

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

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

NOTICE OF FILING OF STAFF REPORT AND RECOMMENDATION

COMES NOW the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission”, respectively), and for its Notice of Filing of Staff Report and Recommendation states as follows:

Staff hereby files the attached Staff Report and Recommendation jointly prepared by Christine Aarnes and Jeff McClanahan, the Commission’s Chief of Telecommunications and Director of Utilities, respectively. Staff’s Report and Recommendation is filed in response to the Application of the City of Chanute, Kansas, filed in the above-captioned docket on October 21, 2014, requesting Commission approval to issue revenue bonds to finance a planned expansion of the city’s fiber-optic network. The City of Chanute’s Application was filed pursuant to K.S.A. 10-1203, which requires that a municipality obtain approval from the Commission when issuing revenue bonds to finance certain utility services. Staff recommends the Commission approve the City of Chanute’s request.

WHEREFORE, Staff requests the Commission consider its Report and Recommendation recommending approval of the City of Chanute's request and grant such other and further relief as the Commission deems just and proper.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Otto A. Newton", is written over a horizontal line.

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For the Commission Staff

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: December 3, 2014

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

EXECUTIVE SUMMARY:

On October 21, 2014, the City of Chanute (Chanute) filed a request for approval to issue revenue bonds to finance the planned expansion of its fiber-optic network, as required pursuant to K.S.A. 10-1203. Staff recommends approval of the request.

BACKGROUND:

Chanute currently owns and operates a fiber optic network serving customers within Chanute's boundaries and three miles thereof. Chanute plans to expand its existing fiber network to support advanced metering infrastructure, sometimes referred to as SmartGrid, and to provide broadband Internet services to all of the businesses and residents in its utility service area. Chanute may provide voice and video services over the infrastructure or may contract with third-party providers. Chanute may use revenue bonds to finance some or all of this expansion and has requested Commission approval to issue the revenue bonds.¹

The Commission derives its authority to approve or deny requests to issue revenue bonds in K.S.A. 10-1203. K.S.A. 10-1203 reads as follows:

10-1203. Duplication of existing utility services; approval and finding by corporation commission. No municipality, as herein defined, shall

¹ Application, ¶¶ 1-2.

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.

Therefore, Chanute is requesting the Commission make a determination that:

1. The expansion of Chanute's facilities, as contemplated, is necessary or 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.

ANALYSIS:

K.S.A. 10-1203 was originally enacted in 1947 and is limited to the issuance of revenue bonds. If Chanute were to finance the planned expansion of its fiber-optic network using other revenue sources, Commission approval would not be necessary but, given that it plans to do so utilizing revenue bonds, Commission approval is necessary. Therefore, the Commission must review the request and determine whether the statutory criteria have been met.

- (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?

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 and allows Chanute to provide ultra-high speed broadband Internet access to community anchor institutions and some community business partners.² Chanute did not seek Commission approval for its current fiber optic network infrastructure; therefore, Staff assumes Chanute financed its current infrastructure through a means other than revenue bonds.

The investment planned for Chanute's system will allow Chanute to provide enhanced, higher quality services to its existing customers and to expand the provisioning of its

² Application, ¶ 1.

services to additional citizens located within its boundary or within three miles thereof. Chanute submits 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.³

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 advanced metering infrastructure (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 boundary. 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 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. 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.⁴

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, Chanute is protecting its current investment. Staff therefore believes the expansion plans as contemplated are appropriate for the municipality and its consumers, and for the protection of its investors.

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

When the statute was enacted in 1947, 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 telecommunications services that are comparable in urban and rural areas throughout the state.⁵ In addition, both state and federal statutes require local exchange carriers to: (1) interconnect directly or indirectly with the facilities and equipment of

³ Application, ¶ 5.

⁴ Application, ¶¶ 6-8.

