

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

Before Commissioners:      Shari Feist Albrecht, Chair  
                                 Jay Scott Emler  
                                 Pat Apple

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

**ORDER GRANTING APPROVAL TO THE CITY OF CHANUTE  
UNDER K.S.A. 10-1203 TO ISSUE REVENUE BONDS**

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

**I. BACKGROUND**

1.      On October 21, 2014, the City of Chanute, Kansas ("Chanute" or "City") filed an Application pursuant to K.S.A. 10-1203, requesting Commission approval for the City to issue revenue bonds to finance the planned expansion of its existing fiber optic network to support advanced metering infrastructure (AMI), sometimes referred to as SmartGrid, and to provide broadband internet services to all of the businesses and residents in its utility service area. Chanute states that it may provide voice and video services over the infrastructure or may contract with third-party providers. The City further states that it may use revenue bonds to finance some or all of this proposed expansion.<sup>1</sup>

2.      On November 12, 2014, Southwestern Bell Telephone Company, pursuant to K.A.R. 82-1-225, filed a Petition for Intervention stating that it is the incumbent electing carrier

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<sup>1</sup> Application, ¶ 2.

providing switched local exchange service within the State of Kansas, including the Chanute, Kansas local exchange area and, specifically, the City of Chanute and the area depicted on Exhibit A to Chanute's Application. A Commission Order granting the requested intervention was issued on December 2, 2014.

3. The requirements for a municipality's issuance of revenue bonds for the furnishing of utility service are addressed in K.S.A. 10-1201 *et seq.* K.S.A. 10-1203 requiring municipalities to obtain approval from the Commission prior to issuance of revenue bonds to finance utility services reads as follows:

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

The Commission must determine (i) whether the municipally proposed utility service is necessary or appropriate and (ii) whether such service would be duplicative of existing private utilities.<sup>2</sup> Chanute's Application requests that the Commission approve its Application finding that:

- (1) The expansion of Chanute's facilities, as contemplated herein is necessary or appropriate for the City, its consumers and investors; and
- (2) The investment will not result in the duplication of existing utility services in the area served or to be served by the City.

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<sup>2</sup> City of Wichita v. State Corp. Commission, 225 Kan. 524 (1979).

## **II. DISCUSSION AND FINDINGS**

4. In conjunction with Chanute's request that the Commission make findings (1) and (2) set forth in paragraph 3 above, Chanute further requests the Commission approve the City's issuance of revenue bonds for the purpose of expanding the City's fiber optic network as described in the Application. The City considers it important that the Commission keep in mind that K.S.A. 10-1203 was enacted 67 years ago, has not been amended, and that the telecommunications industry has changed dramatically, going from a fully regulated marketplace where all services were provided by a monopoly certificated carrier, to a competitive marketplace with numerous providers over which the Commission exercises little or no regulatory control. However, because K.S.A. 10-1203 remains on the books, Chanute concedes that it is necessary for the Commission to approve its ability to issue the subject revenue bonds.<sup>3</sup> Chanute states that the investment planned for Chanute's system will allow the City to provide enhanced, higher quality services to its existing customers allowing it to expand the provisioning of services to additional citizens within its boundary and within three miles thereof. The City further states that it is a rural community where access to broadband is fundamental to the well-being of its citizens and even to the survival of the community itself. Chanute concludes that the investments contemplated for Chanute's broadband network are necessary and appropriate to allow Chanute to meet that need in its territory.<sup>4</sup>

5. At paragraphs 6 and 7 of its Application, Chanute includes a discussion of its existing capabilities and the continuing development of its system to accommodate consumer needs within its territory. Chanute adds that the planned upgrades for its system that would be financed by the revenue bonds proposed in the instant Application involve network expansion

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<sup>3</sup> Application, ¶ 4.

