

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Application of Evergy)
Kansas Central, Inc. for a Certificate of)
Public Convenience and Authority to)
Transact the Business of an Electric Public) Docket No. 20-EKCE-233-COC
Utility defined as TC Burns Tap to TC Burns)
Transmission Line project in Butler County,)
Kansas.)

PUBLIC ORDER APPROVING TRANSMISSION RIGHTS ONLY
CERTIFICATE OF CONVENIENCE AND NECESSITY

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings and conclusions.

I. BACKGROUND

1. On November 26, 2019, Evergy Kansas Central Inc. d/b/a Evergy Kansas Central (“Evergy Kansas Central”), filed an Application requesting a Transmission Rights Only (“TRO”) Certificate of Public Convenience and Necessity (“Certificate”).¹ Evergy Kansas Central is a Kansas corporation authorized to conduct the business of a public utility under K.S.A. 66-104.² Evergy Kansas Central is seeking permission to construct a 138kV transmission line through the certified service territory of Butler Rural Electric Cooperative, Inc. (“Butler Rural Electric”) to serve a new customer.³

¹ Application for Evergy Kansas Central, Inc. (Nov. 26, 2019) (Application).

² See Application at 1.

³ See Application at 2.

2. On April 21, 2020, Commission Staff (Staff) submitted a Report and Recommendation (dated April 15, 2020), in both public and confidential form, regarding the proposed TRO Certificate.⁴ Staff analyzed Evergy Kansas Central's request and the economics underpinning it, and recommended approving Evergy Kansas Central's requested TRO Certificate.⁵

II. JURISDICTION

A. Certificates of Convenience and Necessity

3. K.S.A. 66-131 requires public utilities⁶ doing business in the state obtain a certificate of convenience and necessity from the Commission prior to commencing operations.⁷ The legal standard for the Commission to apply in certificate proceedings is whether "public convenience and necessity" will be promoted.⁸

4. "Public convenience means the convenience of the public, not the convenience of particular individuals."⁹ "Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word 'necessity' means a public need without which the public is inconvenienced to the extent of being handicapped."¹⁰ A showing of absolute necessity is not required to support the granting of a certificate.¹¹ Evaluating public convenience and necessity, or

⁴ See Staff's Report and Recommendation (Apr. 21, 2020) (Report and Recommendation).

⁵ See Report and Recommendation at 2-3.

⁶ K.S.A. 66-104(a) defines "public utility" in relevant part as "all companies for the production, transmission, delivery or furnishing of heat, light, water or power."

⁷ "No . . . public utility . . . governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state." K.S.A. 66-131(a). See also *Kansas Gas & Elec. Co., v. Pub. Serv. Comm'n of Kansas*, 251 P. 1097, 1099 (1927); *Wycoff v. Quick Way Homes, Inc.*, 201 Kan. 442, 446, 441 P.2d 886, 890 (1968).

⁸ See K.S.A. 66-131(a). See also *Cent. Kansas Power Co. v. State Corp. Comm'n*, 206 Kan. 670, 676, 482 P.2d 1, 7 (1971).

⁹ *Cent. Kansas Power Co.*, 206 Kan. at 676, 482 P.2d at 7.

¹⁰ *Id.* (internal quotations retained); See also *General Communications System, Inc. v. State Corporation Commission*, 216 Kan. 410, 415-418 (1975).

¹¹ See *Cent. Kansas Power Co.*, 206 Kan. at 676, 482 P.2d at 7.

lack thereof, is best established by proof of conditions existing in the territory to be served,¹² and the Commission may draw its own conclusions regarding these conditions.¹³

B. Retail Electric Suppliers

5. The Kansas Retail Electric Suppliers Act (RESA), codified at K.S.A. 66-1,170 through K.S.A. 66-1,176c, divided the state into service territories for retail electric suppliers.¹⁴ In addition to outlining policy considerations,¹⁵ RESA: (1) permits only one retail electric supplier to provide retail electric service within a particular service territory,¹⁶ and (2) allows retail electric suppliers to revise customer-specific and service-territory boundaries with Commission approval.¹⁷

6. Provided the Commission agrees, RESA also allows a retail electric supplier to extend distribution or transmission facilities through another retail electric supplier's service territory if the extension is needed to serve the former retail electric supplier's customers located within its own service territory.¹⁸ When this occurs, a retail electric supplier requests a TRO Certificate from the Commission so the supplier may traverse the service territory of another on condition they do not provide retail electric service.

