

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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Kansas Corporation Commission
/S/ Patrice Petersen-Klein

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

In the Matter of the Application of Prairie)
Wind Transmission, LLC for a Siting Permit)
for the Construction of a Double Circuit 345) Docket No: 11-PWTE-600-MIS
kV Transmission Line in Sedgwick, Sumner,)
Harper, and Barber Counties, Kansas.)

ORDER GRANTING SITING PERMIT

I.	Commission Authority.....	2
II.	Background	4
III.	Procedure.....	9
	<i>A. Prefiled Testimony and Other Documents</i>	9
	<i>B. Evidentiary Hearing</i>	11
IV.	Notice to Public and Landowners.....	14
V.	Public Hearing and Public Comment	17
	<i>A. Statutorily-required Public Hearing</i>	17
	<i>B. Second Public Hearing</i>	18
VI.	Necessity.....	19
VII.	Reasonableness.....	23
	<i>A. Overview of Prairie Wind's Process</i>	25
	<i>B. Chermac's Arguments</i>	33
	<i>C. Stolz Alternative 1</i>	34
	<i>D. Stolz Alternative 2</i>	35
	<i>E. Martin Alternative 1</i>	36
	<i>F. Martin Alternative 2</i>	36
	<i>G. Duell Modified Alternative</i>	37
	<i>H. Wetta Alternative</i>	38
	<i>I. Carr Alternative</i>	39
	<i>J. McCracken Alternative 1 and McCracken Alternative 2</i>	40
	<i>K. Stockwell Alternative</i>	41
	<i>L. Hostetler Alternative 1 and Hostetler Alternative 2</i>	42
	<i>M. Newberry/Petitioners Group Alternative</i>	44
	<i>N. Finding of Reasonableness</i>	47
VIII.	Reporting Requirements	47
IX.	Conclusion	48

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission summarizes the arguments of the parties and finds and concludes as follows:

I. Commission Authority

1. This proceeding involves an application for a siting permit under the Kansas Siting Act, K.S.A. 66-1,177, *et seq.*, to construct an electric transmission line in Kansas. The Commission must determine several issues in deciding whether to issue the siting permit. This Order addresses each issue separately, setting forth findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the Commission's discretion, as required by the Kansas Administrative Procedure Act (KAPA). K.S.A. 77-526(c). After careful review and consideration of the evidentiary record, public comments, and policies benefiting the general public, the Commission grants this Application for a siting permit and approves the proposed line with inclusion of several modifications, subject to and upon the terms and conditions as discussed below. Under the Kansas Siting Act, the Commission shall issue a final Order on this Application within 120 days after the date the Application was filed. The Order in this docket must be filed by June 28, 2011. K.S.A. 66-1,178(d).

2. The Commission has jurisdiction over Prairie Wind Transmission, LLC's (Prairie Wind) Application under the Kansas Siting Act. K.S.A. 66-1,177, *et seq.* Unless an exception to the Kansas Siting Act applies, all electric utilities are required to acquire a siting permit from the Commission before beginning site preparation for or construction of an electric transmission line, or before exercising the right of eminent domain to acquire any interest in land in connection with such line. K.S.A. 66-1,178. An electric transmission line is defined as "any line or extension of a line which is at least five (5) miles in length and which is used for the bulk

transfer of two hundred thirty (230) kilovolts or more of electricity.” K.S.A. 66-1,177(b). The transmission line proposed by Prairie Wind in this proceeding is approximately 109 miles in length, and will be used for the bulk transfer of 345 kilovolts (kV) of electricity. Application, February 28, 2011, paragraphs 14-15 (Prairie Wind Application, ¶ 14-15). Therefore, the Commission finds that the transmission line proposed to be constructed in this proceeding falls within the definition of an electric transmission line subject to the Kansas Siting Act.

3. Any hearing conducted under the Kansas Siting Act must be in accordance with the provisions of the KAPA. The Commission must decide the necessity for and the reasonableness of the location of the proposed electric transmission line in issuing or withholding a siting permit. In its decision, the Commission must take into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas. The Commission may condition such permit as it deems just and reasonable and to best protect the rights of all interested parties and the general public. K.S.A. 2010 Supp. 66-1,180.

4. In addition to its authority under the Kansas Siting Act, the Commission has full power, authority, and jurisdiction to supervise and control electric public utilities, as defined at K.S.A. 66-101a, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. K.S.A. 66-101; K.S.A. 66-101a; K.S.A. 2010 Supp. 66-104. The Commission applies a liberal construction to its grants of power, authority, and jurisdiction. Furthermore, “all incidental powers necessary to carry into effect the provisions of [the Electric Public Utilities Act, K.S.A. 66-101, *et seq.*] are expressly granted to and conferred upon the commission.” K.S.A. 66-101g.

