

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of)
NextEra Energy Transmission)
Southwest, LLC for its Certificate of) Docket No. 22-NETE-419-COC
Convenience and Necessity to Construct)
Transmission Facilities in the State of Kansas)

**POST-HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD
IN SUPPORT OF THE NONUNANIMOUS SETTLEMENT AGREEMENT**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits this post-hearing brief in support of the *Joint Motion for Approval of Nonunanimous Settlement Agreement* filed with the Kansas Corporation Commission ("Commission") on June 6, 2022. The motion stems from the application for a new Certificate of Convenience and Necessity ("CCN") filed by NextEra Energy Transmission Southwest, LLC. In support of the agreement thereof, CURB states the following:

Background

1. On February 28, 2022, NextEra Energy Transmission Southwest, LLC ("NEET SW"), a subsidiary of NextEra Energy Transmission, LLC, filed an application with the Commission to obtain a CCN as a new transmission-only public utility in Kansas and to construct, own, operate, and maintain bulk electric transmission facilities located in the State of Kansas, pursuant to K.S.A. 66-131.¹

2. In its application, NEET SW explained how it was selected through the Southwest Power Pool's ("SPP") competitive Transmission Owner Solicitation Process as the Designated

¹ NextEra Energy Transmission Southwest, LLC Application, Docket No. 22-NETE-419-COC (February 28, 2022) (the "Application"); K.S.A. 66-131, et seq.

Transmission Owner for the Wolf Creek-Blackberry 345 kV Transmission Project (the “Project” or “WC-BB Project”).² The Project is designed to be a 94-mile, single-circuit 345 kV transmission line between the existing Wolf Creek Substation in Coffey County, KS to the Blackberry Substation in Jasper County, MO. Approximately 85 miles of the line will be sited in Kansas. NEET SW’s winning bid listed the total cost for the Project at \$85.2 million and provided for an early in-service date of around January 1, 2025.

3. NEET SW supported its application with the testimony of five witnesses:³
 - a. Becky Walding provided an overview of NEET SW and its capabilities and provides background on the Project and SPP’s selection process.
 - b. Daniel Meyers testified about NEET SW qualifications to engineer and construct the Project.
 - c. LaMargo Sweezer-Fischer discussed NEET SW’s managerial and technical capabilities to provide transmission services and to operate the Project.
 - d. Amanda Finnis described the financial resources and capabilities of NEET SW, financing plans for the Project, and cost recovery through the Federal Energy Regulatory Commission (“FERC”).
 - e. Dr. David Loomis provided an economic review of the Project and the overall benefits to state and local economies and communities.

² Application at pg. 1, ¶1.

³ Direct Testimony of Becky Walding on Behalf of Nextera Transmission Southwest, LLC (“Walding Direct Testimony”); Direct Testimony of Daniel Meyers on Behalf of Nextera Transmission Southwest, LLC; Direct Testimony of LaMargo Sweezer-Fischer on Behalf of Nextera Transmission Southwest, LLC; Direct Testimony of Amanda Finnis on Behalf of Nextera Transmission Southwest, LLC; Direct Testimony of David Loomis on Behalf of Nextera Transmission Southwest, LLC (February 28, 2022).

4. Pursuant to the procedural schedule adopted by the Commission on April 28, 2022,⁴ interested parties had until May 6, 2022 to file a Petition to Intervene. The parties granted intervention are as follows: CURB;⁵ Evergy Kansas Central and Evergy Kansas Metro (collectively, “Evergy”);⁶ Southwest Power Pool (“SPP”);⁷ Southwestern Public Service Company;⁸ ITC Great Plains, LLC;⁹ Kansas Electric Power Co-Op, Inc. (“KEPCO”);¹⁰ Darrell McGhee and Rochelle McGhee-Smart (referred to collectively as “Landowners”);¹¹ Kansas Industrial Group, Inc. and several industrial¹² and agricultural¹³ entities (referred to collectively as “KIC group”); and Sunflower Electric Power Corp. (“Sunflower”).¹⁴

5. On May 17, 2022, parties submitted pre-filed direct testimony with their review of and recommendations for the Application.¹⁵ Of note, Dr. Jeff D. Makhholm on behalf of the KIC group recommended that the Commission reject the CCN in order to pursue interstate transmission

⁴ Presiding Officer Order on Procedural Schedule (April 28, 2022).

⁵ CURB Petition to Intervene (March 28, 2022).

⁶ Evergy Petition to Intervene and Motion for Discovery and Protective Order (March 11, 2022).

⁷ Southwest Power Pool, Inc. Petition to Intervene (April 8, 2022).

⁸ Petition to Intervene of Southwestern Public Service Company (April 25, 2022).

⁹ ITC Great Plains, LLC's Petition to Intervene and Motion for Discovery (April 15, 2022).

¹⁰ Kansas Electric Power Cooperative, Inc. Petition of to Intervene (April 13, 2022).

¹¹ Petition for Intervention of Darren McGhee and Rochelle McGhee Smart (May 6, 2022).

¹² See Application for Intervention of Spirit AeroSystems, Occidental Chemical Corp., The Goodyear Tire and Rubber Co., Associated Purchasing Serv. Corp., and The Kansas Industrial Consumers Group (March 28, 2022); Application for Intervention of Lawrence Paper Company (April 1, 2022).

¹³ Petition to Intervene of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, and Kansas Agribusiness Retailer Association (May 2, 2022); AGCO Corporation Petition to Intervene (May 5, 2022); Petition to Intervene of Big Heart Pet Brands (May 6, 2022).

¹⁴ Sunflower Electric Power Corp. Petition to Intervene (April 8, 2022).

¹⁵ Direct Testimony of Jeff D. Makhholm, Ph.D., National Economic Research Associates, Inc. (NERA) on Behalf of Spirit, Oxy Chem, Goodyear, APS, LPC and KIC (“Makhholm Direct Testimony”); Declaration of Intervenor Darren McGhee (“DM Declaration”); Direct Testimony of Intervenor Rochelle McGhee-Smart (“McGhee-Smart Direct Testimony”); Direct Testimony of Kelsey Allen on Behalf of Southwest Power Pool, Inc. (“Allen Direct Testimony”); Direct Testimony of Jarred Cooley on Behalf of Southwestern Public Service Company; Direct Testimony of Darrin R. Ives on Behalf of Evergy (“Ives Direct Testimony”); Direct Testimony of Steve J. Vetsch on Behalf of Evergy; Direct Testimony of Kelly B. Harrison on Behalf of Evergy (“Harrison Direct Testimony”); Direct Testimony of James Brungardt on Behalf of Sunflower Electric Corporation (May 17, 2022).

line planning and also provided a detailed review of transmission planning history in the United States. Additionally, Ms. McGhee-Smart provided her review of the Project and raised several concerns for landowners in her part of the state, including reliability problems and price increases. Mr. McGhee noted concerns about NEET SW's practice of meeting with property owners to obtain option agreements without first obtaining a CCN to build the Project.¹⁶

6. Also on May 17, 2022, the Staff of the Kansas Corporation Commission ("Staff") submitted a Report and Recommendation ("Staff R&R") and provided the analyses of witnesses Leo Haynos, Adam Gatewood, and Justin Grady. Staff relied upon the Commission's criteria for granting CCNs and concluded that the Project and NEET SW met those standards, and further recommended a number of reporting requirements and changes.