III. DISCUSSION

7. Evergy Kansas Central is seeking a TRO Certificate that, if granted, would allow Evergy Kansas Central to construct a radial transmission line through the certificated territory of Butler Rural Electric to serve a new customer.¹⁹ Evergy Kansas Central's requested TRO

¹² See Cent. Kansas Power Co., 206 Kan. at 677, 482 P.2d at 7.

¹³ See *id.*

¹⁴ See K.S.A. 66-1,171.

¹⁵ See *id.*

¹⁶ See K.S.A. 66-1,172; K.S.A. 66-1,173.

¹⁷ See K.S.A. 66-1,172; K.S.A. 66-1,175.

¹⁸ See K.S.A. 66-1,173(a).

¹⁹ See Report and Recommendation at 1-2.

Certificate is part of a larger project planned in the area.²⁰ Evergy Kansas Central is rebuilding a de-energized 161kV transmission line as a new 138kV transmission line, and will use existing right-of-way where possible.²¹ Specific to Evergy Kansas Central's TRO Certificate request, the 138kV transmission line will be constructed in private easements ultimately terminating at a substation located in Evergy Kansas Central's certified territory.²²

8. Staff performed discovery regarding the project's costs and justification (i.e., ensure revenue generated from the project would offset the project's costs).²³ Staff's presentation of estimated revenues is more fully presented in its Confidential Report and Recommendation. Ultimately, Staff determined economics justified the project's construction costs.²⁴ Staff's Report and Recommendation further details how Evergy Kansas Central's responses to Staff's Data Requests satisfied several Staff concerns (e.g., how construction would be funded, subsidization issues, overall justification for demolishing an existing line, and landowner concerns).²⁵

9. After outlining certain applicable legal standards, Staff confirmed the legal description included in the Application accurately depicted the requested TRO Certificate on maps included with the Application, and did not conflict with the Commission's certificate records.²⁶

10. Ultimately, Staff recommended the Commission grant Evergy Kansas Central's Application for a TRO Certificate.²⁷

²⁰ See Report and Recommendation at 2.

²¹ See Report and Recommendation at 2.

²² See Report and Recommendation at 2.

²³ See Report and Recommendation at 2.

²⁴ See Report and Recommendation at 3.

²⁵ See Report and Recommendation at 3.

²⁶ See Report and Recommendation at 3.

²⁷ See Report and Recommendation at 3-4.

IV. FINDINGS AND CONCLUSIONS

11. The Commission finds Evergy Kansas Central is an “electric public utility” as defined in K.S.A. 66-101a, as well as a “public utility” as defined in K.S.A. 66-104(a). As such, the Commission concludes it has jurisdiction over Evergy Kansas Central’s TRO Certificate request as detailed by K.S.A. 66-131 and K.S.A. 66-1,173.

12. The Commission finds approval of Evergy Kansas Central’s TRO Certificate request promotes the public convenience and necessity and should therefore be approved. Allowing Evergy Kansas Central to extend transmission facilities to serve a new customer located within Evergy Kansas Central’s certified territory will provide the new customer with a reliable source of electricity.

13. Evergy Kansas Central’s request will not infringe on the rights of any other retail electric suppliers. Granting the requested TRO Certificate allows Evergy Kansas Central to build a transmission line through Butler Rural Electric’s certified service territory. However, this would not allow Evergy Kansas Central to provide retail electric service within Butler Rural Electric’s certified service territory. Approving Evergy Kansas Central’s requested TRO Certificate allows Evergy Kansas Central to operate utility facilities within Butler Rural Electric’s service territory (e.g., a 138kV transmission line), but does not permit Evergy Kansas Central to provide any retail electric service in that area. Evergy Kansas Central’s TRO Certificate request is consistent with RESA’s policy considerations and framework.