II. Background

5. On February 28, 2011, Prairie Wind filed its Application for a siting permit granting Prairie Wind the right to construct a double-circuit 345 kV transmission line consisting of two line segments of the “Y Plan,” which is discussed in more detail below: (1) from Westar Energy Inc.’s (Westar) substation near Wichita, Kansas, to a new 345 kV substation near Medicine Lodge, Kansas (Thistle substation) to be constructed by ITC Great Plains, LLC (ITC Great Plains), and (2) from the Thistle substation south to the Kansas/Oklahoma border. The proposed line would cross portions of Sedgwick, Sumner, Harper, and Barber counties in Kansas. Application, ¶ 15.

6. The Commission previously granted Prairie Wind’s request for a certificate of public convenience to transact the business of an electric public utility in these counties in Docket No. 08-PWTE-1022-COC (08-1022 Docket), authorizing it to site, construct, own, operate, and maintain the transmission project for which siting authority is sought in this docket. Application, ¶ 2. Prairie Wind’s certificate was granted on the condition that the Southwest Power Pool, Inc. (SPP) would have a regional postage stamp rate recovery mechanism through SPP’s Open Access Transmission Tariff (OATT), or substantially similar funding. Application, ¶ 10. The SPP is a Regional Transmission Organization (RTO) approved by the Federal Energy Regulatory Commission (FERC) with 62 members in nine states, administering transmission service to 48,930 miles of transmission lines which includes Kansas and surrounding states. Direct Testimony of Katherine Prewitt, March 24, 2011, pages 2-3 (Prewitt Direct, pp. 2-3).

7. The Commission found that the form of funding described in paragraph 6 was critical to the Commission in determining the public interest and assuring that Kansas ratepayers alone were not required to bear the cost of a line that would be built to provide benefits beyond Kansas borders. Specifically in the 08-1022 Docket, the Commission noted from a previous

order, “A decision regarding the funding methodology for spreading the costs of a regional project over the SPP region is critical not only to the parties but also to the Commission in determining the public interest.” *Cf.* Application, ¶ 10; *see also* Order Granting Joint Motion to Approve Stipulation and Agreement, Docket No. 08-PWTE-1022-COC, May 22, 2009, paragraph 39 (08-1022 Order, ¶ 39). As of June 19, 2010, the FERC approved a change from the postage stamp rate recovery to the use of a Highway-Byway cost allocation method, which allocates costs between the region and the host zone based upon the operating voltage of the project. Application, ¶ 10; *and see* Direct Testimony of Dennis L. Reed, February 28, 2011, pages 6-7 (Reed Direct, pp. 6-7).

8. Parties to this proceeding include Prairie Wind and the Commission Staff (Staff), and the following parties who were granted intervention by the Commission: the Citizens’ Utility Ratepayer Board (CURB); the SPP; Chermac Energy Corporation (Chermac); ITC Great Plains; Sunflower Electric Power Corporation (Sunflower); Mid-Kansas Electric Company, LLC (Mid-Kansas); and Randy and Rebecca Newberry, R&B Oil & Gas, Inc., Dennis and Penny Newberry, Billie Sue Mideke, Joan Helm Trustee of the Joan Newberry Living Trust, and Jody Oil and Gas Corporation (Petitioners Group).

9. As noted above, Prairie Wind is seeking a siting permit to construct a new double-circuit 345 kV line from Westar’s substation outside Wichita to the Thistle substation and then to the Kansas/Oklahoma border. Kelly B. Harrison (Harrison), president of Prairie Wind, stated that the Thistle substation will serve as a connection point for a new double-circuit 345 kV line to be built by ITC Great Plains, and that Prairie Wind’s line terminating at the Kansas/Oklahoma border will connect with a new-double circuit 345 kV line to be built by Oklahoma Gas & Electric Company (OG&E) which will terminate in Woodward, Oklahoma. Direct Testimony of Kelly B. Harrison, February 28, 2011, pages 2-3 (Harrison Direct, pp. 2-3). Prairie Wind stated

that these line segments constitute a SPP priority project that has been identified as the Y Plan, which will provide substantial benefits to Kansas and the SPP region. Application, ¶ 3.

