



**MISSOURI PUBLIC SERVICE COMMISSION**

**STAFF REPORT ON**

**APPENDIX 2**

**Schedules**

**NextEra Energy Transmission Southwest, LLC (“NEET”)**

**FILE NO. EA-2022-0234**

*Jefferson City, Missouri  
September 22, 202*

# 7 PROJECT RECOMMENDATIONS

## 7.1 TARGET AREA PROJECTS

The ITP Manual Section 4.1.2 describes potential additional analysis of target areas to address specific issues with considerations beyond the scope of a typical ITP assessment. In the 2019 ITP, two areas were identified as potential target areas: southern Kansas/southwest Missouri, and northern Oklahoma.

### 7.1.1 TARGET AREA 1: SOUTHEAST KANSAS/SOUTHWEST MISSOURI

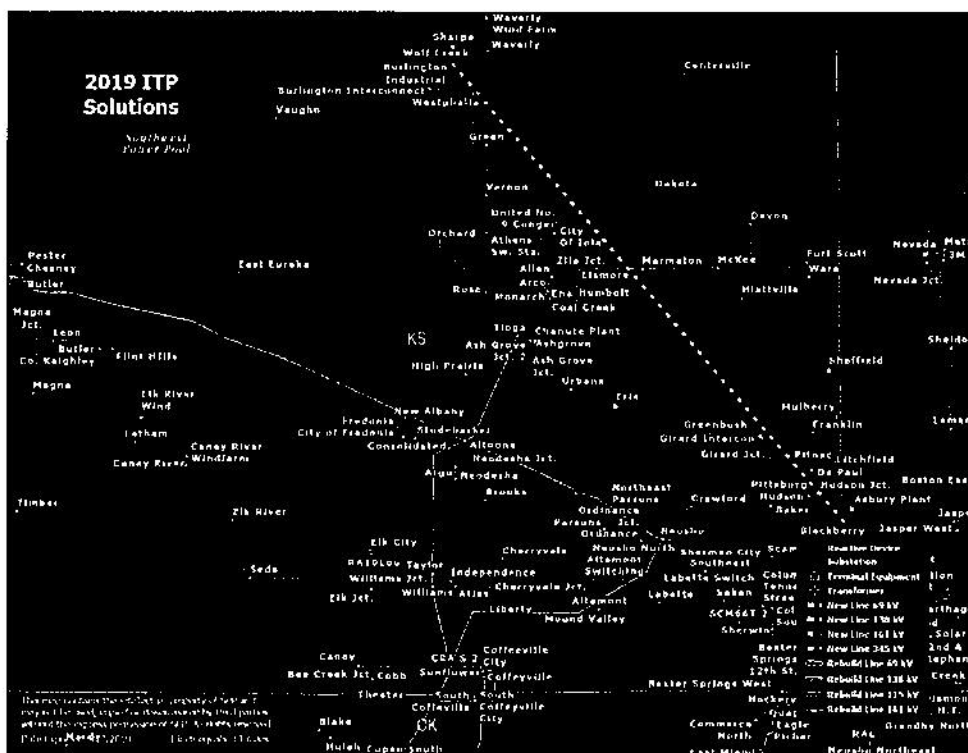


Figure 7.1: New Wolf Creek-Blackberry 345 kV Line and New Butler 138 kV Phase-Shifting Transformer

The new Wolf Creek-Blackberry 345 kV line, paired with the New Butler 138 kV phase-shifting transformer, resolves multiple 2019 ITP needs and additional issues identified for Target Area 1. The major study driver for the new Wolf Creek-Blackberry 345 kV line is its ability to relieve congestion and divert bulk power transfers away from the Wolf Creek-Waverly-La Cygne 345 kV line, Wolf Creek 345/69 kV transformer and downstream 69 kV lines, and allowing system bulk power transfers to continue to flow east to major SPP load centers. This will help to levelize system LMPs, low generator LMPs in the west and high load LMPs in the east, and overall system congestion while providing market efficiencies and benefits to ratepayers and transmission customers.

The new 345 kV line parallels three major contingencies in the area: Caney River-Neosho 345 kV line, Wolf Creek-Waverly-La Cygne 345 kV line, and Neosho-Blackberry 345 kV. Paralleling the Neosho-Blackberry

345 kV line relieves congestion on the Neosho-Riverton 161 kV for the Neosho-Blackberry 345 kV line outage and reduces congestion on Neosho-Riverton 161 kV line for the loss of Blackberry-Jasper 345 kV line outage.

In addition to the projected APC savings, the new Wolf Creek-Blackberry 345 kV line provides multiple reliability benefits. Primarily, it resolves declining transient stability margins at the Wolf Creek nuclear plant by adding a fourth 345 kV outlet that is expected to increase system resiliency and reduce system operation risks. Dynamic simulations show the performance of the Wolf Creek unit with the addition of the Wolf Creek-Blackberry 345 kV transmission line met the “SPP Disturbance Performance Requirements.” This solution will address the transient stability limit discussed previously in Section 4.1.1.1.

The Wolf Creek-Blackberry 345 kV line adds transmission capacity that is expected to relieve system loading and increase available transfer capability (ATC) to local long-term transmission service customers. This should also improve positions of candidate ARR holders that would lead to improved TCR funding and reduce the need for counterflow optimization. This line would specifically help to mitigate the Neosho-Riverton 161 kV ARR constraints.

Although the new Wolf Creek-Blackberry 345 kV line is cost beneficial as a standalone project in the 2019 ITP, the new Butler phase-shifting transformer was paired with the 345 kV line to cost effectively mitigate remaining congestion on the Butler-Altoona 138 kV constraint. The congestion relieved by the new Wolf Creek-Blackberry 345 kV line and the new Butler 138 kV phase-shifting transformer is shown in Table 7.1.

The Wolf Creek transformer was identified as a need in the 2018 ITP near-term assessment, but was ultimately not addressed with new construction based upon the TWG’s direction to determine a more holistic solution in the 2019 ITP. In addition the Butler-Altoona 138 kV line was loaded just below the SPP Planning Criteria reliability threshold. Continued analysis of reliability needs in the 2019 ITP revealed the Butler-Altoona 138 kV line and Wolf Creek 345/69 kV transformer reliability needs are minimally addressed by model corrections. However, thermal loading on both facilities remained just below the 100% threshold. The Wolf Creek-Blackberry 345 kV line achieves the TWG’s goal of addressing thermal loading concerns associated with these facilities.

Alternative solutions were considered and selected in the final Future 1 portfolio – to replace Wolf Creek 345/69 kV transformer and rebuild a portion of the Waverly-La Cygne 345 kV line along with the Butler 138 kV phase-shifting transformer – but they did not perform well together and did not score as well during consolidation of the two futures. Considering that the market economic model represents a DC solution and the issues in the area are due to large power transfers, it is likely that benefits of smaller-scale solutions would not be fully realized due to angular stability limitations and known voltage stability limitations. These smaller-scale solutions could impose operational risks by allowing the system to operate at unstable operating points.<sup>19</sup>

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<sup>19</sup> Generally, thermal limitations precede angular and voltage stability limitations of the BES and prevent the system from reaching unstable operating points. When thermal limitations are addressed by smaller-scale solutions that only address the thermal limitation, the thermal limitations may no longer precede angular and voltage stability limitations, and the system may be inadvertently operated at unstable operation points that are less recognizable.

## **Southwest Power Pool, Inc.**

The new Wolf Creek-Blackberry 345 KV line is the preferred alternative to the 2013 ITP 20-year assessment Wolf Creek-Neosho 345 kV line. The Wolf Creek-Blackberry line is considered to be a more diverse project than Wolf Creek-Neosho 345 kV. It performed better from an APC savings perspective, and it provides additional flexibility for future expansion options, including further expansion into eastern load centers and the opportunity for future seams projects with neighboring regions. At approximately 100 miles, it is short enough to not have surge-impedance-loading concerns.

**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 APPLICATION FOR CERTIFICATE OF CONVENIENCE AND  
NECESSITY**

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

**Background**

1.       The Southwest Power Pool (“SPP”) is a Regional Transmission Organization (“RTO”) mandated by the Federal Energy Regulatory Commission (“FERC”) 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>

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<sup>1</sup> Southwest Power Pool, *About Us*, <https://spp.org/about-us/>.

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

<sup>3</sup> Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pg. 4 (Feb. 28, 2022).

2. The Transmission Project was one of 44 projects recommended by the ITP process, and comprised more than half of the mileage of transmission included in the ITP.<sup>4</sup> SPP approved the Transmission Project as a Competitive Upgrade open to competitive bidding.<sup>5</sup> A total of seven bids were submitted to SPP by four bidding entities.<sup>6</sup>

3. SPP's competitive process is designed to select the right 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> Once selected, the qualified developer creates the design and specific route for the project.<sup>9</sup> Upon completion of its evaluation, IEP recommended NextEra Energy Transmission Southwest, LLC ("NEET Southwest") as the Designated Transmission Owner for the Project.<sup>10</sup>

#### **NextEra's Application**

4. On February 28, 2022, 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 ("Application"). NEET Southwest also filed direct testimony of Amanda Finnis, Daniel Mayers, Dr. David Loomis, LaMargo Sweezer-Fischer, and Becky Walding.

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<sup>4</sup> Tr., Vol. 1, pg. 32.

<sup>5</sup> 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.*

<sup>10</sup> *Id.* at 5.



5. The Citizens' Utility Ratepayer Board ("CURB"), The Kansas Industrial Consumers Group, Inc ("KIC")<sup>11</sup>, Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. ("Evergy"), The Southwest Power Pool ("SPP"), Sunflower Electric Power Corporation ("Sunflower"), Kansas Electric Power Cooperative, Inc. ("KEPCo"), ITC Great Plains, LLC ("Great Plains"), Southwestern Public Service Company ("SPS"), and Darren McGhee and Rochelle McGhee-Smart ("McGhees") were granted intervention.

6. On May 17, 2022, Direct Testimony was filed by Darren McGhee and Rochelle McGhee-Smart, on behalf of the McGhees, Kelsey Allen and Jared Cooley on behalf of SPS, Darren Ives, Kelly Harrison, and Steve Vetsch on behalf of Evergy, and James Brungardt on behalf of Sunflower.

7. Also on May 17, 2022, Commission Staff ("Staff") filed its Report and Recommendation ("R&R"). Staff concluded that NEET Southwest possessed the necessary technical, operational and managerial expertise as well as the financial capabilities necessary to construct, own operate and maintain the Transmission Project.<sup>12</sup> Staff recommended that the Commission grant the CCN with the conditions that NEET Southwest address the option of building at least 25 miles of the proposed line as a double circuit transmission line in conjunction with Evergy, and submit additional annual reports and documents.<sup>13</sup>

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<sup>11</sup> KIC represents Spirit Aerosystems, Occidental Chemical Corporation, The Goodyear Tire and Rubber Company, Associated Purchasing Services, Lawrence Paper Company, Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Heart Pet Brands.

