

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

In the Matter of the Investigation into the)
Principles and Priorities to be Established for)
Evaluating the Reasonableness of the Location of) Docket No. 24-GIME-102-GIE
a Proposed Transmission Line in Future Line)
Siting Proceedings.)

**POST-WORKSHOP REPLY COMMENTS OF
NEXTERA ENERGY TRANSMISSION SOUTHWEST, LLC**

COMES NOW, NextEra Energy Transmission Southwest, LLC (“NEET Southwest”) and pursuant to K.A.R. 82-1-218(d) hereby files its Reply Comments in regarding the initial comments submitted by other intervenors relating to the siting investigation workshop held on November 1, 2024. In support of its Reply Comments, NEET Southwest states as follows:

I. Utilities Are in General Agreement Regarding the Need to Retain Flexibility

1. Six transmission-owning companies¹ have filed comments in this proceeding and all six have cautioned the Commission against adopting standard siting criteria and weights. Rather, all six companies recommend that the Commission adopt flexible routing principles, and this approach is reflected in Staff’s Strawman Proposal. Sunflower raises concerns over the use of fixed weighting for siting criteria, noting that rigid criteria may unintentionally create challenges for both utilities and landowners due to varied land properties across transmission routes.² KAMO

¹ In addition to NEET Southwest, the following transmission-owning companies have filed comments: Grain Belt Express LLC (“Grain Belt Express”); ITC Great Plains, LLC (“ITC”); Sunflower Electric Power Corporation (“Sunflower”), KAMO Electric Power Cooperative, Inc. (“KAMO”); Evergy Kansas Central, Inc. and Evergy Kansas South (together as “Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Kansas Metro”) (collectively, “Evergy”).

² Post Workshop Comments of Sunflower Electric Power Corporation in Response to Staff’s Report and Recommendation (Nov. 8, 2024), p. 1.

emphasizes the need for adaptable criteria rather than rigidly assigned weights.³ It argues that transmission line siting must account for unique property features, environmental conditions, and specific engineering needs that may vary by project.⁴ Grain Belt Express argues that Kansas’ interests are best served by maintaining flexibility in siting to account for unique topography, landowner preferences, environmental factors, and other local considerations.⁵ Evergy argues that routing principles should serve as flexible guidelines rather than mandatory rules, allowing utilities to adapt based on unique project constraints.⁶ ITC supports guiding principles but emphasizes the need for flexibility based on each project’s specific conditions.⁷ ITC highlights the importance of balancing competing criteria and adjusting principles as needed to optimize transmission line placement.⁸ Finally, NEET Southwest supports the use of high-level and flexible routing principles to guide utilities in developing new transmission facilities.⁹

2. At the November 1, 2024 Workshop, Commission Staff suggested that parties provide a “Top 5” criteria and weights, and several intervenors attempted to respond to that suggestion. However, the concept of a “Top 5” criteria is problematic, because proper siting of a transmission line requires a wholistic approach. Each project is unique and may require the use of different factors that are relevant to its specific project area. Although weights are sometimes

³ Post-Workshop Comments of KAMO Electric Cooperative, Inc. d/b/a KAMO Power (Nov. 8, 2024), p. 2.

⁴ *Id.*

⁵ Grain Belt Express LLC’s Post-Workshop Comments to Staff’s Kansas Line Siting Principles and Priorities (Nov. 8, 2024), pp. 3-4.

⁶ Evergy’s Comments in Response to Staff’s Strawman Proposal (Nov. 8, 2024), p. 2.

⁷ ITC Great Plains, LLC’s Initial Post-Workshop Comments (Nov. 8, 2024), p. 4.

⁸ *Id.*

⁹ Initial Post-Workshop Comments of NextEra Energy Transmission Southwest, LLC (Nov. 8, 2024), ¶¶ 6-10.

assigned to the criteria, there is consensus that such weights should be flexible to account for the unique circumstances of each project. Further, routing studies often use a dozen or more criteria, with each individual criterion being a critical component of the whole—the absence of any would result in a suboptimal or even un-permittable route. Accordingly, limiting criteria to a “Top 5” is not an accurate reflection of the routing process.

