

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Joseph F. Harkins

In the Matter of the Application of ITC Great Plains,)
LLC for a Siting Permit for the Construction of a 345-)
kV Transmission Line in Ellis, Rooks, Osborne and) Docket No. 10-ITCE-557-MIS
Smith Counties, Kansas.)

ORDER ADOPTING PROCEDURAL SCHEDULE
AND GRANTING CURB INTERVENTION

I. CURB's Petition to Intervene.	3
II. Procedural Schedule.	3
III. Public Hearing.	4
IV. Comments from members of the public.	6
V. Electronic Service.	7
VI. Attorneys representing the Agency.	7

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. On March 13, 2009, ITC Great Plains, LLC filed an application for a siting permit for the construction of a 345 kV line in Ellis, Rooks, Osborne, and Smith Counties, Kansas, pursuant to the Kansas Siting Act, K.S.A. 66-1,178, *et seq.*

2. The Citizens' Utility Ratepayer Board (CURB) petitioned to intervene on March 5, 2010. Although the time to respond to CURB's request has not passed, K.A.R. 82-1-218(d), parties have indicated no objection will be made to CURB's petition.

3. Under the Kansas Siting Act, the Commission has 120 days from the date of filing to decide the Application. K.S.A. 66-1,178(d). Due to the necessarily compressed schedule, the Commission's Advisory Counsel has consulted with ITC Great Plains, CURB and Staff regarding

a procedural schedule for this docket. The following Procedural Schedule is proposed for the Commission's consideration and approval:

Application Filed	March 2, 2010
Direct Testimony by Staff & Intervenors	April 8, 2010, 3 p.m.
Public Hearing at Stockton City Auditorium	April 12, 2010, 7 p.m.
ITC Rebuttal to Staff & Intervenor Testimony & Response to Public Hearing Comments	April 23, 2010, 3 p.m.
Staff & Intervenor Response to Public Hearing Comments	April 23, 2010, 3 p.m.
ITC Rebuttal to Staff & Intervenor Response To Public Hearing Comments	May 5, 2010, 3 p.m.
ITC list of contested issues	May 7, 2010, 3 p.m.
Public Comment Period Ends	May 12, 2010
Prehearing Conference	May 14, 2010, 10 a.m.
Evidentiary Hearing	May 19-20, 2010, 9 a.m.
ITC Initial Brief with Proposed Factual Findings & Legal Conclusions	June 1, 2010, 3 p.m.
Staff & Intervenors' Responsive Briefs	June 10, 2010, 3 p.m.
ITC Reply Brief	June 17, 2010, 3 p.m.
Final Order 120-day Deadline	June 30, 2010

Staff, ITC Great Plains, and CURB have agreed to serve all testimony and briefs electronically on the date due at or before 3:00 p.m., followed by filing of a hard copy with the Commission.

4. The Commission has jurisdiction over ITC's application for a siting permit pursuant to K.S.A. 66-1,177, *et seq.*, and amendments thereto. This Order will grant intervention to CURB and will adopt the parties' proposed Procedural Schedule.

FINDINGS AND CONCLUSIONS

I. CURB's Petition to Intervene.

5. The Commission has broad discretion to grant a petition for intervention if it is in the interests of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating that its legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding. K.S.A. 77-521(a); K.A.R. 82-1-225. At any time during a proceeding, the Commission may impose limitations on an intervenor's participation, including limiting an intervenor's participation to designated issues in which the intervenor has a particular interest as well as its use of discovery and other procedures. The Commission also may require two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings. K.S.A. 77-521(c)(1) – (3).

6. CURB requests permission to intervene to represent the interests of Kansas residential and small commercial ratepayers in this utility proceeding. K.S.A. 66-1223, *et seq.* CURB Petition, ¶¶ 2, 4-6. No party objects to CURB's intervention in this proceeding. The Commission grants CURB's petition to intervene. Persons to be served on behalf of CURB in this proceeding include the attorneys listed at the end of CURB's Petition to Intervene and the two CURB representatives listed in paragraph 5 of CURB's Petition to intervene.

II. Procedural Schedule.

7. The Commission appreciates the cooperation of the parties in proposing a procedural schedule. The Commission has reviewed the proposed schedule, finds it to be reasonable, and adopts the procedural schedule as set forth above in paragraph 3. The Commission designates Martha J. Coffman, Advisory Counsel, or other staff member as may be appointed by the Commission, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3105, m.coffman@kcc.ks.gov, to act as prehearing officer in this proceeding. The Prehearing Officer may address any of the matters set forth in K.S.A. 77-517(b), including discovery disputes, procedural issues, or other preliminary matters that may arise in this docket.