<sup>12</sup> Notice of Filing of Staff's Report and Recommendation, pg. 26 (May 17, 2022).

<sup>13</sup> *Id.*

Those reports are as follows:

Annual Reports:

- Unplanned outage report providing start and end time of outage, time elapsed before first responder on site, cause of outage, comments on how outage was resolved; summary of actions taken to mitigate future occurrences of similar outages;
- any rapid damage assessment prioritization reports associated with the outage.
- Documentation of transmission line maintenance activities and inspections completed as per Table 3A.6-1 included in response to RFP. (See response to Staff Data Request No. 32, attachment 1);
- Results for any inspections conducted for poles, conductor, and insulators.

8. Reply testimony was filed by Dr. Makhholm on behalf of KIC, Josh Frantz on behalf of CURB, and Kelly Harrison, Darren Ives and Steven Vatch on behalf of Evergy.

### **The Settlement Agreement**

9. On June 6, 2022, NEET Southwest, Staff, Evergy, CURB, SPP, KEPCo and Sunflower filed a Joint Motion to Approval Nonunanimous Settlement Agreement (“Settlement Agreement”). Great Plains and SPS have indicated that they neither join nor oppose the Settlement Agreement.<sup>14</sup> KIC and the McGhees are opposed to the Settlement Agreement.<sup>15</sup> Key terms of the Settlement Agreement, attached as Attachment A, include:

- a. NEET Southwest’s indirect parent company NextEra Energy Capital Holdings Inc. (“NEECH”), commits that, for the first forty years of operation, NEECH will provide or secure equity capital injections up to \$10 million per year as needed to maintain the financial integrity of the Transmission Project.
- b. NEET Southwest will consider and address as part of its line siting proceeding an option to double circuit a 25-mile portion of the Transmission Project that parallels an existing Evergy 161 kV transmission line, subject to receiving necessary approvals for a change in project scope from SPP and necessary agreements from Evergy.

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- Any modifications to contract between NEET-SW and emergency response contractor.
  - Emergency Response Contact List for NEET-SW and its Control Center Documents to be filed upon completion of project:
  - 345kV Transmission Line Restoration Plan;
  - Storm Outage and Emergency Response Plan;
  - Contracts for vendor support services documenting the NEET-SW project in Kansas has been added to various vendor contracts.
  - Contract for Brink Constructors providing unplanned outage response times and equipment availability specifications for the NEET-SW project in Kansas.
- Filing of affiliate contracts:
- Commitment by NextEra, NEET, and NEECH to fund NEET-SW in a manner consistent with an investment grade financial profile.

<sup>14</sup> Joint Motion for Approval of Nonunanimous Settlement Agreement, pg. 2 (June 6, 2022).

<sup>15</sup> *Id.* at 2-3.



- c. NEET Southwest will cooperate with Evergy to interconnect the Transmission Project to the Wolf Creek substation including:
  - i. Moving the interconnection point outside the owner-controlled area of the Wolf Creek nuclear generating station.
  - ii. Coordinate with Evergy towards agreement on issues of connection, project management, impact on the existing system, transmission planning, and future interconnections with the Transmission Project.
- d. NEET Southwest will provide Staff with a copy of the galloping study referenced in its response to KCC Data Request No. 21. In the design and construction of the Transmission Project, NEET Southwest will seek to limit galloping issues that result in potential outage for the transmission line by incorporating mitigation methods derived after engineering studies are completed.
- e. When the Transmission Project becomes operational NEET Southwest will maintain sufficient personnel in the region to provide adequate emergency response.
- f. NEET Southwest acknowledges the Commission's jurisdiction under all statutes not specifically waived by the Commission and that the Commission has authority to oversee NEET Southwest's CCN, including opening proceedings to investigate NEET Southwest's compliance with the terms and conditions of the CCN or any future line siting approvals.
- g. The Settling Parties agree that FERC preempts the KCC's ratemaking authority as set forth in K.S.A. 66-101b-f, 66-117, 66-128, and 66-128a-p unless NEET Southwest acts outside the conduct covered by FERC jurisdiction, at which time the KCC will decide

the applicability of these statutes. The Parties do not object to waivers of K.S.A. 66-1402 and 66-1403, subject to the following:

- i. NEET Southwest agrees to file a list of affiliate contracts specific to operations, maintenance and reliability of the Transmission Project in a compliance docket established for this proceeding, including a summary of any material changes to such contracts since the granting of the CCN; and
  - ii. NEET Southwest agrees to implement asymmetrical pricing in its transactions with affiliates, as discussed in the Rebuttal Testimony of Amanda Finnis at pgs. 5-6.
- h. Annual reporting on outages, damage assessments, maintenance, inspections, and emergency response contracts.
- i. Quarterly reporting on, safety, cost, schedule, quality, and landowner issues and resolutions.
- j. Upon Completion of the Transmission Project, NEET Southwest will file, documents that show NEET Southwest has met the construction requirements of the RFP, 345 kV Transmission Line Restoration plan, Storm Outage and Emergency Response Plan, Communications Plan, Contacts for vendor support services, and Contract for vendor providing response to unplanned outages.
- k. NEET Southwest will not file a line siting docket under K.S.A. 66-1,180 until granted a CCN by the Commission.

10. A hearing was held on June 8-9, 2022. All parties appeared by counsel and were given an opportunity to participate. At the hearing Commission heard the testimony of sixteen witnesses, two of which opposed the Application and Settlement Agreement.

### **Merger Standards**

11. The Commission has broad discretion and authority to grant or deny applications for certificates.<sup>16</sup> This broad discretion is even greater than the Commission's power to regulate rates and service of utilities.<sup>17</sup> In determining whether a CCN should be granted, the Commission should consider the interests of the parties in the following priority: (1) the public convenience ought to be the primary concern, (2) the interest of public utilities serving the territory next, and (3) the desires and solicitations of the applicant ought to be a relatively minor consideration.<sup>18</sup> The existence of the Settlement Agreement does not obviate the Commission's responsibility to make a determination on the Application.

12. Pursuant to K.S.A. 66-131, a CCN is a prerequisite to constructing electric transmission lines in Kansas. Historically, the Commission has required applicants seeking a CCN to demonstrate that they have the necessary technical, managerial, and financial resources to conduct business as a public utility.<sup>19</sup>

13. The Commission has also utilized the "merger standards" set out below to evaluate CCN applications.<sup>20</sup> Rather than serving as a strict checklist, the merger standards serve as factors

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<sup>16</sup> Kansas Gas & Electric Co. v. Public Service Commission, 122 Kan. 462, 468 (1927).

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

<sup>18</sup> Cent. Kansas Power Co. v. State Corp. Comm'n, 206 Kan. 670, 677 (1971).

<sup>19</sup> Docket No. 11-GBEE-624-COC, Order Approving Stipulation & Agreement and Granting Certificate pg. 23 (Dec. 7, 2011); *see also*, Docket Nos. 07-ITCE-380-COC Order Approving Stipulation & Agreement and Addressing Application of Statutes, pg. 8 (June 5, 2007) , and 08-ITCE-936-COC *et al.* Order Granting Joint Motion to Approve Stipulation and Agreement pg.18 (May 22, 2009).

<sup>20</sup> Docket No. 16-ITCE-512-ACQ, Order on Merger Standards, pgs. 2-4 (August 9, 2016).

to evaluate whether a proposed application is in the public interest.<sup>21</sup> Some of these factors are not directly applicable to NEET Southwest's Application, as the transmission facilities that NEET Southwest proposes to build will transmit energy and capacity at wholesale at a rate regulated by FERC. Nevertheless, to the extent they are applicable, the merger standards include:

- The effect of the transaction on customers
- Whether the transaction maximizes the use of Kansas energy resources
- Whether the transaction will reduce the possibility of economic waste
- Whether the transaction will be beneficial to state and local economies and to communities served by the resulting public utility operations in the state
- The effect of the transaction on affected public utility shareholders
- The effect of the transaction on the environment
- What impact, if any, the transaction has on public safety
- Whether the transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state

Over time, the Commission has added the following factors to the merger standards evaluation.<sup>22</sup>

- Financial ability
- Technical operations ability
- Managerial ability
- Impact on transmission in other states
- The historical presence of the Applicant

14. There is substantial overlap between the merger standards and the factors utilized to evaluate a settlement. Therefore the Commission will evaluate the application as modified by the Settlement Agreement under the Commission's previously established merger standards, before evaluating the Settlement Agreement.

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<sup>21</sup> See, Docket No. 16-KCPE-593-ACQ, Order, pg. 18 (April 19, 2017).

<sup>22</sup> See, Docket Nos. 07-ITCE-380-COC Order Approving Stipulation & Agreement and Addressing Application of Statutes, pg. 8 (June 5, 2007); 08-ITCE-936-COC *et al.* Order Granting Joint Motion to Approve Stipulation and Agreement, pg.13 (May 22, 2009).



## The Effect on Customers

15. Staff claims the Transmission Project will have a net positive impact on Kansas customers.<sup>23</sup> Staff witness Justin Grady testified that according to data provided by SPP, the Transmission Project is anticipated to produce a benefit to cost ratio of between 3.36 and 1.48 to 1.<sup>24</sup> Justin Grady further testifies that this is an extremely conservative estimate because those calculations were based on construction costs of \$162.7 million and a carrying charge of 17%.<sup>25</sup> NEET Southwest's winning bid included \$85.2 million in construction costs with a much lower carrying charge.<sup>26</sup> This leads the Commission to believe the benefit to cost ratio is much higher than originally projected.

16. Becky Walding estimates that, accounting only for costs without considering benefits, the Transmission Project would increase the average residential customer bill \$0.04 per month.<sup>27</sup> In Becky Walding's direct testimony she estimates between \$88 million and \$377 million in net benefits from the Transmission Project over 40 years.<sup>28</sup>

17. At the evidentiary hearing, Justin Grady testified that the Transmission Project would "levelize" Locational Marginal Prices ("LMP") in the system causing prices that are lower to rise and those that are higher will come down.<sup>29</sup> Attached to Justin Grady's testimony in support of the Settlement Agreement is a document from the ITP which lists one of the benefits of the ITP is reducing market price disparity, "levelizing wholesale energy prices by 21% on average."<sup>30</sup>

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<sup>23</sup> Staff's Post Hearing Brief, pg. 29 (June 30, 2022).