7. On May 27, 2022, Evergy,¹⁷ KIC group,¹⁸ and CURB filed cross-answering testimony. All of NEET SW witnesses filed rebuttal testimony on that same date. CURB filed cross-answering testimony through Josh Frantz.¹⁹ Mr. Frantz examined the Commission's work at SPP and FERC via statutory grants of authority. He further reviewed several investigatory dockets in which the Commission and Staff evaluated whether SPP membership was beneficial or detrimental to Kansas.²⁰ He noted that the Commission concluded that, overall, Kansas does

¹⁶ DM Declaration at pgs. 1-2.

¹⁷ Cross-Answering Testimony of Kelly B. Harrison on Behalf of Evergy ("Harrison Cross-Answering Testimony"); Cross-Answering Testimony of Darrin R. Ives on Behalf of Evergy ("Ives Cross-Answering Testimony"); Cross-Answering Testimony of Steve J. Vetsch on Behalf of Evergy, (May 27, 2022).

¹⁸ Reply Testimony of Jeff D. Makholm, Ph.D., National Economic Research Associates, Inc. (NERA) (May 27, 2022). ("Makholm Reply Testimony").

¹⁹ Cross-Answering Testimony of Josh Frantz on Behalf of CURB (May 27, 2022). ("Frantz Cross-Answering Testimony").

²⁰ Frantz Cross-Answering Testimony at pgs. 6-8.

receive a net benefit for being a part of SPP, but has indicated a desire to receive Kansas-specific data from SPP.²¹

8. From June 1-2, 2022, parties to the docket participated in a settlement conference. A nonunanimous settlement agreement was negotiated and the terms of that agreement were filed on June 6, 2022 (the “Settlement Agreement”).²² The signatories are NEET SW, Staff, CURB, Evergy, SPP, KEPCO, and Sunflower (collectively the “Signatories”).

9. On June 7, 2022, CURB, NEET SW, Staff, and Evergy filed testimony in support of the Settlement Agreement.²³ No party filed testimony in opposition to the Agreement, but the KIC group and Landowners (collectively referred to as “opponents”) had explicitly expressed their opposition and intent to present the same at hearing.

10. From June 8-9, 2022, the Commission held an evidentiary hearing on the Settlement Agreement and heard from sixteen witnesses.

Arguments

I. Approval of the Nonunanimous Settlement Agreement

11. The disposition of any kind of proceeding before the Commission must be reasonable and not so wide of the mark as to be outside the realm of fair debate, or is not otherwise unreasonable, arbitrary, or capricious and prejudicial to the parties.²⁴ The Commission has historically approved nonunanimous settlement agreements so long as the agreement will establish

²¹ Id. at pg. 7, Ins. 6-17 (referring to Docket Nos. 17-SPPE-617-GIE and 19-SPPE-384-CPL).

²² Joint Motion to Approve Nonunanimous Settlement Agreement, (June 6, 2022).

²³ Testimony in Support of Settlement Agreement of J. Frantz on Behalf of CURB, (“Frantz Testimony in Support”); Testimony in Support of Settlement Agreement of Darrin R. Ives on Behalf of Evergy, (“Ives Testimony in Support”); Testimony in Support of Non-Unanimous Settlement Agreement of Justin Grady on Behalf of KCC, (“Grady Testimony in Support”); Testimony in Support of Settlement of Becky Walding on Behalf of NEET SW, (June 7, 2022).

²⁴ *Zinke & Trumbo, Ltd. v. State Corp. Com’n of Kan.*, 242 Kan. 470, 475 (1988).

just and reasonable rates.²⁵ In order to make such a finding, the Commission examines the following five factors:

- a. Whether each party had an opportunity to be heard on reasons for opposing the settlement;
- b. Whether the settlement is supported by substantial competent evidence in the record as a whole;
- c. Whether the settlement will result in just and reasonable rates;
- d. Whether the settlement conforms to applicable law; and
- e. Whether the results of the settlement are in the public interest.²⁶

12. Kansas courts have accepted such a finding to be a lawful and reasonable determination if it is supported by substantial and competent evidence.²⁷ “Substantial and competent” evidence is that evidence which has “something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.”²⁸ Regarding the substantive requirements of Commission orders, the courts do not impose an obligation to render findings of fact in minute detail, but rather be specific enough in form and content to advise parties of the facts and standards that persuaded the Commission to arrive at its decision and to allow judicial review of the reasonableness of the order.²⁹

²⁵ *Farmland Industries, Inc. v. State Corp. Com'n of Kansas*, 24 Kan.App.2d 172, 187 (Kan. App. 1997).

²⁶ Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS (May 12, 2008).

²⁷ *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 28 Kan.App.2d 313, 316 (2000), rev. denied.

²⁸ *Jones v. Kansas Gas & Elec. Co.*, 222 Kan. 390, 397 (1977).

²⁹ See Zinke at pg. 475 (analyzing K.A.R. 82-1-232(3) and K.S.A. 77-621(c)(5) and citing to *Central Kansas power Co. v. State Corporation Commission*, 206 Kan. 670, 677 (1971)).

A. Each party has had an opportunity to be heard on their reasons for opposing the nonunanimous settlement agreement.

13. This factor looks at the procedural access to the docket that the Commission has made available for all parties to present their cases. The procedural avenues in this docket satisfies due process considerations by providing opponents meaningful opportunities to be heard on their reasons for opposing the Settlement Agreement. Therefore, as shown below, this factor weighs in favor of approving the Settlement Agreement.

14. Here, on April 28, 2022, the Presiding Officer approved a procedural schedule that provided an opportunity for parties to submit pre-filed written testimony.³⁰ Parties had the opportunity to review the Application and to submit discovery requests. Further, on May 20, 2022, the Presiding Officer approved a request to modify the procedural schedule and turnaround time on discovery requests in order to facilitate the expedient exchange of information.³¹

15. On June 1-2, 2022, the parties all met for a settlement conference to discuss the various recommendations and positions on the Application. Representatives from all parties participated in the live discussions and subsequent electronic communications over the drafting of the settlement terms. The opponents to the Settlement Agreement were all provided opportunities to share their concerns and to offer changes that may have won their support. Prior to the evidentiary hearing, opponents had another opportunity to be heard through the filing of pre-written testimony in opposition to the Settlement Agreement.

16. Opponents participated in the evidentiary hearing before the Commission and had the opportunity to cross examine witnesses and to answer Commissioner questions on the record.

³⁰ Presiding Officer Order on Procedural Schedule, (April 28, 2022).

³¹ Presiding Officer Order Granting Motion to Amend Discovery Order and Procedural Schedule, (May 20, 2022); *See also* Motion to Amend Discovery Order and Procedural Schedule and for Expedited Treatment, (May 18, 2022).

