

**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 Kansas	)	
Power Pool for a Certificate of Convenience	)	
and Authority to Transact the Business of an	)	Docket No. 18-KPPE-343-COC
Electric Public Utility in the State of Kansas	)	
for Transmission Rights Only in Cross	)	
Service Territory of Southern Pioneer	)	
Electric Company and Ninnescah Rural	)	
Electric Company.	)	

**ORDER GRANTING TRANSMISSION RIGHTS ONLY CERTIFICATE OF  
CONVENIENCE AND AUTHORITY TO KANSAS POWER POOL**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On February 9, 2018, the Kansas Power Pool (KPP) filed its Application for Commission approval of a Transmission Rights Only (TRO) certificate in the retail service territory of Southern Pioneer Electric Company (Southern Pioneer).<sup>1</sup> KPP seeks to build a five-mile extension of an existing 34.5 kV transmission line through retail territory certified to Ninnescah Electric Cooperative and Southern Pioneer, which would connect the existing KPP 34.5 kV transmission line to a proposed new substation.<sup>2</sup> The new substation and the five-mile extension are collectively referred to as the Kingman Direct Connection (KDC).<sup>3</sup>

2. On May 8, 2018, Larry Holloway, Assistant General Manager – Operations filed direct testimony on behalf of KPP and in support of the Application. Holloway testified the

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<sup>1</sup> Application, Feb. 9, 2018.

<sup>2</sup> Direct Testimony of Leo M. Haynos (Haynos Direct), July 9, 2018, p. 4.

<sup>3</sup> *Id.*

proposed transmission project will provide vastly improved transmission service to the City of Kingman, Kansas.<sup>4</sup> He further testified that Kingman began taking service from KPP in 2007, under the KPP Operating Agreement.<sup>5</sup> Under the Operating Agreement, KPP is required to provide its members with transmission service and that the service be provided as reliably and economically as possible.<sup>6</sup>

3. Holloway claims Kingman suffers from very poor electric transmission connectivity to power supplies and markets.<sup>7</sup> In 2005, Kingman, built about 26 miles of 34.5 kV composite core conductor line to Cunningham to interconnect with an Aquila 34.5 KV line that ran about 18 miles east out of the Pratt substation.<sup>8</sup> The additional 26 miles of line increased Kingman's import capability from 2 MW to 6 MW, but did not allow Kingman to import all the power it needed.<sup>9</sup>

4. Holloway explained a 2009 Southwest Power Pool (SPP) aggregate study proposed an upgrade, where the entire Southern Pioneer 34.5 kV line from Pratt to Cunningham would be rebuilt, and serve Kingman on the end of over 44 miles of 34.5 kV line.<sup>10</sup> Both KPP and Kingman felt the proposed upgrade was an unnecessarily costly solution that would result in an unusually long, low voltage line providing poor transmission connectivity to Kingman.<sup>11</sup> After discussions with Southern Pioneer to use Southern Pioneer's SemCrude Substation to provide transmission

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<sup>4</sup> Direct Testimony of Larry W. Holloway, May 8, 2018, p. 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, p. 7.

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

<sup>9</sup> *Id.*, p. 9.

<sup>10</sup> *Id.*, pp. 11-12.

<sup>11</sup> *Id.*, p. 12.

service to Kingman by interconnecting with Kingman's 34.5 kV line proved too costly,<sup>12</sup> KPP began planning to build the KDC.<sup>13</sup>

5. On May 15, 2018, Southern Pioneer was granted intervention.<sup>14</sup> On May 22, 2018, Mid-Kansas Electric Company, Inc. (Mid-Kansas) was granted intervention.<sup>15</sup>

6. On July 9, 2018, Leo Haynos and Justin Grady filed direct testimony on behalf of Commission Staff (Staff); Dr. Ala Tamimi, Corey Linville, H. Davis Rooney, and Clarence Suppes filed direct testimony on behalf of Mid-Kansas; and Brian Beecher, Elena Larson, Erik Sigurd Sonju, Randall Magnison, and Chantry Scott filed direct testimony on behalf of Southern Pioneer.

7. After analyzing KPP's Application under the Retail Electric Suppliers Act (RESA), Haynos concluded that the Application satisfied the RESA standards and recommended approval of the Application.<sup>16</sup> Specifically, Haynos believes the KDC will promote the orderly development of retail and wholesale electric service;<sup>17</sup> avoid wasteful duplication of facilities for distributing electricity;<sup>18</sup> prevent waste of materials and natural resources;<sup>19</sup> and will not unnecessarily encumber the landscape.<sup>20</sup> In evaluating K.S.A. 66-1,171(e) of RESA, Haynos analyzed the benefits and detriments the KDC would have on the public generally and found it would have a positive impact on KPP and its members and a negative impact on Southern Pioneer and its members.<sup>21</sup> Ultimately, Haynos concluded the KDC is the lowest cost solution to meet Kingman's electric transmission needs and recommended approval of KPP's TRO certificate request.<sup>22</sup>

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<sup>12</sup> *Id.*, pp. 13-14.

<sup>13</sup> *Id.*, pp. 16-17.

<sup>14</sup> Order Granting Intervention; Protective Order; Discovery Order, May 15, 2018, ¶ 6.

<sup>15</sup> Order Granting Intervention, May 22, 2018, ¶ 6.

<sup>16</sup> Direct Testimony of Leo M. Haynos, July 9, 2018, p. 2.

<sup>17</sup> *Id.*, p. 5.

<sup>18</sup> *Id.*, p. 7.

<sup>19</sup> *Id.*, p. 12.

