

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

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

In the Matter of the Application of NextEra )  
Energy Transmission Southwest, LLC for a )  
Siting Permit for the Construction of a 345 kV ) Docket No. 23-NETE-585-STG  
Transmission Line Through Coffey, Anderson, )  
Allen, Bourbon, and Crawford Counties, )  
Kansas. )

**ORDER ON SITING APPLICATION**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. The Commission finds the following:

**Background**

1. The Southwest Power Pool (SPP) is a Regional Transmission Organization mandated by the Federal Energy Regulatory Commission to ensure reliable supplies of power, adequate transmission infrastructure, and competitive wholesale prices on behalf of its members.<sup>1</sup> SPP serves 17 states, including Kansas.<sup>2</sup> In 2019, as part of its annual Integrated Transmission Planning (ITP) process, SPP identified the Wolf Creek-BlackBerry Project (Transmission Project) as a necessary economic project to increase the transmission capability and relieve transmission congestion from western Kansas, east to SPP load centers.<sup>3</sup> The Transmission Project was one of 44 projects recommended by the 2019 ITP, but comprised more than half of the mileage of transmission included in the ITP.<sup>4</sup> SPP approved the Transmission Project as a Competitive

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<sup>1</sup> 22-419 Docket, Order on Application for Certificate of Convenience and Necessity, pg. 1 (August 29, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Docket No. 22-NETE-419-COC, Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pg. 4 (Feb. 28, 2022).

<sup>4</sup> Docket No. 22-NETE-419-COC, Tr., Vol. 1, pg. 32.

Upgrade open to competitive bidding.<sup>5</sup> A total of seven bids were submitted to SPP by four bidding entities.<sup>6</sup> SPP's competitive process is designed to select the best long-term project for the benefit of SPP's customers.<sup>7</sup> Under this process, an independent Industry Expert Panel (IEP) compares Request for Proposal (RFP) responses and allocates points according to Engineering, Project Management, Operations, Rate Analysis, and Financial Capabilities.<sup>8</sup> Upon completion of its evaluation, the IEP recommended NextEra Energy Transmission Southwest, LLC (NEET Southwest) as the Designated Transmission Owner for the Project.<sup>9</sup>

2. On February 28, 2022, in Docket No. 22-NETE-419-COC (22-419 Docket) NEET Southwest filed an Application with the Commission pursuant to K.S.A. 66-131 requesting an Order granting a Certificate of Convenience and Necessity (CCN) to transact business as a transmission-only public utility in Kansas and to construct, own, operate, and maintain an approximately 94-mile single-circuit 345 kV transmission line from the existing Wolf Creek Substation in Kansas to the existing Blackberry Substation in Missouri.

3. On May 17, 2022, in the 22-419 Docket, Commission Staff (Staff) filed a Report and Recommendation which recommended that NEET Southwest address the option of building at least 25 miles of the proposed line which paralleled Evergy's existing 161 kV Marmaton line (Marmaton line) as a double-circuit transmission line in conjunction with Evergy (double-circuit option).<sup>10</sup>

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<sup>5</sup> 22-419 Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pg. 4 (Feb. 28, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4-5.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> 22-419 Docket, Notice of Filing of Staff's Report and Recommendation, pg. 23, (May 17, 2022).

4. On August 29, 2022, the Commission Granted NEET Southwest a limited certificate of convenience and necessity as a transmission-only public utility in Kansas to construct, own, operate and maintain an approximately 94-mile single-circuit 345 kV transmission line from the existing Wolf Creek Substation in Kansas to the existing Blackberry Substation in Missouri.<sup>11</sup> This approval was contingent upon compliance with specific conditions, included among those conditions was a comprehensive evaluation of the double-circuit option.<sup>12</sup>

5. On January 24, 2023, NEET Southwest filed an Application pursuant to K.S.A. 66-1,177, *et seq.*, requesting that the Commission issue a siting permit conferring the right to construct a single-circuit 345 kV transmission line of approximately 83 miles in length across Coffey, Anderson, Allen, Bourbon, and Crawford Counties (Application).<sup>13</sup>

6. On January 26, 2023, Evergy Kansas Central, Inc., Evergy Kansas South, Inc. and Evergy Metro, Inc. (collectively ‘Evergy’) filed a petition for intervention which was granted on February 8, 2023.<sup>14</sup> On January 27, 2023, Darren McGhee and Rochelle McGhee-Smart (McGhees) filed for intervention which was also granted intervention on February 8, 2023.<sup>15</sup> On March 23, 2023, the International Brotherhood of Electrical Workers Local 304 (IBEW) applied for intervention was granted intervention on April 13, 2023.<sup>16</sup>

7. On March 1<sup>st</sup> and 2<sup>nd</sup>, 2023, the Commission held local public hearings in Girard and Iola, Kansas, which are locations in Crawford and Allen Counties respectively as required by K.S.A. 66-1,178(b).

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<sup>11</sup> 22-419 Docket, *See Generally*, Order on Application for Certificate of Convenience and Necessity (August 29, 2022).

<sup>12</sup> *Id.* at 37-39.

<sup>13</sup> Application for NextEra Energy Transmission Southwest, LLC (Jan. 24, 2023).

<sup>14</sup> Presiding Officer Order Granting Intervention (February 8, 2023).

<sup>15</sup> *Id.*

<sup>16</sup> Order on IBEW Local 304’s Petition to Intervene (April 13, 2023).



8. The public hearings were each comprised of two parts – an informal informational session and the public hearing. During the informational session, the Commissioners left the room and members of the public were able to ask questions of Commission Staff and NEET Southwest regarding the NEET Southwest’s Application. Because the informational session took place outside the presence of the Commissioners, it was not part of the official public hearing and was not made part of the official record. Following the informational session, the public hearing was convened by the Commission. During the public hearing, members of the public addressed the Commissioners and offered comments about NEET Southwest’s Application. The public comments received during the public hearing were recorded and became part of the official record.

9. The Commission held an evidentiary hearing on May 2<sup>nd</sup> through the 4<sup>th</sup>, 2023, each party appeared by counsel and had the opportunity to put on evidence, elicit testimony from witnesses, and cross-examine witnesses.

10. At the evidentiary hearing, pursuant to K.S.A. 77-524(f) and K.A.R. 82-1-230(h), the Commission took administrative notice of its own records, specifically the official record of the 22-419 Docket.<sup>17</sup>

11. In the 22-419 Docket, the Commission found that the Transmission Project was anticipated to have a benefit to cost ratio of between 3.36 and 1.48 to 1, meaning for every dollar spent, customers would receive a benefit of between \$1.48 and \$3.36.<sup>18</sup> In addition, the Transmission Project would levelize the cost of energy while reducing congestion and inefficiency and increasing reliability.<sup>19</sup>

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<sup>17</sup> Tr., Vol. 1, pg.15.

<sup>18</sup> 22-419 Docket, Order on Application for Certificate of Convenience and Necessity, pg. 9 (August 29, 2022).

<sup>19</sup> *Id.* at 10-11, 14.



12. In the 22-419 Docket, the Commission approved NEET Southwest's Application for a CCN, subject to several conditions.<sup>20</sup> One such condition was that Evergy and NEET Southwest were directed to work collaboratively and in good faith to "Fully consider, study, and evaluate the double-circuit option."<sup>21</sup> The Commission found this condition necessary to protect the rights of all interested parties and those of the general public pursuant to K.S.A. 66-1,180.<sup>22</sup>

### **Authority**

13. Pursuant to K.S.A. 66-1,178(a), an electric utility must acquire a siting permit from the Commission prior to preparation for construction of an electric transmission line or any exercise of eminent domain to acquire any interest in land in connection with the site preparation for construction of any such line.

