

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

Before the Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the Matter of the Application of NextEra)
Energy Transmission Southwest, LLC for a)
Certificate of Public Convenience and) Docket No. 22-NETE-419-COC
Necessity to Transact the Business of a Public)
Utility in the State of Kansas.)

**ORDER ON PETITION FOR RECONSIDERATION AND PETITIONS FOR
INTERVENTION**

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”). Having examined its pleadings and records, the Commission finds and concludes as follows:

1. On February 28, 2022, NextEra Energy Transmission Southwest, LLC (“NEET Southwest”) filed an application pursuant to K.S.A. 66-131 and other applicable statutes requesting the Commission grant NEET Southwest a certificate of convenience and necessity (“CCN”) pursuant to K.S.A. 66-131 to operate as a public utility in Kansas for the purpose of constructing and operating the Wolf Creek to Blackberry Project (“Transmission Project”) as described in its Application.

Petition for Reconsideration

2. On April 28, 2022, the Commission issued an Order granting intervention to KIC subject to limitations, specifically the Commission stated “KIC describes its members and their

interests in this proceeding as retail ratepayer. KIC is granted limited intervention on that basis and within that scope.”¹

3. On May 12, 2022, KIC filed a Petition for Reconsideration. KIC argues that the Commission’s limitation does not provide detail as to how KIC can participate.²

4. On May 23, 2022, NEET Southwest filed a Response to KIC’s Petition for Reconsideration. NEET Southwest interprets the Commission’s April 28, 2022 Order to mean that KIC should participate regarding the need for the Transmission Project as well as its effect on retail rates.³

Interventions

5. On May 2, 2022 Renew Kansas Biofuels Association (“RKBA”), Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association (collectively “the associations”) filed a Petition to Intervene. RKBA is a trade association of the Kansas biofuels processing industry.⁴ The Kansas Grain and Feed Association is a voluntary association with membership encompassing the entire spectrum of the grain receiving storage, processing and shipping industry in Kansas.⁵ The Kansas Agribusiness Retailers Association is a volunteer organization whose membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers.⁶

¹ Order Granting KIC’s Petition to Intervene, pg. 6 (April 28, 2022). For purposes of this Order, “KIC” means collectively Spirit Aerosystems, Occidental Chemical Corporation, The Goodyear Tire and Rubber Company, Associated Purchasing Services, The Kansas Industrial Consumers Group, Inc. and the Lawrence Paper Company.

² Petition for Reconsideration of the Commission’s Order Granting KIC’s Petition to Intervene, pg. 4 (May 12, 2022).

³ NextEra Energy Transmission Southwest, LLC’s Response to KIC’s Petition for Reconsideration of the Commission’s Order Granting KIC’s Petition to Intervene, pgs. 2-3 (May 23, 2022).

⁴ Petition to Intervene of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, and Kansas Agribusiness Retailer Association, pg. 2 (May 2, 2022).

⁵ *Id.*

⁶ *Id.*

6. On May 5, 2022 AGCO Corporation (“AGCO”) filed a Petition to Intervene. AGCO manufactures agricultural equipment in Hesston Kansas. AGOCO claims an interest in the matter because it relies on the electric system on a daily basis and the costs associated with the Transmission Project directly related to AGCO’s costs and its ability to effectively compete in domestic and international markets.⁷

7. On May 6, 2022, Big Heart Pet Brands (“BHPB”) filed a Petition to Intervene. BHPB manufactures, distributes and markets pet food and other products for the U.S. retail market.⁸ BHPB’s stated interests are nearly identical to those of AGCO.⁹

8. On May 11, 2022, NEET Southwest filed a response to all of the above Petitions to Intervene. NEET Southwest requested that the petitions of AGCO and BHPB be granted subject to the limitations placed on KIC in the Commission’s April 28, 2022 Order.¹⁰ Additionally NEET Southwest requested that AGCO, BHPB and KIC be required to combine their presentation of evidence and argument, cross-examination, discovery and other participation in the proceeding in accordance with K.A.R. 82-1-225(c)(3).¹¹

9. NEET Southwest argues that the associations’ petitions are lacking because they do not identify or claim that any of their members are retail electric customers of any of the Evergy operating divisions.¹²

10. NEET Southwest requested that the petitions to intervene of RKBA, Kansas Grain and Feed Association and Kansas Agribusiness Retailers Association be denied unless and until

⁷ Petition to Intervene of AGCO Corporation, pg. 2 (May 5, 2020).