<sup>20</sup> *Id.*, p. 11.

<sup>21</sup> *Id.*, p. 13.

<sup>22</sup> *Id.*, pp. 18-19.

8. Grady testified that KPP's methodology to evaluate the economic impact of various alternatives for improving Kingman's transmission service is reasonable and that the KDC is a more economical solution than the SemCrude upgrade.<sup>23</sup>

9. After noting 95% of Kingman's energy needs on an annual basis can be currently met,<sup>24</sup> Dr. Tamimi acknowledged "there is a physical limitation on importing energy from the market to Kingman due to the connection at the Cunningham substation and at the Kingman facilities"<sup>25</sup> and that the KDC would remove the import limitation.<sup>26</sup> Dr. Tamimi testified that the SemCrude Upgrade would also remove the limitation, but at a lower cost.<sup>27</sup> He claims the KDC and SemCrude Upgrade offer equivalent electric service, other than the cost.<sup>28</sup> Dr. Tamimi also recognizes the 34.5 kV restriction on Kingman's facilities limit the amount of energy that can flow out of Kingman.<sup>29</sup> As is the case with the import limitation, Dr. Tamini asserts the KDC will not improve Kingman's export capability any more than the SemCrude Upgrade would.<sup>30</sup> Dr. Tamimi concluded the SemCrude Upgrade is the least cost option to connect the Kingman load and serve it from the Ninnescah Transmission Line.<sup>31</sup>

10. Linville believes giving Kingman the ability to sell 16 MW of capacity does not justify building the KDC as Kingman's capacity is already fully claimed and used to support an existing capacity sale.<sup>32</sup> He explains shifting KPP's Local Access Delivery Service (LADS) charges to other customers does not constitute a savings to the public.<sup>33</sup> Rooney claims the net

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<sup>23</sup> Direct Testimony of Justin T. Grady, July 9, 2018, p. 3.

<sup>24</sup> Pre-filed Direct Testimony of Dr. Ala Tamimi, July 9, 2018, p. 17.

<sup>25</sup> *Id.*, p. 18.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, p. 19.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, p. 19.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, p. 22.

<sup>32</sup> Prefiled Direct Testimony of Corey W. Linville, July 9, 2018, p. 26.

<sup>33</sup> *Id.*, p. 27.

cost of KDC to the public is more than twice that of the SemCrude Upgrade.<sup>34</sup> He faults Holloway for not considering the KDC's impact on the customers of Southern Pioneer and Mid-Kansas.<sup>35</sup> Rooney calculates that 97% of the KDC's costs will be borne by customers other than KPP or Kingman and that the Local Access Charge costs will be shifted away from Kingman to other Mid-Kansas customers.<sup>36</sup> Suppes questioned KPP's technical expertise to maintain and operate the KDC.<sup>37</sup>

11. Beecher testified the KDC is duplicative of the SemCrude Substation and like Suppes, questioned KPP's technical expertise to maintain and operate the KDC.<sup>38</sup> Larson testified that KPP's cost assessment of the KDC is incomplete, materially flawed, and does not meet the Commission's public interest standard.<sup>39</sup> She claims the SemCrude Upgrade is a better alternative than the KDC because it: (1) was vetted by a joint planning process; (2) avoids building a new substation; and (3) is less expensive.<sup>40</sup> Sonju argues that Holloway overstates the cost of the SemCrude Upgrade by 7% and understates the cost of the KDC by 30%.<sup>41</sup> Using Sonju's figures, approving KPP's Application will cost \$2,300,000 more than the SemCrude Upgrade to achieve the same electrical results.<sup>42</sup>

12. Magnison testified the KDC does not meet K.S.A. 12-8,111(a)'s public interest test because it duplicates existing 34.5 kV facilities and increases the potential for disputes between electric suppliers.<sup>43</sup> He explains the KDC would be in lieu of KPP taking full import LADS from

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<sup>34</sup> Amended Direct Testimony of H. Davis Rooney, July 9, 2018, p. 4.

<sup>35</sup> *Id.*, p. 28.

<sup>36</sup> *Id.*

<sup>37</sup> Direct Testimony of Clarence D. Suppes, July 9, 2018, pp. 6-7.

<sup>38</sup> Prefiled Direct Testimony of Brian D. Beecher, pp. 3-4.

<sup>39</sup> Prefiled Direct Testimony of Elena E. Larson, July 9, 2018, p. 5.

<sup>40</sup> *Id.*, pp. 5-6.

<sup>41</sup> Direct Testimony of Erik Sigurd Sonju, July 9, 2018, pp. 12-13.

<sup>42</sup> *Id.*, p. 16.

<sup>43</sup> Prefiled Direct Testimony of Randall D. Magnison, July 9, 2018, p. 4.

Southern Pioneer's 34.5 kV system through the SemCrude Upgrade.<sup>44</sup> Magnison claims, Southern Pioneer would not have purchased the 115 kV line from Ninnescah or built the SemCrude substation had it known that KPP was planning to bypass its 34.5 kV facilities and the LADS charges.<sup>45</sup>

13. On July 16, 2018, Haynos and Grady submitted cross-answering testimony on behalf of Staff; Tamimi, Linville, and Rooney filed cross-answering testimony on behalf of Mid-Kansas; and Magnison, filed cross-answering testimony on behalf of Southern Pioneer.