14. Once an application for a siting permit is filed, the Commission must issue a final order on the application within 120 days.<sup>23</sup> The Commission makes its decision with respect to the necessity for and reasonableness of the location of the proposed electric transmission line, taking into consideration the benefit to both consumers in Kansas and consumers outside the state and economic benefits in Kansas.<sup>24</sup> The Commission may condition such permit as it may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.<sup>25</sup>

### **Analysis**

15. Based on the evidence received, the Commission finds the Transmission Project is needed and will have a beneficial effect on customers by lowering overall energy costs,

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<sup>20</sup> *Id.* at 37-39.

<sup>21</sup> *Id.* at 38-39.

<sup>22</sup> *Id.* at 39.

<sup>23</sup> K.S.A. 66-1,178(d).

<sup>24</sup> K.S.A. 66-1,180.

<sup>25</sup> *Id.*

removing inefficiency, relieving transmission congestion, and improving the reliability of the transmission system.<sup>26</sup>

16. K.S.A. 66-1,180 requires the Commission to make a finding that the line is necessary taking into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas. Staff argues that the necessity of the line has already been established in the 22-419 Docket which granted NEET Southwest a CCN.<sup>27</sup> At the evidentiary hearing, the Commission took administrative notice of the record in the 22-419 Docket.

17. The existence of the findings in the 22-419 Docket regarding the need for the Transmission Project does not obviate the Commission's statutory responsibility to make an independent finding of necessity in this proceeding. However the Commission disagrees with the argument, presented in briefing, that because the Commission declined to apply the line siting standards to a CCN docket, the evidence gathered in the 22-419 Docket cannot assist the Commission now.<sup>28</sup> The record in the 22-419 Docket contains extensive testimony and analysis demonstrating the necessity of the line after taking into consideration the benefit to consumers within and outside the state and economic development benefits in Kansas. In the 22-419 Docket, the Commission specifically found that "Kansas will benefit from the Transmission Project by reducing overall electricity rates, increasing local tax revenue and increasing system reliability. When assessing the Application under this factor, within the confines and conditions of this Order the Commission finds that the Application as modified by the Settlement Agreement will have a beneficial effect on State and local economies."<sup>29</sup>

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<sup>26</sup> 22-419 Docket, Order on Application for Certificate of Convenience and Necessity, pg. 13 (August 29, 2022).

<sup>27</sup> Staff's list of Disputed Issues, pg.1 (April 14, 2023).

<sup>28</sup> McGhee Intervenor's Post-Hearing Initial Brief, pg. 7 (May 12, 2023).

<sup>29</sup> 22-419 Docket, Order on Application for Certificate of Convenience and Necessity, pgs. 17-18 (August 29, 2022).

18. While the benefit to other states is not the Commission's primary concern, in his testimony in the 22-419 Docket, Staff witness Justin Grady testified that, in states such as Missouri, Oklahoma, Texas, and Arkansas some congestion issues will also be resolved by this line.<sup>30</sup>

19. Further, while the necessity and benefits of the Transmission Project were not a primary focus of this proceeding, given the extensive relevant evidence gathered in the 22-419 Docket, NEET Southwest did include additional testimony supporting the need and benefits of the Transmission Project with its Application in this Docket.<sup>31</sup> The Commission finds the overwhelming weight of the evidence gathered in both this proceeding and the 22-419 Docket supports a finding that the line is necessary.

20. As noted above, the second statutory requirement for issuance of a siting permit is a finding that the proposed location of the line is reasonable. The Commission's analysis of the reasonableness of the location of the line turns on how the route was selected and whether the final outcome is reasonable.<sup>32</sup> A determination that the route was reasonable does not necessitate a finding that it was the sole acceptable option. More than one route may be reasonable just as more than one method to select the route may be reasonable.

21. To conduct the routing study, NEET Southwest retained the services of Burns & McDonnell. Witness Dusty Werth explained the step-by-step process that was used in identifying and refining the proposed route. After first identifying the end points, the route was broken into 53 segments with 729 possible route combinations.<sup>33</sup> The Burns & McDonnell study analyzed each of the 729 routes using specific factors such as distance to homes and the presence of sensitive

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<sup>30</sup> 22-419 Docket, Justin Grady Testimony in support of Non-Unanimous Settlement Agreement, p. 13 (June 7, 2022); 22-419 Docket Tr., Vol. 2 pgs. 498-499 "I'm absolutely convinced that the line creates benefits for the state as a whole and particularly for Evergy and Evergy customers in Southeast Kansas."

<sup>31</sup> Direct Testimony of Becky Walding, pgs. 14-15 (January 24, 2023).

<sup>32</sup> See, Docket No. 17-WSEE-063-STG, Order Granting Siting Permit, pg. 7 (December 6, 2016).

<sup>33</sup> Direct Testimony of Dusty Werth, pgs. 9-10 (January 24, 2023).



species sites, then assigned each factor a weight and assigned each route a score based on its impact; those routes with lower impact being more desirable. By comparing the top 36 routes using qualitative and quantitative data, Burns & McDonnell eventually determined that Route 65 should be the preferred route.<sup>34</sup>

22. Staff reviewed NEET Southwest's process and determined it was reasonable.<sup>35</sup> Staff based its determination of reasonableness on the routing study provided by NEET's Southwest's consultant Burns & McDonnell, feedback it received from affected landowners, and Staff's own reconnaissance of the proposed route.<sup>36</sup> Staff has determined that the preferred route is reasonable and that the method by which NEET Southwest selected the route is similarly reasonable.<sup>37</sup>

23. NEET Southwest's preferred route, known as "Route 65" can be found in Exhibit DW-1.<sup>38</sup> At the hearing, Staff witness Leo Haynos testified that the preferred route was reasonable but declined to endorse a specific route.<sup>39</sup> Staff argues that, had the factors been weighted differently, some of the top scoring routes would have been different.<sup>40</sup> Kansas law does not recognize nor require a standardized approach to setting and weighing factors in a routing study.

24. At the evidentiary hearing, Staff contended the route proposed by NEET Southwest was reasonable, but also specified that if the Commission, in order to comply with its statutory obligations in K.S.A. 66-1,180, determined alterations to the route were necessary, or require

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<sup>34</sup> Exhibit DW-1 pgs. 60-64.

<sup>35</sup> Staff's Post Hearing Brief, pg. 5 (May 12, 2023).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Exhibit DW-1, pg. 64 of 311.

<sup>39</sup> Tr., Vol 5, pg. 136.

<sup>40</sup> *Id.* at 146.

NEET Southwest to meet certain conditions, that would also be reasonable, based on the evidentiary record.<sup>41</sup>

25. The Commission finds the method NEET Southwest used to select its route and the route proposed by NEET Southwest are reasonable and that the siting permit requested by NEET Southwest complies with all statutory requirements and should be granted, subject to certain enumerated “re-routes” identified in the record.

26. In selecting the initial preferred route for the project, NEET Southwest sought to reduce impacts to land use by paralleling or co-locating with existing transmission lines. As a result, NEET Southwest proposed locating approximately 25 miles of the project parallel to Evergy’s Marmaton transmission line. According to Evergy, the Marmaton line is nearing the end of its useful life.<sup>42</sup> In the 22-419 Docket, Staff suggested that the 25 mile section could potentially be built as a “double-circuit.”

27. A “double-circuit” describes a structure where two separate transmission lines are strung along a single set of poles which reduces the amount of land used by both lines, but may require shorter spans between poles, and thus more pole structures.<sup>43</sup> Double-circuiting is not uncommon; however, according to witness Daniel Mayers there has never been a situation in America where a double-circuit is comprised of two different utilities’ lines.<sup>44</sup>

28. In granting the CCN in the 22-419 Docket, the Commission ordered NEET Southwest and Evergy to “coordinate, cooperate, and jointly evaluate the technical and financial

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<sup>41</sup> Staff’s Post-Hearing Brief, pg. 1 (May 12, 2023).

<sup>42</sup> Tr., Vol. 5. Pg. 30; Direct Testimony of Jacquelyn Blakley, pg. 5 (Jan. 24, 2023).

<sup>43</sup> Tr., Vol. 5 pg. 65.