14. The Commission finds approval of Evergy Kansas Central’s Application and requested TRO Certificate is: (1) in the public interest, (2) promotes the public convenience and necessity, and (3) is permitted by the Commission’s jurisdictional, certification, and RESA statutes.

15. The Commission adopts the recommendation of Staff as contained within Staff's April 15, 2020 Report and Recommendation (filed in this docket on April 21, 2020) as its own. The Commission finds Evergy Kansas Central should be granted a TRO Certificate for the legal description contained within Evergy Kansas Central's Application and as restated in Attachment A to Staff's April 15, 2020 Report and Recommendation.

16. As such, the Commission concludes Evergy Kansas Central's Application and TRO Certificate, discussed above, should be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED:

- A. Evergy Kansas Central's Application and TRO Certificate is approved.
- B. Evergy Kansas Central is hereby granted a TRO Certificate for the legal description contained within Evergy Kansas Central's Application and as restated in Attachment A to Staff's April 15, 2020 Report and Recommendation. Specifically:

BUTLER COUNTY, KANSAS TRANSMISSION RIGHTS ONLY:

The Evergy electric line turns west at the TC Burns Tap and begins the greenfield portion of the TC Burns Tap to TC Burns 138 kV line. The line runs west through the northern edge of the NW/4 S11-T24S-5E, the northern edge of the N/2 S10-T24S-R5E, N/2 S9-T24S-R5E, N/2 S8-T24S-R5E and approximately 122 feet of the NE/4 S7-T24S-R5E where the Butler Rural Electric service area ends.

The line continues west and enters the Evergy Kansas Central service area on the northern edge of the N/2 S7-T24S-R5E for approximately 0.91 miles where the Evergy Kansas Central service area ends in the same section.

The line enters the Butler Rural Electric service area on the northern edge of the NW/4 S7-T24SR5E and continues west for approximately 280 feet and into northern edge of the N/2 S12-T24SR4E and the N/2 S11-T24S-R4E. The line turns southwest in the far NE/4 S10-T24-S-R4E and runs southwest through the N/2 S10-T24S-R4E and the SE/4 S9-T24S-R4E for approximately 2800 feet where the Butler Rural Electric service area ends. The line continues southwest where it enters the Evergy Kansas Central service territory in the S/2 S9-T24S-R4E and into the SE/4 S8-T24S-R4E where it continues southwest for approximately 575 feet then turns west for approximately 800 feet where the Evergy Kansas Central service area ends.

The line continues west, entering the Butler Rural Electric service territory in the southern edge of the SE/4 S8-T24S-R4E where it runs for approximately 715 feet before turning south, leaving the Butler Rural Electric service area and terminating at the TC Burns substation located in the Everyg Kansas Central service area.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 05/07/2020



Lynn M. Retz
Executive Director

REV

PUBLIC¹
REPORT AND RECOMMENDATION
UTILITIES DIVISION

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

FROM: John Gorrell, Utility Engineer
Leo M. Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: April 15, 2020

SUBJECT: 20-EKCE-233-COC
In the Matter of the Application of Evergy Kansas Central, Inc. for a Certificate of Public Convenience and Authority to Transact the Business of an Electric Public Utility defined as TC Burns Tap to TC Burns Transmission Line project in Butler County, Kansas.

EXECUTIVE SUMMARY:

In Docket 20-EKCE-233-COC, Evergy Kansas Central (Evergy) requests a Certificate for Transmission Rights Only (TRO) to construct approximately nine miles of new 138kV transmission line for a Commercial customer in Butler County, Kansas. This greenfield² project will be located in territory certificated to Butler Rural Electric Service Cooperative. The portion of transmission line associated with the TRO is part of a larger project which includes the tear down of a de-energized and abandoned 161kV that will be replaced by 12 miles of new 138 kV line and will connect to the new greenfield line.³ Staff recommends Evergy's Application for Certificate in 20-EKCE-223-COC be granted for Transmission Rights Only for the greenfield portion of the line.

