

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

Before the Commissioners:            Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Dwight D. Keen

In the Matter of the Application of FreeState            )  
Electric Cooperative, Inc. for a Certificate of            )  
Convenience and Authority to Transact the            )        Docket No. 19-FSEE-079-COC  
Business of an Electric Public Utility in the            )  
State of Kansas, Jefferson County.                    )

**ORDER GRANTING APPLICATION**

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:

**I.        Background**

1.        On August 21, 2018, FreeState Electric Cooperative, Inc. (“FreeState”) filed an Application for a Certificate of Convenience and Authority requesting permission to transact the business of an electric public utility in Jefferson County, Kansas.<sup>1</sup>

2.        FreeState requests that it be granted permission to operate as an electric public utility in a portion of Government Lot 2 and the NW ¼ of Section 4, Township 10 South, Range 20 East of 6<sup>th</sup> PM, in Jefferson County, Kansas, more specifically described as follows:

Commencing at the SE Corner of Government Lot 2, Section 4; thence on an assumed bearing on the East line of said NW 1/4 , N 00°20’58” E 50.02’ to the POB; thence N 88°13’49” W 350’; thence N 00°20’58” E 625’; thence S 88°13’49” E 350’ to said East line; thence on said East line, S 00°20’58” W 625’ to the POB.<sup>2</sup>

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<sup>1</sup> *FreeState Electric Cooperative, Inc. Application for a Certificate of Public Convenience and Authority*, (“FreeState Application”), (Aug. 21, 2018).

<sup>2</sup> *Report and Recommendation*, at 3 (Oct. 3, 2018).

3. On September 19, 2018, the Westar Energy Inc. (“Westar”), filed an Application requesting permission to stop transacting the business of an electric public utility in the area of land described in paragraph 2 above.<sup>3</sup> Westar is an electric public utility as defined in K.S.A. 66-104.

4. On October 4, 2018, the Commission Staff (“Staff”) submitted a Report and Recommendation dated October 3, 2018, recommending the Commission grant FreeState’s Application for a Certificate of Convenience and Authority to operate as an electric public utility in the territory described in paragraph 2 above.<sup>4</sup>

## **II. Legal Standards and Discussion**

5. Pursuant to K.S.A. 66-131, the Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas. The standard for granting a certificate under K.S.A. 66-131 is that public convenience and necessity will be promoted by the granting of a certificate. K.S.A. 66-1,170 et seq., the Retail Electric Suppliers Act (RESA), requires the State of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory.<sup>5</sup> Notwithstanding the mandated single electric provider service territories, RESA also provides that retail electric suppliers may enter into agreements to amend boundaries between their facilities. The agreements are subject to Commission approval, and if so approved, the Commission shall issue a certificate accordingly.<sup>6</sup>

6. Westar is currently operating in the area at issue here. According to Staff, FreeState and Westar have agreed to exchange the tract of territory described in paragraph 2 above located in Jefferson County as a matter of convenience.

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<sup>3</sup> Westar Application. (Sep. 19, 2018).

<sup>4</sup> *Report and Recommendation*, at 1.

<sup>5</sup> K.S.A. 66-1,172.

<sup>6</sup> K.S.A. 66-1,175.

7. Based on the foregoing information, and the absence of any objection, Staff recommends the Commission find that public convenience will be promoted by granting FreeState's Application to operate as an electric public utility in the area described above in paragraph 2.

### **III. Findings and Conclusion**

8. The Commission finds pursuant to K.S.A. 66-131 and K.S.A. 66-1,170 et seq., public convenience and necessity will be promoted by granting FreeState's Application for a Certificate of Convenience to operate as an electric public utility in the area described above in paragraph 2.

9. The Commission adopts Staff's Report and Recommendation dated October 3, 2018, which is attached hereto and made a part hereof by reference.

### **THEREFORE, THE COMMISSION ORDERS:**

- A. FreeState's Application is granted pursuant to K.S.A. 66-131.
- 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>7</sup>
- C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders, as it may deem necessary.