⁸ Petition to Intervene of Big heart Pet Brands, pg. 1 (May 6, 2020).

⁹ *Compare with* Petition to Intervene of AGCO Corporation, pg. 2 (May 5, 2020).

¹⁰ NextEra Energy Transmission SW, LLC’s Response to the Petitions to Intervene of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Heart Pet Brands, pg. 2 (May 11, 2022).

¹¹ *Id.*

¹² *Id.* at 4.

each identifies their membership in accordance with K.A.R. 82-1-204(i)(2).¹³ K.A.R. 82-1-204(i)(2) states that “No unincorporated association shall obtain party status in a proceeding without identifying its membership.” In a footnote NEET Southwest concedes that “[o]f the three Associations, only RKB[A] is unincorporated and therefore subject to K.A.R. 82-1-204(i)(2).”¹⁴ However as NEET Southwest illustrates, the Commission has found in previous dockets that it has an interest in the explicit identification of the interests represented by each intervening party, and therefore had rationale for requiring even incorporated associations to identify their membership.¹⁵

11. On May 23, 2022, the intervenors filed a reply to NEET Southwest.¹⁶ Intervenors claim they all have an interest because they will all pay increased retail electric rates.¹⁷ Intervenors state that the Commission has previously allowed the intervention of groups such as the Catholic Archdiocese of Kansas City, the Great Plains Alliance for Clean Energy and the Sierra Club without requiring them to identify membership and that the associations should be treated similarly.¹⁸

12. The Commission first notes that based on a search of the records found at the Kansas Office of the Secretary of State, RKBA appears to be incorporated and doing business under the name “Renew Kansas Association,” business entity number 6009708. If true this would obviate the need for RKBA to disclose membership under K.A.R. 82-1-204(i)(2). Additionally,

¹³ NextEra Energy Transmission SW, LLC’s Response to the Petitions to Intervene of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Heart Pet Brands, pg. 2 (May 11, 2022). Both Intervenors and NEET Southwest occasionally refer to “RKBK” based on context of the filings it is clear that this was a typographical error that should read “RKBA.”

¹⁴ NextEra Energy Transmission SW, LLC’s Response to the Petitions to Intervene of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Heart Pet Brands, pg. 3, fn. 5 (May 11, 2022).

¹⁵ See, Docket No. 05-WSEE-981-RTS, Order Denying Petition to Intervene and Order Granting Petition to Intervene, pgs. 2-3 (May 20, 2005).

¹⁶ “Intervenors” refers collectively to Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Heart Pet Brands.

¹⁷ Reply of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation and Big Heart Pet Brands to NextEra’s Response, pg. 2 (May 23, 2020).

¹⁸ *Id.* at 3.

RKBA's membership list seems to be available at least in part on their website.¹⁹ Neither party notified the Commission of this information.

13. While the Commission has in the past expressed an interest in the membership of incorporated organizations, such an interest has not been expressed here. It would be unreasonable to deny intervention to a party because it did not make a disclosure that was neither requested nor required.

14. NEET Southwest requests that AGCO and BHPB be subject to the same limitations placed upon KIC but fails to articulate why. Nor does NEET Southwest articulate why intervening parties should prove membership within Evergy's service territory in order to intervene.

15. The Commission has broad discretion to grant a petition for intervention if it is in the interest of justice, if the intervention allows for the orderly and prompt conduct of the proceedings to continue unimpaired, and if the party seeking intervention has factually demonstrated that its legal rights, duties and privileges, immunities or other legal interests may be substantially affected by the proceeding.