<sup>44</sup> Tr., Vol 3, pg. 133, 143-144.

feasibility of the option of double-circuiting this 25 mile portion of the Wolf Creek to Blackberry line.”<sup>45</sup>

29. NEET Southwest witness Jacquelyn Blakley presented the report on the double-circuit option in her direct testimony.<sup>46</sup> The report analyzed three scenarios for a double-circuit option, comparing them to the “base option” of not double-circuiting.

30. In the first scenario, if the double-circuit was built using Evergy’s design criteria in NEET Southwest’s Right of Way (ROW), the construction costs would be approximately \$10.7 million dollars higher and result in a one to two year delay resulting in an additional cost \$14.5 to \$29 million in lost production cost savings.<sup>47</sup>

31. In the second scenario, if the double-circuit was built using NEET Southwest’s design criteria in NEET Southwest’s ROW, the construction costs would be approximately \$1.8 million dollars lower than the base case, but would cause a one to two year delay, costing customers \$14.5 to \$29 million in lost production cost savings.<sup>48</sup> According to NEET Southwest, Evergy would only accept a design for NEET Southwest’s concrete monopoles that meets Evergy’s design specifications.<sup>49</sup> NEET Southwest expects that any coordinated design criteria for concrete monopoles would further increase the costs of this option.

32. In the third scenario, if the double-circuit was built using Evergy’s design criteria in Evergy’s ROW, the construction costs would be approximately \$22.7 million dollars higher and also cause a two to three year delay costing customers \$29 to \$45 million in lost production cost savings.<sup>50</sup>

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<sup>45</sup> 22-419 Docket, Order on Application for Certificate of Convenience and Necessity, pgs. 37-38 (August 29, 2022).

<sup>46</sup> *See Generally*, Direct Testimony of Jacquelyn Blakley and attached Exhibit JB-1 (Jan. 24, 2023).

<sup>47</sup> Exhibit JB-1 pg. 3.

<sup>48</sup> *Id.*

<sup>49</sup> Direct Testimony of Jacquelyn Blakley, pg. 6 (Jan. 24, 2023).

<sup>50</sup> Exhibit JB-1 pg. 3



33. The report concluded that any double-circuit option would cause a delay of at least one year to the in-service date of the Transmission Project and that every 12 months of delay would result in a loss of approximately \$14.5 million in benefits to SPP customers including those in Kansas. NEET Southwest reported that a double-circuit would also increase the complexity of the line without providing benefits to landowners in the near term as Evergy does not expect to complete its rebuild of the 161 kV line until 2030.<sup>51</sup>

34. NEET Southwest witness Walding concludes that “because of the expected impacts to project costs, economic benefits and delay, NEET Southwest believes [the double-circuit] would not be a reasonable alternative.”<sup>52</sup>

35. On February 21, 2023, Staff witness Leo Haynos provided testimony assessing the double-circuit options. Staff’s testimony used the same three scenarios as were used by NEET Southwest and came to the same conclusions regarding the higher costs of a double-circuit option.

36. Haynos also testified that there was a degree of operational complexity associated with multiple utilities sharing a double-circuit transmission line.<sup>53</sup> For example, NEET Southwest asserted that developing a concrete pole design criteria acceptable to both companies would result in higher costs, as well as the costs associated with establishing operating agreements and negotiating construction standards.<sup>54</sup> Haynos concluded that he did not believe that the challenges presented were insurmountable. However, Staff ultimately concluded that the cost and complexity of a double-circuit option operated by two utilities makes it an unreasonable alternative.<sup>55</sup>

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<sup>51</sup> Exhibit JB-1, pg. 3.

<sup>52</sup> Direct Testimony of Becky Walding, pgs. 6-7 (January 24, 2023).

<sup>53</sup> Direct testimony of Leo M. Haynos, pg. 8 (February 21, 2023).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

37. The Commission agrees with the assessments of Staff, NEET Southwest, and Evergy. The increased cost and complexity paired with the delays in design and construction make the double-circuit an unreasonable option. In addition to higher customer costs, the record includes evidence indicating operational and reliability drawbacks of a double circuit option.<sup>56</sup>

38. The McGhees are landowners who testify that the proposed route is 550 feet from their home and raised concerns regarding the proximity of the line to their homestead and impact on their farming and ranching operations.<sup>57</sup> In her direct testimony, Rochelle McGhee-Smart proposed a reroute of the line that would move the line to further from her home but closer to other homes (McGhee Reroute).<sup>58</sup>

39. In NEET Southwest witness Jacquelyn Blakley's Rebuttal Testimony, Ms. Blakley outlined three (3) potential routes for the line passing through Ms. McGhee Smart's property.<sup>59</sup> The routes are depicted in Exhibit JB-2 to her testimony and described as follows: (1) NEET Southwest Proposed Route, (2) NEET Southwest Alternative Reroute, and (3) McGhee Reroute.<sup>60</sup>

40. Ms. Blakley testified that "Ms. McGhee Smart's proposed reroute would also be significantly more costly to build (by approximately \$575,000) than NEET Southwest's Proposed Route, primarily because it increases the length of the line, requires additional structures and increases the angle of the turning structures."<sup>61</sup> The McGhee Reroute would also move the line closer to homes which were not originally included among the notified landowners because they were well outside the transmission line's proposed right of way.<sup>62</sup> Mr. Haynos testified he did not

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<sup>56</sup> Exhibit BW-4; Tr., Vol. 5, pg. 244-245.

<sup>57</sup> Direct testimony of Rochelle McGhee Smart, pg. 6 (February 21, 2023).

<sup>58</sup> Direct testimony of Rochelle McGhee Smart, pg. 7 and attached McGhee Exhibit 2 (February 21, 2023); Staff's Post-Hearing Brief, pg. 7 (May 12, 2023).

<sup>59</sup> Rebuttal Testimony of Jacquelyn Blakley, pgs. 4-5 (Mar. 21, 2023).

<sup>60</sup> Exhibit JB-2.

<sup>61</sup> Rebuttal Testimony of Jacquelyn Blakley pg. 4 (Mar. 21, 2023).

<sup>62</sup> Leo Haynos Response to Public Comments on behalf of Staff, pgs. 4-5 (March 31, 2023).

“believe [McGhee-Smart’s] proposed reroute would be reasonable” in part due to the increased cost to NEET Southwest.<sup>63</sup> In the NEET Southwest Proposed Route, the transmission line would be approximately 670 feet from Ms. McGhee-Smart’s home and cost an extra \$75,000.<sup>64</sup> Staff testified the McGhee Reroute would move the line approximately 2,640 feet from her home, requiring three turning structures, and approximately 3,000 feet of additional line to build.<sup>65</sup>

41. Staff found that while the McGhee reroute was not reasonable, NEET Southwest’s alternative reroute was reasonable.<sup>66</sup> NEET Southwest states that they have been unable to access the McGhees’ property to determine if the alternative would be feasible.<sup>67</sup> NEET Southwest requests that the Commission grant the alternative reroute but also grant the flexibility to micro-site back to the original route should the alternative not be feasible due to local conditions such as endangered species or cultural heritage sites.<sup>68</sup>

42. Both NEET Southwest and the McGhees appear to agree the NEET Southwest alternative reroute is reasonable. The McGhees ask that the Commission order the alternative reroute without the ability to revert to the original route using micro-siting, arguing that NEET Southwest’s determination of whether the alternative reroute is feasible includes no oversight and provides the McGhees with no means to appeal that determination.<sup>69</sup>

43. The Commission expects NEET Southwest to work in good faith with McGhee-Smart but is also sensitive to the McGhees’ concern regarding a lack of recourse in the event NEET Southwest unilaterally determines the re-route is unfeasible. Therefore, the alternative reroute as

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<sup>63</sup> *Id.* at 5.

<sup>64</sup> Rebuttal Testimony of Jacquelyn Blakley pg. 6 (Mar. 21, 2023); Leo Haynos Response to Public Comments on behalf of Staff, pg. 5 (March 31, 2023).