<sup>24</sup> Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pg. 25 (June 7, 2022).

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

<sup>26</sup> Notice of Filing of Staff's Report and Recommendation, pg. 12 (May 17, 2022).

<sup>27</sup> Direct Testimony of Becky Walding, pg. 35 (February 28, 2022).

<sup>28</sup> *Id.* at, BW-3. Table 6.16, pg. 95.

<sup>29</sup> Tr., Vol. 1, pg. 125, Locational Marginal Price reflects the cost of energy and congestion and losses at points across the grid.

<sup>30</sup> Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pg. 29 (June 7, 2022).



18. KIC uses the 21% figure to argue that the Transmission Project “could cause material cost increases in western Kansas that could be as high as a 21% increase.”<sup>31</sup> However, there is no evidentiary support in the record for KIC’s theory that the Transmission Project would lead to a 21% increase in energy prices. Darren Ives testified that levelization is not a zero-sum game.<sup>32</sup> Price decreases in one area do not mean the price will be equally increased somewhere else.<sup>33</sup> By alleviating energy congestion and allocating cheaper energy to the surrounding region, generators are encouraged to generate more electricity at cheaper overall costs, thereby lowering the net cost of electricity for the entire region.<sup>34</sup>

19. The evidence cited by KIC does not show the correlation between LMP and overall energy costs, let alone all-in rates or bills, which are impacted by congestion and transmission constraints. Further, when evaluating the impact of levelization on LMPs, the Commission must consider the State as a whole, rather than just specific regions. While Grady testified that LMPs in the western part of the State may go up he also testified that low LMPs are not necessarily a good thing for western Kansas.<sup>35</sup> Entities like Sunflower and Midwest who operate out of western Kansas own large generation resources, and low LMPs cause those generation resources to operate at a loss. Additionally, low LMPs increase congestion and transmission costs as less expensive power is transmitted to higher LMP markets.<sup>36</sup> Grady testified that removing inefficiency and removing congestion and spreading out low cost power to as much of the State as possible is a

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<sup>31</sup> KIC Reply Brief, pg. 3 (July 12, 2022).

<sup>32</sup> Tr., Vol. 2, pg. 297.

<sup>33</sup> *Id.* at 385-386; *See also Id.* at pg. 297-300.

<sup>34</sup> *Id.* at 500-502.

<sup>35</sup> *Id.* at 501.

<sup>36</sup> *Id.* at 500 and 503.

beneficial thing.<sup>37</sup> Levelization also means a reduction in overall energy costs for the entire region.<sup>38</sup>

20. Landowner Rochelle McGhee-Smart argues in her direct testimony that the Transmission Project will negatively affect system reliability by sending power needed by farms and ranches in Kansas to other states.<sup>39</sup> Staff witness Justin Grady testified that the purposes of the Transmission Project is improvements in reliability and congestion and the public narrative that the Transmission Project is meant to move nuclear or wind power outside the State was fundamentally incorrect and “a giant misunderstanding.”<sup>40</sup> Grady further testified there was not any evidence that the Transmission Project was an “export line.”<sup>41</sup> When the Transmission Project was originally studied as an interregional project between SPP and MISO, MISO rejected it because 97% of the benefits of the Transmission Project would go to SPP.<sup>42</sup> Grady used this study to state “[t]his is clear and unequivocal evidence that the purpose of this line is not to ship wind power outside of the State to the benefit of MISO.”<sup>43</sup>

21. In recounting the benefits to Kansas, Justin Grady restated in its entirety the economic and reliability considerations contained in the 2019 Study Report. Those considerations are.

The new Wolf Creek-Blackberry 345 kV line, paired with the New Butler 138 kV phase-shifting transformer, resolves multiple 2019 ITP needs and additional issues identified for Target Area 1. The major study driver for the new Wolf Creek-Blackberry 345 kV line is its ability to relieve congestion and divert bulk power transfers away from the Wolf Creek Waverly-LaCygne 345 kV line, Wolf Creek 345/69 kV transformer and downstream 69 kV lines, and allowing system bulk power transfers to continue to flow east to major SPP

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<sup>37</sup> *Id.* at 502.

<sup>38</sup> *Id.* at 386.

<sup>39</sup> Direct Testimony of Rochelle McGhee-Smart, pg. 3 (May 17, 2022).

<sup>40</sup> Tr., Vol. 2, pgs. 496-497, Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pg. 5 (June 7, 2022).

<sup>41</sup> Tr., Vol. 2, pg. 598.

<sup>42</sup> Tr., Vol. 2, pg. 508. MISO is an RTO which serves Missouri as well as 15 other states and parts of Canada. <https://www.misoenergy.org/about/>

<sup>43</sup> Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pgs. 5-6 (June 7, 2022).



load centers. This will help to levelize system LMPs, low generator LMPs in the west and high load LMPs in the east, and overall system congestion while providing market efficiencies and benefits to ratepayers and transmission customers.

The new 345 kV line parallels three major contingencies in the area: Caney River-Neosho 345 kV line, Wolf Creek-Waverly-LaCygne 345 kV line, and Neosho-Blackberry 345 kV. Paralleling the Neosho-Blackberry 345 kV line relieves congestion on the Neosho-Riverton 161 kV for the Neosho-Blackberry 345 kV line outage and reduces congestion on Neosho-Riverton 161 kV line for the loss of Blackberry-Jasper 345 kV line outage.

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22. The Commission finds the testimony of Grady and Ives most compelling and convincing on this matter. Based on the testimony received, the Commission finds that the Transmission Project will have a beneficial effect on customers by lowering overall energy costs, removing inefficiency, relieving transmission congestion, and improving the reliability of the transmission system.

#### **Whether the Transaction maximizes the use of Kansas Energy Resources**

23. KIC witness Dr. Makholm testified Kansas has a “predicament of being rich in wind resources but being incapable yet of transmitting the benefit of such resources to other states.”<sup>45</sup> While the Transmission Project would appear to contribute to resolving Kansas’ predicament, Dr. Makholm argues that SPP’s approach results in “piecemeal” solutions and instead, advocates for “transmission facilities developed by competitive transmission entrants and financed under contract with load centers and generators – not unlike ... Grain Belt...”<sup>46</sup>

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<sup>44</sup> Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pgs. 6-8 (June 7, 2022).

<sup>45</sup> Reply Testimony of Jeff. D. Makholm, Ph.D., pg. 3 (May 27, 2022).

<sup>46</sup> *Id.* “Grain Belt” is a long distance high voltage transmission line that will run through Kansas Missouri, Illinois and Indiana. See Docket No. 13-GBEE-803-MIS, Order Granting Siting Permit, pg. 8 (November 7, 2013).

24. Becky Walding testified that SPP's 2019 ITP assessment determined a clear need for the Transmission Project to improve transmission capacity in order to decrease transmission congestion and maximize the use of generation in Western Kansas for the benefit of the SPP grid.<sup>47</sup>

25. Staff evaluated this factor by analyzing the recommendation of the SPP 2019 ITP. In the ITP, SPP and its member organizations evaluated more than 1600 solutions to address the region's economic, reliability, operational, and public policy needs.<sup>48</sup> SPP determined that the proposed line coupled with a new phase shifting transformer resolved multiple needs identified in its 2019 ITP.<sup>49</sup> Staff also evaluated SPP's methodology in awarding the Transmission Project. Staff determined that SPP's process was a valid means of evaluating and awarding a transmission project to a successful bidder and that this process meets the Kansas criteria of encouraging orderly development of transmission service.<sup>50</sup> Overall, Staff concluded that the Transmission Project will promote the public interest when evaluated under this standard.<sup>51</sup>

26. The Commission agrees with Staff's assessment. The existence of analysis by SPP does not negate the Commission's responsibility to make an independent determination. However Staff's independent confirmation of SPP's process satisfies the Commission that in this case, the ITP was a valid means of evaluating and awarding a transmission project and that the public interest is served when the Transmission Project is evaluated under this standard.

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<sup>47</sup> Rebuttal Testimony of Becky Walding, pgs. 9-11 (May 27, 2022).

<sup>48</sup> Notice of Filing of Staff's Report and Recommendation, pg. 14 (May 17, 2022).

<sup>49</sup> *Id.*

<sup>50</sup> Notice of Filing of Staff's Report and Recommendation, pgs. 14-15 (May 17, 2022). Staff's Post Hearing Brief, pg. 29 -30(June 30, 2022).

<sup>51</sup> Staff's Post Hearing Brief, pg. 30 (June 30, 2022).



### Whether the Transaction will Reduce the Possibility of Economic Waste

27. Staff evaluated economic waste in two ways. In assessing the ITP process, Staff determined that the ITP met the Kansas criteria of avoiding wasteful duplication of services.<sup>52</sup> The Settlement Agreement also addresses waste from the perspective of unnecessary encumbrances on the land.<sup>53</sup> Paragraph 10(d) of the Settlement Agreement states that NEET Southwest will consider and address as part of its line siting proceeding, an option to double circuit a 25 mile portion of the Transmission Project that parallels an existing Evergy 161 kV line which Evergy planned on rebuilding in the next four years. Staff found that double circuiting this section would more efficiently utilize the land and avoid unnecessary encumbrances.<sup>54</sup>

28. Staff determined that this factor supports granting the application as modified by the Settlement Agreement.<sup>55</sup> KIC, in its petition to intervene, argued that the Transmission Project is not necessary, as Wolf Creek “has produced electric energy which has been delivered to EKC and Evergy Kansas Metro retail electric customers through existing transmission facilities since 1985.”<sup>56</sup> KIC provides no evidence to refute SPP’s findings that the Transmission Project will address issues related to congestion and improve the reliability of the transmission system in the area around Wolf Creek.

29. Landowner Rochelle McGhee-Smart argues in her direct testimony that the Transmission Project will reduce agricultural production potential because it will cross significant tillable pasture land.<sup>57</sup> While the exact route of the Transmission Project has not been finalized, it

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 29.

<sup>54</sup> *Id.* at 32-33.

<sup>55</sup> *Id.* at 30.

<sup>56</sup> 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. 4 (March 28, 2022).

<sup>57</sup> Direct Testimony of Rochelle McGhee-Smart, pg. 3 (May 17, 2022).

seems likely that the Transmission Project will occupy some land that may have otherwise been used for farming.

30. Becky Walding testified at the hearing that NEET Southwest had acquired several voluntary easements in Kansas.<sup>58</sup> It is not clear whether McGhee-Smart opposes voluntarily granted easements or only those which may be acquired by eminent domain. The Commission will address eminent domain separately in paragraphs 59-60.