BACKGROUND:

On November 26, 2019, Evergy filed the above-captioned Application requesting a Certificate for TRO to build nine miles of 138kV transmission line through the certificated territory of

¹ ** Denotes confidential information.

² Greenfield is a term defined as being a brand new construction, meaning there is no preexisting line that is being renovated.

³ EL 39665.

Butler Rural Electric Service Cooperative. Evergy seeks Commission approval to construct the new radial 138kV transmission line to serve a new 15 MVA customer.

Evergy plans to use the right-of-way of an existing de-energized 161kV line from their Midian Substation located just northwest of El Dorado, Kansas, and rebuild it to a 138kV transmission line for approximately 12 miles north to the new TransCanada Keystone Pipeline, LP (TC) Burns Tap, where this Application for TRO begins. The new portion of the 138kV transmission line will run west, in private easements for approximately nine miles terminating at the TC Burns substation located in the Evergy Certified Territory. The legal description of the route of the project is included in Attachment A, and a map is included as Attachment B.

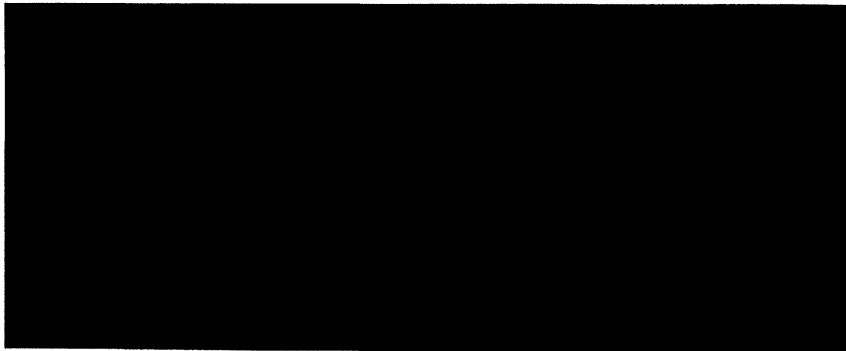
The project is part of a greater project planned by Evergy in the area. Further north of the Burns Tap, a new 138kV/345kV substation is being planned, which will require an additional rebuild of 138kV line to connect with the proposed construction.

The total cost associated with demolition of the old line and rebuild from the El Dorado substation to the tap connection, and radial line to the new customer is \$26,954,966. Evergy supplied a cost breakout for each segment listed in their EL Application, which was submitted to the Commission on October 15, 2019.

ANALYSIS:

Staff requested a cost breakdown and justification for spending on the project. This was requested to ensure the revenue generated by the project would offset the costs of the project such that ratepayers were not subsidizing the cost of the line for the new customer. In response to Staff Data Request 4, a spreadsheet titled "TC Energy – Minimum Capacity Contracts Analysis" was provided by Evergy. This outlined the terms by which TC Energy agreed to purchase a minimum amount of electricity from Evergy based on the new transmission line to the Burns pump station, along with extended minimum purchase agreements for four other pump stations along the pipeline operated by TC Energy. The terms reflected in the agreement, along with a summary of the estimated revenue Evergy would receive based upon the agreements is shown below.

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The individual contractual agreements for minimum capacity for each pump station were provided by Evergy during a meeting with Staff. After careful analysis, and considering that

these contracts are minimum projected amounts, Staff has determined that the economics justify the project construction costs. Ultimately, the costs do not disadvantage ratepayers by having them subsidize the project as the ** [REDACTED] ** in minimum projected revenue outweigh the projected construction costs of \$26.9 million.

Evergy provided answers to several of Staff's concerns through a series of Data Requests. These concerns included, but were not limited to, how line construction was to be funded, if ratepayers would be subsidizing its construction, and overall justification of costs for constructing the line including the demolition of the 161kV line. These responses to Staff's Data Requests included the Letter Agreement between TC and Evergy and the Agreement for Electric Service, including the individual agreements for minimum capacity contracts for the Burns pump station along with four others. Additional concerns raised by Staff were in regards to whether landowners in the area had concerns and whether or not any of the costs would be funded by other Transmission Operators in Evergy's SPP zone. Evergy responded that they have been working with all landowners to keep them informed and address all of their concerns. Additionally, this project is not part of SPP's Notice to Construct (NTC) process and, therefore, would not be funded by anyone other than Evergy. Staff has found that these responses appropriately satisfy all of its concerns.