<sup>65</sup> Leo Haynos Response to Public Comments on behalf of Staff, pg. 5 (March 31, 2023).

<sup>66</sup> Staff’s Post-Hearing Brief, pg. 7 (May 12, 2023).

<sup>67</sup> Rebuttal Testimony of Jacquelyn Blakley, pgs. 8-9 (Mar. 21, 2023).

<sup>68</sup> *Id.*

<sup>69</sup> McGhee Intervenors Post-Hearing Reply Brief, pg. 4 (May 15, 2023).



depicted in exhibit JB-2, subject to mutually agreed upon micro-siting, is the approved route of the Transmission Project. Should NEET Southwest determine that the alternative reroute is not feasible, NEET Southwest may petition the Commission for approval to revert to the originally planned route.

44. Because the Commission chooses not to order double-circuiting there are approximately 25 miles along the proposed route which will host two parallel transmission lines. Evergy requests that along these 25 miles the Commission condition NEET Southwest's siting permit on the creation of a buffer zone between Evergy's and NEET Southwest's easements. Evergy requests that the nearest edge of NEET Southwest's easement be either (1) at least 100 feet from the centerline of Evergy's easement, or (2) NEET Southwest's structure height plus 50 feet.<sup>70</sup>

45. Evergy believes this condition is necessary for two reasons, 1) It will give Evergy room to widen the easement of its Marmaton line when it is eventually rebuilt, and 2) Should any of NEET Southwest's poles fall, it reduces the chances they will contact Evergy's lines.<sup>71</sup> At the evidentiary hearing, Evergy witness Mr. Vetsch made clear that this requested buffer is primarily to give Evergy flexibility if and when it ever decides to rebuild its 161 kV line, because it is unsure of where its current easements are located.<sup>72</sup>

46. Staff witness Leo Haynos recommended the Commission order the two easements "abut one another whenever possible unless the affected landowner agrees to allow separation between the lines."<sup>73</sup>

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<sup>70</sup> Evergy Initial Post-Hearing Brief, pg. 3 (May 15, 2023).

<sup>71</sup> *Id.* at 3-4.

<sup>72</sup> Tr., Vol. 5, pgs. 62-63 "So, we are in the infancy of beginning to look at the rebuild of our line. We have not done the title work on the corridor to even know exactly the width on every parcel of what our easement is."

<sup>73</sup> Direct testimony of Leo M. Haynos, pg. 27 (February 21, 2023).

47. NEET Southwest states that transverse failures (when a pole falls perpendicular to a line rather than parallel) are exceedingly rare, that a buffer zone between Evergy and NEET Southwest's ROW would necessarily encumber more land, and that any extreme weather event which may cause one of NEET Southwest's poles to fail, would likely also cause Evergy's poles to fail as well.<sup>74</sup> Therefore NEET Southwest argues, there is no need for a buffer zone between ROWs.

48. The weight of the evidence does not support implementation of a buffer zone between easements, as requested by Evergy. Therefore the Commission declines to make this a condition of the siting permit.

49. NEET Southwest and Staff request that the Commission grant approval for NEET Southwest to engage in "micro-siting." Micro-siting involves the transmission owner making minor modifications to the route and the placement of infrastructure. It is typically used to accommodate landowner preferences or to avoid environmental concerns.<sup>75</sup> Staff believes it will be necessary for NEET Southwest to make minor changes without further approval from the Commission or review by Staff.<sup>76</sup> This approval would permit NEET Southwest to address existing and future concerns raised by affected landowners and similar concerns anticipated to be encountered should the permit be granted.

50. The Commission has granted micro-siting authority in previous line siting cases.<sup>77</sup> No party has raised opposition to micro-siting. The Commission encourages NEET Southwest to continue to work with landowners and incorporate their reasonable preferences as much as practicable. The Commission approves minor adjustments to the location of the line as necessary

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<sup>74</sup> Daniel Mayers, Rebuttal Testimony to Intervenor Responses to Public Comments, pg. 6 (April 7, 2023).

<sup>75</sup> Tr., Vol. 3 pg. 70-71, Tr., Vol. 5 pg. 173-174.

<sup>76</sup> Staff's Post-Hearing Brief, pgs. 8-10 (May 12, 2023).

<sup>77</sup> See, Docket No. 13-GBEE-803-MIS, Order Granting Siting Permit, pg. 18 (Nov. 7, 2013).

to minimize landowner impact but requires material, major adjustments, and any such adjustment for which landowners would not have received notice, be approved by the Commission before implementation.

51. Staff recommends the Commission order the use of “dead-end” structures at points where the Transmission Project crosses five enumerated highways.<sup>78</sup> Dead-end structures are larger stronger, and more expensive than standard poles and are designed to be more resistant to cascading pole failure, reducing the chances that a line would fall across a highway.<sup>79</sup> Staff notes that NEET Southwest has already agreed to use dead-end structures at points where the Transmission project crosses Evergy’s lines and contends Kansas motorists should be granted the same consideration.<sup>80</sup>

52. NEET Southwest argues that requiring dead-end structures would dramatically increase project costs and that no current laws or regulations call for such measures at highway crossings.<sup>81</sup> NEET Southwest commits that it will continue working with the Kansas Department of Transportation (KDOT) and affected counties regarding highway crossings and will report to the Commission in a compliance docket the results of that coordination and specifically whether KDOT or the counties will require the use of dead-end structures at such crossings.<sup>82</sup>

53. Mr. Mayers testified that the safety concerns associated with a transmission line falling across a road are relatively minimal. Mr. Mayers explained that transmission lines de-energize automatically within less than a tenth of a second upon a line falling, which would significantly decrease the potential concerns with a fallen transmission line across a roadway.<sup>83</sup>

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<sup>78</sup> Staff’s Post-Hearing Brief, pg. 16 (May 12, 2023).

<sup>79</sup> *Id.* at 10, 16.

<sup>80</sup> *Id.* at 16.

<sup>81</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pgs. 30-31 (May 12, 2023).

<sup>82</sup> *Id.* at 32.

<sup>83</sup> Tr. Vol. 3 pg. 119.



NEET Southwest represents that it will monitor 12 of the highway crossings remotely for such failures.<sup>84</sup>

54. The Commission is satisfied with these measures and finds that dead-end structures should not be made a condition of the siting permit. Two considerations are of consequence in the Commission's decision on this matter. First, the evidence indicates Kansas law and KDOT do not require other Kansas electric utilities to install the dead-end structures proposed by Staff, and there is no evidence that standard wire-stringing practices, as set forth in Kansas wire-stringing regulations, are unsafe.<sup>85</sup> There is no evidence to support imposing a higher construction standard on NEET Southwest than other Kansas utilities. Second, imposing a higher construction standard – and much more costly construction standard – for this one project may be viewed as an invitation for other Kansas utilities to invest in such structures, when there is no evidence those investments are cost justified for customers.

55. Staff recommends NEET Southwest file its permit and reclamation plans with the Commission when they are completed.<sup>86</sup> Staff further requests the Commission include Mr. Haynos' recommendations regarding permit and reclamation plan filings (Recommendations 8 and 9) as part of any Order that would grant NEET Southwest a line siting permit.<sup>87</sup> NEET Southwest has agreed to do so.<sup>88</sup> No party opposes the course of action. The Commission finds Staff's recommendation to be reasonable and incorporates it as a condition of the siting permit.

56. NEET Southwest intends to primarily use guylines to support angle structures and dead-end structures.<sup>89</sup> Staff recommends that unless the landowner agrees to accept guyed angle

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<sup>84</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pg. 31 (May 12, 2023).

<sup>85</sup> K.S.A. 66-183, K.A.R. 82-12-1 *et. seq.*

<sup>86</sup> Direct Testimony of Leo Haynos, pg. 23 (Feb. 21, 2023).