31. The Commission agrees with Staff that economic waste can occur when the landscape is unnecessarily encumbered, which is why the Commission believes it will be important to evaluate the double circuit option. See paragraphs 96-99 herein for a detailed consideration of the double circuit option.

32. Staff has determined that the Application as modified by the Settlement Agreement will reduce economic waste.<sup>59</sup> The Commission believes that a robust analysis of the double circuit option is essential in determining the public interest, therefore the Commission finds in favor of this factor, subject to additional conditions below.

**Whether the Transaction will be Beneficial to State and Local Economies and the Communities Served by the Resulting Public Utility Operations in the State**

33. According to the testimony of Becky Walding, the average ratepayer will pay an increase of about \$0.48 per year, but, when the benefits of the Transmission Project are considered, ratepayers should see a *net reduction* of \$1.48 to \$3.36 for every dollar spent over the 40 year life of the Transmission Project.<sup>60</sup> Notwithstanding the economic efficiencies gained from the

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<sup>58</sup> Tr., Vol. 1, pg. 159.

<sup>59</sup> Staff's Post Hearing Brief, pg. 32-33 (June 30, 2022).

<sup>60</sup> Rebuttal Testimony of Becky Walding, pgs. 10-11 (May 27, 2022).

Transmission Project, the Transmission Project enhances system reliability and safety, which has value, even if such value is more difficult to quantify.

34. Dr. Loomis testified that the Transmission Project will be an overall benefit to State and local economies, during construction the Transmission Project will create 998 new jobs, increasing labor income by \$55.6 million and overall economic output by \$145 million.<sup>61</sup> Once construction is complete, ongoing operations will create between six and nine new jobs, leading to between \$4.4 and \$5.1 million in increased output.<sup>62</sup>

35. Becky Walding testified that the Transmission Project will generate an estimated \$28 million in property tax revenue over the life of the Transmission Project as well as \$10 million in landowner payments.<sup>63</sup>

36. Rochelle McGhee-Smart claims that the Transmission Project will reduce tax revenue because it relies on a tax abatement.<sup>64</sup> Becky Walding testified the Transmission Project, like other transmission facilities built in Kansas will receive a tax abatement, but NEET Southwest estimates that it will result in \$28 million in new property taxes over the first 40 years of the Transmission Project.<sup>65</sup> In their post hearing brief, Staff argued that the Transmission Project will have a positive effect on State and local economies.<sup>66</sup>

37. The Commission concludes 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,

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<sup>61</sup> Direct Testimony of David G. Loomis, Ph.D., pgs. 6-7 (February 28, 2022).

<sup>62</sup> *Id.* Dr. Loomis estimates ongoing operations will create 6 new jobs, increasing to 9.6 jobs in year 11.

<sup>63</sup> Rebuttal Testimony of Becky Walding, pg. 14 (May 27, 2022).

<sup>64</sup> Direct Testimony of Rochelle McGhee-Smart, pg. 4 (May 17, 2022).

<sup>65</sup> Rebuttal Testimony of Becky Walding, pgs. 15-16 (May 27, 2022).

<sup>66</sup> Staff's Post Hearing Brief, pg. 31 (June 30, 2022).



the Commission finds that the Application as modified by the Settlement Agreement will have a beneficial effect on State and local economies.

### **The Effect of the Transaction on Affected Public Utility Shareholders**

38. In the Application, NEET Southwest submits this factor is not applicable to the Transmission Project, but to the extent that it may be applicable, Becky Walding testifies the requested CCN will not have any negative impact on any public utility shareholders in Kansas and will have a positive impact on NEET Southwest's shareholders.<sup>67</sup> The Commission agrees this factor is not applicable. NEET Southwest's shareholders are already well protected and NEET Southwest would not have filed the Application if it did not believe doing so was in the shareholders' best interest.

### **The Effect on the Environment**

39. Staff assessed this factor as part of its evaluation on economic waste, concluding that, although any new transmission will encumber the land to some degree, the proposed Transmission Project would not *unnecessarily* encumber the landscape.<sup>68</sup> Furthermore, any potential encumbrances would be tempered and limited if the line is double circuited for approximately 25 miles of its length.<sup>69</sup>

40. Daniel Mayers testified that in reviewing proposed routes, NEET Southwest sought to minimize or avoid impacts to forested wetlands, protected or sensitive species and habitats, known cultural and archeological resources, Federal and State owned lands and easements and tribal lands.<sup>70</sup> NEET Southwest also analyzed the proximity of the route to existing structures

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<sup>67</sup> Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pg. 18 (Feb. 28, 2022); Direct Testimony of Becky Walding, pg. 38 (February 28, 2022).

<sup>68</sup> Staff's Post Hearing Brief, pgs. 32-33 (June 30, 2022).

<sup>69</sup> See, *infra* paragraphs 96-99.

<sup>70</sup> Direct Testimony of Daniel Mayers, pg. 14 (February 28, 2022).

including bridges, culverts, existing oil and gas wells, existing transmission lines and telecom towers.<sup>71</sup> Although the route is not finalized, the Commission is satisfied that NEET Southwest has sufficiently committed to addressing this standard, subject to further consideration of the double circuit option described in more detail below.

### **The Impact on Public Safety**

41. In its R&R, Staff reports that the Transmission Project will not have a negative impact on public safety if it is built to the design standards listed in the RFP and those listed in response to Evergy DR 10.<sup>72</sup> The Settlement Agreement contains provisions designed to increase safety including, limiting galloping issues, emergency response, safety and outage reporting.<sup>73</sup>

42. Rochelle McGhee-Smart testified that the Transmission Project involved significant health risks based on research published in the International Research Journal of Engineering and Technology which reported that high voltage transmission lines may have negative impacts on living organisms, interfering with cell function, breaking DNA strands and affecting the immune systems of vulnerable people.<sup>74</sup>

43. While the McGhees reference scientific research, no specific study was identified and no such research was entered into the record. Rochelle McGhee-Smart was not proffered as an expert in science, electrical engineering or health. The Commission is therefore without an evidentiary basis to make a determination of her claims in this regard.

44. Based on the recommendation of Staff, the Commission finds that this factor weighs in support of the Application.

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<sup>71</sup> *Id.* at 15.

<sup>72</sup> Notice of Filing of Staff's Report and Recommendation, pg. 25 (May 17, 2022).

<sup>73</sup> Joint Motion for Approval of Nonunanimous Settlement Agreement, pgs. 12-13 (June 6, 2022).

<sup>74</sup> Direct Testimony of Rochelle McGhee-Smart, pgs. 4-5 (May 17, 2022).



### **The Effect on Commission Jurisdiction**

45. NEET Southwest witness Becky Walding acknowledges that the Commission will maintain ongoing jurisdiction, including the ability to open an investigation at any time, and the Commission's continued jurisdiction over the siting docket.<sup>75</sup> In its R&R, Staff confirms that the Transmission Project will not diminish the Commission's authority.<sup>76</sup> FERC maintains jurisdiction over the rates for interstate transmission. However as Staff points out, the Commission can intervene in FERC proceedings to have input on that process.<sup>77</sup>

46. No party in this proceeding argues that granting the Application would adversely affect Commission jurisdiction. The Commission determines that this factor is satisfied.

### **Financial Ability**

47. NEET Southwest is the largest public utility in the U.S. with a market capitalization that exceeds \$160 billion.<sup>78</sup> No party argues that NEET Southwest lacks the financial ability to complete the Transmission Project. The Settlement Agreement includes a financial guarantee by NEET Southwest's parent company, NEECH, to provide up to \$10 million per year during construction and for the first 40 years of the Transmission Project. To guarantee ratepayers are adequately protected, the Commission requires modification of the financial guarantee provided by NEECH to clarify that the guarantee would also apply to any of NEECH's successors and/or assigns. This is discussed further in paragraph 95.

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<sup>75</sup> Direct Testimony of Becky Walding, pg. 39 (February 28, 2022).

<sup>76</sup> Notice of Filing of Staff's Report and Recommendation, pg. 9 (May 17, 2022).

<sup>77</sup> *Id.*

<sup>78</sup> Staff's Post Hearing Brief, pg. 35 (June 30, 2022).

### **Technical Ability**

48. Daniel Mayers testified that NEET Southwest affiliates have decades of experience in construction of transmission lines, substation facilities and related infrastructure, and own 11,800 circuit miles of high voltage transmission and 77,400 miles of distribution lines.<sup>79</sup> Staff witness Leo Haynos testified that there is ample evidence that the NextEra Entities are knowledgeable and experienced and possess the necessary technical expertise to operate the proposed line.<sup>80</sup> While Staff originally had concerns about NEET Southwest's response times to operation issues, those concerns were resolved by the Settlement Agreement, Paragraph 10(o), which requires NEET Southwest to file annual reports about maintenance, outages, inspections and emergency response plans.<sup>81</sup>

49. No party claims that NEET Southwest lacks the technical ability to complete the Transmission Project. Based on the assertions of Staff, the Commission finds that NEET Southwest possesses the technical ability to construct and operate the Transmission Project.

### **Managerial Ability**

51. The McGhees oppose NEET Southwest's Application and the Settlement Agreement because they believe NEET Southwest was and continues to be acting outside of the law. Specifically, the McGhees allege that NEET Southwest has violated: (1) K.S.A. 66-131 by conducting business without a CCN, (2) K.S.A. 66-1,178 by engaging in site preparation without a certificate or a line siting docket, and (3) K.S.A. 66-134 by acquiring property interests without

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<sup>79</sup> Direct Testimony of Daniel Mayers, pg. 14 (February 28, 2022).

<sup>80</sup> Notice of Filing of Staff's Report and Recommendation, pg. 18 (May 17, 2022). "NextEra Entities" includes, NEET Southwest and affiliate entities.

<sup>81</sup> Staff's Post Hearing Brief, pg. 35-36 (June 30, 2022); Joint Motion for Approval of Nonunanimous Settlement Agreement, pgs. 14-15 (June 6, 2022).



a certificate.<sup>82</sup> The McGhees argue such violations of Kansas law demonstrate that NEET Southwest lacks the managerial ability to act as a public utility within the bounds of Kansas law.<sup>83</sup>

### **Alleged Statutory Violations**

52. K.S.A. 66-131 reads in operative part:

No person or entity seeking to construct electric transmission lines as defined in K.S.A. 66-1,177, and amendments thereto, or common carrier or public utility, including that portion of any municipally owned utility defined as a public utility by K.S.A. 66-104, and amendments thereto, governed by the provisions of this act **shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state.** (Emphasis added).