14. Haynos explained it is appropriate to consider the LADS charge in calculating the lowest cost solution, since KPP has the option of acquiring wholesale service from another provider or taking no wholesale service at all.<sup>46</sup> If KPP elected to disconnect from Southern Pioneer, Haynos testified there would be no net negative effect on the public interest as it would return the Southern Pioneer system to the condition it was before KPP built a line to acquire an interconnect with Southern Pioneer.<sup>47</sup> Since there would be a positive effect on Kingman and KPP and no net negative effect on Southern Pioneer, the public interest would be promoted if KPP stopped taking service from Southern Pioneer. Haynos recognizes it may seem unfair that a wholesale customer is free to leave its current provider, whereas the provider must serve all requests, but he notes that is a reality of any business.<sup>48</sup>

15. Grady agrees it is appropriate to consider KPP's ability to avoid the LADS charges in the economic evaluation of the KDC.<sup>49</sup> He acknowledges that Southern Pioneer's remaining customers will pay more if KPP exits the Southern Pioneer system, but does not believe it would

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<sup>44</sup> *Id.*, p. 26.

<sup>45</sup> *Id.*, p. 31.

<sup>46</sup> Cross-Answering Testimony of Leo M. Haynos, July 16, 2018, p. 2.

<sup>47</sup> *Id.*, p. 3.

<sup>48</sup> *Id.*, p. 5.

<sup>49</sup> Cross-Answering Testimony of Justin T. Grady, July 16, 2018, p. 4.

be detrimental to the public interest as it is offset by the benefits of KPP avoiding the LADS charge.<sup>50</sup>

16. In his cross-answering testimony, Tamimi criticizes Staff for failing to consider the conclusions of the local planning process, which will result in duplication of facilities, waste, and unnecessary encumbrances on the land.<sup>51</sup> Rooney criticizes Staff for “accepting KPP’s underlying analysis at face value.”<sup>52</sup> Similarly, Magnison faults Staff for focusing on the impact on KPP and its members and failing to consider the public interest as a whole.<sup>53</sup>

17. On July 27, 2018, Southern Pioneer and Mid-Kansas filed a Joint Motion for Approval to File Pre-Hearing Briefs to address legal standards, with their Intervenor’s Brief attached. The Joint Motion simply reiterated the argument that Staff’s analysis of the public interest disregards the impact of the KPP application on the overall public interest, instead focusing completely on the impact to KPP and its members.<sup>54</sup>

18. On July 30, 2018, James Ging and Larry Holloway filed rebuttal testimony on behalf of KPP. Ging testified that together KPP and Kingman are capable of safely building, operating, and maintaining the KDC.<sup>55</sup> Holloway explained the KDC is the only alternative, which has been vetted by the SPP planning process with an approved AQ request.<sup>56</sup>

19. On August 10, 2018, Staff and KPP filed their responses to the Intervenor’s Brief. Commission Staff’s Pre-Hearing Brief on Legal Standard of Review explains, “strictly applying RESA’s policy factors to a municipal energy agency’s TRO certificate request is problematic”

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<sup>50</sup> *Id.*, pp. 4-5.

<sup>51</sup> Cross-Answering Testimony of Dr. Ala Tamimi, July 16, 2018, pp. 1, 3.

<sup>52</sup> Cross-Answering Testimony of H. Davis Rooney, July 16, 2018, p. 2.

<sup>53</sup> Cross Answering Testimony of Randall D. Magnison, July 16, 2018, p. 4

<sup>54</sup> Joint Motion for Approval to File Pre-Hearing Briefs, July 27, 2018, ¶ 16.

<sup>55</sup> Rebuttal Testimony of James Ging, July 30, 2018, p. 2.

<sup>56</sup> Rebuttal Testimony of Larry W. Holloway, July 30, 2018, p. 2. Attachment AQ refers to the SPP delivery point addition process.

because “[b]y law, municipal energy agencies cannot furnish retail electric service, and existing case precedent defining ‘public convenience and necessity’ is largely based on public utilities providing retail service.”<sup>57</sup> Therefore, the Commission’s determination of whether the public interest is met should be based on the specific facts of the case.<sup>58</sup> Staff claims the Intervenor’s Brief conflates the public interest with public convenience and also erroneously interprets the Commission’s Order in the Grain Belt Express Docket<sup>59</sup> to suggest that public convenience involves the consideration of a local and regional transmission planning process.<sup>60</sup>

20. In its Response to Intervenor’s Pre-Hearing Brief of Legal Standard of Review, KPP asserts, “Staff and KPP simply argue that the public convenience and necessity of Southern Pioneer’s customers should not be elevated over the public convenience and necessity of KPP’s members and its members’ customers, including the residences and businesses of the City of Kingman.”<sup>61</sup> KPP explains that Kingman has the right to seek out less expensive wholesale electric service and is not legally bound to take service from Southern Pioneer.<sup>62</sup>

21. Beginning on August 28, 2018, the Commission held two days of evidentiary hearings. The resulting transcript consists of almost 600 pages, plus more than 30 exhibits and more than 20 documents administratively noticed. KPP, Staff, Southern Pioneer, and Mid-Kansas appeared by counsel. The Commission heard live testimony from a total of twelve witnesses, including two on behalf of KPP, two on behalf of Staff, and four each on behalf of Southern

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<sup>57</sup> Commission Staff’s Pre-Hearing Brief on Legal Standard of Review (Staff Brief), Aug. 10, 2018, ¶ 14.

<sup>58</sup> See *id.*, ¶ 17.

<sup>59</sup> Order Approving Stipulation & Agreement and Granting Certificate, Docket No. 11-GBEE-624-COC, Dec. 7, 2011.

<sup>60</sup> Staff Brief, ¶ 18.