Finally, the Commission is accepting post-hearing and responsive briefs from parties prior to issuing a final determination. Thus, opponents were heard on their reasons for opposing the Settlement Agreement.

B. The Settlement Agreement conforms to applicable law

17. Properly interpreted, K.S.A. 66-131 prohibits any entity from being able to transact business as a public utility until such entity has been granted a CCN by the Commission. Under K.S.A. 66-131, the Commission can grant a CCN if it determines that the public convenience and necessity will be promoted by permitting the applicant to transact the business of a common carrier or public utility in Kansas.³² In this context, courts have determined that “public convenience” means the convenience of the public as a whole rather than the convenience of particular individuals.³³ Similarly, “necessity” here does not mean an absolute need, but rather a public need without which the public is inconvenienced to the extent of being handicapped.³⁴ As noted by parties,³⁵ the Commission gets to review the proof of the conditions existing in the territory to be served and is able to impose lawful and reasonable conditions on the granting of a CCN.³⁶

18. The Commission has relied on the Merger Standards established in prior dockets to test whether a transaction will promote the public interest along with the requirement that a new public utility possesses the “financial, managerial, and technical experience” to provide efficient and sufficient service.³⁷ Staff has reduced these considerations to a number of factors to measure whether granting a CCN will promote public convenience and necessity and result in efficient and

³² K.S.A. 66-131(a).

³³ *Central Kansas Power Co. v. State Corp. Commission*, 206- Kan. 670, 676 (1971).

³⁴ *Id.*

³⁵ Application at pg. 10, ¶18-20, pg. 11, ¶21-22; Staff R&R at pgs. 5-7.

³⁶ *Central Kansas Power Co.* at pg. 677.

³⁷ Order Approving Stipulation and Agreement and Granting Certificate, Docket No. 11-GBEE-624-COC, pg. 25, ¶63 (December 7, 2011).

sufficient service.³⁸ As discussed below, the record demonstrates that NEET SW and the Project meet the Commission's standards for granting a CCN and the Commission should grant the same to NEET SW.

19. The settlement provisions pertaining to the Commission's ratemaking authority also comply with applicable laws. The Signatories agreed that certain Kansas statutes regarding ratemaking have been pre-empted by FERC on the topic of interstate transmission.³⁹ Staff witness Justin Grady explains that this part of the Settlement Agreement functions as a restatement of the Commission's view of FERC jurisdiction and Kansas statutes.⁴⁰ In short, this provision resembles language previously approved for transmission-only types of dockets and reserves all Commission authority for activity that goes outside the bounds of FERC jurisdiction.

20. The Settlement Agreement's treatment of K.S.A. 66-1402 and 1403 comply with applicable law. These statutes require the recording of affiliate contracts with the Commission and set the standards by which to include costs associated with such contracts in rates. The statutes empower the Commission to regulate against unreasonable payments for affiliates transactions so that those unreasonable payments are not recovered in a public utility's rates.⁴¹ NEET SW agreed to file a list of affiliate contracts specific to operations, maintenance, and reliability of the Project, along with a summary of any future material changes to such contracts, with the Commission. Such contracts are already subject to FERC and SPP review. Further, NEET SW agreed to implement asymmetrical pricing for its affiliates, which involves charging affiliates at higher

³⁸ Staff R&R at pg. 7 (referring to Docket Nos. 172,745-U, 174,155-D, and 97-WSRE-676-MER).

³⁹ Settlement Agreement at pg. 13, ¶10(m).

⁴⁰ Volume 2 Transcript of Proceedings at pgs. 255-257 (Commission questions for Grady, transcript pgs. 492-494). ("Tr. Vol. 2").

⁴¹ *Southwestern Bell Telephone Co. v. State Corp. Commission of Kansas*, 4 Kan.App.2d 44 (1979).

prices for NEET SW services while also paying affiliates at the lower of cost or fair market value for goods and services.⁴² These commitments provide reasonable ways for the Commission to monitor and enforce affiliate transactions rules in Kansas. Therefore, CURB interprets the Settlement Agreement provision to provide sufficient safeguards against unreasonable profiteering without overburdening the procedural process with duplicative information.

21. Opponents' legal challenges to the Settlement Agreement can be summarized in two points. First, opponents allege that there is insufficient evidence to demonstrate prudence for granting the CCN. Second, they assert that NEET SW's violation of Kansas law related to restrictions on activity as a public utility prior to obtaining a CCN warrants denial of the Application.⁴³ Neither challenge has merit.

22. Insofar as claims of violations of K.S.A. 66-131 are concerned, the opponents' assertions are based on an unreasonable and misguided interpretation of Kansas law without sufficient support in the record.

23. There is insufficient evidence for the Commission to deny the CCN on the grounds that NEET SW has violated Kansas law. The Landowners take the position that the CCN should be rejected because NEET SW's actions in obtaining option agreements for land easements and alleged threats of eminent domain against property owners along the Project's proposed route is unlawful.⁴⁴ They allege that NEET SW's unlawful activity translates into concerns that it will not

⁴² Rebuttal Testimony of Amanda Finnis on Behalf of NextEra Energy Transmission Southwest, LLC, pgs. 5-6, Ins. 24-27; 1-6 (May 27, 2022).

⁴³ See Makhholm Direct Testimony at pgs. 2-3, Ins. 12-21, 1-20; DM Declaration; McGhee-Smart Direct Testimony at pg. 5, Ins. 13-21.

⁴⁴ Petition for Intervention of Darren McGhee and Rochelle McGhee Smart, pgs. 2-4, ¶¶4-19 (May 6, 2022); DM Declaration at pg. 2; Tr. Vol. 2 at pgs. 51-53 (Kimmell Cross of Ives transcript pgs. 288-290).

follow other laws related to the construction of transmission lines.⁴⁵

24. The record is unclear on whether, if at all, NEET SW unlawfully used eminent domain without a CCN. The Commission elicited information during the evidentiary hearing that indicated several landowners have already signed option agreements.⁴⁶ Additionally, the portion of the video of the NEET SW meeting with property owners that was played at the hearing only mentioned “eminent domain” once and in the context of receiving Commission approval before utilizing it.⁴⁷ From CURB’s perspective, the audio played during the hearing did not seem to rise to a level of coercive threats to use eminent domain.

25. Generally, issues related to negotiations, like option agreements, are contractual in nature. Such disputes are typically outside of the Commission’s jurisdiction, which makes this docket a poor forum to litigate private rights and liabilities.⁴⁸ The determination whether to grant a CCN should not be allowed to expand into judicial areas of concern, such as a claim of confiscation of property or impairment of vested rights.⁴⁹ Here, claims of unfair negotiating practices and contractual disputes asserted by the Landowners should not be resolved during the Commission’s determination of whether to grant NEET SW a CCN. Instead, such matters may be more appropriately addressed during the docket for approval of a siting permit, as Evergy witness Darrin Ives suggests.⁵⁰

26. Further, the Landowners’ interpretation of K.S.A. 66-131 as prohibiting all entities from conducting any business is unreasonable and contrary to the purpose of the statute. The

⁴⁵ DM Declaration at pg. 2, ¶¶7-9.