53. The McGhees argue that NEET Southwest has violated K.S.A. 66-131 by “conducting business” without a CCN.<sup>84</sup> The McGhees appear to interpret K.S.A. 66-131 quite strictly, arguing an entity may transact no business at all in Kansas before receiving a CCN. Thus, the McGhee’s argue the voluntary Option Agreement and Transmission Easements executed by NEET Southwest and numerous landowners constitute violations of K.S.A. 66-131.<sup>85</sup>

54. The McGhees cite *Volt Delta Resources, Inc. v. Devine*<sup>86</sup> to define “conducting business.” In *Volt*, the Court ruled that, “[b]usiness is transacted in Kansas when an individual is within or enters this state in person or by an agent and, through dealing with another within the state, effectuates or attempts to effectuate a purpose to improve his economic conditions and satisfy his desires.”<sup>87</sup> The McGhees argue that NEET Southwest soliciting option agreements from landowners represents an attempt to improve its economic conditions and satisfy its desires.<sup>88</sup>

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<sup>82</sup> Post Hearing Brief of Darren McGhee and Rochelle McGhee-Smart, pgs. 5-6 (June 30, 2022).

<sup>83</sup> *Id.* at 4.

<sup>84</sup> *Id.* at 4-5.

<sup>85</sup> *Id.* at 4-6.

<sup>86</sup> 241 Kan. 775, 778, 740 P.2d 1089 (1987).

<sup>87</sup> *Volt Delta Res., Inc. v. Devine*, 241 Kan. 775, 778 (1987) (internal quotations omitted).

<sup>88</sup> Post Hearing Brief of Darren McGhee and Rochelle McGhee-Smart, pg. 5 (June 30, 2022).

55. After reviewing *Volt*, the Commission finds it inapplicable. *Volt* deals with Kansas’s long arm statute, K.S.A. 60-308, in determining if the State can establish personal jurisdiction over an individual within the context of due process. Personal Jurisdiction is not an issue in this docket and no party has raised it. The Commission declines to apply *Volt*’s definition of “conducting business” to this matter, unrelated to the situation found in *Volt*.

56. NEET Southwest interprets K.S.A. 66-131’s restriction on “transacting business” to mean “transacting the business of a public utility in the state.”<sup>89</sup> One case is instructive here, *Matter of Acquisition of Land by Eminent Domain*.<sup>90</sup> In that case, the Kansas Supreme Court ruled that non-utilities could legally buy and sell utility easements even if they do not have a way of using them.<sup>91</sup> When it was argued that purchasing these easements were violations of K.S.A. 66-131 and K.S.A. 66-1,178, the Court held that both of those contentions were “without merit.”<sup>92</sup> The Commission, following the ruling in *Matter of Acquisition of Land by Eminent Domain*, finds that there has been no evidence presented to indicate that NEET Southwest has violated K.S.A. 66-131 or K.S.A. 66-1,178.

57. Similarly, despite the McGhees’ assertions to the contrary, K.S.A. 66-134 also does not bar NEET Southwest from acquiring property; under the statute NEET Southwest cannot receive property “in payment” for stocks, certificates, bonds notes, or other evidences of indebtedness.<sup>93</sup> At the hearing, NEET Southwest admitted it had executed voluntary option agreements from landowners.<sup>94</sup> However the McGhees did not establish a sufficient evidentiary

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<sup>89</sup> Post-Hearing Brief of NextEra Energy Transmission Southwest, LLC, pg. 22 (June 30, 2022).

<sup>90</sup> This case is also cited as, *Kansas Gas & Electric Co. v. Will Investments, Inc.*, 261 Kan. 125 (1996).

<sup>91</sup> “*Yet, as no prohibition bars the conveyance or transfer of this right-of-way to other entities, particularly to those with the ability to obtain the proper certification to enjoy its use.*[Emphasis added]”*Matter of Acquisition of Land by Eminent Domain*, 261 Kan. 125, 130 (1996).

<sup>92</sup> *Id.* at 128.

<sup>93</sup> *See*, K.S.A. 66-134.

<sup>94</sup> *Tr.*, Vol. 1, pg. 159.



basis that those easements were exchanged “in payment” for stocks, certificates, bonds notes, or other evidences of indebtedness.

58. No party responded to the McGhees’ assertion under K.S.A. 66-134. Had the McGhees established that NEET Southwest violated K.S.A. 66-131, K.S.A. 66-1,178 or K.S.A. 66-134, the McGhees would still have to establish that such a violation warrants denial of the CCN; they have failed to do so. The Commission agrees with Staff’s assertion that NEET Southwest possesses the necessary managerial ability to construct the Transmission Project.

### **Eminent Domain**

59. The Commission takes seriously the concerns of the opposing parties (those intervenors opposing the application and Settlement Agreement) with respect to eminent domain. However, the opposing parties appear to take issue with the idea of eminent domain itself as opposed to something unique about the Application. KIC states in its post hearing brief “A KCC order...would permit NEET Southwest to use the power of eminent domain, to acquire land rights from those landowners that do not elect to voluntarily contract with NEET Southwest for rights-of-way and easements.”<sup>95</sup> This statement could equally apply to every application for a utility CCN filed with this Commission. This Docket is not about eminent domain. Using the applicable legal standards in this Docket, the Commission is tasked with determining whether it is in the public interest for NEET Southwest to be allowed to transact the business described in its Application. The Commission has no jurisdiction or legal authority to evaluate the prudence of existing Kansas eminent domain statutes.

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<sup>95</sup> Post Hearing Brief of Kansas Industrial Consumers Group, Inc. (“KIC”), pgs. 3-4 (June 30, 2022).



60. Governments and public utilities use eminent domain regularly. As KIC points out the Commission is a “creature of the Legislature”<sup>96</sup> and lacks statutory authority to deny a CCN based on a philosophical discomfort with eminent domain. The legislature granted public utilities the power of eminent domain, and the Commission is not the correct forum to address these concerns.<sup>97</sup>

#### **Impact on other states**

61. NEET Southwest claims that the Transmission Project will have a positive effect on other states.<sup>98</sup> Staff reports that surrounding SPP states will also experience some congestion relief as a result of the Transmission Project.<sup>99</sup> Staff believes that this is appropriate given that SPP states outside Kansas are paying 83.5% of the cost of the Transmission Project.<sup>100</sup>

62. Staff concludes that when evaluating this factor the Transmission Project will promote the public interest.<sup>101</sup> No party argues that the Commission should reject the Application on this factor. The Commission finds the factor is satisfied.

#### **Historical presence**

63. As stated above, NEET Southwest and affiliates already operate 227 miles of transmission voltage level lines in Kansas.<sup>102</sup> Staff considered NEET Southwest’s historical presence in Kansas and its performance with respect to maintenance activities and responsiveness.<sup>103</sup> Staff’s analysis was similar to the analysis given when it considered NEET

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<sup>96</sup> Kansas Industrial Consumer’s Group (KIC) Reply Brief, pg. 1 (July 12, 2022).

<sup>97</sup> See, K.S.A. 17-618, See also, Miller v. Bartle, 150 P.3d 1282, 1286-1287 (2007), “The eminent domain proceeding does not provide a forum for litigation of the right to exercise eminent domain nor the extent thereof.”

<sup>98</sup> Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pgs. 20-21 (Feb. 28, 2022).

<sup>99</sup> Staff’s Post Hearing Brief, pg. 37 (June 30, 2022).

<sup>100</sup> *Id.*

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

<sup>102</sup> *Id.* at 38.

<sup>103</sup> *Id.* at 37-39.

Southwest's technical ability. Staff determined that given the provisions of the Settlement Agreement, this factor favored granting the Application.<sup>104</sup> No other party testified about this factor. The Commission finds this factor is satisfied.

### **Merger Standard Conclusion**

64. Staff concluded that after applying the Commission's merger standards to the Application, as modified by the Settlement Agreement, the Commission should grant the Application.<sup>105</sup> Even Dr. Makhholm, a witness for a party in opposition to the Application, said at hearing NEET Southwest is "manifestly qualified to own and operate transmission facilities."<sup>106</sup> The Commission agrees with Staff's conclusion. While not every merger standard needs to be satisfied to grant the CCN, NEET Southwest's Application has met all applicable merger standards.

### **Standards for Evaluating the Settlement**

65. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.<sup>107</sup> Settlements are particularly favored when the controversy involves complex litigation taking considerable time and expense to litigate.<sup>108</sup>

66. The Commission may accept a non-unanimous settlement agreement so long as it makes an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.<sup>109</sup> The Commission follows a

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<sup>104</sup> Notice of Filing of Staff's Report and Recommendation, pg. 3 (May 17, 2022).

<sup>105</sup> Staff's Post Hearing Brief, pg. 42 (June 30, 2022).

<sup>106</sup> Tr., Vol. 2, pg. 408.

<sup>107</sup> See, *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

<sup>108</sup> Docket No. 08-ATMG-280-RTS, Order Approving Contested Settlement Agreement, pgs. 4-5 (May 12, 2008).

<sup>109</sup> *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 28 Kan. App. 2d 313, 316 (2000).

five-factor test to guide its decision as to whether a non-unanimous settlement agreement constitutes a reasonable remedy or resolution of the issues. Those standards are as follows:

- i. Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the agreement;
- ii. Whether the agreement is supported by substantial competent evidence;
- iii. Whether the agreement conforms with applicable law;
- iv. Whether the agreement results in just and reasonable rates;
- v. Whether the results of the Settlement Agreement are in the public interest, including the interest of the customers represented by the party not consenting to the agreement.<sup>110</sup>

**i. There was Ample Opportunity for the Opposing Parties to be heard on their Reasons for Opposition to the Settlement Agreement**

67. There are two opponents to the Settlement Agreement, KIC and the McGhees. Both filed testimony, participated in the hearing and filed post hearing briefs opposing the Settlement Agreement. Both opponents had the opportunity to cross-examine proponents of the Settlement Agreement. The Commission finds that this factor is met.

**ii. The Agreement is supported by Substantial Competent Evidence in the Record as a Whole**

68. The Settlement Agreement, subject to the terms of conditions of this Order, is supported by substantial competent evidence in the record as a whole. Substantial competent evidence is that “which possesses something of substance and relevant consequences, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.”<sup>111</sup> The “record as a whole” includes evidence that both supports and detracts from an agency’s

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<sup>110</sup> *Id.*

<sup>111</sup> *Southwestern Bell Tel. Co. v. Kansas Corporation Commission*, 4 Kan.App.2d 44, 46 (1979).



findings.<sup>112</sup> The Commission's ultimate finding must be supported by the evidence in the record that is substantial when considered in light of all of the evidence.<sup>113</sup>

69. On June 7, 2022, Darrin Ives on behalf of Evergy, Josh Frantz on behalf of CURB, Becky Walding on behalf of NEET Southwest, and Justin Grady on behalf of Staff filed testimony in support of the Settlement Agreement.