K.S.A. 66-1,170 et seq., the Retail Electric Suppliers Act (RESA), requires the state of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. If a retail electric supplier receives Commission approval, RESA allows it to extend distribution or transmission facilities through the territory of another supplier provided the supplier building through the territory only uses the proposed line to serve its own certificated customers.⁴

The Commission has authority to grant a Certificate of Convenience and Necessity to any public utility seeking to transact business in the State of Kansas.⁵

The statutory standard of review in this matter is whether the public convenience will be promoted by the transaction of the proposed project and by permitting the Applicants to transact the business of a common carrier or public utility.⁶

Staff has reviewed Evergy's Application and has confirmed the legal description included in the Application is accurately depicted on the map attached to the Application. Staff also confirmed the legal description is not in conflict with the Commission's Certificate records. The legal description is included as Attachment A to this Report and Recommendation.

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

The Commission action date is May 12, 2020⁷.

⁴ K.S.A. 66-1,173.

⁵ K.S.A. 66-131.

⁶ K.S.A. 66-131.

⁷ Original action date was April 12, 2020, but Staff extended the action date by 30 days due to COVID-19 work delays.

RECOMMENDATION:

After careful analysis of the project, its economics, and the conclusion that it does not disadvantage ratepayers, Staff is recommending Evergy's Application for Certificate in 20-EKCE-223-COC be granted for Transmission Rights Only.

ATTACHMENT A
Legal Description of Proposed Transmission Line Route
20-EKCE-233-COC

BUTLER COUNTY, KANSAS

TRANSMISSION RIGHTS ONLY:

The Evergy electric line turns west at the TC Burns Tap and begins the greenfield portion of the TC Burns Tap to TC Burns 138 kV line. The line runs west through the northern edge of the NW/4 S11-T24S-5E, the northern edge of the N/2 S10-T24S-R5E, N/2 S9-T24S-R5E, N/2 S8-T24S-R5E and approximately 122 feet of the NE/4 S7-T24S-R5E where the Butler Rural Electric service area ends.

The line continues west and enters the Evergy Kansas Central service area on the northern edge of the N/2 S7-T24S-R5E for approximately 0.91 miles where the Evergy Kansas Central service area ends in the same section.

The line enters the Butler Rural Electric service area on the northern edge of the NW/4 S7-T24S-R5E and continues west for approximately 280 feet and into northern edge of the N/2 S12-T24S-R4E and the N/2 S11-T24S-R4E. The line turns southwest in the far NE/4 S10-T24S-R4E and runs southwest through the N/2 S10-T24S-R4E and the SE/4 S9-T24S-R4E for approximately 2800 feet where the Butler Rural Electric service area ends. The line continues southwest where it enters the Evergy Kansas Central service territory in the S/2 S9-T24S-R4E and into the SE/4 S8-T24S-R4E where it continues southwest for approximately 575 feet then turns west for approximately 800 feet where the Evergy Kansas Central service area ends.

The line continues west, entering the Butler Rural Electric service territory in the southern edge of the SE/4 S8-T24S-R4E where it runs for approximately 715 feet before turning south, leaving the Butler Rural Electric service area and terminating at the TC Burns substation located in the Evergy Kansas Central service area.