<sup>61</sup> Kansas Power Pool’s Response to Intervenor’s Pre-Hearing Brief of Legal Standard of Review, Aug. 10, 2018, ¶ 12.

<sup>62</sup> *Id.*, ¶ 13.



Pioneer and Mid-Kansas.<sup>63</sup> The parties had the opportunity to cross-examine the witnesses at the evidentiary hearing and to redirect their own witnesses. Following the evidentiary hearing, KPP, Staff, Southern Pioneer, Mid-Kansas, and CURB<sup>64</sup> submitted post-hearing briefs.

22. On September 11, 2018, KPP filed its Post-Hearing Brief in Support of its Application, explaining it is undisputed that the KDC will improve transmission service to Kingman by removing the current 6 MW import barrier and provide a source of excess power for future development.<sup>65</sup> Similarly, there is no dispute that the KDC is electrically equivalent to the proposed SemCrude Upgrade.<sup>66</sup> KPP notes the KDC, which is the only proposed project vetted through Mid-Kansas's planning process,<sup>67</sup> would resolve the current limitations on KPP's ability to supply Kingman with adequate power.<sup>68</sup> Since it is agreed that Kingman's current transmission service is inadequate, KPP contends the KDC cannot be duplicative or wasteful.<sup>69</sup>

23. KPP emphasizes Staff found the KDC to be the most cost effective option before the Commission.<sup>70</sup> Essentially, KPP argues the KDC is the only viable option before the Commission. The SemCrude Upgrade would not solve Kingman's transmission problems because it would increase its LADS charges.<sup>71</sup> The KDC is the only project that removes the economic barrier to Kingman's export generation.<sup>72</sup> Lastly, KPP explains there is no legal barrier preventing it from disconnection from the Southern Pioneer system.<sup>73</sup> Under the terms it negotiated with

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<sup>63</sup> At the outset of the hearing, the Commission waived in the direct testimony and rebuttal testimony of sixteen witnesses. *See* Tr. Vol. 1, pp. 13-14. The Commission received and reviewed testimony from a total of forty witnesses.

<sup>64</sup> At the evidentiary hearing, the Commission granted CURB's Petition to Intervene for Limited Purpose of filing an amicus brief. *See* Transcript (Tr.) p. 9.

<sup>65</sup> Kansas Power Pool's Post-Hearing Brief in Support of its Application (KPP Brief), Sept. 21, 2018, ¶ 9.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*, ¶ 8.

<sup>68</sup> *Id.*, ¶ 7.

<sup>69</sup> *Id.*, ¶ 11.

<sup>70</sup> *Id.*, ¶ 12.

<sup>71</sup> *Id.*, ¶ 13.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*, ¶ 21.

Southern Pioneer, as long as KPP provides Southern Pioneer with one year's advanced notice, it is free to terminate its service.<sup>74</sup>

24. On September 21, 2018, CURB filed its Amicus Brief, agreeing the Commission determines what is in the public interest based upon the appropriate legal standard and facts of the case.”<sup>75</sup> CURB explains, “the public interest is satisfied by the Commission’s full and deliberate consideration of all public policy factors outlined in K.S.A. 66-1,171.”<sup>76</sup> In maintaining the Commission has discretion to determine, based upon the record as a whole, whether granting KPP's application best meets the public policy expressed in K.S.A. 66-1,171,<sup>77</sup> CURB believes the Commission should consider Southern Pioneer’s potential loss of revenue from sales to Kingman may affect Southern Pioneer’s ratepayers.<sup>78</sup> But CURB acknowledges, the Commission has discretion is determining how much weight to give that consideration.<sup>79</sup>

25. On September 25, 2018, Intervenors and Staff filed their Briefs. The Intervenors attack Staff for purportedly interpreting the term “public interest” as being broader than the term “public convenience and necessity.” As a result, the Intervenors accuse Staff of ignoring Kansas law and Commission precedent in treating the desires of the applicant as the most important factor in meeting the public interest.<sup>80</sup> The Intervenors go so far as to say, “[f]or whatever reasons Staff may have, Staff’s goal is to obtain Commission approval of KPP’s application.”<sup>81</sup> Specifically, the Intervenors claim Staff simply accepted KPP’s analysis without further vetting or consideration

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<sup>74</sup> *Id.*

<sup>75</sup> Brief of Amicus Curiae of Citizens’ Utility Ratepayer Board, Sept. 21, 2018, ¶ 2.

<sup>76</sup> *Id.*, ¶ 30.

<sup>77</sup> *Id.*, ¶ 39.

<sup>78</sup> *Id.*, ¶ 37.

<sup>79</sup> *Id.*

<sup>80</sup> Initial Post-Hearing Brief of Southern Pioneer Electric Company and Mid-Kansas Electric Company, Inc. (Intervenor Brief), Sept. 25, 2018, ¶ 10.