<sup>87</sup> Staff's Post-Hearing Brief, pg. 18 (May 12, 2023); Direct Testimony of Leo Haynos, pgs. 29-31 (Feb. 21, 2023).

<sup>88</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pg. 26 (May 12, 2023).

<sup>89</sup> Direct Testimony of Daniel Mayers, pg. 9 (Jan. 24, 2023).

or guyed dead-end structures, the Commission should consider requiring the use of base plated steel poles that do not require guylines.<sup>90</sup>

57. Staff testified that “using guylines in this fashion may create hazards for farm equipment, pose a risk of damage to transmission facilities, and require additional ROW to accommodate the structures.”<sup>91</sup> NEET Southwest witness Daniel Mayers has committed to the Commission that if granted micro-siting authority, NEET Southwest will work closely with landowners to minimize the impact of guyed structures on landowners.<sup>92</sup>

58. NEET Southwest argues that use of guyed structures is standard industry practice and that there is currently no law, code or rule prohibiting their use.<sup>93</sup> NEET Southwest further contends Staff’s recommendation is not necessary because NEET Southwest already offers landowners a choice during easement negotiations.<sup>94</sup> As NEET Southwest witness Sarah Powers testified at the evidentiary hearing, NEET Southwest’s easement agreement is a living document and the landowner can negotiate any and all terms contained therein.<sup>95</sup> NEET Southwest posits that Staff has not presented substantial and competent evidence to support a Commission order which would restrict the use of guyed structures.<sup>96</sup> Staff’s recommendation reflects a well-intentioned concern but does not provide a sufficient evidentiary basis for the Commission to restrict or prohibit guyed structures. The Commission further incorporates its rationale above declining Staff’s recommendation regarding dead-end structures as equally applicable to guyed structures. The Commission does not adopt Staff’s recommendation to eliminate all guyed structures not agreed to by landowners.

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<sup>90</sup> Direct Testimony of Leo Haynos, pg. 19 (Feb. 21, 2023).

<sup>91</sup> Direct Testimony of Leo Haynos, pg. 19 (Feb. 21, 2023).

<sup>92</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pg. 28 (May 12, 2023).

<sup>93</sup> Post-Hearing Rebuttal Brief of NextEra Energy Transmission Southwest, LLC, pgs. 16-17 (May 15, 2023).

<sup>94</sup> *Id.* at. 17.

<sup>95</sup> Tr., Vol. 2, pg. 14.

<sup>96</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pg. 29 (May 12, 2023).

59. Staff's Exhibit 1, titled DR-42, was admitted to the record during the evidentiary hearing.<sup>97</sup> The Exhibit lists twelve landowners who have structures within 300 feet of the transmission line. As part of Discovery Request (DR) 42, Staff asked NEET Southwest to provide information on whether "modifications of the route that would move the line at least 300 feet from the home/structure" were possible and if so whether the parties had agreed to make the modifications.<sup>98</sup> Staff asks the Commission to consider adopting the proposed alternative routes outlined in DR 42 as part of the final route approved in this matter.<sup>99</sup>

60. NEET Southwest reports that of the 12 residences that Commission Staff identified, NEET Southwest has entered voluntary easement option agreements with three of these landowners based upon the Proposed Route location and agreed to additional routing adjustments with one of these landowners to adjust the Proposed Route to move further away from the landowners' residences.<sup>100</sup> For the remaining eight residences, NEET Southwest requests that the Commission allow NEET Southwest to address these landowner issues through micro-siting.<sup>101</sup>

61. The Commission believes that Staff has not provided a sufficient evidentiary basis to determine or order specific reroutes for the remaining 8 residences. However, the Commission expects NEET Southwest to engage in good faith negotiation and reasonable micro-siting to mitigate impacts on these landowners.

62. Electro-Magnetic Fields (EMF) are invisible fields of energy which surround any electrical device or power line. During the public hearing and public comment period many residents expressed concerns about the potential health effects of exposure to EMF from the

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<sup>97</sup> Tr., Vol. 1, pgs. 130-131.

<sup>98</sup> KCC Staff Exhibit #1, Data Request KCC-42, (Mar. 27, 2023).

<sup>99</sup> Staff's Post-Hearing Brief, pg. 9 (May 12, 2023).

<sup>100</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pg. 42 (May 12, 2023).

<sup>101</sup> *Id.*



Transmission Project. Witness Rochelle McGhee-Smart made reference to several studies which purport to link EMF to various health concerns.<sup>102</sup>

63. NEET Southwest argues there is no link that shows a causal relationship between EMF and health effects such as leukemia. Additionally, while Kansas does not have any EMF standards, two states and two expert groups do. Both New York and Florida require magnetic field levels to be no more than 200 mG at the ROW for a 345 kV transmission line.<sup>103</sup> The Institute of Electrical and Electronics Engineers (IEEE) has an exposure guideline of 9040 mG. The International Commission on Non-Ionizing Radiation Protection has an exposure guideline of 2,000 mG. For the Transmission Project, Burns & McDonnell modeled the level of EMF exposure at the edge of the ROW and their analysis predicts that under the average load the EMF levels will be 20 mG and 34 mG at expected peak loading, far below any of the established standards.

64. Dr. Chris Ollson testified that “Scientists have been conducting studies for more than 40 years to determine whether EMF can cause adverse health effects.... some of the most prestigious scientific organizations, such as the U.S. National Cancer Institute and the World Health Organization have evaluated studies on EMF effects, and none has found that exposure causes or contributes to cancer or any other disease or illness.”<sup>104</sup>

65. Staff requests that once the line is finished and energized that NEET Southwest be required to perform an EMF study on any home within 200 feet of the right of way.<sup>105</sup> While Staff maintains that there are no conclusive tests linking EMF exposure to adverse health effects, such

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<sup>102</sup> Rochelle McGhee Smart Response to Public Comments, pgs.2-4 (March 31, 2023).

<sup>103</sup> Direct Testimony of Dr. Chris Ollson, pg. 5 (March 28, 2023).

<sup>104</sup> *Id.*

<sup>105</sup> Staff's Post-Hearing Brief, pg. 17 (May 12, 2023).



a study would allow NEET Southwest to confirm predictions made by Burns &McDonnell, and could be used to demonstrate a response to the public's concerns about EMF exposure.<sup>106</sup>

66. NEET Southwest counters that it has already agreed to do an EMF study upon request of any landowner and that because there has never been an established causal relationship between EMF and health effects, there is no substantial and competent evidence which the Commission can use to make such a requirement.<sup>107</sup> The Commission agrees there is not an evidentiary basis on which to make such a requirement. Because NEET Southwest has agreed to do an EMF Study for any landowner along the route, the Commission is satisfied that no other requirements for an EMF study are necessary. However, the Commission finds NEET Southwest shall be required provide evidence to Staff that all affected landowners are notified of their right to request a study and to report the results of any EMF Study it performs relating to the Transmission Project to Commission Staff.

67. Staff requests that NEET Southwest be required to enter into agreements with counties to compensate them for damage to local roads occurring due to transportation of heavy equipment including pre- and post-construction inspections. NEET Southwest argues that this condition is outside the Commission's authority and is not necessary since such agreements have already been offered to counties.<sup>108</sup> The Commission finds that, given that such agreements have already been offered to the counties, Staff's request is denied as moot. However any such agreement if accepted by the county, should be shared with Staff.

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<sup>106</sup> *Id.* at 17-18.

<sup>107</sup> Initial Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pgs. 34-35 (May 12, 2023).

<sup>108</sup> *Id.* at 36-37.

## **Conclusion**

68. While SPP's bidding and selection process was extensive, the decision of the IEP was devoid of direct input from this Commission. In his Direct Testimony, Staff witness Leo Haynos recommends "the Commission consider approaching SPP to allow states the opportunity to participate in developing routing parameters to include in a Request for Proposal for any future competitively bid transmission lines."<sup>109</sup> The Commission agrees with this recommendation. The Commission believes the competitive solicitation process will be improved, with potentially better outcomes identified, if input from relevant state siting authorities is incorporated early in the process.

