

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of NextEra)
Energy Transmission Southwest, LLC for its)
Certificate of Convenience and Necessity to) Docket No. 22-NETE-419-COC
Construct Transmission Facilities in the State)
of Kansas.)

PETITION FOR RECONSIDERATION

COMES NOW, Darren McGhee and Rochelle McGhee Smart (individually and collectively “the McGhees”), and for their Petition for Reconsideration of the Kansas Corporation Commission (“Commission” or “agency”) August 29, 2022, “ORDER ON APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY,” (“Order”) state as follows:

1. This petition is filed pursuant to K.S.A. § 66-118b and K.S.A. § 77-529.
2. The McGhees are aggrieved by the Order.
3. When issuing the Order:
 - a) The agency action, or the statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied;
 - b) the agency has acted beyond the jurisdiction conferred by any provision of law;
 - c) the agency has not decided an issue requiring resolution;
 - d) the agency has erroneously interpreted or applied the law;

- e) the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;
 - f) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;
 - g) the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or
 - h) the agency action is otherwise unreasonable, arbitrary or capricious.
4. When evaluating whether the proposed application for a Certificate for Convenience and Necessity (CCN) to construct an electric transmission line is in the public interest, the Commission's evaluation includes assessing the impact of the proposed line on public safety and the effect the line will have on the environment. See, Docket No. 16-KCPE-593-ACQ, Order (April 19, 2017).
5. The Commission erred in evaluating the environmental impact of the proposed transmission line. The Commission's environmental impact analysis was limited to assessing the transmission line's potential impact on wetlands, sensitive species habitat, and cultural and archaeological resources. In addition, that evaluation is incomplete in scope, inadequate, and perfunctory at best.

6. Additional companion projects – in particular additional wind resources, i.e. wind farms – are anticipated to be constructed as a result of the proposed transmission line. KIC exhibit 48, sets forth the pending renewable energy projects in the Southwest Power Pool (SPP). Those projects, including wind, solar, and storage. Several of the pending renewable energy projects are in close proximity to the proposed NEET Southwest electric transmission line.
7. Further, Kelsey Allen, an SPP Representative, confirmed that the SPP would attach additional wind farms to the system, if NEET Southwest's proposed transmission line is built:

(Examination by Zakoura)

Q. Would you agree, based on your prior testimony, that so long as the tariff provisions are met, that SPP would attach additional wind resources to its system in the western half of Kansas?

A. As long as all of the requirements are met to do so, yes.

Q. And your testimony was that Kansas is -- I don't want to paraphrase -- I think you said wind-rich or in some fashion you made it a descriptive term. Would you state that again so I won't misstate it? A. Could you refer me to the page that you're looking at?

Volume 2 Tran: 347:9-20 (witness Kelsey Allen)

8. Those potential wind farms and solar projects will have an environmental impact on Kansas and, thus, the public interest.
9. No assessment was completed on the environmental impact those companion wind farms and solar projects will have on the environment and the public interest.

10. The Commission has no authority to regulate wind farms and solar projects

Therefore, once the Commission issues a CCN for the proposed transmission line, it loses all authority to prevent or reduce the environmental impact of those wind farm and solar projects. The Commission erred when it took a foreshortened view of the impacts likely to result from issuing a CCN.

11. By failing to consider the environmental impact of the expected wind farms and solar projects, the Commission did not consider evidence which was material, substantial, and uncontroverted in this proceeding.

12. By failing to consider the environmental impact of the expected wind farms and solar projects, the Commission's Order is based on a determination of fact that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole

13. During the two-day hearing in this Docket, the Commission engaged in unlawful procedure and Commissioner French was subject to disqualification when he acted as an advocate as opposed to an arbiter of fact:

COMMISSIONER FRENCH: Mr. Allen, as I understand it, what you've explained as the reason that you didn't define that part of the route is that you wanted to leave open the flexibility for competitive parties to propose whatever solution they believed would be most competitive and most likely to gain approval by the industry expert panel at SPP. And feel free to correct me if that's a mischaracterization. But would it have been -- is there flexibility within that process where an entity, perhaps partnering with Evergy, or perhaps Evergy itself could have proposed a solution that would incorporate double circuiting that line or paralleling that line?