10. The Y Plan contains line segments approved by the SPP Board of Directors as a group of priority projects on April 27, 2010, to improve the SPP transmission system and benefit the region. Application, ¶ 6. Prairie Wind's transmission line project will be funded on a regional basis under the SPP OATT with 100% recovery from the SPP region, since it is a project operating at or above 300 kV. Reed Direct, p. 6. Prairie Wind's proposed line is a priority project in a portfolio of projects within the SPP, and will be included in the Highway-Byway cost allocation methodology. Reed Direct, p. 7. This methodology will allocate the transmission revenue requirement for the project across the SPP region. Application, ¶ 10.

11. On June 30, 2010, the SPP issued a Notification to Construct (NTC) the Y Plan project to Westar, Mid-Kansas and OG&E, involving lines from Wichita to Medicine Lodge, Medicine Lodge to Comanche County, Comanche County to Spearville, and Comanche County to the Kansas/Oklahoma border, connecting to a line OG&E would construct to Woodward, Oklahoma. Harrison Direct, pp. 8-9. Westar and Mid-Kansas each sent SPP a letter, on September 2 and September 3, 2010, respectively, accepting the NTC and giving notice that Westar and Mid-Kansas were designating Prairie Wind to build the project. Harrison Direct, Exhibits KBH-4 and KBH-5.

12. On November 22, 2010, SPP issued revised NTCs to Mid-Kansas and OG&E adjusting the end points of the Comanche to Woodward line. The revised NTC replaced the Comanche-Woodward line with a line running from Woodward east and north and connecting at the proposed new Thistle substation near Medicine Lodge (Medicine Lodge-Woodward line). On January 4, 2011, Mid-Kansas accepted the revised NTC in a letter to the SPP, and again designated Prairie Wind to construct Mid-Kansas' portion of the project identified in the revised

NTC. The SPP Board of Directors accepted Prairie Wind as the designated transmission owner on January 25, 2011, and approved the novation agreements entered into by Westar, Mid-Kansas and Prairie Wind on February 23, 2011. Harrison Direct, p. 10.

13. Prairie Wind's transmission line will be a double-circuit 345 kV line, which will require a 150-foot nominal width right-of-way. Application, ¶ 26. The line will be constructed using either steel H-Frame structures or single pole tubular structures, which will be either directly embedded using a crushed rock backfill or may utilize a concrete pier foundation. The structures will be spaced approximately 600 to 1,200 feet apart with an approximate height of between 100 and 160 feet, depending on span length, required clearances, and local terrain. Application, ¶¶ 16-17.

14. The line will be constructed with aluminum, steel-reinforced conductors utilizing a two-conductor bundle, with each conductor in the bundle spaced 18 inches apart and arranged in a horizontal bundle. Application, ¶ 18. The line will be protected from lightning by two overhead shield wires strung at the uppermost extremity of the supports. Application, ¶ 19. Non-electric wire fences located within the distance of 150 feet from the center of the right-of-way will be grounded at intervals to limit the electromagnetically induced levels of static charges to safe levels. Application, ¶ 20.

15. Construction of the line will require clearing, structure assembly, stringing and tensioning of conductors and shield wires, energizing the line and cleanup/re-vegetation. All conductors and shield wires will be tension strung to ensure the conductor will not touch the ground or other objects during construction. Conductors will be handled with care to keep their surface smooth, which minimizes corona and associated radio-TV interference and audible noise. Application, ¶ 21. Structure assembly will occur in the field, with tangent structures unguyed and heavy angles and dead ends self-supported. The construction crew will consist of

approximately 50 to 75 workers using equipment that includes hole diggers, cranes, stringing rigs, conductor tensioners, back hoes, trucks, cars and other items. Application, ¶ 22.

16. Prairie Wind will apply for a construction activity, National Pollutant Discharge Elimination System permit from the Kansas Department of Health and Environment (KDHE), pursuant to K.S.A. 65-164 and 65-165, and the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 *et seq.* Application, ¶ 23; *see* Direct Testimony of Robert M. St. John, February 28, 2011, page 6 (St. John Direct, p. 6). Prairie Wind will also develop and submit a Storm Water Pollution Prevention Plan to KDHE before construction begins, to ensure the design, implementation, management, and maintenance of best management practices, in order to reduce the amount of sediment and other pollutants in storm water runoff from construction. Application, ¶ 24. Prairie Wind will inspect the construction and clean-up operations to ensure compliance with specifications and standard procedures. Application, ¶ 25.

17. As stated above, the right-of-way will be approximately 150 feet, but could be more or less depending on span length, conductor sag, and wind characteristics. Application, ¶ 26. Landowners will be able to use the right-of-way for any agricultural purposes that do not interfere with use of the line at full-rated capacity. Prairie Wind stated that landowners will not be permitted to conduct business in the right-of-way that would be hazardous to the landowner, the transmission line, or to the general public, and no foreign structures will be permitted in the right-of-way. Trees and brush will be trimmed or removed, and herbicides will be used to control woody vegetation and re-growth of trees and brush. Application, ¶ 27.

