

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

In the Matter of the Application of the)
City of Chanute, Kansas for Approval) Docket No. 15- CHNE 175 - MIS
Under K.S.A. 10-1203 to Issue Revenue)
Bonds.)

APPLICATION

COMES NOW the City of Chanute (Chanute or City), and requests approval to issue revenue bonds to finance the planned expansion of its fiber-optic network, as required pursuant to K.S.A. 10-1203. In support of its application, Chanute states as follows:

I. BACKGROUND

1. Chanute is a municipality in the State of Kansas with a population of approximately 9,200 citizens. Chanute currently owns and operates a fiber optic network serving customers within the City's boundaries and three miles thereof. Chanute's network supports municipal utility operations and ultra-high-speed broadband internet access to Community Anchor Institutions¹ and some community business partners². A map showing the area served by Chanute's network is attached to this application as **Exhibit A**.

2. Chanute plans to expand its existing fiber optic network to support advanced metering infrastructure (AMI), sometimes referred to as SmartGrid, and to provide broadband internet services to all of the businesses and residents in its utility service area. Chanute may

¹ Community Anchor Institutions include the Chanute Public Library, USD 413, Neosho County Community College, Neosho Memorial Regional Medical Center, and municipal government facilities.

² The following is a partial list of some of Chanute's community business partners: Ash Grove Cement, Spirit AeroSystems, Community National Bank, Chanute Manufacturing, Kustom Signals, Post Rock Energy Tri-Valley Developmental Services, KKOY, Fire Escape Coffee House, and Consolidated Oil Well Services.

provide voice and video services over the infrastructure or may contract with third-party providers. Chanute may use revenue bonds to finance some or all of this expansion.

3. The requirements for the issuance of revenue bonds are addressed in K.S.A. 10-1201 *et seq.* K.S.A. 10-1203 requires a municipality to obtain approval from the Kansas Corporation Commission (Commission) when issuing revenue bonds to finance certain utility services. K.S.A. 10-1203 reads as follows:

No municipality, as herein defined, shall issue revenue bonds to acquire, construct, reconstruct, alter, repair, improve, extend or enlarge any plant or facilities for the furnishing of any utility service where same is being furnished by a private utility, except upon approval by the corporation commission of the state of Kansas, after a finding based on substantial evidence that the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of such plant or facilities is necessary or appropriate for the municipality and its consumers, and for the protection of investors and will not result in the duplication of existing utility services in the area served or to be served by the municipality.

Thus, the Commission needs to make a determination that:

- (a) the expansion of Chanute’s facilities as contemplated is necessary or appropriate for the City, its consumers and investors; and
- (b) the investment will not result in the duplication of existing utility services in the area served by the City.

4. In this application, Chanute is requesting the Commission issue an order making these determinations and approving the issuance of revenue bonds by Chanute for the purpose of expanding its fiber optic network as described herein. In making these determinations, the City believes it is important for the Commission to keep in mind that K.S.A. 10-1203 was enacted in 1947 and has not been amended since that time. In the 67 years since its enactment, the telecommunications industry has changed dramatically – from a fully regulated marketplace where all services were provided by a monopoly certificated carrier, to a competitive marketplace with numerous providers over which the Commission exercises little to no

regulatory control. As such, an analysis under K.S.A. 10-1203 that may have needed to be rigorous in 1947 is no longer necessary in today's environment. However, because K.S.A. 10-1203 remains on the books, it is necessary for the Commission to approve Chanute's ability to issue these revenue bonds.

II. FINDINGS REQUIRED UNDER K.S.A. 10-1203

(a) The Expansion of Chanute's Facilities as Contemplated is Necessary or Appropriate For the City, Its Consumers and Investors.

5. The investment planned for Chanute's system will allow the City to provide enhanced, higher quality services to its existing customers. It will allow Chanute to expand the provisioning of its services to additional citizens located within its boundary or within three miles thereof. Chanute is a rural community, and like all rural communities, access to broadband is fundamental to the well-being of its citizens and even to the survival of the community itself. Chanute does not need to convince the Commission of the importance of having access to a high-speed broadband network. The Commission is well aware of that need. The investments contemplated for Chanute's broadband network are necessary and appropriate to allow Chanute to meet that need in its territory.