THE WITNESS: Yeah, absolutely. I mean, to the extent that the transmission owners want to work together, whether it's in response to the RFP or after, work together to

do that, which, I mean, honestly, my personal opinion would be, you know, that's certainly more efficient use of land, then, yes, they can do that.

COMMISSIONER FRENCH: Okay. I appreciate that. Thank you.

MS. STARNES: *Thank you, Commissioner French. You did my work for me.*

COMMISSIONER FRENCH: Don't ever say that.

Vol. 2 Tran: 387:20 - 388:18 (witness Starnes) (emphasis added)

14. Commissioner French's advocacy is becomes even more apparent from his leading questions:

(Examination by Commissioner French)

Q. One question. Just to clarify something here, and I'm going to apologize if this goes into asking for a legal conclusion and if you're not comfortable. Or if you think you need counsel's assistance to answer, then we'll just stop. That provision, we've mentioned it several times where I think it's sort of an interdependency provision where the parties agree it's a complete package and the agreement or the contract is voidable if it's changed or modified. That provision does say that that's an agreement among the parties. Correct? It's a provision for the parties?

A. Absolutely.

Q. To enforce it against each other. Correct?

A. Yeah, that's correct. I mean, the Commission is not a signatory.

Q. So the Commission can make whatever decision it wants in this case. It can approve the settlement, it can decline to approve the settlement. It can modify the settlement. And that becomes it's decision. Correct?

A. Yeah. I mean, in my six, seven years of experience between CURB and KCC, that's always been my understanding.

Q. And at that point - maybe this is a legal conclusion - but isn't it irrelevant whether the parties could enforce that settlement against each other once we have a Commission decision?

A. Yeah. I mean, my understanding is the Settlement Agreement without an order is pointless. It doesn't get you anywhere.

Q. All right. That's all I had.

CHAIR KEEN: All right. Mr. Astrab, did you have redirect?

MR. ASTRAB: Just briefly.

REDIRECT EXAMINATION

BY MR. ASTRAB:

Q. *First off, hats off to Commissioner French for taking the wind out of my sails for redirect.*

Vol. 2 Tran: 475:12-476:25 (Witness Frantz) (emphasis added)

15. Commissioner French's leading questions morphed into flat-out demands that a witness give a certain answer to his questions, and addressed media accounts of the proceedings not in the record:

(Examination by Commissioner French)

Q. Well, if I could just summarize, Mr. Grady, I think you gave an unequivocal answer to this before. But it's really important to me, so I want a brief unequivocal answer again. There was a direct statement in a pleading filed in this case and then there's been media attention or portrayal that this line is being built for the benefit of customers in another region. And if that is true, to me, that is outrageous and it's scandalous. It's a big problem. I mean, if that were true, it is newsworthy. And so, ***I guess I just want you to unequivocally state***, have you seen any evidence in this proceeding, has any analysis crossed your desk that would suggest that the reason this project was planned and the notice to construct was issued was to serve or benefit customers outside of SPP?

A. Um, yeah, so I appreciate the opportunity to address it again. No. I haven't seen anything that would indicate that the purpose of this line is to benefit anyone other than the region of SPP. Now, is it true to say that all of the benefits of this line are only going to be shared by Kansans? No, that's not true. You know. Because we aren't in this alone. Right.

Vol. 2 Tran: 507:3 - 25 (Witness Grady) (emphasis added)

16. The egregiousness continues with Commissioner French's acknowledgment of ex parte communications with a witness:

(Exam by Commissioner French)

Q. Yeah. The final question I have is, you made me think of it when you were comparing, I guess, Evergy Kansas Central-only transmission to SPP plan transmission. ***Would it be fair to say that you and I have had a lot of conversations*** over the last several years, when I was both inside and outside of KCC, about my and your concerns about the escalating transmission cost?