69. The Commission intends to open a general investigation into principles and priorities to be used in future line siting proceedings at a future date. SPP will be made aware of both the Commission's concerns and the results of its general investigation in order to better facilitate future cooperation and expectations.

70. The Commission finds NEET Southwest has met the requirements to be granted a siting permit for NEET Southwest's preferred route, subject to the NEET Southwest Alternative Reroute found in JB-1 and to micro-siting and minor modifications mutually agreed upon with the landowner.

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<sup>109</sup> Direct Testimony of Leo Haynos, pg. 29 (Feb. 21, 2023).

**THEREFORE, THE COMMISSION ORDERS:**

A. NEET Southwest's Application for a siting permit is granted, subject to the conditions and modifications identified herein.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>110</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair, Keen, Commissioner (Dissenting); French Commissioner.

Dated: 05/24/2023 \_\_\_\_\_.



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Lynn M. Retz  
Executive Director

DGC

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<sup>110</sup> K.S.A. 66-l 18b; K.S.A. 77-503(c); K.S.A. 77-531(b).

### **DISSENTING OPINION**

As proposed, I would deny the NextEra Line Siting Application for the 94 mile Wolf Creek to Blackberry 345 kV Electric Transmission Line (the Line). Instead, I believe the Kansas Corporation Commission (Commission or KCC) should have decided that:

- a major segment of the Line (i.e. approximately 22.5 miles or 1/4<sup>th</sup> of the entire route of the Line) be co-located or “double circuited” on a single set of poles with an existing nearby or adjacent Evergy transmission line to avoid having two major electric transmission lines sited parallel to each other along any portion of the route of the Line; and that
- NextEra and Evergy should negotiate a Memorandum of Understanding (MOU) governing the double circuited lines and coordinate the construction phase, the operating procedures (including maintenance responsibilities), access sharing issues, and cost sharing arrangements for all issues of mutual concern; and that
- the Commission’s proposal for double circuiting be remanded to the Southwest Power Pool (SPP) for its review and consideration of the Commission’s double circuit proposal; for its assessment and consideration of the underlying Commission concerns regarding the siting and routing of the Line as proposed by NextEra; and, for SPP alternative siting solutions to avoid having two parallel transmission lines for any portion of the entire route of the Line.

#### **Overview of the KCC Transmission Line Siting Process**

Traditionally, states have enjoyed sole siting authority over electric transmission lines and facilities.<sup>1</sup> There are good public policy reasons for this siting authority. Energy infrastructure, although vital, can be intrusive on the environment, biology, cultural resources, health and safety, land use and development, and general aesthetics. Traditional electric regulatory authority also recognizes that costs associated with electric transmission planning and execution are paid by the State’s consumers in some form, either directly through utility rates or through formula rates. As a result, the KCC has been granted broad authority over Kansas energy infrastructure in an effort to minimize adverse human and environmental impacts while simultaneously ensuring that energy

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<sup>1</sup> K.S.A. § 66-1,177 *et seq.*



needs are fulfilled in a sufficient, efficient, orderly and timely manner. This KCC evaluation process is vital to ensure that the public, the environment, and individual landowners are not subjected to avoidable and unnecessary impacts.

In evaluating siting applications, the KCC considers “the necessity for and the reasonableness of the location of the proposed electric transmission line[.]”<sup>2</sup> Evaluation of the project’s “necessity” mirrors the evaluation that is performed in reviewing the application for a certificate of public convenience and necessity. Consequently, the principal issue in electric transmission line siting proceedings, specifically including this proceeding, is the reasonableness of the proposed route.

In the KCC’s experience, public outreach is an integral part of the routing and transmission line siting process. As such, in addition to convening public and evidentiary hearings,<sup>3</sup> the KCC also makes great effort to engage impacted parties and ensure that all interests are heard. KCC Staff engages with affected landowners, and other interested parties. The Commission also sends its engineers into the field to drive the proposed route and meet with affected landowners.

State law requires the KCC to issue an order on siting applications within 120 days of the date of filing.<sup>4</sup> Issues raised by siting applications are inherently local. Every electric transmission line comes with its own unique set of circumstances and concerns. Generally, state regulators are much better situated and prepared to evaluate and deal with the myriad of local concerns (including concerns over routing and cost) presented by any transmission line siting proposal than is the SPP,

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<sup>2</sup> K.S.A. § 66-1,180.

<sup>3</sup> The KCC is required to hold a public hearing on the application within 90 days in one of the counties where the line is proposed to be built. K.S.A. § 66-1,178(b); *see also* K.S.A. § 66-1,179 (prescribing the requirements for notice of the public hearing). The KCC may conduct an evidentiary hearing, but its practice has always been to conduct such hearings. It is also required to commence a public hearing “not more than 90 days after the date the application was filed, to determine the necessity for and the reasonableness of the location of the proposed electric transmission line.” K.S.A. § 66-1,178(b)-(c).

<sup>4</sup> K.S.A. § 66-1,178(d).

the electric grid operator for Kansas. With particular regard to routing, in analyzing a transmission line siting application, state electric regulatory authorities are uniquely situated to help inform routing decisions and are available to address local concerns at any stage in the SPP evaluation and authorization processes. Given the emphasis the Commission places on outreach to affected stakeholders, prominently including landowners, the KCC is also uniquely situated to address compliance with the basic process requirements inherent in making good faith efforts to engage landowners and other stakeholders early in the process. As a result of all of this Commission local involvement and engagement, it is imperative that the SPP not take actions that would exclude the Commission as the state's electric regulator, from participating in siting proceedings or discount the effect of or fail to elicit the state's input and analysis of local issues and concerns at an early stage in the SPP process of evaluating and ultimately authorizing new transmission line proposals.

#### The SPP Transmission Line Vetting and Approval Process

The SPP, as the electric grid operator for Kansas and 16 other states, initiated competitive bidding for the Wolf Creek to Blackberry line through a Request for Proposal (RFP) process that sought competitive bids from utilities interested in constructing the proposed Line. The SPP vetting process precluded and did not elicit or consider any KCC staff input prior to the final step in the SPP's analysis, review and approval process -- i.e. the award or granting of an SPP Notice to Construct to NextEra. Thus, the SPP lost the benefit of the specific knowledge of local issues and concerns that state utility regulators bring to the transmission line RFP evaluation and authorization process.

More specifically, the SPP's Request for Proposal process that initiated the solicitation of competitive bids for the Line was devoid of any acknowledgment that roughly 25 miles of the Line

would be parallel to an existing 161 kV transmission line.<sup>5</sup> Such an acknowledgement would have permitted bidders to more holistically consider the potential consequences that parallel lines would pose for utility construction and operation, and for affected landowners.<sup>6</sup> The RFP process made no effort to elicit state or KCC regulatory involvement<sup>7</sup> but rather identified the two end points of the Line, and, as a result, focused SPP's consideration and evaluation efforts, and indeed its ultimate recommendation, primarily on the costs to and technical considerations for the utilities bidding to construct and operate the Line.<sup>8</sup> By strictly limiting its analysis and evaluation to traditional cost and technical considerations, rather than also including consideration of state and local stakeholder and landowner concerns,<sup>9</sup> the SPP's RFP process did not give adequate weight to those important state, local, and landowner concerns and interests.

The procedures underlying the SPP's Independent Expert Panel Report suffered from a similar flaw by not considering the potential consequences of the roughly 25 miles of the Line that would run parallel to an existing high voltage transmission line.<sup>10</sup> Before issuing the Independent Expert Panel Report, which unanimously recommended NextEra's bid as the recommended RFP Proposal, the SPP should have coordinated with the KCC and its Staff to ensure the interests of Kansas and its residents were protected by allowing consideration of local concerns at an early stage in the evaluation process. Instead, without any KCC input or involvement, the SPP followed the recommendation of its Independent Expert Panel and issued a Notice to Construct to NextEra.<sup>11</sup> SPP's failure to coordinate with the KCC in advance of issuing its Independent Expert Panel Report created an untenable situation, where the circumstances surrounding the recommended

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<sup>5</sup> Transcript of Evidentiary Hearing (Tr.), May 2, 2023, Vol. 1, pp. 68-69.