<sup>81</sup> *Id.*, ¶ 16.

of past Commission orders addressing transmission line certifications, and without considering the interests of all impacted customers.<sup>82</sup>

26. The Intervenors explain this Docket is a matter of first impression, since it the first Commission decision since K.S.A. 12-8,111 was revised by the Legislature.<sup>83</sup> Yet, the Intervenors acknowledge the revision simply clarifies that municipal energy agencies must obtain Commission approval before they can build transmission lines in Kansas.<sup>84</sup>

27. The Intervenors claim KPP tries to characterize the public interest standard as Southern Pioneer's customers versus KPP's customers, and that under *Kansas Gas & Electric Co. v. Public Service Com.*, 122 Kan. 462 (1927), greater weight is given to the impact on the incumbent utility, than the wishes of the applicant.<sup>85</sup> The Intervenors argue, the only complete public interest analysis in this proceeding was conducted by Southern Pioneer and Mid-Kansas.<sup>86</sup>

28. The Intervenors clarify the Commission is not faced with making a decision between the SemCrude Upgrade and the KDC Project because they simply presented the SemCrude Upgrade as evidence that a cheaper comparable project is available.<sup>87</sup> Staff relies on this acknowledgement in refuting Southern Pioneer's argument that the SemCrude Upgrade is a lower cost solution than the KDC to address Kingman's needs.<sup>88</sup> According to Staff, not only does the SemCrude Upgrade not exist, but will likely never exist because constructing the SemCrude Project requires an agreement between Southern Pioneer and KPP, which KPP has publicly stated it will not enter.<sup>89</sup>

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<sup>82</sup> *Id.*, ¶¶ 48-49.

<sup>83</sup> *Id.*, ¶ 18.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*, ¶ 20.

<sup>86</sup> *Id.*, ¶ 54.

<sup>87</sup> *Id.*, ¶ 46.

<sup>88</sup> Commission Staff's Post-Hearing Brief (Staff Brief), Sept. 25, 2018, ¶ 3.

<sup>89</sup> *Id.*, ¶¶ 3, 21.

29. Staff distinguishes *Kansas Gas* and *Central Kansas Power Co. v. Kansas Corp. Comm'n*, 206 Kan. 670 (1971), two cases relied on by the Intervenor because KPP cannot directly sell electricity to end users.<sup>90</sup> Unlike *Kansas Gas*, KPP is not requesting authority to provide retail service and would be unable to do so even if it wanted and no incumbent retail electric service provider will lose retail customers if the KDC is built.<sup>91</sup> Therefore, KPP's Application requires less scrutiny than when a public utility attempts to provide retail service in a territory already being served.<sup>92</sup> Similarly, Staff posits, unlike a public utility attempting to provide retail service where the impact on the incumbent utility is given greater weight than the desires of the Applicant, KPP's Application must simply meet the burden of showing it will promote the public convenience and necessity.

30. On October 2, 2018, KPP filed its Post-Hearing Reply Brief in Support of its Application, reiterating that Kingman is not receiving adequate service from Southern Pioneer and needs relief from the import and export limitations imposed on its service.<sup>93</sup> KPP admits the KDC may result in an 8.5% increase in LADS charges to Southern Pioneer's customers, but contends that potential increase does not outweigh the KDC's benefits.<sup>94</sup> In evaluating the public interest, KPP simply asks the Commission to consider the interests of Southern Pioneer's customers in the context of the other RESA factors, including the interests of Kingman and KPP's customers.<sup>95</sup>

31. In evaluating the public interest, KPP advises the Commission should remember the Intervenor could have protected their customers from increased LADS charges by putting in safeguards or other contractual provisions in their Network Integrated Transmission Service

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<sup>90</sup> *Id.*, ¶ 17.

<sup>91</sup> *Id.*, ¶ 18.

<sup>92</sup> *Id.*, ¶ 19.

<sup>93</sup> Kansas Power Pool's Post-Hearing Reply Brief in Support of Its Applications, Oct. 2, 2018, ¶ 3.

<sup>94</sup> *Id.*, ¶ 4.

<sup>95</sup> *Id.*, ¶ 4.

Agreement (NITSA) or Network Operating Agreement (NOA), but elected to change Mid-Kansas's billing approach instead.<sup>96</sup>

32. K.S.A. 66-1,170, lists six policy factors to consider before issuing a certificate of public convenience:

- (a) Encourage the orderly development of retail electric service;
- (b) Avoid wasteful duplication of facilities for the distribution of electricity;
- (c) Avoid unnecessary encumbrance of the landscape of the state;
- (d) Prevent waste of materials and natural resources;
- (e) Facilitate the public convenience and necessity; and
- (f) Minimize disputes between retail electric suppliers, which may result in inconvenience, diminished efficiency and higher costs in serving the consumer.

33. The parties all agree to apply K.S.A. 66-1,170 to the determination of this matter. Therefore, the Commission will address the six factors, with particular emphasis on facilitating the public convenience and necessity, since that appears to be the focus of the dispute.

#### **Orderly Development of Retail Electric Service**

34. Both Staff and KPP believe the KDC will encourage the orderly development of retail electric service by providing additional transmission capacity to Kingman. As Staff explains, as a public utility, KPP must apply for and receive Commission approval to build any electric facility in another utility's service territory. That approval process ensures an orderly development.<sup>97</sup> KPP asserts: (1) it has statutory authority to build the KDC;<sup>98</sup> (2) the KDC would

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<sup>96</sup> *Id.*, ¶ 6.

<sup>97</sup> Staff Brief, ¶ 26.