II. CURB’s Comments Regarding the Importance of Line Length and Costs Passed to Retail Customers is an Important Reminder that Ratepayers Ultimately Bear the Burden of Increased Line Siting Costs

3. The Post-Workshop Comments of the Citizens’ Utility Ratepayer Board (“CURB”) note that the length of a transmission line is the criterion most directly tied to cost. CURB argues that overall cost should be the Commission’s highest priority from a broad perspective and, therefore, the length of the line should be given the highest weight of all criteria.¹⁰ While NEET Southwest does not advocate for length to be given the highest weight of all criteria, NEET Southwest agrees that cost is critically important because the costs incurred by transmission developers will ultimately be borne by customers. This is especially important in light of the significant transmission buildout that is needed, as reflected by the Southwest Power Pool’s 2024 Integrated Transmission Planning Assessment Report, which identifies \$7.7 billion in new transmission projects.¹¹

4. In addition to length, another important factor in the cost of a transmission line is the number of heavy-angle structures. Accordingly, in its Initial Post-Workshop Comments,

¹⁰ Post-Workshop Comments of the Citizens’ Utility Ratepayer Board (Nov. 8, 2024), p. 5.

¹¹ SPP’s 2024 Integrated Transmission Planning Assessment Report (Oct. 7, 2024), available at <https://spp.org/documents/72605/2024%20itp%20report%20draft%20v0.6.pdf>

NEET Southwest recommended that, if the Commission establishes a list of standard criteria, it should include “Angles over 30 degrees.”¹²

III. Response to Eastern Kansas Oil & Gas Association and Kansas Independent Oil and Gas Association Comments

5. Eastern Kansas Oil & Gas Association and Kansas Independent Oil and Gas Association (collectively referred to as the “Associations”) filed Comments regarding perceived and hypothetical concerns the oil and gas industry has regarding transmission line siting.¹³ While these Comments offer a welcomed perspective, they rely on some misconceptions about the line siting process and how oil and gas interests have actually been affected to date. Additionally, the potential issues that the Associations flag are so unique and variable in nature that creating a “one-size-fits-all” resolution to those issues would not be prudent or practicable.

A. Historic Impacts to Oil and Gas Interests

6. The Associations’ Comments express general concerns regarding how oil and gas interests may be affected by development of transmission corridors. For example, the Associations explain that if a transmission line were to be sited over an existing well, then the underlying well would not be operable because equipment to serve the well can be up to 140 feet in height.¹⁴ The Associations offer that transmission corridors could also affect oil and gas operators depending “upon the restriction which are imposed upon other activities within the right of way.”¹⁵ Finally,

¹² Initial Post-Workshop Comments of NextEra Energy Transmission Southwest, LLC, p. 7.

¹³ *See generally* Post-Workshop Comments from Intervenors (Nov. 8, 2024) (hereinafter referred to as “the Associations’ Comments”).

¹⁴ The Associations’ Comments at p. 1.

¹⁵ *Id.*

the Associations state that in some circumstances, based on underground reservoir geology, oil and gas operators may not be able to access a reservoir from alternative points, and the placement of a line or pole along the limited entry point could affect the ability of the operator to reach the reservoir.¹⁶

7. While these are important considerations, the Associations' Comments do not put into perspective how often these incidents actually occur. In NEET Southwest's experience, and the experience of its affiliates that have developed significant miles of transmission lines across oil and gas areas, utilities and transmission developers are generally able to address and accommodate oil and gas interests through micro-siting and other coordination with oil and gas developers and mineral rights' holders.

8. NEET Southwest and its affiliates under the NextEra Energy Transmission, LLC ("NEET") umbrella have developed or are in the process of developing over 1,000 miles of transmission lines, many of which cross regions with significant oil and gas activity, including the Lone Star Transmission facilities in Texas, the Minco-Pleasant Valley-Draper and Heartland Spirit Connector Projects in Oklahoma, the Crossroads-Hobbs-Roadrunner Project in New Mexico, and the Wolf Creek-to-Blackberry Project in Kansas and Missouri. Throughout the course of siting, land acquisition, site development, and operation of these Projects, NEET's subsidiaries have been able to accommodate oil and gas interests without incident.