⁵ K.S.A. 66-2001(b) and (c).

other telecommunications carriers; (2) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services; (3) provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission; (4) provide dialing parity to competing providers of telephone exchange service and telephone toll service; and (5) permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.⁶

According to Chanute, duplication of facilities in the telecommunications industry is no longer a concern of regulators and legislators. With the implementation of the Kansas Telecommunications Act of 1996 and Federal Telecommunications Act of 1996, policymakers have encouraged competition and investment to build new facilities to compete with the incumbent providers. Chanute argues that K.S.A. 10-1203 fails to reflect these changes in the telecommunications marketplace, making the statute outdated and irrelevant.⁷

Staff agrees with Chanute in that K.S.A. 10-1203 does not harmonize with current state and federal statutes. K.S.A. 10-1203, however, remains current law in Kansas; therefore, the Commission must review the Application in accordance with the existing statute.

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. According to Merriam-Webster Dictionary, 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.⁸ Essentially, the Commission must determine whether the proposed utility services are identical or the same as an existing utility.

Chanute submits that there are other telecommunications providers in the Chanute area, and the City of Chanute itself is already a provider of service. Southwestern Bell Telephone Company d/b/a AT&T (AT&T) is the incumbent local exchange provider and Cable One, Inc. (Cable One) is the incumbent cable TV operator. Chanute contends neither provider offers the level of service throughout Chanute’s utility service area that Chanute will be able to offer its citizens as a result of the investment planned for Chanute’s network. As a result, Chanute contends there will not be a duplication of existing services.⁹

Staff agrees that numerous telecommunications carriers provide local telecommunications services in the Chanute exchange area. According to the Local Service Provider database maintained by the Commission, there are sixteen competitive local exchange carriers (CLECs) and AT&T in the Chanute exchange.¹⁰ In addition to

⁶ K.S.A. 66-2003 and 47 U.S.C. 54 § 251 and 252.

⁷ Application, ¶¶ 9-10.

⁸ “Duplicate.” Merriam-Webster.com, Merriam-Webster, n.d. Web. 2 Dec. 2014. <<http://www.merriam-webster.com/dictionary/duplicate>>.

⁹ Application, ¶ 11.

¹⁰ 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

the sixteen CLECs and AT&T, Voice over Internet Providers, which are not required to be certificated by the Commission¹¹, may also provide telecommunications services in the Chanute exchange.

Although many providers provide telecommunications services in the Chanute area, there are less providers that provide broadband services and, in particular, the caliber of broadband services proposed by Chanute for the citizens of Chanute. 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.¹²

The Kansas Statewide Broadband Map Initiative website indicates the data is current as of June 30, 2013. In order to ensure the broadband data provided is accurate and current, Staff sent discovery requests to AT&T and Cable One. The discovery requests asked 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. A map of Chanute's Utility Service area (Exhibit A to the Application) was attached to the discovery requests.

AT&T responded that it does not have facilities to provide Gigabit connectivity to customers in AT&T's Chanute Local Exchange area. At this time, 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. 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.¹³

Cable One responded that it offers service to 100% of residential and business customers within the City of Chanute. Cable One indicates it does not have the facilities on the ground today to provide Gigabit connectivity to all of its customers; however, it states it has the capability of providing customized or dedicated multiple location Gigabit service to customers requesting such service. Cable One further indicates 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; and (3)

exchange. See: <http://estar.kcc.ks.gov/estar/portal/kcc/page/ServiceProvidersSearch/portal.aspx>, website last visited December 2, 2014.

¹¹ K.S.A. 66-2017.

¹² 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.

¹³ The Chanute Local Exchange Area is the area that AT&T, as the incumbent telecommunications provider, has been certificated to operate within. The Utility Service Area for Chanute is illustrated on Exhibit A to the Application.

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.

Neither AT&T nor Cable One furnish or are currently able to furnish Gigabit connectivity to all of the City of Chanute and three miles thereof, as proposed by the City of Chanute. 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 the customers located *within* the City of Chanute.

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, therefore, concludes that Chanute's expansion plans will not result in the duplication of existing utility services in the area to be served by Chanute.

RECOMMENDATION:

Staff recommends the Commission approve the request of Chanute and make a determination 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.

CERTIFICATE OF SERVICE

15-CHNE-175-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was served by electronic service on this 3rd day of December, 2014, to the following:

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