

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of ITC)
Great Plains, LLC for a Limited Certificate) Docket Nos. 08-ITCE-936-COC
of Public Convenience to Transact the) 08-ITCE-937-COC
Business of an Electric Public Utility in the) 08-ITCE-938-COC
State of Kansas)

STATE CORPORATION COMMISSION

**MOTION OF WESTAR ENERGY, INC. AND
KANSAS GAS AND ELECTRIC COMPANY
TO INTERVENE, TO CONSOLIDATE
AND TO DISMISS**

APR 25 2008

 Docket Room

Westar Energy, Inc. and Kansas Gas and Electric Company (collectively "Westar") move that the Commission issue its order allowing Westar to intervene in these proceedings, for consolidation of these proceedings and dismissal of the applications in such dockets. In support of its Motion, Westar states:

I. Background

1. On April 11, 2008, ITC Great Plains, LLC (ITC), filed three separate applications to amend its existing certificate of convenience and authority to transact the business of an electric public utility within the state of Kansas (the "ITC Applications"). In each of the ITC Applications, ITC sought authority to construct, own and operate a portion of a transmission project that ITC refers to as the "V-Plan." Each of the ITC Applications was limited to a specific "segment" of the V-Plan. Thus, the application in Docket No. 08-ITCE-936-COC was specifically limited to the "initial segment" of the V-Plan; the application in Docket No. 08-ITCE-937-COC was specifically limited to the "middle segment"; and the application in Docket No. 08-ITCE-938-COC was specifically limited to the "final segment."

2. ITC's certificate of convenience and authority to transact business in the state of Kansas was granted in the Commission's *Order Approving Stipulation & Agreement and Addressing*

Application of Statutes in Docket No. 07-ITCE-380-COC (June 5, 2007) (the “Certificate Order”).

In the Certificate Order, the Commission approved “ITC’s request for a certificate of convenience and authority for the limited purpose of building and operating SPP Transmission Projects in the state, **subject to conditions contained in the S&A . . .**” Certificate Order, at 20. (Emphasis added.) The conditions are listed in paragraph 12 of the ITC Stipulation which states:

The Certificate will be subject to the following conditions:

- a.. ITC will construct only SPP Transmission Projects for which each Affected Incumbent Transmission Owner has declined to exercise its right of first refusal as provided herein.
- b. ITC will adhere to the SPP Membership Agreement and Federal Energy Regulatory Commission (“FERC”) approved regional tariff documents.
- c. ITC agrees that each Affected Incumbent Transmission Owner shall have the right of first refusal to construct SPP Transmission Projects. ITC understands that in some situations, more than one Affected Incumbent Transmission Owner will have a right of first refusal to construct an SPP Transmission Project and that in such situations each such Affected Incumbent Transmission Owner shall have the right of first refusal to construct its portion of the SPP Transmission Project that connects to its transmission system.
- d. An Affected Incumbent Transmission Owner that has exercised its right of first refusal and accepted the obligation to build an SPP Transmission Project but has failed, after commercially reasonable efforts, to meet any in-service target date related to completion of such SPP Transmission Project or any part of such project shall not, as a consequence of such failure, forfeit its right of first refusal. However, any party to this Agreement may initiate proceedings at the Commission asserting that such forfeiture has or has not occurred.
- e. Once each of the Affected Incumbent Transmission Owners determines that it will not construct a particular SPP Transmission Project and ITC determines that it wishes to build such SPP Transmission Project, ITC will file an

application with the Commission to amend its Certificate and obtain authorization from the Commission to construct, own and operate such SPP Transmission Project. Such application to amend shall:

- (1) Set forth the beginning and end points of the proposed transmission line and shall generally describe the proposed route,
 - (2) Be provided to each Affected Incumbent Transmission Owner as a service copy.
- f. After approval of the amendment to its Certificate, ITC will file a siting application pursuant to K.S.A. 66-1,177, *et seq.*, if required.
- g. ITC will file a “transmission only” certificate application in accordance with the same requirements for retail electric suppliers pursuant to K.S.A. 66-1,170, *et seq.* This filing will provide evidence that ITC has obtained a Letter of Intent or Memorandum of Understanding from the applicable Affected Incumbent Transmission Owner(s) that sets forth the terms and conditions relating to the proposed interconnections contained in the SPP Transmission Project that is the subject matter of said application. Should the transmission project require a siting application, ITC will file such a “transmission only” certificate application following Commission approval of the transmission line siting.
- h. ITC will make all required “EL” filings for any transmission line that it builds.