<sup>6</sup> *Id.*, p. 69.

<sup>7</sup> *Id.*

<sup>8</sup> Tr., May 5, 2023, Vol. 5, p. 96.

<sup>9</sup> *Id.*, Vol. 1, p. 70.

<sup>10</sup> *Id.*, p. 74.

<sup>11</sup> Tr., Vol. 5, p. 96.

Line had not adequately considered or safeguarded Kansas landowner concerns and interests. NextEra received a Notice to Construct, which forced the Commission into a set of constraints that it did not have an adequate opportunity to consider or assist in resolving at a stage prior to this line siting application.<sup>12</sup> Accordingly, the KCC finds itself placed in the awkward and unenviable position of choosing between denying or delaying construction of the proposed Line, which potentially could be economically detrimental to Kansas, or approving and permitting a proposed route for the Line that has not adequately or timely considered and protected the interests and concerns of Kansas stakeholders and landowners.<sup>13</sup> To avoid this circumstance and as suggested by Leo Haynos, KCC Chief Engineer for the Utilities Division, state or KCC input should be routinely included and considered by the SPP in developing routing parameters as early as and within their RFP process in future competitively bid transmission line projects. Such early KCC or state utility regulator involvement would allow bidders to address KCC or state regulatory concerns early in the RFP process.<sup>14</sup> In sum, the SPP process for vetting proposed new transmission lines should, in the ordinary course, proactively and directly elicit input from affected states and the state electric utility regulators regarding information pertaining to any concerns or complications or unique factors or features that may impact the practical implementation of the SPP Notice to Construct.<sup>15</sup>

Based upon testimony elicited at the evidentiary hearing in this docket, there was unanimity among the parties in this docket that the SPP transmission line authorization process is flawed in certain important respects. In the 22-NETE-419-COC Docket, Kelsey Allen, the Lead or Principal

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<sup>12</sup> *Id.*, p. 97.

<sup>13</sup> *Id.*, pp. 97-98.

<sup>14</sup> *Id.*, p. 98.

<sup>15</sup> *Id.*, p. 99.



Engineer for SPP,<sup>16</sup> acknowledged that SPP does not consider local concerns, including identifying whether a proposed transmission line would run parallel to an existing line. Mr. Allen also testified, “SPP does not do line routing. So to the extent that the proposed route parallels directly that 161 line, that is not something that we could have known or considered. We do not do detailed routing studies.”<sup>17</sup> Under the circumstances, it is difficult to understand how SPP could disclaim responsibility for transmission line siting and routing when they commenced a competitive bidding process for the Line by identifying and defining rather precisely the parameters or ending points of the proposed Line. Mr. Allen further testified that the SPP vetting process leading to the approval of new transmission lines does “not consider, as a general practice, specific issues in terms of land use...”, including the impact proposed transmission lines may have on competing land uses -- such as for agricultural or commercial purposes or for petroleum production or recreational uses.<sup>18</sup> Steven Vetsch, Evergy’s Vice President of Transmission, also acknowledged that SPP’s review processes did not consider or seek any input from the Commission that could have made it aware that the potential for having parallel lines could be an issue.<sup>19</sup>

NextEra retained the firm of Burns & McDonnell to conduct the routing study for the proposed Line. NextEra’s witness Dusty Werth, Senior Environmental Scientist with Burns & McDonnell, acknowledged there are benefits to communicating with regulators as part of the routing study,<sup>20</sup> and explained that regulators in Texas and Maryland preferred to be involved early in the routing process and prior to the submission of the siting application.<sup>21</sup> Obviously there are

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<sup>16</sup> *Id.*, p. 41.

<sup>17</sup> *Id.*, p. 42.

<sup>18</sup> 22-NETE-419-COC Transcript of Hearing, Vol. 2, pp. 328-329.

<sup>19</sup> Tr., Vol. 5, pp. 42-43.

<sup>20</sup> *Id.*, p. 210.

<sup>21</sup> *Id.*, p. 211.

significant benefits to an evaluation process that anticipates potential problems, concerns or issues at the earliest possible stage rather than the process that evolved in this instance.

In sum, I would adopt the recommendation of Leo Haynos, KCC Chief Engineer, that the Commission suggest to SPP that it proactively elicit state participation in the development of routing parameters for RFPs in future SPP competitively bid transmission line projects.<sup>22</sup> As Mr. Werth testified, “it would be helpful if the SPP and the KCC worked together to come up with parameters for routing.”<sup>23</sup>

### The Double Circuit Dilemma

The route of the Line, as proposed and advanced by NextEra and as approved by the Commission, will permit NextEra to construct and operate a Wolf Creek to Blackberry 345 kV electric transmission line approximately 94 miles in length through five Southeast Kansas counties. In Kansas, approximately 22.5 miles of the Line (or approximately 1/4<sup>th</sup> of the total length of the Line) will be adjacent or parallel to an existing 161 kV electric transmission line owned and operated by Evergy. Both of these transmission lines are large structures that will run parallel to each other as they traverse (sometimes diagonally) 78 landowner parcels.<sup>24</sup>

The Commission’s Order rejects the option of co-locating or double circuiting these lines on a single set of poles for the approximately 22.5 mile segment. “Double circuiting” is where two separate transmission lines are strung along or on one set of poles – thereby significantly reducing the amount of land used for both lines. As acknowledged in the Commission Order, double circuiting is not uncommon, however, according to NextEra witness Daniel Mayers, the NextEra

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<sup>22</sup> *Id.*, p. 212.

<sup>23</sup> *Id.*, p. 213.

<sup>24</sup> Staff Response to Public Comments Prepared by Leo M. Haynos, March 31, 2023, p. 10.

Director of Transmission, to date within the United States there has never been a situation where a double circuit is comprised of transmission lines owned by two different electric utilities.<sup>25</sup>

I oppose permitting the Line without double circuiting the 22.5 mile segment of the Line with the adjacent 161 kV Everygy line. My opposition and concern about these two parallel transmission lines arises from the very burdensome and potentially adverse consequences that will be visited upon all affected landowners and those having a vested interest in the affected lands. These consequences range from the potentially dire effect these encumbrances may have on land values to the effects two sets of large transmission infrastructures will have on future alternative uses of the affected lands. All affected landowners, and their successors in interest, will be compelled to cope in perpetuity with the multiple effects of having two sets of large transmission lines crossing their properties. In significant respects, this outcome is the result of the SPP's flawed RFP and IEP processes as explained above. These are outcomes that could have been foreseen, addressed and perhaps prevented or mitigated prior to this line siting docket had the SPP communicated with or sought or elicited input from the KCC Staff regarding potential local concerns and issues in a more timely, collaborative and coordinated fashion. In this instance, the SPP processes should have provided for KCC input contemporaneously with the RFP process and prior to the issuance of the IEP Report and the Notice to Construct.

Pursuant to K.S.A. 66-1,180, the Commission is charged with determining whether the route of any proposed transmission line is reasonable. I do not believe that it is reasonable to construct a major transmission line that will be parallel to another existing major transmission line for approximately 22.5 miles or 1/4<sup>th</sup> of the length of the proposed 94 mile Line. Parallel transmission lines constitute very burdensome, untenable and adverse encumbrances on the land

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<sup>25</sup> Tr. Vol. 3, pg. 133, lines 2-8, Mayers, also pp. 143-144.

and in this instance make the proposed route of the Line unreasonable. If the approximately 22.5 miles of the Line were co-located with the existing 161 kV transmission line owned by Evergy, with the double circuiting utilizing NextEra's construction specifications, including the use of concrete poles where appropriate, many of the adverse circumstances surrounding this line siting application could have been avoided or significantly mitigated.