<sup>98</sup> KPP Brief, ¶ 5.

resolve Kingman's 6 MW import limit;<sup>99</sup> and (3) the KDC is consistent with SPP's planning process and is the only project vetted through that process.<sup>100</sup>

35. The Intervenor take issue with KPP's claims. First, the Intervenor acknowledge that all public utilities are authorized to build electric facilities, but that does not make KPP immune from Commission oversight, namely whether KPP is acting in the public interest.<sup>101</sup> That statement is not in dispute. It merely raises the crucial question presented in this Docket, whether the KDC is in the public interest. Second, while claiming the SemCrude Upgrade is less expensive than the KDC, the Intervenor admit the KDC is electrically equivalent to the SemCrude Upgrade.<sup>102</sup> In doing so, they acknowledge the KDC would resolve Kingman's transmission limitations. Lastly, the Intervenor dispute KPP's claim that the KDC is consistent with Mid-Kansas's planning process. The Intervenor cite to Dr. Tamimi's testimony that the KDC was not analyzed through Mid-Kansas's local planning process as a transmission solution.<sup>103</sup> While true, this Docket has revealed some potential problems in the local planning process, namely whether the local planning process is unfairly dominated by the Intervenor.<sup>104</sup> Regardless of the local planning process, the Intervenor fail to adequately address that the KDC is the only proposal currently before the Commission. The Intervenor reliance on the local planning process is misplaced because it is the Intervenor planning process for its own facilities, not for all transmission in western Kansas. Nothing in Mid-Kansas's Open Access Transmission Tariff (OATT) designates them as the transmission planner for western Kansas.

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<sup>99</sup> *Id.*, ¶ 7.

<sup>100</sup> *Id.*, ¶ 8.

<sup>101</sup> Intervenor Brief, ¶ 58.

<sup>102</sup> *Id.*, ¶ 59.

<sup>103</sup> *Id.*, ¶ 61.

<sup>104</sup> *See* Tr., p. 378.

36. Based on the undisputed facts that Kingman's current transmission service is inadequate and that the KDC is the only proposal currently before the Commission, which will resolve Kingsman's issues, the Commission finds the KDC will encourage the orderly development of retail electric service.

**Avoiding Wasteful Duplication of Facilities and Unnecessary Encumbrances of the Landscape of the State**

37. The Commission agrees with the Intervenor's that there is sufficient overlap in these two factors to address them in tandem. KPP argues the KDC will not result in wasteful duplication because the existing facilities are providing inadequate service to Kingman.<sup>105</sup> Staff acknowledges the KDC will result in some duplication of transmission facilities, but it will not be wasteful because the existing SemCrude substation does not meet Kingman's needs and the SemCrude Upgrade will likely never be built.<sup>106</sup> The Intervenor's rely on testimony from its witnesses Sonju and Magnison that all essential equipment in the KDC will duplicate the SemCrude substation equipment, other than a new transformer.<sup>107</sup> They also dispute that the Southern Pioneer facilities serving Kingman are inadequate.<sup>108</sup> The Intervenor's claim KPP's purported need for higher level of service is simply an attempt to avoid the LADS charge.<sup>109</sup>

38. The Commission concludes Kingman's current service is inadequate. This conclusion is based in large part on testimony from the Intervenor's own witnesses that Kingman cannot currently obtain 100% of its energy and transmission capacity needs. Dr. Tamimi, testified "there is a physical limitation on importing energy from the market to Kingman due to the

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<sup>105</sup> KPP Brief, ¶ 11.

<sup>106</sup> Staff Brief, ¶ 28.

<sup>107</sup> Intervenor Brief, ¶ 68.

<sup>108</sup> *Id.*, ¶ 69.

<sup>109</sup> *Id.*

connection at the Cunningham substation and at the Kingman facilities”<sup>110</sup> and that the KDC would remove the import limitation.<sup>111</sup> Similarly, when asked how Kingman would get relief if the Commission rejected the KDC, Magnison replied, “the City of Kingman can continue to receive -- I think it’s Mr. Rooney’s testimony – 95% of their energy needs are purchased from the integrated market, even though they have the 6 megawatt limitation, so if they choose to do nothing, they would continue to live with that 6 megawatt threshold...”<sup>112</sup>

39. While the Intervenors claim upgrading a transformer at the SemCrude substation would address Kingman’s needs, their own cost estimates illustrate the transformer is the most expensive investment in a substation.<sup>113</sup> Furthermore, Staff reminds the Commission a new sub-transmission line would also need to accompany the transformer upgrade.<sup>114</sup> There is substantial uncertainty, even by Magnison’s own admission whether the SemCrude Upgrade will ever occur because “there is no agreement about how to pay for it.”<sup>115</sup> Staff concludes it is unlikely KPP will ever agree to pay for the SemCrude Upgrade.<sup>116</sup> Based on the testimony that the SemCrude Upgrade will likely never be built, the Intervenors attempt to argue the SemCrude Upgrade is the lower cost option falls flat. It is unrealistic to assume the SemCrude Upgrade will ever occur. Therefore, it cannot be considered as a lower cost option.

40. The Commission finds Staff’s testimony on the need to provide more transmission capacity to Kingman to be more credible than that of the Intervenors. Based on evidence that Kingman needs improved transmission service, that the existing facilities are inadequate to provide that service, and that an upgrade to the existing facilities is not an economically viable option, the

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<sup>110</sup> Tamini Direct., p. 18.

<sup>111</sup> *Id.*

<sup>112</sup> Tr., p. 441.

<sup>113</sup> Staff Brief, ¶ 31.

<sup>114</sup> *Id.*

<sup>115</sup> Tr., p. 441.

<sup>116</sup> See Staff Brief, ¶ 28.



Commission finds the KDC would not result in wasteful duplication of facilities for the distribution of electricity.

41. Only Staff specifically addresses the issue of unnecessary encumbrances. While noting the KDC will be visible across the landscape and result in congestion of power lines along a county road, Staff explains congestion would result from either the KDC or the SemCrude Upgrade.<sup>117</sup> Since any solution to Kingman's transmission needs would encumber the landscape, Staff views the KDC as not rising to an unnecessary encumbrance. The Commission agrees. The evidence suggests an upgrade in Kingman's transmission capacity is necessary, so while the KDC is an encumbrance, it is an unavoidable one, and thus not an unnecessary encumbrance.