70. The Settlement Agreement is supported by: 1) NEET Southwest witnesses Becky Walding, Daniel Mayers, LaMargo Sweezer-Fischer, Amanda Finnis, and Dr. David Loomis who filed Direct Testimony explaining NEET Southwest's position with regard to the Settlement Agreement and the future costs and benefits of the Transmission Project; 2) Staff's independent review of NEET Southwest's Application and filed R&R; 3) CURB, Sunflower, SPP, KEPCo, KIC, Landowners, and Evergy Direct Testimony; 4) Cross-Answering Testimony and Reply Testimony of Evergy, KIC, and CURB; 5) Rebuttal Testimony of NEET Southwest; 6) Affidavits and Direct Testimony of Landowners; and 7) Testimony in Support of the Settlement Agreement filed by Staff, CURB, Evergy, and NEET Southwest.

71. Additionally, at the hearing, the Commission had the opportunity to question witnesses, and the Parties had an opportunity for cross-examination. Witnesses for the Signatories to the Settlement Agreement expressed their rationale for support of the Settlement Agreement in response to Commissioner questions, as well as in response to cross-examination and re-direct, all of which are part of the evidentiary record.

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<sup>112</sup> Herrera-Gallegos v. H&H Delivery Service, Inc., 42 Kan.App.2d 360, 360 (2009).

<sup>113</sup> Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n, 28 Kan. App. 2d 313, 316 (2000).



72. Staff believes these proceedings, contain ample evidence to support Commission approval of the Settlement Agreement.<sup>114</sup> Subject to the terms and conditions of this Order, the Commission agrees with Staff's assessment.

### **iii. The Settlement Agreement Conforms to Applicable Law**

73. The Settlement Agreement conforms to applicable law. There is a strong policy in law that settlements are to be encouraged.<sup>115</sup> The fact that the Settlement Agreement was non-unanimous does not negate this fact. As discussed above, all parties were present during and have been given due process throughout these proceedings. The parties received notice of the contents of the Settlement Agreement by being part of the settlement negotiations and being afforded the opportunity to argue for inclusion of various terms.

74. As acknowledged by Staff, the Settlement Agreement is binding on the parties, *not* the Commission.<sup>116</sup> Paragraph 10(m), of the Settlement Agreement provides that “the parties do not object to waivers of K.S.A. 66-1402 and 66-1403.” No such waiver has been or is hereby granted by the Commission. Paragraph 40 of NEET Southwest's Application requests the Commission make a finding of non-applicability or waiver of several statutes.<sup>117</sup> Paragraph 10(k) of the Settlement Agreement notes that NEET Southwest acknowledges the Commission's jurisdiction under all statutes not specifically waived by the Commission. Except as otherwise

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<sup>114</sup> Staff's Post Hearing Brief, pg. 42 (June 30, 2022).

<sup>115</sup> *See, Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

<sup>116</sup> Staff's Post Hearing Brief, pgs.9-10 (June 30, 2022).

<sup>117</sup> Application for a Certificate of Convenience and Necessity to Construct Transmission Facilities in the State of Kansas, pg. 22 (Feb. 28, 2022).

“For clarity, NEET Southwest requests the Commission find that:

(a) K.S.A. 66-101b-f, 66-117, 66-128, and 66-128a-128e are inapplicable unless NEET Southwest acts outside conduct that is covered by FERC jurisdiction under Section 201(b) of the Federal Power Act (16 U.S.C. § 824);

(b) K.S.A. 66-128f to 66-128p are inapplicable to NEET Southwest as long as NEET Southwest remains a provider of transmission service only; and

(c) K.S.A. 66-1402 and 66-1403 are waived as long as NEET Southwest does not act outside conduct that is covered by FERC jurisdiction under Section 201(b) of the Federal Power Act.”

provided in this Order, the Commission approves the Settlement Agreement. The Commission also acknowledges FERC jurisdiction over transmission rates applicable to NEET Southwest. However, the Commission does not and will not consent to any waivers or voluntary relinquishment of any authority conferred by Kansas statutes or the regulations adopted thereunder. The terms and conditions of Kansas statutes applicable to the KCC are not subject to modification or waiver by the agency. Accordingly, the Commission does not have the authority nor will it set aside or waive statutes for the convenience of any parties or for any other reason.

75. Dr. Makholm argues that the Transmission Project suffers from a “prudence gap.” While SPP determined that the Transmission Project was necessary and good for SPP as a whole, Dr. Makholm asserts, SPP did not assess whether the Transmission Project would be good for Kansas specifically.<sup>118</sup> Dr. Makholm continues by contending if the Commission approves the Transmission Project no party will have determined what if any benefits are specific to Kansas.<sup>119</sup>

76. KIC makes repeated reference to K.S.A. 66-1,180, which states in relevant part, “The commission shall make its decision with respect to the necessity for and the 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 development benefits in Kansas.” KIC then attempts to apply the standards of 66-1,180 to this proceeding.<sup>120</sup> The McGhees also make passing reference to K.S.A. 66-1,180, however their arguments to that effect are largely the same as those raised by KIC.<sup>121</sup>

77. KIC’s reference to K.S.A. 66-1,180 is curious because that statute relates to line siting, which is not the subject of this Docket. It is probable that a proceeding under K.S.A. 66-

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<sup>118</sup> Direct Testimony of Jeff D. Makholm, Ph.D., Pgs. 22-25 (May 17, 2022).

<sup>119</sup> *Id.*

<sup>120</sup> Post Hearing Brief of Kansas Industrial Consumers Group, Inc. (“KIC”), pg. 11 (June 30, 2022).

<sup>121</sup> Post Hearing Brief of Darren McGhee and Rochelle McGhee-Smart, pg. 8 (June 30, 2022).



1,180 will occur if NEET Southwest is ultimately granted a CCN. For purposes of this Docket, arguments raised under K.S.A. 66-1,180 are premature. KIC has never sufficiently explained why the Commission should apply the siting docket standards to a CCN docket, and as such the Commission rejects these arguments.

78. The foregoing finding notwithstanding, the Commission finds that the testimony and analysis of the parties in support of the agreement establishes a sufficient evidentiary basis to determine the benefits of the Transmission Project. The Commission further finds that the Settlement Agreement conforms with applicable law.

#### **iv. The Agreement Results in Just and Reasonable Rates**

79. Because the Transmission Project involves interstate commerce, the rates charged by NEET Southwest are governed by FERC, not the Commission.<sup>122</sup> However based on the evidence presented by the Parties, to the extent the rates are within the Commission's purview they appear just and reasonable. Staff has testified that for every dollar spent by ratepayers in Evergy's Service territory on the Transmission Project, there will be a savings of \$4 to \$7 over the life of the Transmission Project.<sup>123</sup> The Transmission Project will also enhance the reliability of the transmission system which benefits all ratepayers.<sup>124</sup>

80. Dr. Makholm, in his direct testimony, argues that the cost allocation methodology does not result in just and reasonable rates.<sup>125</sup> Makholm does not take issue with any specific aspect of the SPP cost allocation methodology.<sup>126</sup> Rather, Dr. Makholm argues that prudence analysis is a prerequisite to determining just and reasonable rates and he believes because the parties have not

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<sup>122</sup> What FERC Does, <https://www.ferc.gov/what-ferc-does>.

<sup>123</sup> Staff's Post Hearing Brief, pgs. 17-18 (June 30, 2022).

<sup>124</sup> *Id.* at 21.

<sup>125</sup> Direct Testimony of Jeff D. Makholm, Ph.D., Pgs. 30-31 (May 17, 2022).

<sup>126</sup> *Id.*

conducted the appropriate state specific analysis, there is no way to arrive at just and reasonable rates.<sup>127</sup>

81. The Commission finds that the Settlement Agreement will ultimately result in just and reasonable rates that fall within the “zone of reasonableness,” which is the zone in which the determination of whether a rate is just and reasonable is predicated upon a balancing test in which the following interests are considered: 1) the utility’s investors vs. the ratepayers; 2) the present ratepayers vs. the future ratepayers; and 3) the public interest.<sup>128</sup> The asymmetrical pricing agreed to as part of the Settlement Agreement protects ratepayers throughout SPP. The Settlement Agreement ensures that when NEET Southwest (and by extension ratepayers) buys goods from affiliates, it will pay the lower of either fully distributed costs or fair market value. When selling to affiliates, NEET Southwest will receive the higher of the two options. Staff witness Grady called asymmetrical pricing the “gold standard” for affiliate transactions.<sup>129</sup>

82. Given the protections offered by the asymmetrical pricing as well as the testimony of the Transmission Project’s benefits to the State, including substantial evidence of lower overall electricity rates as a result of the Transmission Project, the Commission finds that the Settlement Agreement will result in just and reasonable rates.

#### **v. The Settlement Agreement is in the Public Interest**

83. The Settlement Agreement is in the Public Interest, including the interest of the customers represented by the opposing parties. While not unanimous, the Settlement Agreement represents a balancing of multiple, disparate interests.<sup>130</sup>

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<sup>127</sup> Reply Testimony of Jeff. D. Makhholm, Ph.D., pgs. 6-8 (May 27, 2022).

<sup>128</sup> Staff’s Post Hearing Brief, pg. 17 (June 30, 2022).

<sup>129</sup> Tr., Vol. 2, pg. 490.

<sup>130</sup> Staff’s Post Hearing Brief, pg.18 (June 30, 2022).



84. The public interest is served when ratepayers are protected from unnecessarily high prices, discriminatory prices, and/or unreliable service.<sup>131</sup> Justin Grady testified that the Settlement Agreement is in the public interest because it allows NEET Southwest to be issued a CCN for a project, which will benefit Kansas with respect to safety, cost and reliability.<sup>132</sup> It resolves the interconnection issues between Evergy and NEET Southwest, and enhances safety and reporting requirements. In his testimony in support of the Settlement Agreement, Justin Grady restated in its entirety, the economic and reliability considerations that were identified for this Transmission Project.<sup>133</sup>

85. Dr. Makholm recommended that the Commission deny the Application.<sup>134</sup> But he does not take this position because NEET Southwest is in any way incapable or deficient. In fact at the hearing Dr. Makholm described NEET Southwest as, manifestly qualified.<sup>135</sup> Rather, Dr. Makholm's opposition is more general and philosophical in nature. Dr. Makholm opposes the process by which Kansas, SPP and FERC go about planning for transmission investment and infrastructure describing the current process as "piecemeal" and "ineffective."<sup>136</sup> And he argues that the Commission should reject this Application as a means to "signal a change in focus" to "say to its regional RTO that Kansas is looking for other more preferable administrative methods, supporting competitive entry rather than regulated planning and investment."<sup>137</sup>

86. Dr. Makholm recommends that the Commission deny the Application and then take the following actions, which he refers to as his "hitchhiker's guide".<sup>138</sup>

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<sup>131</sup> Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pg. 26 (June 7, 2022).

