in response to Staff’s Proposal for Commission review and consideration and or such other relief as the Commission deems just and reasonable.

Respectfully submitted,

*/s/ Cole A. Bailey*

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that a true and correct copy of the above and foregoing Evergy Comments to the Staff's Report and Recommendation was served via electronic service this 22<sup>nd</sup> day of November 2024, to the following:

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