

**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 GRANTING KIC'S PETITION TO INTERVENE

This matter comes before the Commission for consideration and decision. Having reviewed the record, the Commission makes the following findings and conclusions.

I. Background

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

2. On March 28, 2022, Spirit Aerosystems, Occidental Chemical Corporation, The Goodyear Tire and Rubber Company, Associated Purchasing Services Corporation, and the Kansas Industrial Consumers Group, Inc. ("Collectively KIC") filed a petition to intervene. KIC is comprised of and represents several retail electric customers in Kansas.¹

3. KIC raises a myriad of concerns with NEET Southwest's application which can be broken down into four general categories: (1) eminent domain, (2) project cost, (3) project

¹ Application for Intervention of Spirit Aerosystems (Spirit), Occidental Chemical Corporation (Oxy Chem), The Goodyear Tire and Rubber Company (Goodyear), Associated Purchasing Services Corporation (APS), and The Kansas Industrial Consumers Group, Inc. (KIC), pg. 2 (March 28, 2022).

necessity and (4) regionally competitive rates.² KIC argues that its members have a direct financial interest in project costs.³ The cost of the project will be recovered through transmission charges which already make up approximately 20% of KIC member's electric costs.⁴ KIC argues that the Commission cannot approve NEET Southwest's application unless NEET Southwest demonstrates that the project is necessary, that intervenors will receive material savings/reductions in their electric rates and that the project will move electric rates toward more regionally competitive levels.⁵

4. On April 1, 2022, the Lawrence Paper Company filed an application for Intervention. Lawrence Paper Company claims that as a direct retail electric customer it has a direct financial interest in this Docket and reiterated the majority of KIC's March 28, 2022, petition to intervene.⁶ Lawrence Paper Company stated that if granted intervention, it would participate through KIC.⁷ Subsequent filings from KIC included Lawrence Paper Company in the list of companies it represented.⁸

5. On April 4, 2022, NEET Southwest responded to KIC's application for intervention. NEET Southwest argues that KIC has not met the standards to qualify for intervention required by K.S.A. 77-521 and K.A.R. 82-1-225.⁹ Under that statute and regulation, intervention requires a finding that "the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding ...and, the interests of justice and the

² *Id.* at 1-6.

³ *Id.* at 3.

⁴ *Id.* at 5.

⁵ *Id.* at 5-6.

⁶ Application for Intervention of Lawrence Paper Company, pg. 1 (April 1, 2022).

⁷ *Id.*

⁸ Further references to KIC include Lawrence Paper Company.

⁹ NextEra Energy Transmission Southwest, LLC's Response to the Applications for intervention of Spirit Aerosystems, Occidental Chemical Corporation, the Goodyear Tire and Rubber Company, Associated Purchasing Services Corporation, the Kansas Industrial Consumers Group and Lawrence Paper Company, pg. 2 (April 4, 2022).

orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.” NEET Southwest cites Docket 13-WSEE-629-RTS where the Prehearing Officer (citing the Commission’s Order in Docket 13-MKEE-447-MIS) noted “in proceedings with multiple parties asserting an attenuated or speculative nexus about the possible impact of a Commission decision on their interests can impair the orderly and prompt conduct of the proceedings and may not add materially to the record upon which the Commission must base its decisions.”¹⁰

6. Here, NEET Southwest argues that KIC’s interests are both attenuated and speculative.¹¹ Specifically that Evergy’s retail rates are not at issue in this docket and that KIC is not a landowner impacted by the project.¹² NEET Southwest observes that the statute cited by KIC with respect to eminent domain is K.S.A. 66-1,177, which relates to line siting; however, siting of the transmission line will be subject to a separate proceeding and is not directly related to the CCN.¹³ NEET Southwest contends that this docket is to determine only whether the Commission will grant or deny the application for a CCN, that decision does not have an effect on Evergy’s rates, regionally competitive or otherwise.¹⁴ Because this project involves interstate commerce, allocation of costs is subject to the jurisdiction of the Federal Energy Regulatory Commission.¹⁵ Therefore, NEET Southwest claims that KIC has not demonstrated that its rights or privileges will be substantially impacted by this proceeding.¹⁶ NEET Southwest observes that the standards articulated by KIC (material savings and regionally competitive rates) are not the standards that the Commission utilizes to analyze an application for a CCN.¹⁷ These standards are fully laid out