**Prevent waste of materials and natural resources**

42. KPP states the KDC is the only solution that would prevent the waste of Kingman's excess generation, which cannot be marketed due to the LADS charges.<sup>118</sup> Staff contends that removing the 6 MW import capacity limit on Kingman, makes it economically beneficial for KPP to purchase electricity, instead of having Kingman generate the electricity.<sup>119</sup> Making it more financially viable for KPP to purchase electricity would provide two benefits: (1) less costs and wear on Kingman's generators and (2) KPP and Kingman could sell Kingman's excess generation capacity.<sup>120</sup> The Intervenor's argue KPP's claim that the KDC is the only solution that allows Kingman to market its excess generation is "patently false" because the KPP can pool and sell its excess generation without incurring an LADS charge.<sup>121</sup> They also claim KPP will not have excess capacity to sell after 2022.<sup>122</sup>

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<sup>117</sup> Staff Brief, ¶ 32.

<sup>118</sup> KPP Brief, 17.

<sup>119</sup> Staff Brief, ¶ 34.

<sup>120</sup> *Id.*

<sup>121</sup> Intervenor Brief, ¶ 75.

<sup>122</sup> *Id.*

43. On cross-examination, Linville admitted that when KPP had previously tried to sell Kingman's capacity to KMEA that Southern Pioneer assessed a LADS charge on that sale and that in the 15-MKEE-461-TAR Docket he filed testimony supporting assessing LADS charges on Kingman generation.<sup>123</sup> Based on Linville's testimony, the Commission questions the Intervenor's claim that KPP can sell its excess generation without incurring a LADS charge. The Intervenor's do not contest that there is a market for KPP's excess capacity, only that the excess capacity will be short-lived and it can already be freely marketed.<sup>124</sup> Since there is no dispute a market for KPP's excess capacity presently exists, the Commission finds that by removing barriers to Kingman and KPP selling Kingman's excess generation capacity will prevent waste of materials and natural resources.

**Facilitate the public convenience and necessity**

44. The central question presented in this Docket is how to define the public interest. The parties agree that if the KDC is built, KPP's LADS charges will be shifted to other Southern Pioneer customers. Essentially, "the crux of the issue ... heard here for the last 2 days is your [Southern Pioneer's] customers are going to pay 8 1/2 percent more and their [KPP's] customers are going to pay 8 1/2 percent less."<sup>125</sup> As Leo Haynos testified, "this is all about the LADS charge."<sup>126</sup>

45. The Intervenor's accuse KPP of placing its own interest above that of the public. Yet, in reality, both parties are equating the public interest with their own interests. Staff takes a more holistic approach, looking at both KPP's and the Intervenor's members as the public.<sup>127</sup>

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<sup>123</sup> Tr., pp. 152-153.

<sup>124</sup> Intervenor Brief, ¶ 75.

<sup>125</sup> Tr., p. 440.

<sup>126</sup> Tr., p. 561.

<sup>127</sup> Staff Brief, ¶ 39.

Under Staff's analysis, KPP and Kingman cannot obtain all of their energy needs and capacity from existing electric facilities and, therefore, the public interest is promoted when municipal energy agencies like KPP are allowed to seek out an economic and sufficient source of supply, as envisioned by the Legislature.<sup>128</sup>

46. The Intervenor offers two main reasons that the KDC is not in the public interest: (1) the KDC is not the least cost alternative;<sup>129</sup> and (2) KPP should not be allowed to disconnect from Southern Pioneer's facilities to construct duplicate, wasteful facilities at a much higher cost to the public.<sup>130</sup>

47. Underlying the Intervenor's claim that the KDC is not the least cost alternative is their assumption that the SemCrude Upgrade is a viable alternative. This assumption is contradicted by the record. Staff has testified it doubts the SemCrude Upgrade will ever happen because "there is no agreement about how to pay for it"<sup>131</sup> and that it is quite unlikely that KPP will ever agree to pay for the SemCrude Upgrade.<sup>132</sup> Therefore, the Commission cannot conclude the SemCrude Upgrade is a viable alternative. Even if it were, Staff has concluded that the KDC is a more economical solution for Kingman and KPP than the SemCrude Upgrade.<sup>133</sup> Under the circumstances and given the practicalities presented here, the Commission agrees with Staff's conclusion that the KDC is the most economical solution for Kingman.

48. The Commission has already found the KDC will not be unnecessarily duplicative or wasteful and will not repeat that analysis here. The Intervenor readily acknowledges there is no legal impediment to KPP disconnecting from Southern Pioneer's facilities.<sup>134</sup> Instead,

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<sup>128</sup> *Id.*

<sup>129</sup> Intervenor Brief, ¶ 80.

<sup>130</sup> *Id.*, ¶ 84.

<sup>131</sup> Tr., p. 441.

<sup>132</sup> See Staff Brief, ¶ 28.

<sup>133</sup> Grady Direct, p. 3.

<sup>134</sup> Intervenor Brief, ¶ 83.