A. Absolutely.

Vol. 2 Tran: 509:3 – 11: (Witness Grady) (emphasis added)

17. The Commission's bylaws incorporate the Canons and Rule of the Kansas Code of Judicial Conduct (Code). The Code requires a judge to "uphold and apply the law, and shall perform all duties of judicial office fairly and *impartially*." Cannon II, Rule 2.2 (emphasis in original). Consequently, Commissioner French was obligated to perform his duties fairly and impartially.
18. Commissioner French's advocacy referenced above, and throughout the June 8 and 9, 2022, hearing, indicate he did not conduct his duties as a commissioner with impartiality. Commissioner French's advocacy in violation of Cannon II, Rule 2.2 demonstrates that the agency has engaged in an unlawful procedure.
19. Similarly, Commissioner French's advocacy demonstrates that the parties did not receive a full, fair, and equitable hearing as required by the U.S. Constitution and the Kansas Constitution. Consequentially, the agency action, is unconstitutional on its face or as applied.
20. The Commission erroneously interprets the law and acts unreasonably, arbitrarily, or capriciously, when it fails to give the plain and ordinary meaning to K.S.A. 66-131's prohibition on a utility's authority to transact business in the state until that utility is issued a CCN.

21. The Commission erroneously interprets the law and acts unreasonably, arbitrarily, or capriciously, when it fails to give the plain and ordinary meaning to K.S.A. 66-134's prohibition on a utility obtaining property until that utility is issued a CCN. NEET Southwest admitted that it paid for easements. Therefore, it is undisputed that the easements were exchanged for an evidence of indebtedness. Whether, NEET Southwest handed the landowner's a check or handed them cash, that instrument is evidence of indebtedness.

22. The Commission and acts unreasonably, arbitrarily, or capriciously, when it fails to give the plain and ordinary meaning of K.S.A. 66-1,178(a)'s prohibition on site preparation until the utility obtains a CCN.

23. K.S.A. 66-1,178(a) prohibits any entity seeking to construct an electric transmission line from beginning site preparation for an electric transmission line without first acquiring a siting permit from the Commission. NEET Southwest has started site preparation by accessing landowner property to survey, conduct studies, and collect soil samples. See, McGhee Exhibit 2, Survey Permission Form; see also, Trans 457:15-19 (Smart indicating that NEET Southwest entered her property to survey and collect soil samples without permission).

24. It cannot be legitimately disputed that NEET Southwest began site preparation, by accessing landowner property, conducting studies, and collecting soil samples.

25. The commission engages in unlawful procedure and fails to follow prescribed procedure when it allows NEET Southwest to begin site preparation in violation of K.S.A. 66-1,178, without first receiving a siting permit.
26. When determining the necessity for an electric transmission line, the Commission must consider the line's benefit to Kansas consumers and the economic development benefits the line provides to Kansas. K.S.A. 66-1,180. No data has been submitted quantifying the Kansas-specific benefits of the Wolf Creek to Blackberry transmission line. Consequently, the Commission's decision to issue the CCN is based on a determination of fact that is not supported by the appropriate standard of proof by evidence.

WHEREFORE, The McGhees respectfully request the Commission reconsider its issuance of the Order and abrogate, change, or modify that order so it complies with the Law.

Kimmell Law Firm, LLC

By: /s/ Rustin J. Kimmell

Kimmell Law Firm, LLC

514 Neosho St

P.O Box 209

Burlington, KS 66839

KS Bar No. 23369

(816) 399 – 5328

rustin@kimmell-law.com

Declaration (pursuant to K.S.A. § 53-601)

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on September 12, 2022. /s/ Rustin J. Kimmell

Certificate of Service

I, certify that a true and correct copy of the foregoing PETITION FOR RECONSIDERATION has been served by electronic service on this 12th day of September, 2022, to all parties on the following service list. This constitutes service and hard copies will not follow.

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
D.NICKEL@CURB.KANSAS.GOV

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

DEREK BROWN, Sr. Federal Reg. Affairs, Manager
EVERGY KANSAS CENTRAL, INC
818 S KANSAS AVE
PO BOX 889

TOPEKA, KS 66601-0889
Derek.Brown@evergy.com

CATHRYN J. DINGES, SR DIRECTOR & REGULATORY AFFAIRS COUNSEL
EVERGY KANSAS CENTRAL, INC
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Cathy.Dinges@evergy.com

DENISE M. BUFFINGTON, DIR. FED REG. AFFAIRS
EVERGY METRO, INC D/B/A EVERGY KANSAS METRO
One Kansas City Place
1200 Main St., 19th Floor
Kansas City, MO 64105
DENISE.BUFFINGTON@EVERGY.COM