18. Prior to the beginning of construction, easements will be procured starting in July 2011, if the Commission approves Prairie Wind's Application. Landowners will be compensated for all damages including crop losses that are directly attributable to construction. Prairie Wind anticipates construction of this project will take approximately 35 months, beginning in January

2012 if rights-of-way can be acquired, with an estimated completion date of December 31, 2014. Application, ¶¶ 28-30.

III. Procedure

A. Prefiled Testimony and Other Documents

19. In an Order Adopting Procedural Schedule and Granting Intervention to CURB issued March 9, 2011 (March 9, 2011 Order), the Commission approved a procedural schedule that set deadlines for this docket. The following deadlines were scheduled: Staff/Intervenor Direct Testimony due April 4, 2011; public hearing in Harper, Kansas on April 7, 2011; Prairie Wind Rebuttal Testimony due April 18, 2011; public comment period closing on April 18, 2011; all parties response to public hearing comments on April 20, 2011; Prairie Wind response to written comments and rebuttal to Staff/Intervenor response to public hearing comments on April 27, 2011; list of disputed issues, prehearing motions and discovery cut-off on May 3, 2011; prehearing conference on May 6, 2011; evidentiary hearing beginning May 16, 2011 through May 18, 2011; Prairie Wind initial brief with proposed factual findings and legal conclusions on May 31, 2011; Staff/Intervenor responsive briefs on June 7, 2011; and Prairie Wind reply brief on June 14, 2011. March 9, 2011 Order, ¶ 3. The Commission also ordered Prairie Wind to provide notice of the Harper public hearing and the opportunity to file written comments to landowners, and also provide notice in various newspapers, as required by K.S.A. 66-1,179. Prairie Wind was required to submit an affidavit verifying proper notice was given. March 9, 2011 Order, ¶¶ 3, 13.

20. The Prehearing Officer issued an Order establishing a new deadline for filing of Direct Testimony by Staff witness Thomas DeBaun (DeBaun) of April 6, 2011, at 3:00 p.m. Order Granting Staff Motion for an Enlargement of Time, April 4, 2011, paragraph 4. The Prehearing Officer also issued an Order establishing a second public hearing in this docket,

which will be discussed in more detail below. Prehearing Officer Order Modifying Procedural Schedule, April 29, 2011, paragraph 5 (April 29 PHO Order, ¶ 5).

21. Prairie Wind prefiled direct testimony with its Application on February 28, 2011, from three witnesses: Harrison, president of Prairie Wind, provided an overview and addressed policy issues; St. John, consulting design engineer for Westar, addressed the process used to determine the preferred route for the line; and Reed, director of FERC compliance for Westar, addressed the cost-recovery mechanism for the line. Application, ¶ 4. On March 4, 2011, the SPP attached the direct testimony of Prewitt, the director of planning for the SPP, with its Petition to Intervene in support of Prairie Wind's application, and formally filed Prewitt's testimony on March 24, 2011.

22. On April 4, 2011, parties filed direct testimony according to the procedural schedule. Michael J. Wegner (Wegner), chief of energy operations; and Andy Fry (Fry), energy engineer, filed direct testimony on behalf of Staff. Chermac filed direct testimony of Jamie Lyle McAlpine (McAlpine), president of Chermac; James R. Dittmer (Dittmer), senior regulatory consultant with Utilitech, Inc.; Paul Kerlinger (Kerlinger), principal and lead scientist with consulting firm of Curry & Kerlinger, LLC; and Heath D. Garner (Garner), employed by Enercon Services Incorporated as a senior biologist in the NEPA and ecological services of the Environmental and Industrial Services Division.¹ Pursuant to the Prehearing Officer's Order discussed above, Staff witness DeBaun, senior energy engineer, also filed direct testimony on behalf of Staff on April 6, 2011. On April 18, 2011, rebuttal testimony was filed on behalf of Prairie Wind by Harrison; Brad Loveless (Loveless), director of biology and conservation

¹ Kerlinger and Garner were not called as witnesses at the evidentiary hearing, and therefore Direct Testimony submitted by each was not made a part of the record in this docket.

programs for Westar; and Eric Johnson (Johnson), chief of the ecological services section of the Kansas Department of Wildlife and Parks (KDWP).