<sup>132</sup> *Id.*

<sup>133</sup> *See supra* paragraph 21.

<sup>134</sup> Reply Testimony of Jeff. D. Makholm, Ph.D., pg. 20 (May 27, 2022).

<sup>135</sup> Tr., Vol. 2, pg. 408.

<sup>136</sup> Direct Testimony of Jeff D. Makholm, Ph.D., pg. 32 (May 17, 2022).

<sup>137</sup> *Id.* at 6-7.

<sup>138</sup> Tr., Vol. 2, pgs. 394-395.

1. Open an investigation of transmission costs that would require the Kansas utilities and SPP to provide an explanation of why transmission costs have increased so radically vis-à-vis distribution costs in Kansas.
2. Convene a group to work with commissions in states that are the target markets for Kansas wind generation. Those target markets would fund dedicated transmission enabling development of Kansas wind resources in a way that benefits Kansas and similarly-situated resource-rich states that does not result in piecemeal transmission expansion continuing to disproportionately burden electricity customers in those resource-rich states.
3. Request SPP to examine and report to the KCC on the feasibility of curtailing wind generation that impinges on reliable operation of the transmission system in Kansas and causes Kansas rates to rise.
4. Request that future SPP ITP analyses include benefit and costs ratios for individual zones and individual projects<sup>139</sup>

87. Dr. Makhholm does not articulate whether he believes the Commission could undertake these activities within its authority, if such would solve the issues that gave rise to the Transmission Project, and, if so, when. That is not to say that the issues raised by Dr. Makhholm's "hitchhiker's guide" are not worthy of investigation. Rather, such investigation should not preclude other more concrete and immediate methods of improving the transmission system such as the instant Transmission Project. Dr. Makhholm's approach asks the public to forgo the real and substantial customer benefits of this project to send a message that larger scale projects should be implemented instead, without any guarantee that such projects will materialize in the future. The Commission cannot accept this logic or approach. The 345 kV backbone transmission investment at issue in this case meets multiple economic and reliability needs and can hardly be described as "piecemeal." While it may be optimal to look at longer or higher voltage projects in the future, it does not follow that this line is unneeded or does not produce immense benefits.

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<sup>139</sup> Reply Testimony of Jeff. D. Makhholm, Ph.D., pgs. 20-21 (May 27, 2022).



88. Subject to the terms and conditions of this Order, the Commission finds that the Settlement Agreement is in the public interest. As Justin Grady testified, it allows NEET Southwest to build the Transmission Project and garner benefits to all Kansans.<sup>140</sup>

89. Upon review of the evidence and testimony presented, the Commission finds that the Non-Unanimous Settlement Agreement meets the Commission's five part test and should be approved, subject to the terms conditions of this Order.

### **KIC's Post Hearing Exhibit**

90. On July 18, 2022, KIC filed a request to file Post Hearing Exhibit No. 1. The exhibit consisted of a news story about expansions to the Grain Belt project in Missouri. NEET Southwest opposed KIC's request because KIC has not demonstrated good cause to reopen the record as required by K.A.R. 82-1-230(k).<sup>141</sup> Additionally, NEET Southwest states that KIC's late filed exhibit has no relevance as it is a press release from a different entity related to a separate transmission project.<sup>142</sup>

91. While Grain Belt was mentioned several times, KIC's motion does not explain how its possible expansion is relevant or should affect these proceedings. However, the Commission will accept KIC's late-filed exhibit and grant it the weight it is due.

### **Additional Conditions**

92. The Commission has the authority to impose lawful conditions on public utility certificates.<sup>143</sup> Subject to the terms and conditions of this Order, the Commission finds it is in the public interest to approve the Application as modified by the Settlement Agreement. In this regard,

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<sup>140</sup> Justin Grady, Testimony in Support of Non-Unanimous Settlement Agreement, pgs. 26-28 (June 7, 2022).

<sup>141</sup> Response of NextEra Energy Transmission Southwest to Kansas Industrial Consumers' Request to Submit Late-Filed Exhibit, pgs. 1-2 (July 20, 2022).

<sup>142</sup> *Id.*

<sup>143</sup> Kansas Electric Power Cooperative, Inc. v. State Corporation Commission, 235 Kan. 661, 664 (1984).



the Commission, in executing its statutory duty and responsibility to protect ratepayers also exercises its authority to impose additional lawful conditions on the CCN.

### **Additional Reporting Requirements**

93. With respect to the additional reporting requirements of the Settlement Agreement, the Commission finds more specificity is required on issues of cost, schedule and quality. The Quarterly reports identified in the Settlement Agreement shall contain budget reports that provide a comparison of expenditures to bid costs and include, at a minimum, the following information:

- a) Percent of Transmission Project completed to date;
- b) The amount spent to date compared with the amount previously expected to have been spent to date;
- c) The total budget and expenditures of the Transmission Project to the date of the report (including explanations of increases and decreases in budgeted amounts);
- d) Information concerning SPP agreements, invoices and agreements with other Kansas jurisdictional public utilities during the reporting period; and
- e) Applicable FERC filings during the reporting period.

94. The Commission anticipates that NEET Southwest's FERC filings will include information concerning the status of all the cost containment measures contained in NEET Southwest's SPP bid and as provided for under the Settlement Agreement and in accordance with this Order. All such FERC reports shall be filed with the Commission in this Docket.

### **Financial Guarantee**

95. As stated above, the Financial Guarantee provided by NEECH must be updated to specify that it will apply to all NEECH's successors and assigns. The Commission finds that this additional protection is necessary to ensure that Kansas ratepayers are protected if NEECH is sold, merged or dissolved.

### **Double Circuit**

96. The Commission finds the aspect of the Settlement Agreement pertaining to the option to double circuit approximately 25 miles of the Wolf Creek to Blackberry line is too general to ensure the public interest of Kansas has been protected and promoted. This provision of the Settlement Agreement that requires NEET Southwest to “consider and address as part of its line siting proceeding an option to double circuit a 25-mile portion of the Wolf Creek-Blackberry Project that parallels an existing Evergy 161 kV transmission line, subject to receiving necessary approvals for a change in project scope from SPP and necessary agreements from Evergy.” The public interest of Kansans, especially including the landowners that would be affected along this portion of the preliminary route of the line, will not be served if this issue is not comprehensively reviewed before NEET Southwest files its line siting request with the Commission. To reiterate, failure to earnestly and completely review the double circuit option may result in a proposed route that the Commission cannot approve as reasonable, which the Commission wishes to avoid.

97. The Commission finds the concept of double circuiting this portion of the Wolf Creek to Blackberry line important because of the potential to reduce the total cost of this portion of the line when properly compared to the cost of building both a new Wolf Creek to Blackberry line *and* rebuilding Evergy’s existing 161 kV line. Equally, if not more importantly, this option has the potential to reduce landowner encumbrances and environmental impacts on approximately 25% of the preliminary route of the line. Simply put, this option has too many potential benefits to the public interest and the interests of Kansas ratepayers to be left to the sole discretion of NEET Southwest to “consider and address” in the next docket. Therefore, the Commission conditions approval of the Settlement Agreement and the grant of the CCN hereunder upon compliance by NEET Southwest and Evergy to coordinate, cooperate, and jointly evaluate the technical and

financial feasibility of the option of double circuiting this 25 mile portion of the Wolf Creek to Blackberry line, and to file the results of said evaluation with the Commission as part of the line siting docket to be filed pursuant to K.S.A. 66-1,177, et. seq. Given the Commission's jurisdiction over both public utilities, the Commission directs NEET Southwest and Evergy to work expeditiously and keep Staff informed as this process unfolds so that Staff is prepared to critically and independently evaluate the results of this comprehensive evaluation when filed.

98. As discussed above, the Commission desires a comprehensive evaluation of this double circuit option, as it appears to have the potential to reduce total costs, landowner encumbrances, and environmental impacts along the preliminary route of this line. Accordingly, NEET Southwest and Evergy shall consider at least (but not limited to) the following factors in this evaluation: 1) Detailed cost estimates of the cost to double circuit this portion of the line; 2) Cost sharing arrangements/agreements between NEET Southwest and Evergy pertaining to the upgrade costs and all aspects of operation and maintenance of this double-circuited portion of the line; 3) Easement sharing agreements and O&M responsibility sharing agreements for the double circuit portion of the line; 4) Any revisions to construction timelines (of either standalone project) necessary to accommodate Evergy or NEET Southwest's construction schedule for this portion of the line; and 5) Any engineering analysis necessary to determine construction standards for this portion of the line. To be clear, the timelines for approval of a line siting docket as provided by K.S.A. 66-1,178(b) shall not begin to toll until the NEET Southwest has filed a comprehensive evaluation of the option to double-circuit this portion of the line containing a satisfactory analysis of (at least) each of the enumerated evaluation factors described above.

99. Accordingly, the Commission directs Evergy and NEET Southwest to collaboratively work together in good faith, including but not limited to sharing internal



information and resources, to fully consider, study, and evaluate the double circuit option in a timely manner. The results of such review must be presented for consideration as part of an evaluation of the proper route for the NEET Southwest's line siting filing. The Commission finds 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.

**THEREFORE, THE COMMISSION ORDERS:**

A. NEET Southwest's Application as modified by the non-unanimous settlement is granted, conditioned upon compliance with the conditions of this Order, specifically including but not limited to paragraphs 95-99.

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>144</sup>

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

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 08/29/2022  
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Lynn M. Retz  
Executive Director

DGC

<sup>144</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

**NONUNANIMOUS SETTLEMENT AGREEMENT**

NextEra Energy Transmission Southwest, LLC (“NEET Southwest”), the Staff of the State Corporation Commission of the State of Kansas (“Staff”), Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together as “Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Kansas Metro”) (collectively as “Evergy”), the Citizens Utility Ratepayer Board (“CURB”), Southwest Power Pool (“SPP”), Kansas Electric Power Cooperative, Inc. (“KEPCo”), and Sunflower Electric Power Corporation (“Sunflower”), (collectively referred to as the “Settling Parties”), pursuant to K.A.R. 82-1-230a), hereby submit to the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) for its consideration and approval, the following Nonunanimous Settlement Agreement (“Agreement”).

**I. BACKGROUND**

1. On February 28, 2022, NEET Southwest filed its Application requesting a Commission Order granting to NEET Southwest a Certificate of Public 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 (the “Project”).

Error! Unknown document property name.