6. Presently, Chanute operates a multi-homed autonomous network (ASN 36069) peered through active fiber connections with two national Tier 1 Internet Access Providers (Level 3 Communications and Cox Communications). Connectivity to existing AT&T fiber is also available. These fiber connections are capable of delivering multi-Gigabit bandwidth to network participants. The City has its own, direct allocation of both IPv4 and IPv6 address space reassignable to network participants.

7. For redundancy and even greater network reliability, the City has distributed its core network routers and currently operates a 10 Gigabit Metro Ethernet Loop between the

hardened core facilities. Chanute has developed hardened colocation facilities to provide Gigabit fiber connectivity and equipment space within the community for entities to achieve ultra-high-speed access to the global network from Chanute. These spaces are ideal for disaster recovery and remote backup facilities. The secured spaces are supported with local, onsite power generation and remotely accessible video surveillance equipment.

8. The upgrades planned for Chanute's system that would be financed by the revenue bonds proposed in this application involve network expansion that includes deployment of additional fiber optic cable and network electronics to support Gigabit connectivity to potentially all of Chanute's utility customers, not just a select portion of those customers. The expanded network will include upgraded network core routers and modern network access equipment. These investments are necessary and appropriate as they will improve the broadband service already being provided by Chanute to some of its citizens and will allow Chanute to extend that improved broadband service to others located within its territory.

(b) The Investment Will Not Result in the Duplication of Existing Utility Services in the Area Served By the City.

9. As stated above, when K.S.A. 10-1203 was enacted in 1947, plain-old-telephone-service was provided by one monopoly carrier certified by the Commission to provide that service within a specifically designated geographical territory. This statute was enacted to ensure that investment contained in the rate base of a monopoly carrier was not unnecessarily stranded, resulting in the ratepayers of the monopoly provider having to pay for those stranded assets. Duplication of facilities in the telecommunications industry is no longer a concern of regulators or legislators. With the implementation of competition brought about by the Kansas Telecommunications Act of 1996 and the Federal Telecommunications Act of 1996, policy-makers have encouraged investment to build new facilities and networks to compete with

incumbent providers. Whereas the goal in 1947 was to protect the incumbent system, today the goal is to get new telecommunications providers to expand into new areas and compete with the incumbent provider. K.S.A. 10-1203 fails to reflect these dramatic changes in the telecommunications marketplace that have occurred over the past thirty years, making the statute outdated and irrelevant.

10. In addition to protecting the customers of an incumbent monopoly provider, K.S.A. 10-1203 was also intended to protect municipalities, their potential customers and investors by allowing the Commission to determine whether the revenue from the bonds would be sufficient to meet the bond obligations. Revenue bonds are paid exclusively from revenue derived from the facilities on which the money so raised was spent. (K.S.A. 10-1201.) As the Kansas Supreme Court explained in *City of Wichita v. State Corp. Commission*, 225 Kan. 524, 531 (1979), “[I]f the services to be provided are all, or partly, duplicative of existing services provided by a private utility, obviously, the earning ability of the municipally owned utility could be seriously jeopardized.” Again, this reasoning reflects an environment where construction of a telecommunications network was considered a natural monopoly, where one company could supply an entire market at less cost than two or more companies. That is no longer the case in the telecommunications marketplace.

11. That said, Chanute represents that there are other telecommunications providers in the Chanute area. Chanute is already a provider of service. AT&T is the incumbent telephone company and Cable One is the incumbent cable TV operator. Neither of those providers offers the level of service throughout Chanute’s utility service area that Chanute will be able to offer its citizens as a result of the investment planned for Chanute’s network. As such, there will not be a duplication of existing services, even if such a consideration were still relevant today.

WHEREFORE, Chanute respectfully requests the Commission issue an order (1) finding that the expansion of Chanute's facilities as contemplated herein is necessary or appropriate for the City, its consumers and investors; (2) finding that the investment will not result in the duplication of existing utility services in the area served by the City, and (3) approving the application as filed.

Respectfully submitted,



Glenda Cafer (#13342)
(785)271-9991

Terri Pemberton (#23297)
(785)232-2123

CAFER PEMBERTON LLC

3321 SW 6th Avenue

Topeka, Kansas 66606

(785) 233-3040 (fax)

glenda@caferlaw.com

terri@caferlaw.com

COUNSEL FOR CITY OF CHANUTE

EXHIBIT A

UTILITY SERVICE AREA CHANUTE, NEOSHO COUNTY, KS