16. The Commission finds that the Intervenors have demonstrated an interest in this proceeding and meet the above requirements to intervene in this proceeding. Therefore, pursuant to K.S.A. 77-521 the Commission grants the Intervenors Petitions for Intervention.

17. RKBA, Kansas Grain and Feed Association, Kansas Agribusiness Retailers Association, AGCO and BHPB will be added to the official service list.

Discussion

18. The Commission notes that the following entities and applicants are all represented by Smithyman & Zakoura, Chartered: Spirit Aerosystems, Occidental Chemical Corporation, The

¹⁹ <https://renewkansas.com/get-involved/>.

Goodyear Tire and Rubber Company, Associated Purchasing Services, The Kansas Industrial Consumers Group, the Lawrence Paper Company, Renew Kansas Biofuels Association, Kansas Grain and Feed Association, the Kansas Agribusiness Retailers Association, AGCO and BHPB.

19. Thus far, thirteen separate requests for intervention have been filed in this matter, five of which are represented by Smithyman & Zakoura. These intervenors all share an interest in the effect of the Transmission Project on Kansas rates and have interests that are similar enough to be represented by the same firm. Given the amount of intervenors in this matter, the Commission finds that the prompt and orderly conduct of the proceedings will be best served if Spirit Aerosystems, Occidental Chemical Corporation, The Goodyear Tire and Rubber Company, Associated Purchasing Services, The Kansas Industrial Consumers Group, the Lawrence Paper Company, Renew Kansas Biofuels Association, Kansas Grain and Feed Association, the Kansas Agribusiness Retailers Association, AGCO and BHPB combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings under K.A.R. 82-1-225(c)(3).²⁰

20. Because the Commission has determined that BHPB, AGCO, Renew Kansas Biofuels Association, Kansas Grain and Feed Association, and Kansas Agribusiness Retailers Association should be granted full intervention, it no longer makes logical sense to limit KIC's intervention since they are represented by the same firm.

21. While the Commission originally only chose to limit KIC's intervention in this matter, all parties remain bound by the Commission's April 21, 2022 Protective and Discovery

²⁰ The May 23, 2022 Reply was filed by the intervenors suggesting they are amenable to combination.

Order. Paragraph 33 of that Order provides guidance for how the Commission will determine what matters are relevant, and all parties may wish to refer to that standard in the upcoming hearing.²¹

22. As noted above, the Commission herein reverses the limitation on KIC's intervention, granting it full rights of participation. The Commission continues to believe the prompt and orderly conduct of the proceeding is best served when each party appropriately limits its participation to the matters in which it has a concrete interest and standing to represent a claim. That said, the Commission acknowledges an express limitation on intervention rights is a somewhat indelicate method of enforcing this implicit principle of administrative process. Therefore, the Commission finds KIC shall be granted full rights of intervention.

THEREFORE, THE COMMISSION ORDERS:

- A. KIC's Petition for Reconsideration is granted, KIC is granted full intervention.
- B. The Petitions to Intervene of Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO and BHPB are granted subject to the requirements below.
- C. Spirit Aerosystems, Occidental Chemical Corporation, The Goodyear Tire and Rubber Company, Associated Purchasing Services, the Kansas Industrial Consumers Group, Inc., the Lawrence Paper Company, Renew Kansas Biofuels, Kansas Grain and Feed Association, the Kansas Agribusiness Retailers Association, AGCO, and BHPB shall combine their presentations pursuant to K.A.R. 82-1-225(c)(3).

²¹ See, *Kansas Med. Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 620 (2010) "The scope of relevancy in discovery is broader than the scope of relevancy at trial."

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner (No)

Dated: 06/02/2022



Lynn M. Retz
Executive Director

DGC

CERTIFICATE OF SERVICE

22-NETE-419-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 06/02/2022.

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