⁴⁶ Volume 1 of Transcript of Hearing, pg. 159, lns. 7-12.

⁴⁷ Id. at pgs. 148-149, lns. 20-25, 1-25, 1-5.

⁴⁸ *Central Kansas Power Co.* at pg. 680.

⁴⁹ Id. at pg. 681.

⁵⁰ Tr. Vol. 2 at pg. 51-52, lns. 18-25, 1-9 (Kimmell Cross of Ives transcript pgs. 289-290).

Landowners seem to have interpreted the statute as preventing NEET SW from “conducting” any business and that seeking out option agreements and performing soil testing, has violated that rule. However, K.S.A. 66-131 was originally intended to put reasonable limitations on the economic waste associated with unnecessary duplication of utilities services in a territory, such as ruinous competition between large prudent investments in infrastructure.⁵¹ The CCN process gives the Commission the ability to regulate such stacking of facilities and services. This power was formally extended to the area of electric transmission lines in 2014.⁵² Therefore, K.S.A. 66-131 is a procedural check against wasteful and duplicative services, not a hurdle to receiving a CCN.

27. If the interpretation is that K.S.A. 66-131 bars *any* kind of business being conducted in Kansas prior to the Commission granting a CCN, it would unreasonably restrict commercial activity of others and prevent regulatory bodies from conducting full investigations into transmission plans and other permitting applications. For illustration purposes, assume that executing option agreements and soil testing as NEET SW has done are prohibited by K.S.A. 66-131. As a result, in order to gather evidence to support a CCN application to conduct business in Kansas, one needs to conduct business without a CCN. However, meeting with landowners to gain some kind of assurance that a particular location can be relied upon in transmission planning is a reasonable activity that does not directly result in duplicative service in a territory. Without being able to conduct business related to study and research within Kansas, competitive outside entities would not be able to gather direct Kansas-specific evidence to apply for a CCN, which would likely run afoul of the KIC group’s position in this docket. The Landowners’ interpretation subjects

⁵¹ *Kansas Gas & Elec. Co., v. Pub. Serv. Comm'n of Kansas*, 122 Kan. 462, 251 P. 1097, 1098-99 (1927).

⁵² House Bill No. 2487, Kansas Legislature, (effective July 1, 2014). Accessed at: http://www.kslegislature.org/li_2014/b2013_14/measures/documents/hb2487_enrolled.pdf.

any kind of interaction between an outside entity's agents and a resident of Kansas to a violation of K.S.A. 66-131 and, thus, potentially warrants rejection of a CCN application. Such a rigid and punitive interpretation does not reasonably advance the policy goal of regulating wasteful and duplicative investments in Kansas utility services.

28. The appropriate interpretation of K.S.A. 66-131 is the one that only prohibits the transacting of business as a public utility as it relates to the exchange of money for the provision of actual utility services. The purpose of K.S.A. 66-131 is to allow the Commission to regulate the presence of utility services throughout Kansas by controlling the process to issue CCNs. Kansas courts have rejected a more stringent interpretation of K.S.A. 66-131 by viewing the statute as a restriction on the unauthorized generation or sale of utility services.

29. In The Matter of Acquisition of Land by Eminent Domain, the Kansas Supreme Court rejected arguments that the exchange of easement rights between two non-utility entities was an invalid and illegal transaction.⁵³ There, a public utility brought a condemnation action for a right-of-way interest on a piece of property to build an electric transmission line. The right-of-way was originally created by a prior owner of the property and held by a non-utility third party. The current owner of the property subject to the right-of-way had the property rezoned and was awarded compensation for the condemnation of the right-of-way. The prior owner and third party joined the suit and claimed that they, as the true holders of the right-of-way, were entitled to the compensation. The present owner argued that because the right-of-way was intended for the construction of an electric transmission line, the creation and transfer of that easement was illegal under K.S.A. 66-131 because neither party had a CCN from the Commission. However, the Court

⁵³ *In the Matter of the Acquisition of Land by Eminent Domain. Kansas Gas and Electric Company v. Will Investments, Inc., and SAD, L.C., and Mohammed Aghakani*, 261 Kan. 125 928 P.2d 73 (1996).

ruled that contracts that grant easement rights to construct transmission lines were not illegal under 66-131 or 66-1,178 because such contracts did not involve the generation or sale of electricity or involved actual preparation or construction of any transmission lines.⁵⁴ Simply acquiring the right to install transmission lines over property does not amount to transacting business as a public utility.

30. Likewise, NEET SW does not violate Kansas law by acquiring option agreements and performing preliminary soil testing because there was no sale or generation of electricity involved. Recognizing that NEET SW's final goal is to become certified and to build a transmission line, it has not actually started building the line or preparing the site by virtue of acquiring the option agreements nor has it generated or otherwise sold electricity by doing so. Under a more strict interpretation, only incumbent utilities who have a CCN (regardless of what territory was previously certified by the CCN) could "transact business" in Kansas. This view would stifle competitive enterprises from performing preliminary studies and obtaining permissions as required for due diligence considerations. Therefore, K.S.A. 66-131 should be interpreted to prohibit transacting business of a public utility in the provision of utility services and the Commission should find that the Settlement Agreement conforms to applicable law.

31. Under a reasonable interpretation of K.S.A. 66-131, the Landowners have not proven that NEET SW violated that statute. Therefore, the basis of the Landowners' argument that NEET SW's unlawful behavior should prohibit it from obtaining a CCN fails. Consequently, the Landowner's argument that NEET SW should not be granted a CCN should be disregarded.

⁵⁴ *Matter of Acquisition of Land by Eminent Domain* at pg. 128-129.

C. The Settlement Agreement, including granting of the CCN to NEET SW, is supported by substantial and competent evidence

32. The record, as a whole, contains substantial and competent evidence to support approving the Settlement Agreement and granting a CCN to build the Project. This factor will be broken down to examine the record as it relates to the need for the Project and how the Project and NEET SW satisfies the CCN criteria.

1) The record contains sufficient evidence to demonstrate that SPP identified specific regional transmission needs in Kansas and took reasonable actions to address those needs.

33. As noted in the Application, this request for a CCN stems from the SPP and the results of its transmission planning process. SPP witness Kelsey Allen discussed the role of SPP in transmission planning and expansion in the region in response to FERC Order 2000, which requires SPP to provide efficient, reliable, and non-discriminatory service.⁵⁵ Mr. Allen describes the extensive process that SPP used to develop its transmission plans.⁵⁶ Mr. Allen explains how the SPP's Integrated Transmission Planning Process ("ITP") evaluates reliability and economic needs related to the regional transmission system to determine if there are comprehensive regional solutions it can pursue.⁵⁷ He highlights the details of SPP's planning process and the importance of complying with the North American Electric Reliability Corporation ("NERC") reliability standards.⁵⁸ The ITP is required to be regionally-focused and is designed in a way that develops a long-term vision for the region, which is then used to plan for shorter-term items. The final product of the ITP is an assessment report which reflects a 10-year regional transmission plan that provides

⁵⁵ Allen Direct Testimony at pgs. 7-8, lns. 1-5, 1-19, fn. 1.