Stipulation and Agreement, Docket No. 07-ITCE-380-COC, at 3-4 (ITC Stipulation).

3. The ITC Stipulation defined a number of terms relevant to the conditions applicable to ITC’s certificate. The definitions significant to this Motion are as follows:

- “Incumbent Transmission Owner” means any Kansas electric utility that is an SPP Member and that has executed the SPP Membership Agreement as a transmission owner, and their successors, as of the date of this Agreement.

- “Affected Incumbent Transmission Owner” means an Incumbent Transmission Owner that has facilities that would interconnect with a SPP Transmission Project.
- “SPP Transmission Project” means any transmission project identified within the SPP transmission planning processes.

Id. at 2.

4. As stated in the ITC Applications, on July 16, 2007, ITC’s President, Carl A. Huslig, sent a letter to Carl Monroe, Senior Vice President and Chief Operating Officer of Southwest Power Pool, Inc. (SPP) in which ITC requested the inclusion of the V-Plan in the SPP Expansion Plan (STEP) (the “Huslig Letter”). In the Huslig Letter, Mr. Huslig described the project as follows:

Project description: Addition of a 345 kV transmission line from the existing Sunflower Electric Cooperative, Inc. Spearville 345 kV switchyard, terminating in the vicinity of the existing Westar Energy Wichita 345 kV switchyard. The line route will proceed out of the Spearville switchyard in the general direction of Woodward, OK to a point in southern Comanche county, Kansas which will be the proposed site of a future switchyard. The line will proceed from this point in a northeasterly direction toward the Wichita area. The line length is presently estimated at 180 miles. A current initial estimate places the cost of the project at approximately \$160 million, assuming 345 kV construction. However, ITC Great Plains will work with SPP to construct this project at 765 kV where prudent to do so. In addition, the current initial cost estimate is preliminary and likely will be adjusted based on the completion of detailed engineering design and future actual cost of material, labor, and other expense.

Huslig Letter, at 1. A copy of the Huslig Letter is attached hereto as Exhibit 1.

5. On September 26, 2007, Mr. Monroe responded by letter to the Huslig Letter. A copy of Mr. Monroe’s September 26, 2007 letter, (the “Monroe Letter”) was attached to the ITC Applications as Exhibit A. In his letter, Mr. Monroe stated:

In response to your July 16, 2007 letter, SPP will include the Project described in your letter in the Southwest Power Pool Planning process. SPP will be asking its Board of Directors in the October

meeting to include the Project in the 2007 SPP Transmission Expansion Plan (“STEP”) to be reviewed, approved and ultimately implemented pursuant to SPP’s governing documents and processes and all applicable laws and regulations. SPP acknowledges ITC Great Plains’ willingness to fund, construct, own and operate the Project as set forth in your letter.

As described in your letter, SPP now envisions the Project to consist of the addition of a 345 kV transmission line designed at either a 345 kV or 765 kV standard comprising what we call the Northern half of the X-Plan in Kansas, the Spearville to Comanche County to Wichita line.

Monroe Letter, ITC Applications, Exhibit A, at 1.

6. In its applications, ITC now states that the “V-Plan” consists of three segments and has filed separate applications for each. According to the ITC Applications, the “initial segment” would run from the Spearville substation in Ford County southeast through Kiowa, Clark and Comanche Counties where ITC Great Plains proposes to construct a new switchyard. The “middle segment” runs from the switchyard that ITC Great Plains proposes to construct in either western Comanche County or eastern Clark County, proceeding northeast through Clark, Comanche and Barber Counties to a proposed ITC substation to be located in the Medicine Lodge area. The “final segment” would be constructed from the proposed ITC substation near Medicine Lodge to a substation located “in the service territory of Kansas Gas and Electric Co., [sic] a wholly owned subsidiary of Westar Energy, Inc., (‘Westar’), near Westar’s Gordon Evans Generating Station.” ITC Applications, at paragraph 4.

7. As described in the ITC Applications, the “initial” segment will connect to Sunflower’s facilities at Spearville and the “final” segment will connect to Westar’s facilities near Wichita but neither will connect to any other facilities except the “middle” segment. Consequently,

as described in the ITC Applications, none of the segments can operate without construction of each of the other segments and connection to Sunflower at Spearville and to Westar near Wichita. As described in the ITC Applications, none of the segments will be capable of moving power to load without construction of each of the other segments and connection to Sunflower and Westar. As described by ITC, each of the segments, viewed on a standalone basis, would be a line to nowhere.