<sup>4</sup> Id., ¶ 5.

that includes deployment of additional fiber optic cable and network electronics to support Gigabit connectivity to potentially all of Chanute's utility customers, not just a select portion of those customers. The City states that the expanded network will include upgraded network core routers and modern network access equipment. Chanute maintains that these planned investments are necessary and appropriate as they will improve the broadband service already being provided by the City to some of its citizens and will allow Chanute to extend that improved broadband service to others located within its territory.<sup>5</sup> Chanute represents that there are other telecommunications providers in the Chanute area, including AT&T and Cable One, the incumbent telephone company and incumbent cable TV operator, respectively. However, the City maintains that neither AT&T nor Cable One offers the service throughout Chanute's utility service area that Chanute will be able to offer its citizens as a result of the investment planned for the City's network. As such, Chanute concludes there will not be a duplication of existing services, even if such a consideration were still relevant today.<sup>6</sup>

6. On December 3, 2014, the Commission Staff (Staff) filed its Report and Recommendation of even date recommending the Commission grant Chanute's Application, make the determinations set forth in paragraph 3 above, and approve the City's issuance of revenue bonds for financing the planned extension of Chanute's fiber optic network. Originally enacted in 1947, K.S.A. 10-1203 is limited to a municipality's issuance of revenue bonds for financing utility service projects. Staff points out that if the City were to finance the proposed expansion of its fiber optic network through means other than the issuance of revenue bonds, Commission approval would not be a requirement. However, K.S.A. 10-1203 is controlling in this circumstance and the Commission must review the request and determine whether the

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<sup>5</sup> Id., ¶ 8.

<sup>6</sup> Id., ¶ 11.

statutory criteria have been met. Staff frames the Commission's task in the form of two questions.

- (1) Is the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of such plant or facilities necessary or appropriate for the municipality and its consumers, and for the protection of investors?

According to Staff, the City of Chanute has already invested in its fiber optic network in that it currently has a fiber optic network serving some, but not all, customers within the Chanute utility service area. The current network supports Chanute's municipal utility operations allowing Chanute to provide ultra-high speed broadband Internet access to community Anchor Institutions and some community business partners.<sup>7</sup> Chanute's planned investment to its system will allow the City to provide enhanced higher quality services to its existing customers and to expand the provisioning of its services to additional citizens located within its boundary and within three miles thereof. Chanute submits that it is a rural community and, like all rural communities, access to broadband is fundamental to the well-being of its citizens and even to the survival of the community itself.<sup>8</sup> Staff explains that Chanute operates a multi-homed autonomous network (ASN 36069) peered through active fiber connections with two national Tier 1 Internet Access Providers (Level 3 Communications and Cox Communications). These fiber connections are capable of delivering multi-Gigabit bandwidth to network participants. The planned upgrades would allow Chanute to expand its existing fiber optic network to support AMI, sometimes referred to as SmartGrid, and to provide Gigabit connectivity to its existing customers and to expand its facilities to additional citizens within its territory. This includes the citizens of Chanute as well as Chanute's community Anchor Institutions and business partners, such as the Chanute Public Library, USD 413, Neosho County Community College, Neosho Memorial

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<sup>7</sup> Id., ¶ 1.

<sup>8</sup> Id., ¶ 5.

Regional Medical Center, municipal government facilities, Ash Grove Cement, Spirit AeroSystems, Community National Bank, Chanute Manufacturing, Post Rock Energy, Tri-Valley Developmental Services, and Consolidated Oil Well Services.<sup>9</sup> Chanute indicates the investments are necessary and appropriate as they will improve the broadband service already being provided by Chanute to some of its citizens and will allow Chanute to extend that improved broadband service to others located within its territory.<sup>10</sup> Staff concludes that upgrading Chanute's facilities would not only benefit the citizens of Chanute but its community Anchor Institutions and community business partners as well. In addition, by improving and expanding upon the fiber optic network currently in place by Chanute, the City is protecting its current investment. Therefore, Staff believes the City's proposed expansion plans as contemplated are appropriate for Chanute and its consumers, and for the protection of its investors.<sup>11</sup>

- (2) Will the investment result in the duplication of existing utility services in the area served or to be served by the municipality?

Staff indicates that when K.S.A. 10-1203 was enacted in 1947, Southwestern Bell Telephone Company (AT&T) was the incumbent monopoly; therefore, it appears that the original intent of the statute was to prevent stranded investment in a monopolistic system. The monopolistic system no longer exists and federal and state statutes have changed to encourage competition. Pursuant to the Kansas Telecommunications Act of 1996, it is the public policy of the state to ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates, and to promote consumer access to a full range of telecommunications services, including advanced

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<sup>9</sup> Id., footnote 2.

<sup>10</sup> Id., ¶s 6-8.