⁵⁶ See Allen Direct Testimony at pgs. 12-19.

⁵⁷ Allen Direct Testimony at pg. 8, lns. 3-20.

⁵⁸ Id. at pg. 9, lns. 14-22.

reliability and economic energy delivery benefits for end use customers.⁵⁹ The 2019 ITP Assessment Report (“ITP Report”) was created after SPP working groups and members collaborated over several years on the collection of data and exchange of solutions to regional transmission needs.⁶⁰

34. These working groups and SPP members consist of utilities and state regulators from across the region, including Kansas.⁶¹ SPP staff and stakeholders focused specifically on southeast Kansas/southwest Missouri for analysis in the 2019 ITP.⁶² This particular area had a history and projections of congestion issues on the system that remained unresolved. By focusing on this area, SPP was able craft a path forward with stakeholders.⁶³ These working groups managed various aspects of the overall transmission planning process and evaluated the drivers behind the Future 1 and 2 modeling scenarios.⁶⁴ The 2019 ITP Report identified and approved 44 transmission projects, including the WC-BB Project, as part of a portfolio of projects estimated to provide significant benefits over a 40-year timeframe.⁶⁵ The Project was selected to be part of this portfolio for several reasons including relieving overall system congestion and diverting bulk power transfers away from such congestion points, levelizing system Locational Marginal Prices (“LMP”), increased reliability at the Wolf Creek nuclear plant, and adding transmission capacity and expansion options.⁶⁶

⁵⁹ Allen Direct Testimony at pg. 10, lns. 12-19.

⁶⁰ Id. at pgs. 12-13, lns. 1-11, 1-5.

⁶¹ Id. at pgs. 10-11, lns. 13-21, 1-4.

⁶² Id. at pgs. 18-19, lns. 21-24, 1-5.

⁶³ Id.

⁶⁴ Id. at pgs. 15-17.

⁶⁵ Id. at pg. 19, lns. 19-25.

⁶⁶ Allen Direct Testimony at pgs. 20-21, lns. 1-23.

35. As a further verification of the metrics tied to the Project, the ITP also considered alternative solutions to the noted congestion problems in the southeast Kansas region. Such alternatives involved smaller-scale projects aimed at replacing and rebuilding existing infrastructure. However, these smaller projects did not perform well together and did not score as well as the Project.⁶⁷

2) The record shows that the Project and NEET SW meet the appropriate standards imposed by SPP and for the Commission to grant the CCN.

36. The record shows that the review of the Project through the vetting process at the SPP and before the parties in this docket demonstrates the Project's ability to resolve transmission issues and NEET SW's capabilities to construct and operate the Project, per Commission standards. SPP awarded NEET SW the opportunity to construct the Project as a result of a competitive selection and review process.⁶⁸ In this process, SPP retained an Industry Expert Panel ("IEP") to compare bids and scored each proposal on various metrics.⁶⁹ Evergy itself even participated in selection process to determine who would be the entity to construct the line. Ms. Walding walks through the IEP's comments and details regarding NEET SW's proposal.⁷⁰ After the IEP evaluation, NEET SW and the Project was selected and approved by SPP. Even Dr. Makhholm admitted that awarding the Project to a non-incumbent entity is unusual, but in a good way.⁷¹ Since that decision, SPP has not raised any concerns with the Application or Settlement Agreement that rises to a material change in SPP's approval of NEET SW and the Project.

⁶⁷ Id. at pg. 22, lns. 5-14.

⁶⁸ Walding Direct Testimony at pg. 21, lns. 1-8.

⁶⁹ See Exhibit BW-5 ("IEP Report").

⁷⁰ Walding Direct Testimony at pgs. 25-26, lns. 13-25, 1-28.

⁷¹ See Makhholm Direct Testimony at pg. 12, lns. 5-16; Makhholm Reply Testimony at pgs. 14-15, lns. 3-18, 1-3.

37. Granting NEET SW a CCN to construct the project will result in efficient and sufficient service per Commission standards. In Staff's R&R, Staff identified the factors that the Commission uses to determine whether to grant a CCN:

- 1) The requested CCN to construct, own, operate, and maintain the WC-BB Project will not adversely affect the Commission's jurisdiction;
- 2) The proposed action will promote adequate and efficient service;
 - a) Whether ratepayer benefits resulting from the transaction can be quantified
 - b) The effect of the transaction upon consumers
 - c) The effect of the proposed transaction on competition
 - d) Whether the transaction will reduce the possibility of economic waste
 - e) Whether the transaction maximizes the use of Kansas energy resources
- 3) The level of financial, managerial, operational and technical expertise to operate and maintain the Kansas Assets in an efficient and sufficient manner;
 - a) Financial
 - b) Managerial, operational and technical capability of the Applicant
 - c) The Applicant's experience in providing similar service in other service territories or jurisdictions;
- 4) Avoid unnecessary encumbrance of the landscape of the state and minimize disputes between transmission electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer;
- 5) Whether the action will encourage the orderly development of transmission service by avoiding the wasteful duplication of facilities and preventing waste of materials and natural resources; and
- 6) What impact, if any, the transaction has on the public safety.⁷²

38. Staff witnesses reviewed the Application and data as it applied to each of the factors and provided several conclusions and recommendations.⁷³ For purposes of this brief, CURB will highlight those factors related to ratepayer bill impacts. Section 8 of the 2019 ITP Report discusses the types of benefits associated with the overall ITP portfolio of projects and quantifies such benefits and costs based on zonal-level data. Section 8.1 examines the Net Present Value ("NPV")

⁷² Staff R&R at pgs. 7-8.

⁷³ Id. at pgs. 7-24.

of the portfolio benefits in 2019 dollars.⁷⁴ Benefit metrics are developed according to a Benefits Metrics Manual.⁷⁵ Such metrics measured for the portfolio include Adjusted Production Cost (“APC”) Savings, reduction of emission rates and values, savings due to lower ancillary services needs required to maintain reliability, avoided or delayed reliability projects, capacity cost savings due to reduced on-peak transmission losses, benefits from mandated projects, mitigation of transmission outage costs, increased wheeling through and out revenues, and marginal energy losses benefits. Tables 8.12 and 8.13 illustrate the estimated 40-year NPV of benefit metrics and costs by state for Futures 1 and 2, respectively.⁷⁶ The data for these tables is based off the measured zonal benefits and their geographical location and ratio of service within each state. For Kansas, the total portfolio is anticipated to provide net benefits overall.

39. Staff was able to further quantify benefits of the WC-BB Project. Because the ITP Report presents benefits and costs at a portfolio level, Staff requested project-specific details on a project-by-project basis.⁷⁷ SPP’s response revealed that the Project would produce a 40-year APC savings benefit/cost ratio of 1.48 to 1 in the Future 1 scenario and 3.36 to 1 in the Future 2 scenario.⁷⁸ Staff noted that the supporting calculations for this response were based on higher total construction costs and a larger carrying charge compared to NEET SW’s numbers, indicating that the benefit/cost ratios are conservatively estimated compared to actual results of the Project.