II. Motion to Intervene

8. Westar currently provides transmission service in the state of Kansas and desires to continue providing such services through upgrades to its existing facilities and the construction of new facilities to reduce congestion and facilitate commercial transactions. As a potential builder, owner and operator of new transmission facilities in the state of Kansas and as an “Affected Incumbent Transmission Owner” under the ITC Stipulation, Westar has a direct interest in the ITC Applications that cannot be represented by any other party. ITC admits that Westar has a right of first refusal at least as to the “final segment” the proposed line. Application, Docket No. 08-ITCE-938-COC, at paragraph 8. As will be discussed below, Westar actually has a right of first refusal as to the entire project.

9. Due to its clear interests in these matters, Westar respectfully requests that it be allowed to intervene and participate as a party to these dockets.

III. Motion to Consolidate

10. K.A.R. 82-1-224(a) states that “[F]or good cause shown, the joinder of any proceeding with another proceeding may be permitted by the commission. However, issues that are not germane to each other and that require separate and distinct proof shall not be joined in the same proceeding.”

11. The ITC Applications should be consolidated.

12. As described by ITC in the Huslig Letter, the “V-Plan” is a single project “from the existing Sunflower Electric Cooperative, Inc. Spearville 345 kV switchyard, terminating in the vicinity of the existing Westar Energy Wichita 345 kV switchyard.” Exhibit 1, at 1. The issues of the public convenience and necessity under the statute and the application of the ITC certificate conditions apply to the project as a whole and not separately to individual segments.

13. That the “V-Plan” is a single project is further reinforced by SPP’s response to the Huslig Letter. Thus, the Monroe Letter recites that “SPP will include the Project described in your letter in the Southwest Power Pool Planning process.” ITC Applications, Exhibit A, at 1. Further, the Monroe Letter describes the “Project” as “the Northern half of the X-Plan in Kansas, the Spearville to Comanche County to Wichita line.” *Id.* Also, the minutes of the October 30, 2007 SPP board meeting references “the Spearville-Comanche Co.-Wichita transmission project.” ITC Applications, Exhibit B.

14. Consideration of all three segments of a single project is also consistent with the approach taken by the Commission in recent siting proceedings. In *Re the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, Docket No. 07-WSEE-715-MIS, the Commission considered both segments of the proposed Wichita to Reno to Summit line rather than conducting separate proceedings for each phase.

15. Finally – and most importantly – as proposed by ITC, none of the segments can operate without construction of and connection to the other two segments and to the electric grid at Spearville and Wichita – the end points of the “initial” and “final” segments. *See* paragraph 7 above. The three “segments” constitute a single project and must be considered together.

16. Consolidating the ITC Applications is appropriate because all of the facts and law related to the ITC Applications are common. Moreover, as will be discussed in the Motion to Dismiss, the filing of three separate applications by ITC is nothing more than a thinly disguised attempt to avoid the conditions placed upon its certificate by the ITC Stipulation to which ITC was a voluntary signatory and which the Commission approved.

IV. Motion to Dismiss

17. Regardless of whether the ITC Applications are consolidated, they should be dismissed. Separately, the ITC Applications do not make a prima facie case for the granting of the requested amendment to ITC's certificate; consolidated, the filing of the ITC Applications is a violation of the certificate conditions applicable to ITC's certificate.

A. *If the ITC Applications are not consolidated, they must be dismissed for failing to provide a basis for the requested amendment to ITC's certificate.*

18. As has been discussed, the segments that are the subject of the three ITC Applications together comprise the "V-Plan." See paragraphs 4, 5 and 6 above. However, as proposed by ITC, none of the segments will be operational unless each of the other segments is constructed and connected to each other and to the electric grid at the end points. See paragraph 7 above. Despite that fact, each of the ITC Applications states "[T]his Application does not request any Commission action related to the [other two segments] of the V-Plan," ITC Applications, at paragraph 4 (emphasis original), and "[T]his Application requests action by the Commission only on the [segment addressed in this Application]." *Id.* at paragraph 5 (emphasis original).

19. Because none of ITC Applications relates to a line that would be electrically connected to the grid, none of the ITC Applications has set forth a basis for the amendment of ITC's certificate. Without being electrically connected to the grid, the segments proposed in each of the

individual, carefully and intentionally separated applications to amend ITC's certificate cannot provide any benefit to the public. Therefore, if the Commission does not consolidate the dockets, it must dismiss each of the ITC Applications for failing to state a *prima facie* case.

