

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

In the Matter of the Application of Evergy)
Kansas Central, Inc. for a Certificate of Public)
Convenience and Authority to Transact the)
Business of an Electric Public Utility defined as) Docket No. 20-EKCE-326-COC
the Marshall County Transmission Line Project)
WR#M100924491 in Marshall County,)
Kansas.)

ORDER APPROVING TRANSMISSION RIGHTS ONLY
CERTIFICATE OF CONVENIENCE AND NECESSITY

The above-captioned matter comes before the State Corporation Commission (“Commission”) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings and conclusions.

1. On January 28, 2020, Evergy Kansas Central (“Evergy”) filed an Application requesting a Certificate for Transmission Rights Only (TRO) through a portion of the certified territory of Nemaha-Marshall Electric Cooperative, Assn. Inc. (Nemaha-Marshall), specifically, beginning in the SW ¼ of the SW ¼ Section 19, at point B, thence east along the south side of SW ¼ of Section 19, in T-04-S, R09-E.¹

2. Commission Staff (“Staff”) submitted a Report and Recommendation regarding the proposed TRO Certificate on May 12, 2020.² A copy of Staff’s Report and Recommendation is attached hereto and incorporated into this Order by reference. Staff recommended the Commission approve Evergy’s requested TRO Certificate.³

¹ Evergy Kansas Central, Inc. Application, Docket No. 20-EKCE-326-COC (Jan. 28, 2020).

² Staff Report and Recommendation, Docket No. 20-EKCE-326-COC (May 12, 2020).

³ *Id.*

I. JURISDICTION

3. K.S.A. 66-131 requires public utilities⁴ doing business in the state obtain a certificate of convenience and necessity from the Commission prior to commencing operations.⁵ The legal standard for the Commission to apply in certificate proceedings is whether “public convenience and necessity will be promoted.”⁶

4. “Public convenience means the convenience of the public, not the convenience of particular individuals.”⁷ “Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word ‘necessity’ means a public need without which the public is inconvenienced to the extent of being handicapped.”⁸ A showing of absolute necessity is not required to support the granting of a certificate.⁹ Evaluating public convenience and necessity, or lack thereof, is best established by proof of conditions existing in the territory to be served,¹⁰ and the Commission may draw its own conclusions regarding these conditions.¹¹

5. The Kansas Retail Electric Suppliers Act (RESA), codified at K.S.A. 66-1,170 through K.S.A. 66-1,176c, divided the state into service territories for retail electric suppliers.¹² In addition to outlining policy considerations,¹³ RESA: (1) permits only one retail electric supplier

⁴ K.S.A. 66-104(a) defines “public utility” in relevant part as “all companies for the production, transmission, delivery or furnishing of heat, light, water or power.”

⁵ “No... public utility...governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state.” K.S.A. 66-131(a). *See also* *Kansas Gas & Elec., v. Pub. Serv. Comm’n of Kansas*, 251 P. 1097, 1099 (1927); *Wycoff v. Quick Way Homes, Inc.*, 201 Kan. 442, 446 441 P.2d 886, 890 (1968).

⁶ *See* K.S.A. 66-131(a). *See also* *Cent. Kansas Power Co. v. State Corp. Comm’n*, 206 Kan. 670, 676, 482 P.2d 1, 7 (1971).

⁷ *Cent. Kansas Power Co.*, 206 Kan. At 676, 482 P.2d at 7.

⁸ *Id.* (internal quotations retained); *See also* *General Communications System, Inc. v. State Corporations Commission*, 216 Kan. 410, 415-418 (1975).

⁹ *See* *Cent. Kansas Power Co.*, 206 Kan. at 676, 482 P.2d at 7.

¹⁰ *See* *Cent. Kansas Power Co.*, 206 Kan. at 676, 482 P.2d at 7.

¹¹ *See id.*

¹² K.S.A. 66-1,171.

¹³ *Id.*

to provide retail electric service within a particular service territory,¹⁴ and (2) allows retail electric suppliers to revise customer-specific and service-territory boundaries with Commission approval.¹⁵

6. Provided the Commission agrees, RESA also allows a retail electric supplier to extend distribution or transmission facilities through another retail electric supplier's service territory if the extension is needed to serve the former retail electric supplier's customer located within its own service territory.¹⁶ When this occurs, a retail electric supplier requests a TRO Certificate from the Commission so the supplier may traverse the service territory of another on condition they do not provide retail electric service.

II. DISCUSSION

7. Evergy's Application proposes to remove an old 34.5kV Transmission line, three-phase overhead and single-phase overhead primary, and install a new 34.5kV overhead Transmission line with a three-phase overhead primary, south of the City of Frankfort, in Marshall County.¹⁷

8. Over the past five years, the 34.5kV transmission line at question has sustained 15 outages greater than six minutes and 20 momentary outages.¹⁸ The number of customers affected varies from 380 to 620 per each sustained outage.

9. Staff has reviewed and verified the legal description of the line construction project.¹⁹ Staff confirmed the legal description attached to the Report is not in conflict with the

¹⁴ K.S.A. 66-1,172; K.S.A. 66-1,173.