2. NEET Southwest addressed the Commission's Merger Standards (Merger Standards) in the Joint Application and in testimony.

3. The following parties have been granted intervention in this proceeding: CURB, Evergy, Sunflower, ITC Great Plains, LLC (“ITC Great Plains”), KEPCo, SPP, Southwestern Public Service Company (“SPS”), several retail electric customers and industry groups collectively referred to as the Kansas Industrial Customers or (“KIC”),<sup>2</sup> and Darren McGhee and Rochelle McGhee Smart (the “Landowners”).

4. On April 21, 2022, the Commission issued a Discovery and Protective Order. The Discovery and Protective Order was subsequently amended on May 5, 2022 and May 20, 2022.

5. On April 28, 2022, the Presiding Officer issued its Order on Procedural Schedule, setting forth dates for testimony, settlement discussions, discovery cut-off, settlement and supporting testimony deadlines, a prehearing conference, an evidentiary hearing, post-hearing briefs, and reply briefs. The discovery cut-off was modified by order of the Presiding Commissioner on May 20, 2022.

6. On May 17, 2022, Staff filed its Report and Recommendation recommending approval of the Application with several modifications, and the following parties filed direct testimony: KIC, Evergy, SPP, SPS, Sunflower, and the Landowners.

7. On May 27, 2022, NEET Southwest filed Rebuttal Testimony and the following parties filed Cross-Answering Testimony: Evergy, KIC, and CURB.

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<sup>2</sup>The electric customers and industry groups collectively referred to as KIC are Spirit AeroSystems, Occidental Chemical Corp., The Goodyear Tire and Rubber Co., Associated Purchasing Serv. Corp., The Kansas Industrial Consumers Group, Lawrence Paper Company, Renew Kansas Biofuels Association, Kansas Grain and Feed Association, Kansas Agribusiness Retailer Association, AGCO Corporation, and Big Heart Pet Brands.



8. Consistent with the Procedural Order, all of the parties to the proceeding met to discuss possible resolution of the issues in this docket.

9. As a result of the settlement conference, the Settling Parties have reached agreement as set forth below. ITC Great Plains and SPS have indicated that they do not oppose the agreement. KIC and the Landowners have indicated that they are opposed to the Settlement Agreement. Therefore, the Agreement is “nonunanimous” as that term is defined by K.A.R. 82-1-230a(3).

## **II. NONUNANIMOUS SETTLEMENT AGREEMENT**

### **A. APPROVAL OF APPLICATION WITH CONDITIONS**

10. The Settling Parties agree that the Commission should approve the Application, subject to the following conditions:

- a. The Settling Parties agree that NEET Southwest should be granted a CCN, pursuant to K.S.A. 66-131, to transact business as a transmission-only public utility in Kansas and to construct, own, operate, and maintain the Project, as described in its Application.
- b. NEET Southwest will commit that its Federal Energy Regulatory Commission (“FERC”) formula rate filings for the Wolf Creek-Blackberry Project will include caps and conditions consistent with NEET Southwest’s bid to SPP for the project and NEET Southwest’s response to Evergy Data Request No. 42 and the Direct Testimony of Becky Walding at pp. 24, 28-29, 34 and 35 and Rebuttal Testimony of Becky Walding at pp. 16-18, 21 and 23.
- c. NEET Southwest’s indirect parent company, NextEra Energy Capital Holdings, Inc. (“NEECH”), commits that, for the first forty years of operation of the Wolf

Creek-Blackberry Project, NEECH will provide or secure equity capital injections up to \$10 million per year, as needed to maintain the financial integrity of the Project consistent with an investment-grade credit profile. Following the initial 40-year period, NEET Southwest and NEECH will review and assess whether this financial commitment remains necessary to maintain the financial integrity of the Project, consistent with an investment-grade credit profile, for the remaining depreciable life of the Project.

- d. NEET Southwest will consider and address as part of its line siting proceeding an option to double circuit a 25-mile portion of the Wolf Creek-Blackberry Project that parallels an existing Evergy 161 kV transmission line, subject to receiving necessary approvals for a change in project scope from SPP and necessary agreements from Evergy.
- e. NEET Southwest will construct the Wolf Creek-Blackberry Project consistent with SPP's design criteria contained in the SPP RFP and consistent with the construction specifications in NEET Southwest's bid.
- f. NEET Southwest will cooperate with Evergy to interconnect the Project to the Wolf Creek Substation, including:
  - i. NEET Southwest agrees to move the point of interconnection to outside the owner-controlled area of the Wolf Creek Nuclear Generating Station, subject to any necessary SPP reviews or approvals; and
  - ii. Coordinating with Evergy towards agreement on issues of connection, project management, impact on the existing system, transmission

planning, and future interconnections to the Project.

- g. NEET Southwest will coordinate with Evergy as needed regarding line crossings and paralleling of any Evergy ROW.
- h. NEET Southwest will coordinate with SPP and SPP members, as appropriate, and complete any studies required related to the Project and interconnections to the Project.
- i. NEET Southwest will provide KCC Staff with a copy of the galloping study referenced in its response to KCC Data Request No. 21. In the design and construction of the Project, NEET Southwest will seek to limit galloping issues that result in potential outage for the transmission line by incorporating mitigation methods derived after engineering studies are completed.
- j. When the Wolf Creek-Blackberry Project becomes operational, NEET Southwest will maintain sufficient personnel (employees or local contractors) in the region of the facilities such that it can provide adequate emergency response to any portion of its Kansas operations consistent with NEET Southwest's bid to SPP.
- k. NEET Southwest acknowledges the Commission's jurisdiction under all statutes not specifically waived by the Commission and that the Commission has authority to oversee NEET Southwest's CCN, including opening proceedings to investigate NEET Southwest's compliance with the terms and conditions of the CCN or any future line siting approvals.
- l. NEET Southwest shall comply with all applicable statutes for any future proposal



to extend or relocate an existing transmission line, obtain an ownership interest in an existing regulated electrical facility in Kansas, or construct a new transmission line.

- i. Future transmission rights only CCN applications must explain: (1) why the project is necessary; (2) why current facilities could not address the same needs as the proposed project; (3) why the proposed project avoids imposing unreasonable costs; (4) the estimated cost of the project; (5) economic and environmental impacts of the project; and (6) the identification of any alternative solutions proposed by affected stakeholders.
- ii. To the extent NEET Southwest determines that any of this information is inapplicable or not necessary with respect to a project, it shall include in its application an explanation as to why such information is not applicable or is unnecessary. NEET Southwest shall confer and work with Staff and other parties to determine if NEET Southwest has provided sufficient information to allow Staff and other parties to conduct its review of any future application.
- m. The Settling Parties agree that FERC preempts the KCC's ratemaking authority as set forth in K.S.A. 66-101b-f, 66-117, 66-128, and 66-128a-p unless NEET Southwest acts outside the conduct covered by FERC jurisdiction, at which time the KCC will decide the applicability of these statutes. The Parties do not object to waivers of K.S.A. 66-1402 and 66-1403, subject to the following:

- i. NEET Southwest agrees to file a list of affiliate contracts specific to operations, maintenance and reliability of the Project in a compliance docket established for this proceeding, including a summary of any material changes to such contracts since the granting of the CCN; and
  - ii. NEET Southwest agrees to implement asymmetrical pricing in its transactions with affiliates, as discussed in the Rebuttal Testimony of Amanda Finnis at pp. 5-6.
- n. NEET Southwest will not file a line siting application for the Project in Kansas until after the KCC issues a CCN for the Project.
- o. NEET Southwest will provide the following reports and completed plans:
- i. Annual Reports, which NEET Southwest will file in a compliance docket:
    - (a) Unplanned outage reports providing start and end time of outage, time elapsed before first responder on site, cause of outage, comments on how outage was resolved; summary of actions taken to mitigate future occurrences of similar outages;
    - (b) Any rapid damage assessment prioritization reports associated with the outage;
    - (c) Documentation of transmission line maintenance activities and inspections completed as per Table 3A.6-1 in NEET Southwest's RFP response;
    - (d) Result of inspections conducted for poles, conductor, and insulators;

- (e) Any modifications to contract between NEET Southwest and emergency response contractor; and
  - (f) Emergency Response Contact List for NEET Southwest and its Control Center. NEET Southwest will make an additional compliance filing with-in 30 days of any changes to its Emergency Response Contact List.
- ii. Quarterly Construction Reports, which NEET Southwest will file in a compliance docket:
  - (a) NEET Southwest will provide quarterly reports on its progress with respect to safety, cost, schedule, quality, and landowner issues/resolutions, similar to what the Commission has required in other siting dockets.
- iii. Documents to be filed upon completion of the Project:
  - (a) Post-construction report that documents NEET Southwest has met the construction requirements agreed to in its RFP response;
  - (b) 345 kV Transmission Line Restoration Plan;
  - (c) Storm Outage and Emergency Response Plan;
  - (d) Communications Plan;
  - (e) Contacts for vendor support services documenting the NEET Southwest project in Kansas has been added to various vendor contracts; and
  - (f) Contract for Brink Constructors (or other similarly qualified



vendor) providing unplanned outage response times and equipment availability specifications for the NEET Southwest project in Kansas.

B. EFFECTIVE DATE

11. This Agreement shall be deemed to become effective as of the date of the Commission order approving this Agreement.

C. OTHER TERMS

12. This Agreement represents a negotiated settlement which fully resolves the issues addressed in this docket.

13. The Settling Parties represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues raised in this docket.

14. Except as specified in this Agreement, the Settling Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in this docket.

15. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Settling Parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed in this Agreement and will not appeal the Commission's order on those issues.

16. The provisions in this Agreement have resulted from negotiations among the Settling Parties and are interdependent. In the event the Commission does not approve and adopt the terms in this Agreement in total, it shall be voidable by any Settling Party. If this Agreement is

terminated or voided, no Settling Party shall be bound, prejudiced, or in any way affected by any of the agreements or provisions in this Agreement.

17. All discovery requests and responses exchanged to facilitate the settlement negotiations, and all settlement discussions, shall be treated as privileged and confidential and shall not be (i) utilized as evidence in any other case or proceeding, or (ii) deemed an admission by any Settling Party of any principle contained herein.

18. This Agreement is the result of negotiations between the Settling Parties, each of which has participated in the drafting of this Agreement through its respective attorneys. No Settling Party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against any Settling Party as the drafter.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Settling Parties have executed and approved this Unanimous Settlement Agreement as of the 6th day of June, 2022, by subscribing their signatures below.

/s/ Anne E. Callenbach

Anne E. Callenbach, #18488

Andrew O. Schulte, #24112

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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 08/29/2022.

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