ANTHONY WESTENKIRCHNER, SENIOR PARALEGAL
EVERGY METRO, INC D/B/A EVERGY KANSAS METRO
One Kansas City Place
1200 Main St., 19th Floor
Kansas City, MO 64105
anthony.westenkirchner@evergy.com

LISA AGRIMONTI, ATTORNEY
FREDRIKSON & BYRON
200 S 6TH
MINNEAPOLIS, MN 55402
LAGRIMONTI@FREDLAW.COM

TERRY M. JARRETT, Attorney at Law
HEALY LAW OFFICES, LLC
3010 E BATTLEFIELD
SUITE A
SPRINGFIELD, MO 65804
terry@healylawoffices.com

HEATHER H STARNES, ATTORNEY
HEALY LAW OFFICES, LLC
12 Perdido Circle
Little Rock, AR 72211
heather@healylawoffices.com

JAMES W. BIXBY, ATTORNEY - REGULATORY & LEGISLATIVE

ITC GREAT PLAINS, LLC
601 THIRTEENTH STREET NW
STE 710S
WASHINGTON, DC 20010
jbixby@itctransco.com

PATRICK WOODS, Manager of Regulatory Strategy
ITC GREAT PLAINS, LLC
3500 SW FAIRLAWN RD STE 101
TOPEKA, KS 66614-3979
cwoods@itctransco.com

DAVID COHEN, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.cohen@kcc.ks.gov

BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
b.fedotin@kcc.ks.gov

JARED JEVONS, LITIGATION ATTORNEY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.jevons@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

SUSAN B. CUNNINGHAM, SVP, Regulatory and Government Affairs, General Counsel
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW
PO BOX 4877
TOPEKA, KS 66604-0877
scunningham@kepco.org

MARK DOLJAC, DIR RATES AND REGULATION
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW
PO BOX 4877
TOPEKA, KS 66604-0877
mdoljac@kepco.org

REBECCA FOWLER, MANAGER, REGULATORY AFFAIRS
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW
PO BOX 4877
TOPEKA, KS 66604-0877
rfowler@kepco.org

LESLIE WINES, ADMINISTRATIVE ASST.
KCP&L AND WESTAR, EVERGY COMPANIES
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Leslie.Wines@evergy.com

GLENDA CAFER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
GCAFER@MORRISLAING.COM

TREVOR WOHLFORD, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
twohlford@morrislaing.com

WILLIAM P. COX, Senior Attorney
NEXTERA ENERGY TRANSMISSION, LLC
700 Universe Blvd
Juno Beach , FL 33408
will.p.cox@nexteraenergy.com

TRACY C DAVIS, SENIOR ATTORNEY
NEXTERA ENERGY TRANSMISSION, LLC
5920 W WILLIAM CANNON DR, BLDG 2

AUSTIN, TX 78749
TracyC.Davis@nexteraenergy.com

MARCOS MORA, Executive Director, Development
NEXTERA ENERGY TRANSMISSION, LLC
700 Universe Blvd
Juno Beach , FL 33408
marcos.mora@nexteraenergy.com

BECKY WALDING, Executive Director, Development
NEXTERA ENERGY TRANSMISSION, LLC
700 Universe Blvd
Juno Beach , FL 33408
becky.walding@nexteraenergy.com

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

ANDREW O. SCHULTE, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
aschulte@polsinelli.com

LEE M. SMITHYMAN, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W. 110th St.
OVERLAND PARK, KS 66210-2362
LEE@SMIZAK-LAW.COM

CONNOR A. THOMPSON
SMITHYMAN & ZAKOURA, CHTD.
7400 W. 110th St.
OVERLAND PARK, KS 66210-2362
connor@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W. 110th St.
OVERLAND PARK, KS 66210-2362
jim@smizak-law.com

JUSTIN A. HINTON, Attorney
SOUTHWEST POWER POOL, INC.
201 WORTHEN DR
LITTLE ROCK, AR 72223
jhinton@spp.org

TESSIE KENTNER, ATTORNEY
SOUTHWEST POWER POOL, INC.
201 WORTHEN DR
LITTLE ROCK, AR 72223
tkentner@spp.org

TAYLOR P. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
TCALCARA@WCRF.COM

JEFFREY M KUHLMAN, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
jkuhlman@wcrf.com

/s/ Rustin J. Kimmell