¹⁵ K.S.A. 66-1,172; K.S.A. 66-1,175.

¹⁶ K.S.A. 66-1,173(a).

¹⁷ Evergy Application, Beginning in the SW 1/4 of the SW 1/4 of Section 19, at point B, thence east along the south side of SW 1/4 of Section 19, in T-04-S, R09-E.

¹⁸ Staff R&R at 2.

¹⁹ *Id.* at 2

Commission's Certificate records.²⁰ Staff recommends Evergy's Application for TRO Certificate be granted.²¹

III. FINDINGS AND CONCLUSIONS

10. The Commission finds approval of Evergy's TRO Certificate request promotes the public convenience and necessity and should therefore be approved.

11. The Commission finds approval of Evergy's Application and requested TRO Certificate is: (1) in the public interest, (2) promotes the public convenience and necessity, and (3) is permitted by the Commission's jurisdictional, certification, and RESA statutes.

12. The Commission adopts the recommendation of Staff as contained within Staff's May 12, 2020 Report and Recommendation, which as discussed above is attached to this Order and incorporated herein by reference. The Commission finds Evergy should be granted a TRO Certificate for the legal description contained in the Application and as restated in Attachment A to Staff's May 12, 2020, Report and Recommendation.

THEREFORE THE COMMISSION ORDERS:

A. Evergy Kansas Central's Application for Transmission Rights Only Certificate filed January 28, 2020, is hereby granted.

B. Evergy Kansas Central is hereby granted a TRO Certificate for the legal description contained within Staff's May 12, 2020 Report and Recommendation, specifically:

Beginning in the SW 1/4 of the SW 1/4 of Section 19, at point B, thence east along the south side of SW 1/4 of Section 19, in T-04-S, R09-E.

²⁰ *Id.*

²¹ *Id.*

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established in K.S.A. 77-529(a)(1).²²

D. The Commission retains jurisdiction over the subject matter and parties for the purposed of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 05/21/2020 _____



Lynn M. Retz
Executive Director

cab

²² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

Susan K. Duffy, Chair
Shari Feist Albrecht, Commissioner
Dwight D. Keen, Commissioner

Laura Kelly, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

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

DATE: May 12, 2020

SUBJECT: 20-EKCE-326-COC
In the Matter of the Application of Evergy Kansas Central, Inc. for a Certificate of Public Convenience and Authority to Transact the Business of an Electric Public Utility defined as the Marshall County Transmission Line Project WR#M100924491 in Marshall County, Kansas.

EXECUTIVE SUMMARY:

In Docket 20-EKCE-326-COC, Evergy Kansas Central (Evergy) requests a Certificate for Transmission Rights Only (TRO) to remove and replace a 34.5kV Transmission Line in Marshall County, Kansas.¹

BACKGROUND:

On January 28, 2020, Evergy filed the above-captioned Application requesting a Certificate for TRO through a portion of the certified territory of Nemaha-Marshall Electric Cooperative, Assn. Inc. (Nemaha-Marshall). Evergy proposes to remove an old 34.5kV Transmission line, three-phase overhead and single-phase overhead primary, and install a new 34.5kV overhead Transmission line with a three-phase overhead primary, south of the City of Frankfort, in Marshall County.

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. If a retail electric supplier receives Commission approval, RESA allows it to extend distribution or transmission facilities through the territory of another supplier provided

¹ EL 39712.

the supplier building through the territory only uses the proposed line to serve its own certificated customers.²

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.³

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.⁴

ANALYSIS:

Through a Data Request (DR), Evergy provided an ESRI shapefile detailing the line construction of the project. Staff has also reviewed Evergy's Application and has confirmed the legal description included in the Application is accurately depicted on the map attached to the Application. Staff also confirmed the legal description is not in conflict with the Commission's Certificate records. The legal description is included as Attachment A to this Report and Recommendation.

Evergy provided answers to DRs which focused on outages over the past 5 years. Evergy concluded that there were 15 sustained outages greater than 6 minutes on the 34.5kV line in the past 5 years. There were also 20 momentary outages. During an outage of this circuit, depending on the switching configuration at the time of the outage, the number of customers affected varied. The customer count per each sustained outage during the past five years was between 380 and 620, respectively.

In the EL Application, Evergy provided an itemized cost sheet for this project with a total of \$1,968,688.32.

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

The Commission action date is July 26, 2020.

RECOMMENDATION:

Staff is recommending Evergy's Application for Certificate in 20-EKCE-326-COC be granted for Transmission Rights Only.

² K.S.A. 66-1,173.

³ K.S.A. 66-131.

⁴ K.S.A. 66-131.

ATTACHMENT A
Legal Description of Proposed Transmission Line Route
20-EKCE-326-COC

MARSHALL COUNTY, KANSAS

TRANSMISSION RIGHTS ONLY:

Beginning in the SW 1/4 of the SW 1/4 of Section 19, at point B, thence east along the south side of SW 1/4 of Section 19, in T-04-S, R09-E.

CERTIFICATE OF SERVICE

20-EKCE-326-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 05/21/2020.

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/S/ DeeAnn Shupe

DeeAnn Shupe