¹⁶ *Id.*

9. Similarly, Sunflower provided good perspective on this issue in its Post-Workshop Comments, noting that its members' territories have a large oil and gas presence, yet Sunflower has not experienced major difficulties in siting electric lines.¹⁷

10. To date, the Commission has received no testimony indicating that the problems the Associations have highlighted are wide-spread, predictable, or represent a serious and pervasive issue in light of existing regulations and policies protecting mineral interest holders. Without clearer definition and evidence from the Associations regarding the types and magnitude of harms that oil and gas operators face, generally applicable standards cannot be drafted.

B. The Associations' Proposed Oil and Gas Protocols Should not be Adopted

11. The oil and gas protocols that the Associations propose do not align with Kansas law on the rights of mineral rights holders and suggest a misunderstanding of the site control process in transmission siting. The Associations' protocols would: have the Commission compel transmission developers to acquire easements from oil and gas stakeholders; provide oil and gas stakeholders access to and control over routing that equals or exceeds that of surface landowners, agencies, and the Commission; and require the addition of petroleum engineers to the long list of experts that applicants and interested parties would have to enlist for Commission proceedings over line siting.

12. The Associations' Comments presume that transmission developers need to acquire easements to the mineral estate—they do not. In practice, utilities acquire easements from the surface estate to place transmission facilities and operate the surrounding right of way. When it acquires that easement interest, it does so subject to any land rights that the landowner has no

¹⁷ Post Workshop Comments of Sunflower Electric Power Corporation in Response to Staff's Report and Recommendation, pp. 2-3.

power to convey. Owners of a severed mineral estate have implied rights to enter the surface estate and to make reasonable use of the land in order to explore and develop the mineral estate.¹⁸ Accordingly, when a utility negotiates an easement with the surface estate owner, it takes its easement subject to the mineral estate owner's rights to use the surface estate.

13. Kansas law provides that when the mineral estate has been severed from the surface estate, the consequence is the creation of two separate, distinct, and independent estates that may be conveyed separately from the other.¹⁹ Surface estate owners do not need permission or separate approval from mineral estate owners when the surface owner conveys an interest in the surface estate.²⁰ Therefore, the conveyance of an interest in the surface estate alone does not displace or affect the mineral rights' holder's interest and does not require their approval.

14. Because utilities generally do not need to acquire an interest in the mineral state, a mandatory protocol for such acquisitions are not necessary. Worse, creating a mandatory system for acquiring easements from mineral estates would inevitably lead to dramatic increases in the cost of transmission.

C. Oil and Gas Interest Holders are not Required to be Noticed

15. The Associations argue that, going forward, mineral estate owners and interest holders should be treated as "landowners of record" and entitled to notice under K.S.A. 66-1,179 and 66-1,178(a)(2). The statutes at issue provide that notice is required for "landowners of record whose land or interest therein *is proposed to be acquired* in connection with the construction of or

¹⁸ *Mai v. Youtsey*, 231 Kan. 419, 424, 646 P.2d 475 (1982).

¹⁹ *Oxy USA, Inc. v. Red Wing Oil, LLC*, 51 Kan. App. 2d 1028, 360 P.3d 457, 461 (2015), aff'd, 309 Kan. 1022, 442 P.3d 504 (2019).

²⁰ *Dick Properties, LLC v. Paul H. Bowman Tr.*, 43 Kan. App. 2d 139, 143, 221 P.3d 618, 621 (2010).

is located within 660 feet of the center line of the easement where the line is proposed to be located.”²¹ As noted above, transmission developers do not acquire mineral interests to develop transmission lines, therefore, only surface landowners of record are necessary parties.

16. This statutory requirement likely ties into constitutional due process rights, so it bears investigating whether, somehow, a mineral estate’s owner’s due process rights are affected by the conveyance of a severed estate. In *McGinty v. Hoosier*, 291 Kan. 224, 239, 239 P.3d 843, 854 (2010), the Kansas Supreme Court confirmed that mineral estate owners do not have due process rights where a transaction would allow the mineral estate owners retain all incidents of ownership and respective interests in the mineral estate. Therefore, there are no due process concerns with declining to extend notice to mineral estate owners.