23. On April 20, 2011, St. John filed response to public hearing comments in his Supplemental Testimony, and Wegner also filed Response to Public Hearing Comments on behalf of Staff. St. John also filed Second Supplemental Testimony on April 27, 2011, to address written comments from the public.

24. On May 3, 2011, a Joint List of Disputed Issues was filed by Staff, Prairie Wind, CURB, the SPP, Sunflower and Mid-Kansas. Chermac also filed its Proposed List of Contested Issues separately on May 3, 2011.

25. The Commission conducted an Oral Argument in this docket jointly with Docket No. 11-ITCE-644-MIS (11-644 Docket) on May 11, 2011 to address Commission questions, which included: (1) whether the Commission has authority to extend the procedural schedule in these dockets beyond the 120-day statutory deadline, and any consequences that would result from doing so, (2) if there were any issues that should be considered jointly in this docket and the 11-644 Docket, which involves the Application filed by ITC Great Plains requesting a siting permit for another section of the Y Plan transmission line, and (3) whether landowners affected by landowner-proposed alternative routes have sufficient opportunity to provide comments to the Commission if the procedural schedule were not extended. Order Scheduling Oral Argument, May 10, 2011, paragraph 5.

B. Evidentiary Hearing

26. An evidentiary hearing was conducted in this proceeding beginning on May 16, 2011, and continued through May 18, 2011, with the Commission presiding. Appearances at the Evidentiary Hearing were as follows: Patrick Smith (Smith) and Dana Bradbury (Bradbury) on behalf of Commission Staff and the public generally; Martin J. Bregman (Bregman) and Cathryn

J. Dinges (Dinges) on behalf of Prairie Wind; John Wine (Wine) on behalf of the SPP; Niki Christopher (Christopher) on behalf of CURB; James P. Zakoura (Zakoura) on behalf of Chermac; Susan B. Cunningham (Cunningham) and Brett D. Leopold (Leopold) on behalf of ITC Great Plains; and Diana Edmiston (Edmiston) on behalf of the Petitioners Group. Transcript of Proceeding, Volume 1, May 16, 2011, pages 6-7 (Tr. Vol. 1, pp. 6-7). Staff reported that notice was contained in the Commission's Order Adopting Procedural Schedule on March 9, 2011. No objections were made to notice, and the Commission found that notice of the hearing was proper and the Commission had jurisdiction to hear the matter. Tr. Vol. 1, p. 7.

27. At the beginning of the hearing, the Commission addressed four motions as preliminary matters, some of which are discussed in more detail below. The four motions are:

- (1) May 4, 2011 Motion of Staff and Prairie Wind to Strike the List of Disputed Issues of Chermac Energy Corporation (Staff/Prairie Wind Motion to Strike)
- (2) May 11, 2011 Motion of Intervenors Billie Sue Mideke and R&B Oil and Gas to Dismiss the Application (PG Motion to Dismiss)
- (3) May 12, 2011 Motion of Intervenor Chermac Energy Corporation to Dismiss the Application of Prairie Wind Transmission (Chermac Motion to Dismiss)
- (4) May 13, 2011 Motion for Leave to Submit the Direct Testimony Out of Time and Participate in the Docket Proceedings (PG Motion for Leave)

28. Also as a preliminary matter, the Commission addressed consideration of a "Western Route" as proposed by Chermac. The Commission stated that Prairie Wind as the Applicant does not propose a Western Route as part of its Application, and ruled that evidence relating to a Western Route was not relevant to Prairie Wind's Application and is outside the scope of this docket. *See* Tr. Vol. 1, pp. 15-18.

29. The parties presented brief Opening Statements as follows: Bregman on behalf of Prairie Wind, Tr. Vol. 1, pp. 19-28; Wine on behalf of the SPP, Tr. Vol. 1, p. 28; Zakoura on behalf of Chermac, Tr. Vol. 1, pp. 28-44; Edmiston on behalf of the Petitioners Group, Tr. Vol. 1, pp. 44-47; Leopold on behalf of ITC Great Plains, Tr. Vol. 1, p. 47; Christopher on behalf of CURB, Tr. Vol. 1, pp. 47-49; and Smith on behalf of Staff, Tr. Vol. 1, pp. 49-54. Prairie Wind witnesses testifying at the hearing included St. John, Tr. Vol. 1, pp. 67-192; Kristi Wise (Wise), a Project Manager in the Environmental Studies and Permitting Section of Burns & McDonnell, Tr. Vol. 1, pp. 192-237; Reed, Transcript of Proceedings, Volume 2, May 17, 2011, pages 250-266 (Tr. Vol. 2, pp. 250-266); Harrison, Tr. Vol. 2, pp. 310-334; Loveless, Tr. Vol. 2, pp. 335-355; and Johnson, Tr. Vol. 2, pp. 355-364 and 373-391. The SPP witness testifying at the hearing was Prewitt, Tr. Vol. 2, pp. 267-309. Chermac witnesses testifying at the hearing included McAlpine, Tr. Vol. 2, pp. 391-431; and Dittmer, Tr. Vol. 2, pp. 431-441. Staff witnesses testifying at the hearing included Fry, Tr. Vol. 1, pp. 54-64; Wegner, Tr. Vol. 2, pp. 443-456 and Transcript of Proceedings, Volume 3, May 18, 2011, pages 465-500 (Tr. Vol. 3, pp. 465-500); and DeBaun, Tr. Vol. 3, pp. 501-527. Although Chermac pre-filed Direct Testimony of Kerlinger and Garner, Chermac did not call these witnesses at the evidentiary hearing and did not enter their pre-filed testimony into the record. CURB, ITC Great Plains, and the Petitioners Group did not present witnesses. Sunflower and Mid-Kansas did not appear at the evidentiary hearing.