8. The Commission concludes that a prehearing conference will be needed to address the format of the evidentiary hearing and other preliminary matters that may arise prior to the evidentiary hearing. **A Prehearing Conference is scheduled for May 14, 2010, beginning at 10 a.m. in the Third Floor Hearing Room of the Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604-4027.** Issues to be addressed at this prehearing conference include any pending motions, the order of witnesses that will testify at the evidentiary hearing, any agreement of parties to waive cross-examination of witnesses, the order of cross-examination, and any evidentiary or other matters that may promote the orderly and prompt conduct of this proceeding. K.S.A. 77-517; K.A.R. 82-1-222. As noted above, the Prehearing Officer presiding at the prehearing conference will be Martha J. Coffman, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, at telephone number 785-271-3105. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act (KAPA). K.S.A. 77-516(c)(8); K.S.A. 77-520. At the prehearing conference, this proceeding without further notice may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by KAPA. K.S.A. 77-516(c)(7).

9. **An evidentiary hearing with the Commission presiding will begin on May 19, 2010, at 9:00 a.m., and continue, as needed and ordered by the Commission, on May 20, 2010, in the First Floor Hearing Room at the Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, at telephone number 785-271-3100.** Any party who fails to attend or participate in the hearing or any other stage of this proceeding may be held in default under KAPA. K.S.A. 2008 Supp. 77-518(c)(8); K.S.A. 77-520

III. Public Hearing.

10. The Commission must conduct a public hearing that will give people impacted by this proposed transmission line an opportunity to inquire of the parties and to present statements to the Commission. K.S.A. 66-1,178. Based upon communications with the parties and the Commission's Office of Communications, Advisory Counsel recommends that the Commission conduct a public hearing on Monday, April 12, 2010, at the Stockton City Auditorium, 115 South

Walnut Street, Stockton, KS 67669, beginning at 7:00 p.m. Advisory Counsel has informed the Commission that ITC plans to be available at the site of the public hearing on April 12, 2010, from 5:00 p.m. to 7:00 p.m. with detailed maps of the proposed route location and a computer viewing system to answer questions of landowners.

11. The Commission adopts the recommendation of the Prehearing Officer to conduct a public hearing on April 12, 2010, beginning at 7:00 p.m. During the first part of the public hearing, beginning at 7:00 p.m., the Prehearing Officer will moderate a question-and-answer session at which representatives of ITC Great Plains, Commission Staff and CURB Staff discuss the proposed route with members of the public. Following the question-and-answer session, and beginning no later than 8:00 p.m., the Commission will conduct a Public Hearing to receive comments from members of the public. Statements by members of the public to Commissioners during the Public Hearing will be recorded by a court reporter and transcribed. Testimony and written comments received from members of the public during the Open Meeting will be filed as part of the administrative record in this proceeding.

12. The Kansas siting act requires that written notice of the time, place and subject matter of the public hearing, along with a copy of the Application, be given by certified mail to landowners of interest, as defined in K.S.A. 66-1,178, not less than 20 days before the public hearing. K.S.A. 66-1,179. Additionally, notice of the time, place and subject matter of the public hearing must be published in newspapers having general circulation in every county through which the electric transmission line is proposed to traverse, which in this docket are Ellis, Rooks, Osborne and Smith Counties, Kansas. K.S.A. 66-1,179. The company shall work with the Commission's Office of Communications to obtain approval of the content of the notice, the timing of the publication, and the list of newspapers in which notice will be published. Any dispute regarding the notice to be given landowners or to be published in newspapers shall be brought to the attention of the Prehearing Officer. The company shall file an affidavit by April 16, 2010, verifying the notice of public hearing that has been given to landowners and by publication in newspapers as required. K.S.A. 66-1,179.

IV. Comments from members of the public.

13. The Commission directs that a public comment period begin immediately and encourages the public to submit written comments to the Commission's office of Public Affairs and Consumer Protection (PACP) using email at public.affairs@kcc.ks.gov. Oral comments may also be made to the PACP Office by calling 1-800-662-0027. Written comments may be submitted by mail to the Kansas Corporation Commission Office of Public Affairs and Consumer Protection, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604-4027. Notice to landowners and in newspapers about the public hearing will also inform the public of the opportunity to submit written or oral comments regarding this proceeding.

14. The public comment period begins immediately and will run until May 12, 2010, which is two business days before the prehearing conference on May 14, 2010. The Commission desires that the PACP Office provide two reports that summarize public comments. The first report is due April 12, 2010, and shall summarize any comments received between now and April 9, 2010, which is the last business day before the public hearing on April 12, 2010. The PACP Office's second report is due May 13, 2010, and shall summarize public comments received between April 9, 2010, and May 12, 2010. Any comments received by the PACP Office after May 12, 2010, shall be promptly provided to the Prehearing Officer and parties for review.