40. The bill impacts associated with the Project is a reasonable estimate of the effects of the Project on ratepayers. Ms. Walding stated that the Project will have a *monthly* bill impact of

⁷⁴ ITP Report at pg. 130.

⁷⁵ Id.

⁷⁶ Id. at pgs. 141-142.

⁷⁷ Staff R&R at pgs. 10-11.

⁷⁸ Id. at pg. 11.

approximately \$0.04 for the average residential customer based on the Project's Annual Transmission Revenue Requirement ("ATRR").⁷⁹ Section 8.2 of the ITP Report discusses the total portfolio rate impacts for the 2029 study year.⁸⁰ The report expresses the results in 2019 dollars and state-specific results are based on zonal calculations. Tables 8.16 and 8.17 show that there is a net monthly benefit of \$0.09 in the Future 1 scenario and \$0.07 in the Future 2 scenario.⁸¹

41. Staff evaluated the effect on ratepayers based on zonal load calculations to allocate revenue requirements for transmission projects.⁸² In the first year of the assumed ATRR for the Project, Staff concluded that Kansas ratepayers will be allocated approximately \$1.5 million of the total \$8.9 million. Staff further refined the portion that will be assigned to Evergy Kansas Central because the Project is proposed to be sited in that service territory. Staff used Evergy Central's Load Ratio Share as of April 2022 and concluded that those customers would pay approximately \$730,000 of the Kansas portion for the first year.⁸³ Assuming this was the only change to transmission charges for the territory, the Project's first year ATRR would raise the average residential customer's bill by \$0.04.⁸⁴ Staff concluded that the average customer should see a reduction in overall rates during the 40-year revenue requirement lifetime of the Project when considering the ITP's APC modeling of net benefits.

42. After reviewing the remaining factors, Staff ultimately recommended approval of the CCN as being in the public interest, but recommended several reporting conditions to monitor

⁷⁹ Walding Direct Testimony at pgs. 35-36, lns. 3-15, 1-3.

⁸⁰ ITP Report at pg. 144.

⁸¹ Id. at pgs. 146-147.

⁸² Staff R&R at pg. 11.

⁸³ Id.

⁸⁴ Id. at pg. 12.

the Project and modifications to the proposal.⁸⁵ In addition, other parties filed testimony and critiqued NEET SW's ability to construct and run the Project and offered additional requirements for the Commission to consider.⁸⁶ Commissioners walked through the terms of the Settlement Agreement with witnesses in order to verify that the concerns raised had been adequately addressed from the witnesses' perspective.⁸⁷ Therefore, the Settlement Agreement is supported by substantial and competent evidence in the record.

3) The Opponents' criticism of the Settlement Agreement is an attack on the weight of the evidence, rather than direct evidence against granting the CCN.

43. The evidence in favor of the Settlement Agreement outweighs the opponents' claims that the record does not have enough Kansas-specific information to make a prudence determination required to grant a CCN.⁸⁸ The opponents suggest that the Commission should deny the CCN and seek out its own means to construct and regulate transmission projects geared towards exporting Kansas wind energy. KIC witness Dr. Makhholm also criticizes the parties' reliance upon SPP and other entities for data and analyses, citing "path dependency" as a barrier to wind energy generation and sale.⁸⁹ There is no allegation that SPP or NEET SW has improperly measured the ITP regional metrics it uses or that the proposed cost of \$85.2 million for the Project is inaccurate. Rather, Dr. Makhholm views the Project as a bargaining chip to use against SPP to force a discussion about interstate transmission planning and unleashing development of Kansas wind

⁸⁵ Id. at pgs. 26-27.

⁸⁶ See Ives Direct Testimony at pgs. 18-21; Harrison Direct Testimony at pgs. 24-26; Vetsch Direct Testimony at pgs. 7-8; Brungardt Direct Testimony at pg. 2, lns. 12-16; Exhibit JB-1; Cooley Direct Testimony at pg. 11, lns. 1-6.

⁸⁷ See Tr. Vol. 2 at pg. pgs. 11-12, lns. 15-25, 1-5 (Comm. Duffy questions for Ives Transcript pgs. 248-249); pgs. 13-15, 19-33 (Chair Keen questions for Ives Transcript pgs. 256-270); pgs. 75-76 (Chair Keen questions for Harrison Transcript pgs. 312-313).

⁸⁸ See Makhholm Direct Testimony at pgs. 22-36; DM Declaration; McGhee-Smart Direct Testimony.

⁸⁹ Makhholm Reply Testimony at pg. 3, lns. 16-22.

resources. Opponents claim that the Project's value in moving energy from western Kansas to the east is suspect because the Project is not part of a larger interstate system and risks price increases and reliability issues.⁹⁰ However, these notions are based on an incorrect interpretation of the Project and SPP, generally.

44. Mr. Frantz addresses the topic by explaining that the role of SPP is to coordinate the regional transmission system used by its members.⁹¹ Inherent in that role is the duty to develop ways to efficiently move energy from one location of the region to another. So while some Kansas energy may be sent to Missouri, it is not a one-way deal as characterized by the opponents. Mr. Grady further refutes the opponents' assertions. He refers back to the list of individual projects in the portfolio and how the Project stands above others as the primary source of the benefits listed, especially in terms of APC savings.⁹² He uses the congestion relief graphics in the ITP Report to illustrate the zonal benefits from the Project and how those benefits are focused within Kansas itself.⁹³ So while there may not be specific measurements on Kansas rate impacts, there is substantial and competent evidence of the costs and benefits assigned to the SPP region that support approving the Settlement Agreement.

D. The Settlement Agreement will result in just and reasonable rates

45. While CURB acknowledged that actual rates will be set by FERC,⁹⁴ the record contains substantial evidence on the benefits and costs to find that the Settlement Agreement will result in just and reasonable rates. The Commission has already recognized the presence of general

⁹⁰ Makhholm Direct Testimony at pgs. 32-33, lns. 13-19, 1-23; McGhee-Smart Direct Testimony at pgs. 2-3.

⁹¹ Frantz Cross-Answering Testimony at pg. 8, lns. 5-17.

⁹² Tr. Vol. 2 at pgs. 260-2, lns. 14-25, 1-25, 1-9 (Chair Keen questions for Grady Transcript pgs. 497-499).

⁹³ Grady Testimony in Support at pgs. 12-13, lns. 13-21, 1-5.

⁹⁴ Frantz Testimony in Support at pgs. 5-6, lns. 15-20, 1-6.

benefits for Kansas that come from SPP participation. As discussed above, witnesses have been able to estimate rate impacts and benefits at the zonal level and draw reasonable conclusions about the Project's rate impacts in Kansas. This data serves as a sufficient source to evaluate NEET SW and the Project for overall rate impacts with some confidence.

