

**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-234-COC  
Utility defined as Midian to TC Burns Tap )  
Transmission Line Project in Butler County, )  
Kansas. )

**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”).<sup>1</sup> Evergy Kansas Central is a Kansas corporation authorized to conduct the business of a public utility under K.S.A. 66-104.<sup>2</sup> Evergy Kansas Central is seeking permission to replace aging infrastructure and convert the voltage of an existing transmission line, a portion of which runs through the certified service territory of Butler Rural Electric Cooperative, Inc. (“Butler Rural Electric”).<sup>3</sup>

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<sup>1</sup> Application for Evergy Kansas Central, Inc. (Nov. 26, 2019) (Application).

<sup>2</sup> See Application at 1.

<sup>3</sup> See Application at 2.

2. On May 18, 2020, Commission Staff (“Staff”) submitted a Report and Recommendation (dated May 15, 2020), regarding the proposed TRO Certificate.<sup>4</sup> Staff analyzed Evergy Kansas Central’s Application and recommended approving Evergy Kansas Central’s requested TRO Certificate.<sup>5</sup>

## II. JURISDICTION

### A. Certificates of Convenience and Necessity

3. K.S.A. 66-131 requires public utilities<sup>6</sup> doing business in the state obtain a certificate of convenience and necessity from the Commission prior to commencing operations.<sup>7</sup> The legal standard for the Commission to apply in certificate proceedings is whether “public convenience and necessity” will be promoted.<sup>8</sup>

4. “Public convenience means the convenience of the public, not the convenience of particular individuals.”<sup>9</sup> “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.”<sup>10</sup> A showing of absolute necessity is not required to support the granting of a certificate.<sup>11</sup> Evaluating public convenience and necessity, or

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<sup>4</sup> See Staff’s Report and Recommendation (May 18, 2020) (Report and Recommendation).

<sup>5</sup> See Report and Recommendation at 2.

<sup>6</sup> 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.”

<sup>7</sup> “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).

<sup>8</sup> 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).

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

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

<sup>11</sup> 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,<sup>12</sup> and the Commission may draw its own conclusions regarding these conditions.<sup>13</sup>

### **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.<sup>14</sup> In addition to outlining policy considerations,<sup>15</sup> RESA: (1) permits only one retail electric supplier to provide retail electric service within a particular service territory,<sup>16</sup> and (2) allows retail electric suppliers to revise customer-specific and service-territory boundaries with Commission approval.<sup>17</sup>

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.<sup>18</sup> 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 convert a de-energized 161kV transmission line to a 138kV transmission line to provide service to a new customer.<sup>19</sup> Staff considers the Application in the instant

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

<sup>13</sup> See *id.*

<sup>14</sup> See K.S.A. 66-1,171.

<sup>15</sup> See *id.*

<sup>16</sup> See K.S.A. 66-1,172; K.S.A. 66-1,173.

<sup>17</sup> See K.S.A. 66-1,172; K.S.A. 66-1,175.

<sup>18</sup> See K.S.A. 66-1,173(a).

<sup>19</sup> See Report and Recommendation at 1.

proceeding to be a companion filing to the Application Evergy Kansas Central filed in Docket No. 20-EKCE-233-COC.<sup>20</sup> The Commission approved Evergy Kansas Central's Application in Docket No. 20-EKCE-233-COC on May 7, 2020.<sup>21</sup> In short, the instant proceeding involves Evergy Kansas Central converting an *existing*, de-energized line, to serve a new customer.<sup>22</sup> Docket No. 20-EKCE-233-COC involved the "*greenfield*" portion of Evergy Kansas Central's TRO Certificate request.<sup>23</sup>

8. Staff outlined certain applicable legal standards, and noted the costs associated with this TRO certificate request.<sup>24</sup> 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.<sup>25</sup>

9. Ultimately, Staff recommended the Commission grant Evergy Kansas Central's Application for a TRO Certificate.<sup>26</sup>

#### **IV. FINDINGS AND CONCLUSIONS**

10. 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.

11. The Commission finds approval of Evergy Kansas Central's TRO Certificate request promotes the public convenience and necessity and should therefore be approved.

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<sup>20</sup> See Report and Recommendation at 1-2.

<sup>21</sup> See Order Approving Transmission Rights Only Certificate of Convenience and Necessity, Docket No. 20-EKCE-233-COC (May 7, 2020).

<sup>22</sup> See Report and Recommendation at 1-2.

<sup>23</sup> See Report and Recommendation at 1-2 (emphasis added).

<sup>24</sup> See Report and Recommendation at 2.

<sup>25</sup> See Report and Recommendation at 2.

<sup>26</sup> See Report and Recommendation at 2.

Allowing Evergy Kansas Central to convert existing 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. Moreover, Evergy Kansas Central's request in the instant docket is a companion proceeding to the request made in Docket No. 20-EKCE-233-COC, which as described above the Commission has previously approved.

12. 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 convert a de-energized transmission line currently located in 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.

13. The Commission finds approval of Evergy Kansas Central's Application and requested TRO Certificate, as conditioned below, 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.

14. The Commission adopts the recommendation of Staff as contained within Staff's May 15, 2020 Report and Recommendation (filed in this docket on May 18, 2020) as its own. The Commission finds Evergy Kansas Central should be granted a TRO Certificate for a portion of the legal description contained within Evergy Kansas Central's Application and as restated in Attachment A to Staff's May 15, 2020 Report and Recommendation. Evergy Kansas Central's

Application contains Township and Range Public Land Survey System information for the transmission line's route in both Evergy Kansas Central's certified service territory and Butler Rural Electric's certified service territory.<sup>27</sup> Because no Commission approval is necessary to construct or convert this particular transmission line in Evergy Kansas Central's certified service territory, the Commission is limiting the requested TRO Certificate to the portion of the route that runs through Butler Rural Electric's certified service territory.

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

**IT IS, THEREFORE, BY THE COMMISSION ORDERED:**

A. Evergy Kansas Central's Application and TRO Certificate, as limited to the portion described in Ordering Clause B, is approved.

B. Evergy Kansas Central is hereby granted a TRO Certificate for the legal description stated in Attachment A to Staff's May 15, 2020 Report and Recommendation. Specifically:

BUTLER COUNTY, KANSAS

TRANSMISSION RIGHTS ONLY:

TRO begins at the Butler Rural Electric service area in the NW/4 S34-24S-R5E and turns north in the same 1/4 section. The line continues north through the middle of S27-T24S-R5E and S22-T34S-R5E. The line enters the middle of S15-T24S-R5E, turns northeast in the NE/4 of that section and enters the SE/4 S10-T24S-R5E and continues through the NW/4-S11-T24S-R5E. This rebuild ends in the northern edge of the NW/4 S11-T24S-R5E at the TC Burns Tap in Butler County, Kansas.

C. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration.<sup>28</sup>

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<sup>27</sup> See Application at 1-2.

<sup>28</sup> See K.S.A. 66-118b; 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: 05/21/2020



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Lynn M. Retz  
Executive Director

REV

## CERTIFICATE OF SERVICE

20-EKCE-234-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 05/21/2020.

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/S/ DeeAnn Shupe  
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