<sup>11</sup> Report and Recommendation, pages 2-3.

telecommunications services that are comparable in urban and rural areas throughout the state.<sup>12</sup> Additionally, both state and federal statutes require local exchange carriers to: (i) interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; (ii) not prohibit, and not impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services; (iii) provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission; (iv) provide dialing parity to competing providers of telephone exchange service and telephone toll service; and (v) permit all such providers nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.<sup>13</sup> Staff agrees with Chanute<sup>14</sup> that K.S.A. 10-1203 does not harmonize with current state and federal statutes. However, K.S.A. 10-1203 remains current law in Kansas and the Commission must review the Application and make the required determinations in accordance with the statute. Staff concludes that the plain reading of the statute is whether the investment will result in *duplicate utility services* in the area served or to be served by the municipality. Staff, referencing Merriam-Webster Dictionary, states that the definitions of “duplicate” are: 1) *consisting of or existing in two corresponding or identical parts or examples*; and 2) *being the same as another*.<sup>15</sup> Chanute submits that there are other telecommunications providers in the Chanute area, the City of Chanute itself is already a provider of service. Staff indicates that AT&T is the incumbent local exchange provider and Cable One, Inc. (Cable One) is the incumbent cable TV operator in the Chanute area. The City maintains that neither provider offers the level of service throughout Chanute’s utility service area that the City will be able to offer its citizens as a result of the

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<sup>12</sup> K.S.A. 66-2001(b) and (c).

<sup>13</sup> K.S.A. 66-2003 and 47 U.S.C. 54 § 251 and 252.

<sup>14</sup> Application, ¶s 9-10.

<sup>15</sup> “Duplicate.” Merriam-Webster.com. Merriam-Webster, n.d. Web. 2 Dec. 2014. <<http://www.merriam-webster.com/dictionary/duplicate>>

investment planned for the City's network. As a result, Chanute contends there will not be a duplication of existing services.<sup>16</sup> Staff agrees that there are numerous telecommunications carriers providing local telecommunications services in the Chanute exchange area. From the Local Service Provider database maintained by the Commission, Staff determines that there are sixteen competitive local exchange carriers (CLECs) and AT&T in the Chanute exchange.<sup>17</sup> Staff further points out that in addition to the sixteen CLECs and AT&T, Voice over Internet Providers, that are not required to be certificated by the Commission,<sup>18</sup> may also provide telecommunications services in the Chanute exchange. Staff adds that although many providers provide telecommunications services in the Chanute area, there are fewer providers that provide broadband services and, in particular, the caliber of broadband services proposed by the City for the citizens of Chanute. Staff indicates that according to the Kansas Statewide Broadband Map Initiative, AT&T, Cable One, and the City of Chanute are the only three wireline broadband providers in the Chanute area. According to the website, AT&T provides download speeds of up to 10 - 25 Mbps, Cable One provides download speeds of 50 - 100 Mbps, and the City of Chanute provides download speeds of 100 Mbps – 1 Gbps.<sup>19</sup> Staff states that in order to ensure that the broadband data provided is accurate and current, it sent discovery requests to AT&T and Cable One. Staff indicates that its discovery requests queried whether the listed provider has facilities to provide Gigabit connectivity to all of Chanute's utility customers and, if not, to explain the level of connectivity the provider does provide to all of Chanute's utility customers.

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<sup>16</sup> Application, ¶ 11.

<sup>17</sup> The Local Service Provider database contains a listing of those local exchange carriers and competitive local exchange carriers that have informed the Commission that they provide service in the Chanute exchange. See: <http://estar.kcc.ks.gov/estar/portal/kcc/page/ServiceProvidersSearch/portal.aspx>, website last visited December 2, 2014.

<sup>18</sup> K.S.A. 66-2017.

<sup>19</sup> See: <http://broadband.kansasgis.org/map/>, website last visited December 2, 2014. A fixed wireless provider is also listed as well as four mobile wireless providers but, with the exception of Verizon Wireless, the broadband speeds are much lower.