46. The Settlement Agreement will result in just and reasonable rates because the forecasted customer rate impact is minimal and the potential benefits are likely to result in a net reduction to monthly bills. Mr. Frantz stated that the Project's regionally-focused development process should not be a bar to approving the CCN in light of the Project's benefits and SPP's stake in efficiently managing the regional transmission system relative to the projected \$0.04 per month bill impact.⁹⁵ Mr. Frantz articulated how it is not reasonable to expect that every single SPP project will provide a net benefit for Kansas.⁹⁶ He reviewed the Commission's authority regarding SPP and FERC and the dockets that examined SPP membership. He determined that, overall, Kansas benefits from SPP membership, and further, that the inability to produce Kansas-specific results in this docket does not change that view.⁹⁷ Although the Commission will not have direct control over NEET SW's transmission rates, Mr. Frantz notes that the rates will be monitored by SPP and FERC.⁹⁸ However, if NEET SW acts outside of conduct covered by FERC jurisdiction, the Commission is able to determine whether to enforce its own jurisdiction over the matter.

47. The Settlement Agreement contains reporting and cost containment measures that will help mitigate the risk of larger cost overruns. NEET SW is expected to work with the Commission, SPP, utility companies, Staff, and other intervenors in monitoring the progress of

⁹⁵ Frantz Cross-Answering Testimony at pg. 6, lns. 7-11.

⁹⁶ Frantz Cross-Answering Testimony at pg. 9, lns. 1-13.

⁹⁷ Frantz Testimony in Support at pg. 6, lns. 11-19.

⁹⁸ Id. at pgs. 5-6, lns. 15-20, 1-4.

construction and the results of any additional studies and operational changes.⁹⁹ Issues such as line galloping and double-circuits will be studied and evaluated for solutions from all angles, especially cost.¹⁰⁰ The cost containment measures that Staff had previously identified as “...very extensive, and beyond what we have seen in any Transmission Formula Rate (TFR) filing at FERC...” (original emphasis)¹⁰¹ are part of the Settlement Agreement.¹⁰² Further, parties negotiated additional financial support from NEET SW’s indirect parent company in the amount of up to \$10 million in equity capital injections per year for the first forty years of the Project’s life, with the option to continue beyond that timeframe.¹⁰³ CURB believes that the Settlement Agreement will help control the amount of costs that are passed along to Kansas ratepayers.

48. A substantial amount of the Project’s benefits is likely to be realized by Kansas customers. Witnesses largely agree on where the portfolio’s economic benefits will come from out of the total portfolio of projects. Ms. Walding testified that the vast majority of the economic benefits can be narrowed down to nine economic projects, including the WC-BB Project. The WC-BB Project also represents a majority of the overall portfolio costs estimated in the ITP Report. In light of this data, Ms. Walding concludes that the only plausible source for the economic benefits stated in the ITP Report must be the Project and that the area where the Project will be sited will receive those benefits.¹⁰⁴ Every witness Mr. Ives concurred with this conclusion.¹⁰⁵ He further added that Kansas would also benefit from the extra interconnection point with improved

⁹⁹ See Settlement Agreement at pg. 14, ¶10(o).

¹⁰⁰ Id. at ¶10(d), (g), and (i).

¹⁰¹ Staff R&R at pg. 13, part c.

¹⁰² Joint Motion for Approval of Nonunanimous Settlement Agreement Settlement Agreement at pg. 2, ¶8.

¹⁰³ Settlement Agreement at ¶10(c).

¹⁰⁴ Tr. Vol 1 at pgs. 164-165, lns. 10-25, 1-7 (Redirect of Walding Transcript pgs. 164-165).

¹⁰⁵ Tr. Vol. 2 at pg. 58, lns. 9-13 (Comm. French questions for Mr. Ives Transcript pg. 295).

reliability at Wolf Creek nuclear plant and congestion relief in the region.¹⁰⁶ He also supports SPP's methodology as reasonable because it has been reviewed, developed, and agreed to by stakeholders and FERC. Finally, he concludes that the ITP Report is sufficient to rely upon for viewing Kansas benefits because the study focused on the southeast Kansas region specifically.¹⁰⁷

49. Mr. Grady explained that independently calculating state-specific information would require cooperation from utilities in all 13 SPP member states and having access to confidential information to compare market data.¹⁰⁸ He concluded that performing that task is impractical from Staff's perspective. Despite that, witnesses in support of the Settlement Agreement have been able to view the evidence and draw similar conclusions about Kansas benefits flowing from the Project. Therefore, there is substantial and competent evidence to associate the estimated regional costs and benefits to Kansas ratepayers.

50. Any kind of rebalancing of LMPs between eastern and western Kansas as a result of the Project will still produce just and reasonable rates in Kansas. The congestion relief associated with the Project may impact prices in Kansas with possible increases in the west and decreases in the east. However, such rebalancing is not outside the bounds of acceptable ratemaking.

51. In these regards, CURB is certainly mindful that some areas in Kansas do not benefit from this project. However, that is not unusual in utility regulation. No rate design is truly "perfect." Further, CURB is mindful that SPP rules arguably create certain inequities between states, localities, and regions within the SPP footprint. In particular, CURB is concerned that

¹⁰⁶ Id. at pgs. 57-59 (Comm. French questions for Mr. Ives Transcript pgs. 294-296).

¹⁰⁷ Tr. Vol. 2 at pg. 58, Ins. 18-25 (Comm. French questions for Mr. Ives Transcript pgs. 295).

¹⁰⁸ Grady Testimony in Support at pg. 10, Ins. 1-16.

ratepayers in the legacy system Westar South (or Kansas Gas & Electric) may have paid an inequitable portion of costs of generation plants without subsequent remuneration. CURB believes that those issues absolutely need to be addressed, but at the proper time and place. These concerns notwithstanding, CURB cannot conflate them to a rejection of the Settlement Agreement by the Commission. The record demonstrates that the Project, as a whole, benefits Kansas. Among those benefits is the fact that congestion will be reduced in locations where Evergy's transmission is presently constrained. Moreover, Kansas benefits from its membership in SPP, as experienced throughout Winter Storm Uri in 2021. In short, CURB believes that it is reasonable and beneficial to ratepayers for the Commission to continue to work with SPP to alleviate disparities that exist rather than simply disapprove of this pertinent project and refuse the associated benefits to Kansas. Therefore, the Settlement Agreement will result in just and reasonable rates in Kansas.

E. The Settlement Agreement is in the public interest

52. In determining whether a CCN should be granted, the public convenience ought to be the Commission's primary concern, the interest of public utility companies already serving the territory secondary, and the desires and solicitations of the applicant a relatively minor consideration.¹⁰⁹ The Signatories represent interests from a wide variety of Kansas ratepayers. Staff represents the public and ratepayers, generally; CURB represents residential and small commercial ratepayers; Evergy, Sunflower, and KEPCO represent the electric utility presence in Kansas; and SPP as the regional transmission operator. The Settlement Agreement is a compromise to all issues raised among this broad coalition and supported by live and pre-written testimony. Therefore, public convenience considerations have been thoroughly examined in the

¹⁰⁹ *Kansas Gas & Elec.* at pg. 462.

record.