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 6.

in NEET Southwest's application.¹⁸ While these standards include "the effect of the transaction on customers," NEET Southwest urges the Commission to make a comprehensive evaluation of all the factors and give them the weight that it determines to be reasonable and appropriate.¹⁹

7. On April 5, 2022, KIC filed its Reply of Retail Electric Customer Intervenors to NextEra's Response. KIC stated that it has a financial interest because if the Commission issues the CCN, KIC will "pay increased retail electric rates."²⁰ KIC contends that the project is not necessary because "[t]he existing electric transmission system efficiently and effectively moves electric energy produced from the Wolf Creek Generation Station to the existing electric grid."²¹ KIC further argues that the purpose of the transmission project is to move wind energy from the Southwest Power Pool ("SPP") to the Midcontinent Independent System Operator ("MISO"), therefore MISO should pay the cost of the project.²²

8. KIC characterized NEET Southwest's Response as "an attempt to disenfranchise all business, commercial, educational, and governmental retail ratepayers in Kansas from participation in this Docket."²³ KIC argues that the Commission must consider the retail rate impact of the transmission project citing K.S.A. 66-1287.²⁴ KIC also claims that regionally competitive electric rates are a policy of the State of Kansas.²⁵

9. On April 7, 2022, NEET Southwest filed a sur-reply to KIC's April 5, 2022, filing. NEET argues that KIC's April 5, 2022, filing mischaracterizes NEET Southwest's position which

¹⁸ Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pg.9-12 (February 28, 2022).

¹⁹ NextEra Energy Transmission Southwest, LLC's Response to the Applications for intervention of Spirit Aerosystems, Occidental Chemical Corporation, the Goodyear Tire and Rubber Company, Associated Purchasing Services Corporation, the Kansas Industrial Consumers Group and Lawrence Paper Company, pg. 7 (April 4, 2022).

²⁰ Reply of Retail Electric Customer Intervenors to NextEra's Response, pg. 3 (April 5, 2022).

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.* at 4.

²⁴ *Id.* at 5.

²⁵ *Id.* at 5-6.

is that KIC has failed to provide persuasive reasoning as to how its rights, duties, privileges and immunities are affected by the proceeding which are required to justify its status as an intervenor.²⁶

II. KIC's Intervention

10. The Commission shall grant intervention if the petition: (1) is submitted in writing and properly served; (2) states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (3) that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.²⁷ The Commission has discretion to grant intervention at any time where intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.²⁸ At any time during a proceeding, the Commission may impose limitations on an intervenor's participation, which may include limiting an intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition, limiting intervenor discovery, cross-examination and other procedures, and requiring intervenors to consolidate their participation in the proceedings.²⁹

11. KIC submitted its petition in writing and properly served it in accordance with K.S.A. 77-521(a)(1). Further, KIC states facts demonstrating a cognizable interest in this proceeding. Therefore, the Commission finds KIC should be permitted to intervene subject to the limitations below.

²⁶ NextEra Energy Transmission Southwest, LLC's Sur-Reply to the April 5, 2022 Reply of Retail Electric Customer Intervenors, pg. 2 (April 7, 2022).

²⁷ K.S.A. 77-521(a); K.A.R. 82-1-225(a).

²⁸ K.S.A. 77-521(b); K.A.R. 82-1-225(b).

²⁹ K.S.A. 77-521(c); K.A.R. 82-1-225(c).

12. KIC's filings make wide-ranging allegations about the necessity of the proposed project and how Kansas retail electric customers will be impacted by the subject transmission project, focusing primarily on retail rate impacts. While such issues will be relevant, rate impacts are only one aspect of determining "necessity." Further, any rates charged to Kansas utilities for transmission facilities are set by the Federal Energy Regulatory Commission. Neither federally-jurisdictional transmission rates nor state-jurisdictional retail electric rates are directly at issue in this proceeding.

13. This Commission is statutorily tasked with examining the necessity of both NEET Southwest's requested certificate and the transmission facilities it proposes to develop. All parties agree Kansas retail ratepayers, including KIC's members, may ultimately be asked to pay some portion costs of the subject transmission facilities. Therefore, the Commission finds KIC has an interest in understanding the need for NEET Southwest's certificate and how its proposed transmission development activities may impact Kansas retail rates.