IV. Response to Kansas Farm Bureau Comments

17. Kansas Farm Bureau (“Farm Bureau”) filed Comments suggesting revisions to Staff’s proposed definitions and listing specific provisions for inclusion in landowner protocols.²² While NEET Southwest appreciates the perspective provided by the Farm Bureau, several of its recommendations are problematic.

A. Farm Bureau’s Proposed Definition Revisions

18. Farm Bureau suggests two revisions to Staff’s proposed definitions. First, Farm Bureau suggests that the term “Rural” be defined to include any area outside of a municipality or outside of non-incorporated areas with similar housing densities to a municipality, with no buffer

²¹ K.S.A. 66-1,178(a)(2) (emphasis added).

²² “Intervenor Kansas Farm Bureau’s Post-Workshop Comments (Nov. 8, 2024) (hereinafter referred to as “Farm Bureau Comments”))

outside of such areas.²³ Staff's definition defines Rural to be areas that are one mile beyond a municipality's borders or one mile beyond a similar non-incorporated area.

19. Staff's one-mile buffer zone is a common-sense inclusion because it would capture the many unincorporated suburban and exurban communities that exist just outside municipal limits and that are fairly considered extensions of a municipality's planning jurisdiction or otherwise nonrural in nature. Application of the criteria contemplated in this docket to these suburban and exurban communities, as Farm Bureau suggests, would severely restrict line siting since the goal of many transmission corridors is to connect to power plants and substations located within these buffer zones.

20. The buffer zone treatment is also in keeping with the State's general policy toward treating areas just beyond a municipality's borders as an extension of the municipality. For planning, zoning, and platting purposes, a Kansas municipality can regulate up to a three-mile area outside of its municipal limits.²⁴ It is therefore justified to include a buffer area here as well.

21. The second definitional revision that Farm Bureau offers is to augment the definition of "Center Pivot Irrigation." The change would, in effect, expand circumstances where a route would be considered less viable due to proximity to center pivot irrigation equipment without clear justification. Presently, the definition requires routes to be compared based on the area, within the right-of-way, where a center pivot irrigation system would be impacted. Farm Bureau advocates to expand the definition to areas inside and outside the right-of-way.

²³ Farm Bureau Comments at 1.

²⁴ *City of Salina v. Jagers*, 228 Kan. 155, 159, 612 P.2d 618, 621 (1980)

22. It is unclear how center pivot irrigation facilities could be impacted when located outside of the right-of-way. To the extent that a particular irrigation system outside of a right-of-way would be affected, it would be a unique scenario that would be better addressed in a specific line siting docket.

B. Many of the Proposed Landowner Protocols are Enforced by Other Agencies

23. As discussed below and in NEET Southwest's Initial Post-Workshop Comments, the Commission should not dictate the specific contents of protocols. While some of Farm Bureau's suggestions for items to include in protocols are well-taken, they must only be considered suggestions. On the other hand, some of Farm Bureau's suggestions are duplicative of or contradictory to already existing regulations and code requirements and would intrude upon the jurisdiction of other state and federal agencies.

24. For example, the Commission cannot regulate the amount of compensation offered to landowners or the methods by which compensation is provided. Fair compensation for land is highly specific and based on unique nature of the land's value and the specific easement required. Where negotiations stall, the courts retain exclusive authority over determining appropriate compensation for landowners. The Commission has no clear statutory authority to intrude on that process.

25. Protocols should not establish explicit setbacks from residential and agricultural structures, as Farm Bureau suggests. Farm Bureau offers vaguely that setbacks be established "based on scientifically-proven health and safety information."²⁵ As the Commission is well aware, no parties to this docket have presented any scientifically-proven health and safety

²⁵ Farm Bureau Comments at 7.

information justifying setbacks and the Commission has never, in any prior proceeding, found that health and safety evidence supports mandatory setbacks.²⁶

26. There is also no need for protocols that are duplicative or contradictory to the NESC. These include requested methods to determine line height and design and safety measures relating to construction and operation near improvements, among other issues.