B. *If the ITC Applications are consolidated, they must be dismissed as a violation of ITC's certificate conditions.*

20. ITC's certificate was issued with a number of conditions. *See* paragraph 2. The first condition stated: "ITC will construct only SPP Transmission Projects for which each Affected Incumbent Transmission Owner has declined to exercise its right of first refusal as provided herein." ITC Stipulation, at 3. ITC has not met this condition and therefore the ITC Applications must be dismissed as a violation of its certificate conditions.

21. Because the V-Plan is a single project, Westar's right of first refusal attaches to the entire project and the filing of the ITC Applications is a violation of ITC's certificate conditions. As the ITC Stipulation states: "ITC will construct only SPP Transmission Projects for which each Affected Incumbent Transmission Owner has declined to exercise its right of first refusal as provided herein." ITC Stipulation at 3. The "V-Plan" is clearly an "SPP Transmission Project" that would attach to Westar facilities – thereby making Westar one of the Affected Incumbent Transmission Owners" as to the V-Plan. However, Westar has not relinquished its right of first refusal provided for in ITC's certificate conditions. To the contrary, Westar has indicated to ITC that Westar is interested in building all or a portion of the line. Even though it knew of Westar's interest, ITC filed the ITC Applications without even seeking a waiver of Westar's right of first refusal. Because Westar has not waived its right of first refusal, the filing of the ITC Applications at this time is barred by ITC's certificate conditions.

22. ITC seems not to understand the terms of its own certificate and as a result misstates the identities of the Affected Incumbent Transmission Owners as well as its obligations to them. In the ITC Applications, without stating the basis for its allegations, ITC states that Sunflower is the only Affected Incumbent Transmission Owner as to the initial segment of the line; MKEC is the only Affected Incumbent Transmission Owner as to the middle segment of the line; and Westar is the only Affected Incumbent Transmission Owner as to the final segment of the line. ITC Applications, at paragraph 8. However, the only Incumbent Transmission Owners to which the V-Plan will connect are Sunflower on the west and Westar on the east. As a result, Sunflower and Westar are the Affected Incumbent Transmission Owners for the project.¹

23. ITC also states that its certificate conditions require it to file an application to amend its certificate and serve Affected Incumbent Transmission Owners. ITC Applications, at paragraphs 7 and 8. While that is true, by making its filings now and serving the Affected Incumbent Transmission Owners, ITC is acting prematurely and in violation of its certificate conditions.² ITC's filing to amend its certificate and its obligation to provide a "service copy" of the filing to the Affected Incumbent Transmission Owners are both subject to conditions precedent that ITC has chosen to ignore. As stated in the ITC certificate conditions, ITC may file to amend its certificate **"Once each of the Affected Incumbent Transmission Owners determines that it will not construct a particular SPP Transmission Project** and ITC determines that it wishes to build such SPP Transmission Project" ITC Stipulation, at 3 (emphasis added). Westar – clearly an

¹ Westar assumes that ITC included MKEC because the line will cross MKEC certified territory. That does not, however, make MKEC an Affected Incumbent Transmission Owner under the definitions embedded in ITC's certificate.

² Because it misidentified the Affected Incumbent Transmission Owners related to the initial and middle segments of the project, ITC did not comply with this requirement because it did not serve Westar with its filings related to those segments.

Affected Incumbent Transmission Owner as to the V-Plan – has not “determined that it will not construct” the project. Before it can make such a determination, it must be provided an opportunity to review the plan and consider its potential benefits to Westar and its customers. Westar’s waiver of its right of first refusal is a condition precedent to ITC’s filing of its applications which has not yet been met.

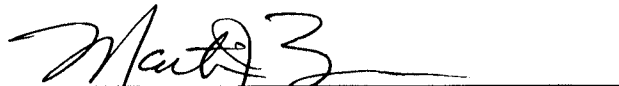
24. Because ITC filed the ITC Applications in violation of the conditions of its certificate, the Commission should dismiss the ITC Applications.

V. Conclusion

25. For the above and foregoing reasons, Westar requests that the Commission grant its Motion to Intervene, to Consolidate and to Dismiss.

WHEREFORE, Westar requests that the Commission issue its order granting Westar’s application to intervene in this matter, to consolidate the ITC Applications and to Dismiss and for such other and further relief as may be appropriate.