Staff included a map of Chanute's Utility Service area as an attachment to its discovery requests. Staff states that AT&T responded that the company does not have facilities to provide Gigabit connectivity to customers in AT&T's Local Exchange area. Currently, AT&T offers up to 18 Mbps connectivity through its Internet Protocol Digital Subscriber Line broadband service to those customers typically located within 15,000 feet of AT&T's Chanute central office. Business customers can order one of AT&T or its affiliate's fiber-based Ethernet services that offer up to 10 Gbps of connectivity. Staff indicates that AT&T further stated that it cannot say whether "all" of the utility customers in question are within AT&T's Chanute Local Exchange area.<sup>20</sup> According to Staff, Cable One responded that it offers service to 100% of residential and business customers within the City of Chanute. The company indicated that it does not have the facilities on the ground today to provide Gigabit connectivity to all of its customers. However, it stated it has the capability of providing customized or dedicated multiple location Gigabit service to customers requesting such service. Cable One further indicated that it offers residential customers in Chanute three levels of service: (1) Streaming service – 50 Mbps download/3 Mbps upload; (2) Premier service – 60 Mbps download/4 Mbps upload; and (3) Ultra service – 70 Mbps download/6 Mbps upload. In addition, business levels of service are offered in packages ranging from 15 Mbps to 75 Mbps download. Staff states that neither AT&T nor Cable One furnish or are currently able to furnish Gigabit connectivity to all of the City of Chanute and within three miles thereof, as proposed by the City. Cable One indicates it could provide customized or dedicated multiple location Gigabit service to customers requesting such service but it is unknown how long it would take to provision this service and at what cost. In addition, according to Cable One's response, it would only be available to customers located *within* the

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<sup>20</sup> The Chanute Local Exchange Area is the area that AT&T, as incumbent telecommunications provider, has been certificated to operate within. The Utility Service Area for Chanute is illustrated on Exhibit A to the Application.

City of Chanute.<sup>21</sup> Staff concludes that although there are current providers of telecommunications and broadband services in the Chanute area, the existing utility services are not identical or the same as that proposed by Chanute. Staff further concludes that Chanute's expansion plans will not result in the duplication of existing utility services in the area to be served by Chanute.

7. Based on its review and investigation of Chanute's Application, Staff recommends the Commission make the requested determinations that (1) the expansion of Chanute's facilities, as contemplated, is appropriate for the municipality and its consumers, and for the protection of investors; and (2) the investment will not result in the duplication of existing utility services in the area served or to be served by the municipality; and approve the City's request to issue revenue bonds to finance the planned expansion of its fiber optic network.<sup>22</sup>

8. The Commission has reviewed Chanute's Application and Staff's Report and Recommendation and finds that the same support a finding that the City of Chanute's Application meets the requirements of K.S.A. 10-1203, is reasonable, in the public interest, and should be granted; that the requested determinations should be made; and that the City's request to issue revenue bonds to finance the planned expansion of its fiber optic network within its utility service area should be approved.

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

A. The City of Chanute's Application filed in this matter on October 21, 2014 is hereby granted. Pursuant to K.S.A. 10-1203, the Commission determines that: (1) the expansion of Chanute's facilities, as contemplated by the City, is necessary or appropriate for the City, its consumers and investors, and (2) the investment will not result in the duplication of existing

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<sup>21</sup> Report and Recommendation, pages 3-8.

<sup>22</sup> Id., page 6.

utility services in the area served or to be served by the City. The City of Chanute's request for approval to issue revenue bonds for the purpose of expanding its fiber optic network to support advanced metering infrastructure, sometimes referred to as SmartGrid, and to provide broadband internet services to all of the businesses and residents of its utility service area is hereby approved.

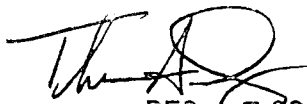
B. The parties have fifteen (15) days, plus three (3) days if service of this Order is by mail, from the date this Order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2013 Supp. 77-529(a)(1).

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

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

Albrecht, Chair; Emler, Com.; Apple, Com.

Dated: DEC 16 2014

  
ORDER MAILED DEC 17 2014  
Thomas A. Day  
Acting Executive Director

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PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET  
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
LARRY GATES, UTILITIES DIRECTOR CITY OF CHANUTE 101 SOUTH LINCOLN MEMORIAL BLDG, PO BOX 907 CHANUTE, KS 66720		
OTTO NEWTON, LITIGATION COUNSEL 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 ***Hand Delivered***		
ANNE E. CALLENBACH, ATTORNEY POLSINELLI PC 6201 COLLEGE BOULEVARD SUITE 500 OVERLAND PARK, KS 66211		
FRANK A. CARO, JR., ATTORNEY POLSINELLI PC 6201 COLLEGE BOULEVARD SUITE 500 OVERLAND PARK, KS 66211		
BRUCE A. NEY, GENERAL ATTORNEY SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T KANSAS 220 SE 6TH AVE RM 505 TOPEKA, KS 66603-3596		

ORDER MAILED **DEC 17 2014**

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.