30. At the conclusion of the hearing, Prairie Wind asked the Commission to take administrative notice of the SPP Open Access Transmission Tariff 6, Revised Volume No. 1, Attachment O, Section VI, pages 1643-1645, concerning the transmission planning process; Attachment A I, pages 2654-2658, concerning transmission definitions; and Attachment V, pages 1714-2002, concerning generator interconnection procedures. Pursuant to K.S.A. 77-524(f)(4)

(official notice may be taken of codes of standards that have been adopted by a nationally recognized organization or association), the Commission granted Prairie Wind's request and took official notice of these items. Tr. Vol. 3, pp. 527-530.

31. Prairie Wind filed its initial post-hearing brief with Proposed Findings of Fact and Conclusions of Law with a Memorandum in Support on May 31, 2011. On June 7, 2011, a Responsive Post Hearing Brief of Chermac Energy Corporation was filed, as was Staff's Response to Prairie Wind's initial brief. Other intervenors did not file briefs. Prairie Wind filed a Reply Brief on June 14, 2011.

IV. Notice to Public and Landowners

32. The Kansas Siting Act contains specific requirements and procedures regarding notice. When an electric utility files its Application for a siting permit with a proposed location for an electric transmission line, the utility must submit the names and addresses of the landowners of record whose land or interest therein is proposed to be acquired or which is located within 660 feet of the center line of the easement where the line is proposed to be located in the Application. K.S.A. 66-1,178(a)(2). After the Application is filed, the Commission must schedule a public hearing on the Application in one of the counties the line is proposed to traverse. K.S.A. 66-1,178(b). Notice of the time, place, and subject matter of the public hearing is required to be published "in newspapers having general circulation in every county through which the electric transmission line is proposed to traverse once each week for two consecutive weeks, the last newspaper publication to be not less than five days before such hearing date." K.S.A. 66-1,179. Additionally, written notice by certified mail of the public hearing and a copy of the Application must be served not less than 20 days prior to the hearing date on all landowners described in K.S.A. 66-1,178(a)(2). K.S.A. 66-1,179. The Commission may require

the utility to submit an affidavit of publication to show the dates of publication and newspapers in which notice appeared prior to the hearing. K.S.A. 66-1,179.

33. With its Application, Prairie Wind submitted a list with the names and addresses of landowners of record whose land or interest therein was proposed to be acquired in connection with the construction of the line proposed in the Application, or which was located within 1,000 feet of the center line of the easement where the line is proposed to be located. Application, ¶ 32, and Attachment 2. Prairie Wind indicated that Westar identified landowners within 1,000 feet of the proposed line in order to have a better assurance that affected landowners would be identified and have the opportunity to provide input concerning location of the line. Application, ¶ 32, footnote 2. In an Affidavit of Publication filed April 4, 2011, Erin La Row (La Row), a communications representative for Westar, stated that notice of the public hearing in Harper, Kansas, had been placed in various newspapers having general circulation in the counties where the proposed transmission line would be constructed. Affidavit of Publication, April 4, 2011, paragraphs 1-3 (April 4 Affidavit, ¶¶ 1-3); *see* Amended Exhibit 1, June 20, 2011. Each notice was published two consecutive weeks. April 4 Affidavit, Exhibits 1 and 2; *see* Amended Exhibit 1, June 20, 2011. La Row by affidavit certified that on March 14, 2011, she sent a copy of the Application along with a letter by certified mail to owners of record of property located within 1,000 feet of the center line of the proposed route. April 4 Affidavit, ¶ 5; *see* Exhibits 3 (letter sent by certified mail) and 4 (list of landowners).