ATTACHMENT B

New TC Burns Substation

BTRE

Butler

Midian Substation

Substations

- METER
- SUBSTATION

VOLTAGE

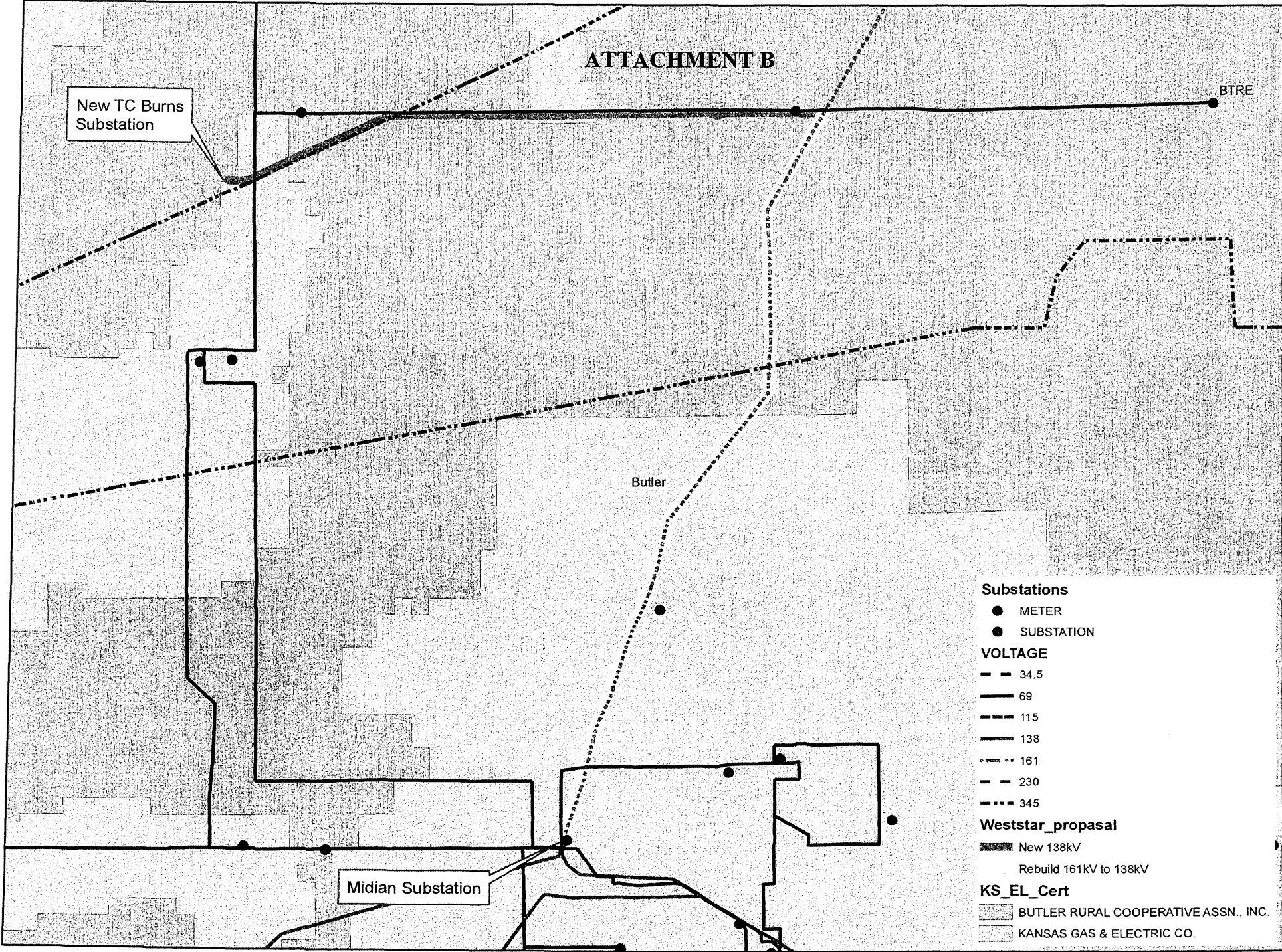
- - - 34.5
- 69
- - - 115
- 138
- · - · - 161
- - - 230
- · - · - 345

Weststar_proposal

- ▨ New 138kV
- ▨ Rebuild 161kV to 138kV

KS_EL_Cert

- ▨ BUTLER RURAL COOPERATIVE ASSN., INC.
- ▨ KANSAS GAS & ELECTRIC CO.



CERTIFICATE OF SERVICE

20-EKCE-233-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 05/07/2020.

JEFFREY L. ADAMS, VICE PRESIDENT OF OPERATIONS
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/s/ DeeAnn Shupe

DeeAnn Shupe