

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

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler  
Dwight D. Keen

In the Matter of the Application of FreeState )  
Electric Cooperative, Inc. for a Certificate of )  
Convenience and Authority to Transact the )  
Business of an Electric Public Utility in ) Docket No. 19-FSEE-174-COC  
Portions of Section 4, Township 10 South, )  
Range 20 East, Jefferson County, Kansas. )

**ORDER GRANTING APPLICATION**

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

**I. Background**

1. On October 30, 2018, FreeState Electric Cooperative, Inc., (“FreeState”) filed an Application requesting a Certificate of Convenience and Authority for Transmission Rights Only to extend an existing, single-phase, two-wire, 7,200 volt overhead line in Jefferson County, Kansas.<sup>1</sup>

2. FreeState is an Electric Cooperative Corporation organized and existing under and by virtue of the laws of the State of Kansas with a Certificate of Convenience and Authority from the Commission to conduct the business of an electric public utility in the State of Kansas.<sup>2</sup>

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<sup>1</sup> Application of FreeState Electric Cooperative, Inc. (Oct. 30, 2018) (“Application”).

<sup>2</sup> *Id.*

3. FreeState requests the Commission grant a Certificate of Convenience and Authority for Transmission Rights Only (TRO) in Westar Energy Inc.'s certified territory described as follows:

Beginning at the Southern edge of the FreeState certified territory comprised of the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 4, Township 10 South, Range 20 East in Jefferson County, KS, running along the East side of the Northwest  $\frac{1}{4}$  of Section 4, Township 10 South, Range 20 East in Jefferson County, KS, thence South through the certified territory of Westar Energy, approximately 370 feet ending at the Northern edge of the newly assigned FreeState certified territory requested under Kansas Corporation Commission Application for a Certificate of Convenience and Authority, Docket No. 19-FSEE-079-COC.

4. On November 16, 2018, the Commission Staff ("Staff") submitted a Report and Recommendation dated November 15, 2018, recommending the Commission grant FreeState's request for a Certificate of Convenience and Authority for Transmission Rights Only in Westar Energy's certified territory described in paragraph three above.<sup>3</sup>

## **II. Legal Standards and Discussion**

5. Pursuant to K.S.A. 66-131, the Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas. The standard for granting a certificate under K.S.A. 66-131 is that public convenience and necessity will be promoted by the granting of a certificate. K.S.A. 66-1,170 *et seq.*, the Retail Electric Suppliers Act, 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.<sup>4</sup> Notwithstanding the mandated single electric provider service territories, RESA also provides that retail electric suppliers may enter into agreements to amend boundaries between their facilities. The agreements are subject to Commission approval, and if so approved, the Commission shall issue a certificate accordingly.<sup>5</sup>

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<sup>3</sup> *Report and Recommendation*, at 1 (Nov. 15, 2018).

<sup>4</sup> K.S.A. 66-1,172.

<sup>5</sup> K.S.A. 66-1,175.

6. On August 21, 2018, FreeState filed its Application for a Certificate for a customer's property in Docket No. 19-FSEE-079-COC and Westar filed a companion Application to Cease.<sup>6</sup> The two dockets related to providing service to this particular customer were approved by the Commission on November 1, 2018.

7. By building a line extension through Westar certificated territory, FreeState will be able to provide service to the new customer without installing the multiple turning structures that would be required to serve the customer while keeping the line in its certified territory.<sup>7</sup> This proposed TRO Certificate is an economic solution that will allow FreeState to service its new customer.<sup>8</sup>

8. Based on the foregoing information, and the absence of any objection, Staff recommends the Commission find that public convenience will be promoted by granting FreeState a Certificate of Convenience to extend its service through Westar-certified territory.

### **III. Findings and Conclusion**

9. The Commission finds pursuant to K.S.A. 66-131 and K.S.A. 66-1,170 et seq., public convenience and necessity will be promoted by granting FreeState's Application for a TRO Certificate of Convenience to operate as an electric public utility in the area described in paragraph three above.

10. The Commission adopts Staff's Report and Recommendation dated November 15, 2018, which is attached hereto and made a part hereof by reference.

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<sup>6</sup> See Docket No. 19-WSEE-114-CCS.

<sup>7</sup> *Report and Recommendation*, at 2 (Nov. 15, 2018).