34. On May 9, 2011, Hazel Sutherland (Sutherland), a Real Estate Coordinator for Westar, submitted an Affidavit of Publication regarding written notice given to landowners of record of property located within 1,000 feet of the center line of “landowner alternatives” that were proposed by landowners as alternatives to Prairie Wind’s proposed route, and which were the subject of a second public hearing held in Colwich, Kansas, discussed in more detail below.

Affidavit of Publication, May 9, 2011, paragraphs 1-2 (May 9 Affidavit, ¶¶ 1-2), *see* Exhibit A. Prairie Wind identified 12 landowner-proposed alternative routes that warranted consideration, and listed the landowners under each route that were affected. These landowner-proposed alternative routes are: Stolz Alternative 1, Stolz Alternative 2, Duell Modified Alternative, Martin Alternative 1, Martin Alternative 2, Wetta Alternative, McCracken Alternative 1, McCracken Alternative 2, Stockwell Alternative, Carr Alternative, Hostetler Alternative 1, and Hostetler Alternative 2. May 9 Affidavit, Exhibit B.

35. The Commission concludes that Prairie Wind complied with the requirement to send notice to all landowners of record whose land or interest therein is proposed to be acquired in the Application in connection with the construction of the line. K.S.A. 66-1,179. In fact, Prairie Wind exceeded the requirements of K.S.A. 66-1,178(a)(2) by including landowners within 1,000 feet of the center line of the easement of the proposed line, greater than the 660 feet required in the Kansas Siting Act. The Commission approves of the form of notice provided to those who were newly affected by the landowner-proposed alternative routes, and finds that the notice is appropriate to this proceeding. Additionally, the Commission concludes that the steps Prairie Wind took to notify landowners within 1,000 feet of the center line of landowner-proposed alternative routes that it found to be viable gave adequate notice to landowners, and provided affected landowners the opportunity to be heard and provide comments to the Commission.

36. The Commission finds that Prairie Wind also met the statutory requirement to publish notice of the Harper public hearing conducted on April 7, 2011, as required by K.S.A. 66-1,179 and ordered by the Commission. Prairie Wind was required to publish notice of the Harper public hearing in newspapers having general circulation in every county through which the electric transmission line is proposed to traverse. K.S.A. 66-1,179.

37. In Docket No. 10-ITCE-557-MIS (10-557 Docket), the Commission found that an applicant's obligation to notify landowners does not end with the initial Application. The Commission held that the Legislature adopted notice provisions in K.S.A. 1,178(a)(2) and 66-1,179 to ensure landowners received notice that a proposed transmission line might impact their interests and to give these landowners an opportunity to address the Commission about the proposed route before a decision was made on an application for a siting permit. The Commission held that comments from landowners and members of the public provide important input when considering a request for a siting permit, and that public input may lead to developing a landowner-proposed alternative route that the Applicant finds viable and that should be considered in evaluating the location of the transmission line. The Commission also stated in the 10-557 Docket that if the Applicant determines there is a viable landowner-proposed alternative route to its proposed route which is developed in response to public comments, the Applicant shall give notice to landowners who are newly impacted by the landowner-proposed alternative route. Order Granting Siting Permit, Docket No. 10-ITCE-557-MIS, June 30, 2010, paragraph 25 (10-557 Siting Order, ¶ 25).

V. Public Hearing and Public Comment

A. Statutorily-required Public Hearing

38. On April 7, 2011, the Commission conducted a public hearing in this docket in the city of Harper, Kansas, located in Harper County, as required by K.S.A. 66-1,178, to determine the necessity for and the reasonableness of the location of the proposed electric transmission line. K.S.A. 66-1,178. The purpose of the public hearing was to give landowners whose land or interest therein was proposed to be acquired within 660 feet of the center line of the easement the opportunity to learn about the line and provide comments to the Commission. At the public hearing, notice was examined and found sufficient. Transcript of Public

Testimony, April 7, 2011, pages 2-3 (April 7 Tr., pp. 2-3). Twenty public comments were received during the Harper public hearing. April 7 Tr., pp. 4-46.

39. The public comment period set by the procedural schedule in this docket ended on April 18, 2011. The Commission's Office of Public Affairs and Consumer Protection (PACP Office) filed a report summarizing comments received about this proceeding on April 19, 2011, stating 71 comments had been received by email or by telephone as of April 18, 2011.