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<sup>7</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/01/2018

A handwritten signature in dark ink, appearing to read "Lynn M. Retz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lynn M. Retz  
Secretary to the Commission

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# STATE OF KANSAS



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SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Dwight D. Keen

**FROM:** Jason Kerr, Electric Utility Engineering Technician  
Leo Haynos, Chief Engineer  
Jeff McClanahan, Director of Utilities

**DATE:** October 3, 2018

**SUBJECT:** 19-WSEE-114-CCS  
In the Matter of the Application of Westar Energy, Inc. for Authority to Cease Transacting the Business of an Electric Public Utility specifically, in portions of Section 04, Township 10 South, Range 20 East, in Jefferson County, Kansas.

19-FSEE-079-COC  
In the Matter of the Application of FreeState Electric Cooperative, Inc. for a Certificate of Convenience and Authority to transact the business of an Electric Public Utility in the State of Kansas, Jefferson County.

### **EXECUTIVE SUMMARY:**

In Docket 19-WSEE-114-CCS, Westar Energy, Inc. (Westar) is seeking approval of the Commission to cease operating as an electric utility in a small tract of certified territory in Jefferson County. In Docket 19-FSEE-079-COC, FreeState Electric Cooperative, Inc. (FreeState) is requesting a Certificate for this tract of certified territory.

Staff recommends that the Commission grant these Applications and find that public convenience will be promoted by this transaction.

## **BACKGROUND:**

On September 19, 2018, Westar filed the above-captioned Application to Cease in Docket No. 19-WSEE-114-CCS. On August 21, 2018, FreeState filed a Companion Application for a Certificate in Docket No. 19-FSEE-079-COC.

K.S.A. 66-1,170 et seq., the Retail Electric Suppliers Act (RESA), requires the state of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory.

The Commission has authority to grant a Certificate of Convenience and Necessity to any public utility seeking to transact business in the State of Kansas.<sup>1</sup>

The statutory standard of review in this matter is whether the public convenience will be promoted by the transaction of the proposed project and by permitting the Applicants to transact the business of a common carrier or public utility.<sup>2</sup>

## **ANALYSIS:**

The landowners of this tract of land are wishing to build a home on their land. They contacted FreeState on June 5<sup>th</sup> asking for service. FreeState informed the landowner that the property is in Westar's territory. On June 12<sup>th</sup>, the landowner received an estimate from Westar.

Westar's line to serve this property is approximately 1.4 miles away. The customer also received an estimate from FreeState, whose nearest distribution line is 1,265 feet away.

On June 18, 2018, the customer sent Westar a letter asking for Westar to cease serving in their land and asking for FreeState to be granted a Certificate. Westar's Application to Cease includes the letter from the customer.

Westar and FreeState have mutually agreed, subject to the Commission's approval, that FreeState should serve as an electric public utility in the territory described in Attachment A.

Staff has reviewed both Applications and has confirmed the legal descriptions included in both Applications is accurately depicted on the map attached to each Application. Staff also confirmed the legal description is not in conflict with the Commission's Certificate records.

Staff recommends that the Commission find that public convenience will be promoted by the granting of this Application.

The Commission action date is March 24, 2019.

## **RECOMMENDATION:**

Staff recommends that the Commission grant these Applications and find that public convenience will be promoted by this transaction.

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<sup>1</sup> K.S.A. 66-131

<sup>2</sup> K.S.A. 66-131

ATTACHMENT A  
Legal Description of Territory Trade Between  
Westar Energy and FreeState Electric Cooperative, Inc.  
Docket No. 19-WSEE-114-CCS and 19-FSEE-0079-COC

JEFFERSON COUNTY

A portion of Government Lot 2 and the NW 1/4 of Section 4, Township 10 South, Range 20 East of the 6<sup>th</sup> PM, in Jefferson County, Kansas described as follows:

Commencing at the SE Corner of Government Lot 2, Section 4; thence on an assumed bearing on the East line of said NW 1/4, N 00°20'58" E 50.02' to the POB; thence N 88°13'49" W 350'; thence N 00°20'58" E 625'; thence S 88°13'49" E 350' to said East Line; thence on said East line, S 00°20'58" W 625' to the POB.

## **CERTIFICATE OF SERVICE**

19-FSEE-079-COC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 11/01/2018.

MATTHEW MAGILL, ENGINEERING MANAGER  
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/S/ DeeAnn Shupe  
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DeeAnn Shupe