53. The Commission should find that granting the CCN and allowing NEET SW to construct and operate the Project under the terms of the Settlement Agreement is in the public interest. In this docket, the Commission is provided with two scenarios to consider: one where the Commission grants the CCN and one where it does not. CURB posits this section as an analysis of the aftermath of each scenario for the Commission to consider how to weigh the decision.

54. Granting the CCN as modified by the Settlement Agreement will allow the Commission to adequately monitor the Project while contributing to the overall enhancement of the SPP transmission system in Kansas. The terms of the Settlement Agreement provide many avenues to review the construction and operation of the Project. As demonstrated by numerous witnesses, SPP and Kansas customers will receive several layers of benefits: increased reliability and transmission capacity, local job and economic opportunities and growth, reduced congestion costs and levelized LMPs throughout Kansas. As a member of an organization that allocates resources among members, it is inevitable that some members will be called upon for more in order to benefit others. However, this system only works if all members agree to this arrangement to improve the organization's ability to serve all its members. Other SPP members outside of Kansas will be called upon to take up their share of the ITP portfolio and develop their respective projects to realize the benefits of a better transmission system. As Mr. Grady and Mr. Ives have stated, it would be a net detriment for Kansas to reject the Project from a SPP standpoint. Because Kansas still recognizes that SPP provides a net benefit, Kansas' continued cooperation with the SPP by approving the Project will promote the public convenience with increased reliability and economic benefits by addressing outstanding regional issues.

55. However, if the Commission decides to adopt the KIC group's position and reject

the CCN, Kansas may be irreparably distancing itself from SPP. It is not realistic for Kansas to expect or demand that it must benefit more than it pays every time Kansas has to be involved in a SPP project. While there might be compelling reasons to cater to Kansas, it is plausible to expect other states in SPP would try to gain similar treatment. If Kansas were to balk at participating in the largest project in the ITP portfolio, other projects may become less beneficial or even unnecessary due to cost and the lost efficiencies from the Project. Similarly, should SPP redo the selection process and issue a new project of similar magnitude and impact in another state, would that state be entitled to reject SPP, as well? Such a cascade of non-compliance would have a devastating impact on the SPP system and the ability to serve the region.

56. One can imagine how much worse Winter Storm Uri would have been had the utilities disregarded curtailment orders from SPP and the power grid failed under the unsustainable conditions. Trying to ease those tensions and restore cooperative transmission planning is also easier said by Dr. Makholm than done by the Commission. Dr. Makholm paints a scenario where SPP and Kansas continue working in a post-CCN denial world to unleash Kansas wind resources. It is unlikely that SPP would cooperate with Kansas if Kansas chose to reject the Project and forced SPP to restart the ITP. Kansas would be left alone to plan and negotiate with other states and customers to construct long-distance high-voltage transmission lines, including working groups with other state commissions that are a target for wind generation sales.¹¹⁰ Dr. Makholm does not provide details on where these potential customers are located or how to best coordinate planning efforts outside of SPP. As Dr. Makholm acknowledges in his recommendations, additional extensive study must be done prior to building a long-distance transmission line. However, the

¹¹⁰ Makholm Reply Testimony at pgs. 20-21, lns. 12-20, 1-14.

congestion problems identified in the ITP exist now and are currently causing regional system issues.

57. Developing an interstate, long distance transmission line will require a significant amount of planning and coordination efforts among states. A tool in transmission planning is the power of eminent domain.¹¹¹ An interstate transmission line necessarily involves more opportunities for eminent domain to be used, which may become a point of friction. For instance, the Landowners have demonstrated much disdain for eminent domain in Kansas. It is not a stretch to say that landowners in other states may have similar feelings. At a minimum, transmission line development and siting can elicit strong reactions and delay construction plans. It is unclear how the recommendations in Dr. Makholm's reply testimony, especially obtaining SPP studies on state-specific benefits, cannot be pursued with a granting of the CCN here. There are logistical problems in measuring such data, even for SPP. The Commission and Staff have attempted to work with SPP to measure such metrics with limited success. The KIC group has not provided evidence that a divisive move like disrupting the 2019 ITP portfolio is the key to this particular change. SPP has identified areas of congestion problems and the potential solutions available which has led to this docket. The Signatories have evaluated the ITP analyses and the Application and contributed additional recommendations to improve the proposal. Denying the CCN as the opponents suggest is a gamble with serious ramifications for the remote opportunity to potentially expedite gaining more granular data and to avoid potential bill increases of approximately \$0.04 per month. From CURB's perspective, the scenario that grants the CCN is the only one in the public interest and which still allows for further exploration of the ideas brought forward by Dr. Makholm. Therefore,

¹¹¹ See Makholm Reply Testimony at Section II.

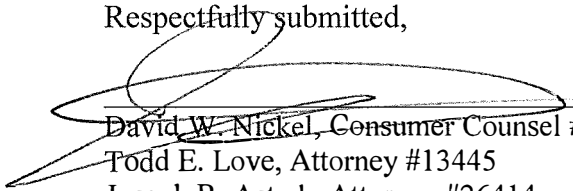
this factor favors approval of the Settlement Agreement.

CONCLUSION

58. The evidence in the record as a whole shows that the Settlement Agreement satisfies the Commission's five factor test to approve nonunanimous settlement agreements. Specifically, the record demonstrates that NEET SW meets all the appropriate criteria to construct, manage, and operate the Project in order to meet the transmission needs identified by SPP and the 2019 ITP Report. Further, the Project will result in just and reasonable rates as supported by the analyses and conclusions of the Signatories. The opponents to the Settlement Agreement have provided detailed and important perspectives on Kansas' transmission future. To the degree that these topics are valued by the Commission, CURB looks forward to exploring such items in other dockets. However, the decision before the Commission is one related to granting a CCN for a transmission project developed by SPP. The Commission should not barter its ratemaking authority in Kansas with regional and federal entities in order to pursue new ideas. In that regard, the evidence here significantly outweighs the claims against and alternatives to the Settlement Agreement.

WHEREFORE, CURB respectfully submits its post-hearing brief for consideration and asks that the Commission approve the Settlement Agreement and make any and all other orders it deems appropriate.

Respectfully submitted,



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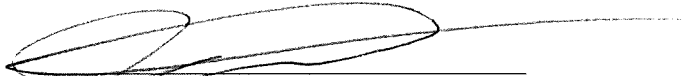
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VERIFICATION

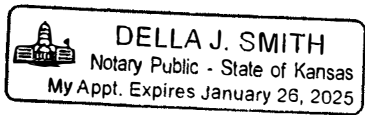
STATE OF KANSAS)
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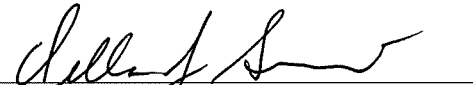
I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



Joseph R. Astrab

SUBSCRIBED AND SWORN to before me this 30th day of June, 2022.





Notary Public

My Commission expires: 01-26-2025.

CERTIFICATE OF SERVICE

22-NETE-419-COC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 30th day of June, 2022, to the following:

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