Respectfully submitted,




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ATTORNEYS FOR
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KANSAS GAS AND ELECTRIC COMPANY

VERIFICATION

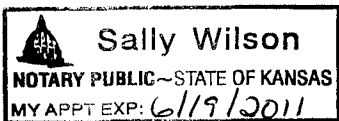
STATE OF KANSAS)
)
) ss:
COUNTY OF SHAWNEE)

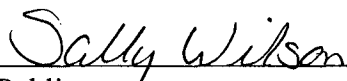
Martin J. Bregman, being duly sworn upon his oath deposes and says that he is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that he is familiar with the **Motion of Westar Energy, Inc. and Kansas Gas and Electric Company to Intervene, to Consolidate and to Dismiss** and that the statements therein are true and correct to the best of his knowledge and belief.



Martin J. Bregman

SUBSCRIBED AND SWORN to before me this 25th day of April, 2008.





Notary Public

My Appointment Expires:

6/19/2011

CERTIFICATE OF SERVICE

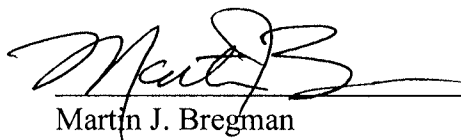
I hereby certify that on this 25th day of April, 2008, the original and eight copies of the **Motion of Westar Energy, Inc. and Kansas Gas and Electric Company to Intervene, to Consolidate and to Dismiss** were hand-delivered to:

Susan K. Duffy
Executive Director
KANSAS CORPORATION COMMISSION
1500 SW Arrowhead Road
Topeka, Kansas 66604

and that one copy was mailed, postage prepaid, addressed to each of the parties or counsel of record on the attached list.

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July 16, 2007

Mr. Carl Monroe
Sr. Vice President and Chief Operating Officer
Southwest Power Pool
415 North McKinley
Suite 800
Little Rock, AR 72205-3020

Dear Carl:

Please accept this letter as an official request to include the project described below in the Southwest Power Pool Transmission Expansion Plan ("STEP").

Project description: Addition of a 345 kV transmission line from the existing Sunflower Electric Cooperative, Inc. Spearville 345 kV switchyard, terminating in the vicinity of the existing Westar Energy Wichita 345 kV switchyard. The line route will proceed out of the Spearville switchyard in the general direction of Woodward, OK to a point in southern Comanche county, Kansas which will be the proposed site of a future switchyard. The line will proceed from this point in a northeasterly direction toward the Wichita area. The line length is presently estimated at 180 miles. A current initial estimate places the cost of the project at approximately \$160 million, assuming 345 kV construction. However, ITC Great Plains will work with SPP to construct this project at 765 kV where prudent to do so. In addition, the current initial cost estimate is preliminary and likely will be adjusted based on the completion of detailed engineering design and future actual cost of material, labor, and other expenses.

ITC Great Plains hereby expresses its commitment to fund, construct, own and operate the Project upon and subject to the receipt of all appropriate regulatory approvals, including successful inclusion of the Project in the STEP, certificate and siting approvals from the Kansas Corporation Commission, appropriate ITC Great Plains transmission

building the *future*

Mr. Carl Monroe
July 16, 2007
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rate and other approvals from the Federal Energy Regulatory Commission ("FERC"), and any other appropriate regulatory approvals.

Subject to the completion of detailed engineering design, the Project is expected to be rated at a minimum of 1200 MVA with terminal equipment at 3000 amperes. ITC Great Plains will utilize its strategic partners to engineer and maintain the project. The primary partners on the project are anticipated to be Black & Veatch and Asplundh. The vendors for equipment and construction will be determined based on a competitive bid process.

ITC Great Plains expects to be compensated for electric transmission service provided over facilities constructed as part of the Project through an open access transmission tariff service rate, which must be approved by the FERC. That rate would be based on ITC Great Plains transmission-related costs and investments and is expected to be included in the tariff administered by SPP, which would functionally control those facilities as the regional transmission organization. ITC Great Plains understands that this Project would be eligible for any SPP-adopted or other FERC-approved regional cost allocation methodology for economic projects in SPP. ITC Great Plains anticipates constructing the Project using a combination of debt financing, which it anticipates raising through access to debt capital markets, and equity. By comparison, ITC Great Plains' parent company, ITC Holdings Corp., and both of its operating utility affiliates *ITC Transmission* and Michigan Electric Transmission Company LLC, all maintain investment grade credit ratings from both Standard and Poor's and Moody's credit services.

It is ITC Great Plains' present intention to place the Project in service in late 2010 or early 2011 if all regulatory and siting approvals are obtained in a timely manner. Please advise of SPP's disposition of this matter as soon as practicable. We look forward to working with you on this most important regional project.

Very Truly Yours,



Carl A. Huslig
President
ITC Great Plains