15. In reviewing a request for a siting permit, the commission must determine the necessity and reasonableness of the location of the proposed electric transmission line. The Commission has found that, in reviewing requests under the Kansas Siting Act, many factors must be taken into account in determining whether location of a proposed route is reasonable. The Commission discussed some of these factors in considering ITC's request for a siting permit in the first phase of the transmission line from Spearville, KS, to Axtell, NE. KCC Docket No. 09-ITCE-729-MIS, Order Granting Siting Permit, filed July 13, 2009, ¶ 63 (July 13, 2009 Order, ¶ 63). The Commission emphasized the importance of receiving comments from landowners and members of the public in dockets that involve siting of electric transmission lines. The Commission concluded that, if a viable alternative route to the company's proposed route is

developed in response to public comments, the company must give notice to new landowners impacted by this alternative route. The Commission noted that it would work with companies to be sure newly impacted landowners have notice of the alternative route and have an opportunity to comment before a final decision is made on the siting permit. July 13, 2009 Order, ¶ 63. To this end, the Commission directs its PACP Office to work with ITC and other parties in this proceeding to provide access to public comments as they are received.

V. Electronic Service.

16. The Commission approves the agreement of the parties to use electronic service of all testimony, briefs, and orders, without requiring provision of follow-up hard copies as required by K.A.R. 82-1-216(a)(6). Confidential papers will be served either electronically if confidentiality can be retained or by some other method such as providing information on a compact disc. Testimony and briefs must be served electronically by 3:00 p.m. on the date due, without requiring service among the parties of a follow-up hard copy, but the original and at least seven paper copies of briefs and testimony must still be filed for use by the Commission. K.A.R. 82-1-215(a). Any electronic service of Commission orders without follow-up hard copies will specifically state in the electronic message serving the Order that the electronic message constitutes service of the attached Commission order and that a hard copy will not follow, in order to make clear that paper copies will not also be provided. The Commission directs that electronic service of briefs and testimony include service on the Presiding Officer at m.coffman@kcc.ks.gov. Due to the short timeframe of this proceeding, the Commission appreciates the willingness of the parties to cooperate in using electronic service.

VI. Attorneys representing the Agency.

17. The attorneys designated to appear for the agency in this proceeding are Dana Bradbury, telephone number 785-271-3396, d.bradbury@kcc.ks.gov, Thomas Stratton, telephone number 785-271-3173, t.stratton@kcc.ks.gov, and Andrew Schulte, telephone number 785-271-3273, a.schulte@kcc.ks.gov, 1500 Arrowhead Road, Topeka, KS 66604-4027. K.S.A. 2008 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby grants intervention to CURB, as stated in paragraphs 5-6. The service list shall include counsel and representatives for CURB as listed in its petition.

(B) The Commission adopts the procedural schedule, as set forth in paragraph 3.

(C) The Commission designates Martha J. Coffman to serve a Prehearing Officer, as set forth above in paragraph 7.

(D) The Commission schedules a prehearing conference for May 14, 2010, at 10:00 a.m., in the Third Floor Hearing Room at the Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604, as described in paragraph 8.

(E) The Commission will conduct an Evidentiary Hearing, beginning at 9:00 a.m. on May 19, 2010, and continuing as needed on May 20, 2010, in the First Floor Hearing Room at the Commission's Offices, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, as described in paragraph 9.

(F) The Commission orders that a Public Hearing be held in Stockton, Kansas, beginning at 7:00 p.m., as set forth above in paragraph 1011. The Commission directs ITC Great Plains to provide notice of this proceeding and the public hearing to its customers and the public, as discussed in paragraph 12.

(G) The Commission orders that notice to landowners and in newspapers about the public hearing include information regarding the ability to submit comments to the Commission until May 12, 2010, by email, orally, or by mailing written comments, as discussed above in paragraphs 13-14.

(H) The Commission orders that electronic service, without filing a follow-up hard copy, be used in this proceeding, and specifically for this Order, as discussed in paragraph 16.

(I) This is a procedural order and constitutes non-final agency action. K.S.A. 77-607(b)(2). Parties have fifteen days from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

(J) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Harkins, Com.

Dated: MAR 10 2010

ORDERED MAILED

MAR 11 2010

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

mjc

CERTIFICATE OF SERVICE

10-ITCE-557-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Adopting Procedural Schedule and Granting CURB Intervention was served by electronic mail this 10th day of March, 2010, to the following parties who have waived receipt of follow-up hard copies:

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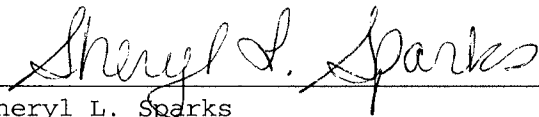
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CERTIFICATE OF SERVICE

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