C. The Commission Should not Adopt Protocols that Require the Commission to Approve or Enforce Landowner Protocols

27. As noted in NEET Southwest’s Initial Post-Workshop Comments, the Commission can and should consider whether any filed protocols are reasonable and evaluate protocols as expressions of a utility’s “managerial and technical resources and capabilities.”²⁷ However, the Commission should not adopt a policy where it becomes a clearinghouse for approving and enforcing such protocols.

28. The Commission’s statutory jurisdiction is over “the necessity for and the reasonableness of the location of the proposed electric transmission line.”²⁸ It is not clear that the Legislature has granted the Commission the authority to create or enforce rules regarding the conduct of utilities in negotiating and contracting with third parties. While the Commission has jurisdiction over rates, rules, and regulations of public utilities,²⁹ absent abuse of discretion, the Commission has no authority to substitute its judgment for the utility’s in the general management

²⁶ See Reply Comments of NextEra Energy Transmission Southwest, LLC (Oct. 4, 2024) at ¶¶ 15-22.

²⁷ See Initial Post-Workshop Comments of NextEra Energy Transmission Southwest, LLC (Nov. 8, 2024) at ¶¶ 20-24.

²⁸ K.S.A. 66-1,180.

²⁹ K.S.A. 66-101e.

of the utility or in non-regulated contracting.³⁰ Further, while the Commission has jurisdiction over rates, charges, rules, and regulations relating to *retail electric service* to customers, that jurisdiction is not extended more generally to all contractual relationships between utilities and third parties, like parties to land acquisition.³¹

29. Finally, the concept of landowner protocols does not appear to be within the scope of the Commission’s investigation in this docket. In the Commission’s Order Adopting Staff’s Recommended Scope and Establishing Procedural Schedule, the Commission adopted Staff’s recommendations which focus “solely on establishing guidelines on land use parameters and construction practices that should be considered *in determining the reasonableness of the route.*” Landowner protocols go beyond the determination of the reasonableness of the route and impact landowner interactions during the land acquisition, construction, and maintenance phases.

30. In any event, the Commission should not rush into a requirement regarding protocols, when the concept of protocols was not recommended by Staff until its proposal circulated to the parties on October 31, 2024 and filed with the Commission on November 4, 2024. The legal and practical implications of imposing a protocols requirement in all line siting cases should be carefully considered.

V. Response to Evergy’s Recommendations

31. Evergy filed comments recommending a routing principle that reads “Maximize the length along or co-location of the transmission line with existing transmission line facilities.”³²

³⁰ *Southwestern Bell Telephone Co. v. Public Service Commission of Missouri*, 262 U.S. 276, 289 (1923).

³¹ K.S.A. 66-101b and K.S.A. 66-101c.

³² Evergy Comments in Response to Staff’s Strawman Proposal, pp. 2-3.

Evergy suggests that such a routing principle would enable utilities to “work with SPP to right-size transmission line projects.”³³ However, right sizing projects is a transmission planning principle that takes place at the Southwest Power Pool. In fact, Federal Energy Regulatory Commission (“FERC”) Order No. 1920, which was recently issued by FERC, requires transmission providers to assess if existing transmission facilities can be right sized. Accordingly, this Commission does not need to establish a routing principle to encourage right sizing. Similarly, co-location is a transmission planning principle, not a routing principle, so the Commission should decline to adopt Evergy’s recommendation to include it as a routing principle. Instead, Evergy and other stakeholders should work within the SPP transmission planning process to determine which projects are suitable for co-location, where reliability and resiliency issues can also be accounted for.

VI. Conclusion

WHEREFORE, NEET Southwest respectfully requests the Commission accept these Reply Comments.

Respectfully submitted,

/s/ Andrew O. Schulte

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³³ *Id.* at p. 3.

VERIFICATION

I, Andrew O. Schulte, do solemnly, sincerely and truly declare and affirm that I am counsel to NextEra Energy Transmission Southwest, LLC, that I have read the foregoing Response and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief, and this I do under the pains and penalties of perjury.

By: /s/ Andrew O. Schulte
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November 22, 2024

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above Entries of Appearance was electronically served this 22nd day of November 2024 to:

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