Intervenors argue Southern Pioneer included Kingman's load in its planning with the anticipation that Southern Pioneer would be serving the load long-term.<sup>135</sup> Magnison explained:

Had Southern Pioneer known that KPP intended to bypass Southern Pioneer's 34.5 kV facilities at some point in the near future to avoid payment of the Southern Pioneer wholesale LADS, Southern Pioneer would not have had to construct the new SemCrude Substation facilities, which costs were borne by SemCrude and Southern Pioneer's retail and wholesale customers. Rather, the SemCrude load could have been fed from the existing Southern Pioneer 34.5 kV facilities, as the release of the 6 MW obligation to the City of Kingman would have freed up sufficient capacity to serve the increased 2.3 MW SemCrude load.<sup>136</sup>

In other words, the Intervenors argue they would not have invested significant money to serve other customers had they known that KPP was planning to exit their system. While that is most likely true, the Intervenors bear the burden of that decision and many of the circumstances leading up to that decision. The Intervenors do not take issue with KPP's right to disconnect.<sup>137</sup> But as the Commission noted at the hearing, the Intervenors could have protected themselves from the contingencies and consequences of that possibility, since these issues "could have been covered in a contract."<sup>138</sup> Indeed, the Commission noted that this is a risk "... in the business world especially when you didn't dot the I's and cross the T's?"<sup>139</sup>

49. In view of all of the factors and circumstances of the Docket when considered as a whole, the Commission concludes that it is not in the public interest to hold Kingman captive to the risks attendant with more costly and inadequate electricity service. While building the KDC will shift some costs from KPP's members to the Intervenors, there is no contractual or legal bar to such a shift. The Intervenors' concerns that others may follow KPP's lead and leave their system

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<sup>135</sup> Magnison Direct, p. 28.

<sup>136</sup> *Id.*, p. 31.

<sup>137</sup> Intervenors Brief, ¶ 84.

<sup>138</sup> Tr., p. 440.

<sup>139</sup> Tr., p. 439.

to avoid LADS charges<sup>140</sup> can best be addressed on a case by case basis through the terms of the contracts between the Intervenors and its other customers. The Commission finds the KDC will facilitate the public convenience and necessity.

**Minimize disputes between retail electric suppliers**

50. Staff believes the KDC will minimize disputes between KPP and Southern Pioneer by resolving the outstanding arguments between the two.<sup>141</sup> It also contends the KDC will allow KPP and Kingman to more efficiently utilize their own generating resources and KPP to serve its members at a lower cost than available alternatives.<sup>142</sup> KPP explains the NITSA and NOA under Mid-Kansas's OATT, which govern the relationship between the parties, allow KPP to disconnect from Southern Pioneer's 34.5 kV line and that the Commission should not impose terms beyond those in the agreement.<sup>143</sup> KPP also claims enforcing the parties' agreements and Commission-approved tariff will minimize disputes by providing regulatory certainty to the parties.<sup>144</sup>

51. The Intervenors argue KPP fails to present evidence that the KDC will not result in inconvenience, diminished efficiency and higher costs in serving the public.<sup>145</sup> In fact, they claim neither Staff nor KPP even address the issue.<sup>146</sup> The Intervenors charge that if the Commission approves the KDC, it will become too easy to obtain a Transmission Rights Only certificate and foster disputes.<sup>147</sup> The Intervenors predict a flood of similar efforts by other utilities that will cherry pick the most lucrative customers.<sup>148</sup> Essentially, the Intervenors state, "[t]he reason the

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<sup>140</sup> Intervenors Brief, ¶ 85.

<sup>141</sup> Staff Brief, ¶ 52.

<sup>142</sup> *Id.*, ¶ 53.

<sup>143</sup> KPP Brief, ¶ 24.

<sup>144</sup> *Id.*

<sup>145</sup> Intervenors Brief, ¶ 88.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*, ¶ 89.

<sup>148</sup> *Id.*

sub-transmission system developed in the monopolistic manner it did is because it was the most efficient means of providing non-discriminatory access to markets and services to the public. Now, if KPP's TRO certificate is granted, it will be the beginning of diminished efficiency and higher costs to the public."<sup>149</sup> The Commission concludes these contentions lack merit as discussed in detail below.

52. This factor addresses the several issues, including whether it will minimize disputes. Various aspects of this Docket demonstrate that the relationship between the Intervenor and KPP is very contentious and adversarial. Forcing them to collaborate on a SemCrude Upgrade could produce even more disputes and delays in providing relief to Kingman. Accordingly, the public interest and the long-term best interests of Kingman ratepayers is best served by minimizing disputes between the Intervenor and KPP by granting KPP's Application for a Transmission Rights Only certificate.

53. This factor also considers whether the KDC will result in inconvenience, diminished efficiency and higher costs in serving the consumer. The answer to that question is dependent on who is the consumer. Since KPP is the Applicant seeking to serve Kingman, it appears that Kingman is the consumer. The evidence suggests that the KDC will provide relief, or in other words, reduce the inconvenience to Kingman. Removing barriers to Kingman and KPP selling Kingman's excess generation capacity will prevent waste of materials and natural resources, which will promote efficiency in serving the customers.

54. As detailed in the discussion of the public interest, the KDC will benefit KPP and its members, including Kingman to the detriment of Southern Pioneer's members. KPP and Kingman will get relief from the LADS charges and Southern Pioneer's other customers will incur

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<sup>149</sup> *Id.*, ¶ 98.

additional LADS charges as a result. Since it appears that Kingman is the consumer, the Commission concludes the KDC will not result in higher costs in serving the consumer.

55. The Commission approves KPP's Application for a Transmission Rights Only certificate.

**THEREFORE, THE COMMISSION ORDERS:**

- A. KPP's Application for a Transmission Rights Only certificate is granted.
- 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>150</sup>
- C. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

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

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/01/2018



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Lynn M. Retz  
Secretary to the Commission

BGF

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<sup>150</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

## CERTIFICATE OF SERVICE

18-KPPE-343-COC

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