Had the Commission directed double circuiting, the approval of the Line should also have been further conditioned upon requiring that NextEra and Evergy enter into a Memorandum of Understanding (MOU) for the purpose of specifically considering, coordinating and facilitating issues regarding construction, right-of-ways, access, and cost-sharing.

Furthermore, with double circuiting, an important additional condition for ultimate Commission approval should have been a Commission directed remand of this matter back to SPP to:

- (1) request that the SPP assess and review the Commission's proposal for double circuiting and seek SPP guidance and assistance regarding the best practices to utilize under the circumstances to implement double circuiting; and
- (2) in the alternative, request SPP guidance and assistance regarding alternative siting solutions in lieu of double circuiting that would avoid siting two parallel transmission lines along any portion of the route of the Line; and
- (3), request that SPP provide guidance concerning its willingness to consider revising its current new transmission line vetting procedures by formally adopting proactive procedures that provide for the solicitation of input regarding local issues and concerns from the state utility regulators and coordinate that input with the SPP in the RFP and IEP review processes.

While Commission Staff ultimately concluded that double circuiting was unreasonable, Leo Haynos of Staff testified that the challenges presented by multiple utilities sharing a double circuit transmission line were not insurmountable. Furthermore, the joint report from Evergy and NextEra ordered by the Commission in the 22-419 Docket, engaged in pure conjecture and speculation when it estimated that any double circuit option would cause a delay to the in-service



date of this transmission project and that every twelve months of delay would result in a loss of approximately \$14.5 million in benefits to SPP customers. Any actual time delay and cost consequences would be contingent upon the timeliness of any SPP re-review and reconsideration processes. In this instance, the negatives associated with double circuiting are not so compelling as to reject its use and do not clearly outweigh its benefits.

The Commission's Order acknowledges flaws and deficiencies in SPP's RFP and IEP review and vetting processes leading to the issuance of the Notice to Construct to NextEra. Indeed, serious consideration of the potential adverse effects and consequences to Kansas landowners was not undertaken until just prior to the filing of the line siting application, and was initiated by the Commission. Granting the siting permit without remanding any important issues to the SPP for its reconsideration as suggested herein, in effect, provides only scant and passing acknowledgement of the serious costs, consequences and burdens for affected Kansas landowners and other stakeholders while proceeding with the Line and favoring and advancing more immediate regional SPP benefits. Much greater weight should have been given to the costs and consequences to be borne by affected Kansas landowners.

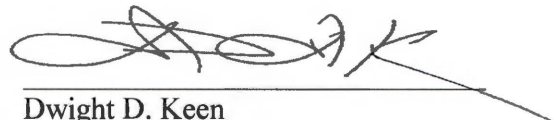
#### Conclusion

The Commission is forced to balance the potential benefits of the Line with its impact on Kansas landowners and other stakeholders. The Commission acknowledges that a flawed SPP vetting process precluded or excluded KCC Staff from providing timely input regarding local issues and concerns in the consequential SPP managed RFP and IEP decision making processes. The Commission further recognizes SPP would have benefited from involving the Commission at the outset of its review processes. However, the Commission's suggestion to the SPP that it consider reforming or revising its RFP procedures to allow states to participate in developing

transmission line routing parameters in the future does not sufficiently address the adverse consequences to current affected landowners that will ensue from the grant of this permit. Furthermore, the Commission does not provide relief in the form of a remand to the SPP for its reconsideration or alternative solutions that could potentially protect current landowners and other stakeholders who will otherwise be adversely affected in perpetuity with two parallel large electric transmission lines traversing their properties.

The quest for expediency and results in achieving regional electric grid transmission planning and execution goals should never override or supplant the absence of adequate and timely consideration of the very real long-term consequences to be visited by large transmission lines on landowners and other affected local stakeholders. In this instance, an SPP transmission line evaluation and selection process that is acknowledged to be flawed should not proceed to fruition without reconsideration and redress.

Accordingly, for the reasons set out herein, I respectfully dissent from the Commission Order.



Dwight D. Keen  
Commissioner

## **CERTIFICATE OF SERVICE**

23-NETE-585-STG

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
electronic service on 05/24/2023.

DEREK BROWN, SR. FEDERAL REG. AFFAIRS,  
MANAGER  
EVERGY KANSAS CENTRAL, INC  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
derek.brown@evergy.com

CATHRYN J. DINGES, SR DIRECTOR & REGULATORY  
AFFAIRS COUNSEL  
EVERGY KANSAS CENTRAL, INC  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
cathy.dinges@evergy.com

PATRICK T. SMITH, CORPORATE COUNSEL  
EVERGY KANSAS CENTRAL, INC  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
patrick.smith@evergy.com

DENISE M. BUFFINGTON, DIR. FED REG. AFFAIRS  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
denise.buffington@evergy.com

ANTHONY WESTENKIRCHNER, SENIOR PARALEGAL  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
anthony.westenkirchner@evergy.com

JOHN GARRETSON, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 304  
3906 NW 16TH STREET  
TOPEKA, KS 66615  
johng@ibew304.org

DAVID COHEN, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.cohen@kcc.ks.gov

BRIAN G. FEDOTIN, GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
b.fedotin@kcc.ks.gov

WALKER HENDRIX, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
w.hendrix@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
a.latif@kcc.ks.gov

## CERTIFICATE OF SERVICE

23-NETE-585-STG

CARLY MASENTHIN, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
c.masenthin@kcc.ks.gov

LESLIE WINES, ADMINISTRATIVE ASST.  
KCP&L AND WESTAR, EVERGY COMPANIES  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
leslie.wines@evergy.com

RUSTIN J. KIMMELL  
KIMMELL LAW FIRM, LLC  
512 Neosho Street  
PO Box 209  
Burlington, KS 66839  
rustin@kimmell-law.com

GLENDA CAFER, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY  
800 SW JACKSON  
SUITE 1310  
TOPEKA, KS 66612-1216  
gcafer@morrislaing.com

TREVOR WOHLFORD, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY  
800 SW JACKSON  
SUITE 1310  
TOPEKA, KS 66612-1216  
twohlford@morrislaing.com

JACQUELYN BLAKLEY, EXEC DIRECTOR,  
DEVELOPMENT  
NEXTERA ENERGY TRANSMISSION, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
jacquelyn.blakley@nexteraenergy.com

WILLIAM P. COX, SENIOR ATTORNEY  
NEXTERA ENERGY TRANSMISSION, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
will.p.cox@nexteraenergy.com

TRACY C DAVIS, SENIOR ATTORNEY  
NEXTERA ENERGY TRANSMISSION, LLC  
5920 W WILLIAM CANNON DR, BLDG 2  
AUSTIN, TX 78749  
tracyc.davis@nexteraenergy.com

PHOENIX Z. ANSHUTZ, ATTORNEY  
PENNER LOWE LAW GROUP, LLC  
245 N WACO STREET, STE 125  
WICHITA, KS 67202  
panshutz@pennerlowe.com

ANNE E. CALLENBACH, ATTORNEY  
POL SINELLI PC  
900 W 48TH PLACE STE 900  
KANSAS CITY, MO 64112  
acallenbach@polsinelli.com

ANDREW O. SCHULTE, ATTORNEY  
POL SINELLI PC  
900 W 48TH PLACE STE 900  
KANSAS CITY, MO 64112  
aschulte@polsinelli.com

KRISTIN CONKRIGHT, PARALEGAL  
WICKHAM & WOOD, LLC  
107 W. 9th Street, 2nd Floor  
Kansas City, MO 64105  
office@wickham-wood.com

## CERTIFICATE OF SERVICE

23-NETE-585-STG

BRIAN WOOD  
WICKHAM & WOOD, LLC  
107 W. 9th St., 2nd Flr.  
Kansas City, MO 64105  
brian@wickham-wood.com

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