14. In its Petition and other filings, KIC describes its members and their interests in this proceeding as retail ratepayers. KIC is granted limited intervention on that basis and within that scope. While KIC has made broad statements about other interests that should be protected or evaluated, it has not identified how it, a collection of private commercial and industrial utility customers, has standing to represent those interests.

15. KIC will be added to the official service list. Service of pleadings, communications, and correspondence should be delivered to counsel of record as follows:

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16. The Commission notes that this proceeding has generated interest from a large and diverse group of intervenors. As of this Order, nine applications to intervene have been filed. Given this matter's statutory deadline under K.S.A. 66-131(b), it is important that the Commission balance the interest of the parties with the orderly and prompt conduct of the proceedings. Therefore, all parties are reminded that their inquiries and arguments should be limited to those matters in which they have a direct interest under K.S.A. 77-521(a)(2). At this time the Commission chooses not to issue any additional limitations to participation by the parties. However if such limitations become necessary they are available under K.S.A. 77-521(c)(1-3).


THEREFORE, THE COMMISSION ORDERS:

A. The petitions to intervene of Spirit Aerosystems, Occidental Chemical Corporation, the Goodyear Tire and Rubber Company, Associated Purchasing Services Corporation, the Kansas Industrial Consumers Group, Inc. and Lawrence Paper Company are granted, subject to the limitation described in paragraph 14.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair (Concur in Part; Dissent in Part); Duffy, Commissioner; French Commissioner.

Dated: 04/28/2022.



Lynn M. Retz
Executive Director

DGC

Concurring in part; Dissenting in part

I concur with the grant of KIC intervention in this docket.

I dissent to the limitations the majority purports to impose upon KIC's intervention by this order.

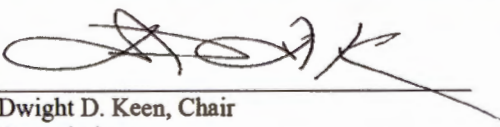
KIC has stated facts demonstrating its legal rights and interests may be substantially affected by this proceeding under K.S.A. 77-521(a)(2). Accordingly, KIC satisfies the requirements for intervention pursuant to K.S.A. 77-521 and K.A.R. 82-1-225. Contrary to the contention by NEET Southwest, in my opinion KIC's interests are neither speculative nor attenuated. Indeed, paragraph 13 of the order acknowledges that "KIC has an interest in understanding the need for NEET Southwest's certificate and how its proposed transmission development activities may impact Kansas retail rates." Furthermore, paragraph 12 concedes that KIC's contentions about the necessity of the proposed project and how Kansas retail electric customers will be impacted by the subject transmission project, including rates, are a relevant aspect of determining "necessity." However, paragraph 12 then inconsistently concludes that state-jurisdictional retail electric rates are not directly at issue in this proceeding.

In pertinent part, paragraph 14, finds that KIC in its Petitions and other filings describes its members and their interests in the proceeding as retail ratepayers, before concluding that "KIC is granted limited intervention on that basis and within that scope." Beyond this conclusory statement, the order does not provide with specificity any rationale, explanation or statutory authority for so limiting KIC's intervention. In my opinion, this "standard" by which the majority seeks to limit KIC intervention is, at best, over broad, vague and ambiguous and, accordingly ineffectual and virtually unenforceable.

In all other instances intervention was granted to other parties with varied stated interests without limitation, condition or admonition beyond the limitations imposed by the procedural ground rules generally applicable to all intervenors in this proceeding. Once the Commission has granted intervention, the Commission should not seek to direct or micro-manage how counsel for the intervenors should present or argue their client's interests before the Commission. Within the purview of its administrative authority and the procedures governing the execution of this authority, the Commission is the arbiter and exercises administrative discretion over the admissibility, relevance and weight of evidence presented in every proceeding to come before it. This circumstance renders the limitation on intervention in this and other similar instances unnecessary.

As was the case for other intervenors in this docket, this intervention order should have been granted without limitation by the Presiding Officer. In the alternative, KIC intervention should have been granted by the Commission without limitation. Unfortunately, the majority did not choose to pursue either of these paths.

For the reasons set forth herein, I respectfully dissent to the limitations the majority seeks to impose upon the intervention of KIC in this docket.



Dwight D. Keen, Chair
Commissioner

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 04/28/2022.

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