<sup>8</sup> *Id.*

**THEREFORE, THE COMMISSION ORDERS:**

A. FreeState's Application is granted pursuant to K.S.A. 66-131 and K.S.A. 66-1,170 et seq.

B. 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).<sup>9</sup>

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

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/27/2018



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Lynn M. Retz  
Secretary to the Commission

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<sup>9</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

# STATE OF KANSAS



CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PHONE: 785-271-3100  
FAX: 785-271-3354  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Dwight D. Keen

**FROM:** Jason Kerr, Electric Utility Engineering Technician  
Leo Haynos, Chief Engineer  
Jeff McClanahan, Director of Utilities

**DATE:** November 15, 2018

**SUBJECT:** 19-FSEE-174-COC  
In the Matter of the Application of FreeState Electric Cooperative, Inc. for a Certificate of Convenience and Authority to transact the business of and Electric Public Utility in portions of Section 4, Township 10 South, Range 20 East, Jefferson County, Kansas.

### **EXECUTIVE SUMMARY:**

In Docket 19-FSEE-174-COC, FreeState Electric Cooperative, Inc. (FreeState) is seeking a Transmission Rights Only (TRO) Certificate to extend its service through Westar Energy, Inc. (Westar) certified territory to provide electric power to a new customer.<sup>1</sup>

Staff recommends that the Commission grant this Application for TRO and find that public convenience will be promoted by this transaction.

### **BACKGROUND:**

In December 2017, a Jefferson County landowner contacted FreeState inquiring about electrical service to his future residence. FreeState instructed the land owner to notify them 60 days prior to needing service. On March 2018, the landowner contacted FreeState to start the process of acquiring service to his land. In June 2018, FreeState discovered the property was actually in Westar's certified territory.

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<sup>1</sup> EL 39513

The customer then requested a quote from Westar to provide electrical service. Later that month, Westar contacted the customer and advised them they did not feel it was economically viable for them to build to his site and agreed to release his property to FreeState.

On August 21, 2018, FreeState filed the Application for a Certificate for this customer's property in Docket 19-FSEE-079-COC and Westar filed a companion Application to Cease.<sup>2</sup> The two Dockets related to providing service to this customer were approved by the Commission on November 1, 2018.

In order for FreeState to build the line extension to serve its new customer and keep the line in its certified territory, the installation of multiple turning structures would be required. However, by building the line extension through Westar certificated territory, FreeState would be able to provide a more economic solution to serve the new customer. Because Westar is unwilling to assign FreeState additional territory from its Certificate that is adjacent to the customer of concern, FreeState does not have access to serve its customer. Therefore, FreeState filed the above-captioned Application requesting a Certificate for TRO.

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.

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.<sup>3</sup>

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.<sup>4</sup>

### **ANALYSIS:**

Staff has reviewed FreeState'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 1 to this Report and Recommendation. The proposed TRO Certificate will provide FreeState the ability to serve its new customer at the lowest possible cost. Therefore, Staff recommends that the Commission find that public convenience will be promoted by the granting of this Application.

The Commission action date is April 28, 2019.

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<sup>2</sup> 19-WSEE-114-CCS

<sup>3</sup> K.S.A. 66-131.

<sup>4</sup> K.S.A. 66-131.

**RECOMMENDATION:**

Staff is recommending FreeState's Application for Certificate in 18-FSEE-174-COC be granted for Transmission Rights Only.

ATTACHMENT 1  
Legal Description of Proposed Distribution Line Route  
19-FSEE-174-COC

JEFFERSON COUNTY, KANSAS

Beginning at the Southern edge of the FreeState certified territory comprised of the North 1/2 of the Northwest 1/4 of Section 4, Township 10 South, Range 20 East in Jefferson County, KS, running along the East side of the Northwest 1/4 of Section 4, Township 10 South, Range 20 East in Jefferson County, KS, thence South through the certified territory of Westar Energy, approximately 370 feet ending at the Northern edge of the newly assigned FreeState certified territory requested under Kansas Corporation Commission Application for a Certificate of Convenience and Authority, Docket No. 19-FSEE-079-COC.



**CERTIFICATE OF SERVICE**

19-FSEE-174-COC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 11/27/2018.

STEVE FOSS, CEO  
FREESTATE ELECTRIC COOPERATIVE, INC.  
507 N UNION STREET  
McCLOUTH, KS 66054  
steve.foss@freestate.coop

COLE BAILEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
c.bailey@kcc.ks.gov

MICHAEL HURST, NORTH DISTRICT MANAGER C&M  
WESTAR ENERGY, INC.  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
michael.hurst@westarenergy.com

TODD NINCEHELSE, MANAGER, TECHNICAL SERVICES  
WESTAR ENERGY, INC.  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
Fax: 785-575-6068  
todd.nincehelser@westarenergy.com

/S/ DeeAnn Shupe  
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DeeAnn Shupe