B. Second Public Hearing

40. As discussed above, at the Harper public hearing and through comments submitted to the Commission's PACP Office, several landowner-proposed alternative routes were developed and submitted to the original proposed location of the line in Prairie Wind's Application. On April 29, 2011, after consultation with each Commissioner and the Commission's Director of Public Affairs and Consumer Protection, the Prehearing Officer issued an Order Modifying Procedural Schedule which scheduled a second public hearing in Colwich, Kansas, to give those impacted by the landowner-proposed alternative routes the opportunity to hear the details about and to present statements to the Commission regarding the landowner-proposed alternative routes. The Commission required Prairie Wind to provide notice to landowners affected by landowner-proposed alternative routes and submit an Affidavit of Publication on May 9, 2011.

41. An extended public comment period was also established by the April 29 Prehearing Officer's Order, to give landowners affected by landowner-proposed alternative routes the opportunity to submit comments for the Commission's consideration of the landowner-proposed alternative routes. The public comment period was extended through May 11, 2011, at 5:00 p.m.

42. The second public hearing in this docket was held on May 10, 2011, in the city of Colwich, Kansas, located in Sedgwick County. At the public hearing, notice was examined and found sufficient. Public Comments Hearing Transcript, May 10, 2011, pages 2-3 (May 10 Tr., pp. 2-3). Twenty-six public comments were received during the public hearing. May 10 Tr., pp. 4-45.

43. The Commission's PACP Office filed a second report summarizing comments received about this proceeding during the extended public comment period. The report dated May 12, 2011, stated 96 comments had been received by email or telephone from April 19 through May 11, 2011.

44. The Commission notes that many of these comments will be discussed more fully in evaluating the reasonableness of the proposed route. Even if not specifically addressed in this Order, the Commission has reviewed all comments submitted to the PACP Office and made during the Harper public hearing on April 7, 2011, and the Colwich public hearing on May 10, 2011. These comments have been made a part of the record of public comments received from landowners and other members of the public.

VI. Necessity

45. In issuing a siting permit, the Commission must determine the necessity of the proposed electric transmission line. In deciding necessity, the Commission must take into consideration "the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas." K.S.A. 2010 Supp. 66-1,180. The Commission is required to "issue or withhold the permit applied for and may condition such permit as the commission may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public." K.S.A. 2010 Supp. 66-1,180.

46. The Commission notes that the Kansas Legislature did not define what the Commission was to consider in determining necessity for a line. In its evaluation of the necessity for a proposed transmission line, the Commission reviewed case law regarding the grant of a certificate of convenience. The Commission previously found that the broad overriding factor the Commission must consider in determining necessity of a proposed electric transmission line is whether the facility promotes the public interest. Order Granting Siting Permit, Docket No. 09-ITCE-729-MIS, July 13, 2009, paragraph 39 (09-729 Siting Order, ¶ 39), citing *General Communications System v. State Corporation Comm'n*, 216 Kan. 410, 418, 532 P.2d 1341, 1348 (1975), and *Central Kansas Power Co. v. State Corporation Comm'n*, 206 Kan. 670, 676-677, 482 P.2d 1, 7 (1971).

47. Prairie Wind stated that construction of its project will provide significant benefits to retail electric customers in Kansas and throughout the region. Prairie Wind noted the lack of transmission line connecting western Kansas to eastern Kansas, and pointed out that increased capacity provided by the project will significantly reduce transmission constraints and improve reliability in the region, which would facilitate the import and export of power to and from the Westar control area and Kansas. This will provide the needed additional capacity to move power from wind farms located in remote areas to load centers and help contribute to the development of wind generation in Kansas. Also, the project will greatly enhance bidirectional flow of power to move wind power from west to east and enhance the flow of lower-priced power in Kansas. Harrison Direct, pp. 16-17.

48. The Commission transferred authority to the SPP for transmission planning in Docket No. 06-SPPE-202-COC (06-202 Docket), which was an Application made by the SPP for a certificate of convenience and authority for the purpose of managing and coordinating the use of transmission facilities in Kansas. The 06-202 Docket was a Joint Application with Docket

No. 06-WSEE-203-MIS (06-203 Docket), where Kansas utilities filed for authority to transfer functional control of certain transmission facilities to the SPP. The Commission found in those dockets that the SPP RTO would benefit Kansas retail electricity customers and was in the public interest, approved the transfer of functional control of the transmission facilities to the SPP, and approved SPP's request for certificate of convenience and authority for the limited purpose of managing and coordinating the use of said transmission facilities. Order Adopting Stipulation and Agreement and Granting Applications, Docket No. 06-SPPE-202-COC and Docket No. 06-WSEE-203-MIS, September 19, 2006, paragraph 40.

49. The Commission notes that the SPP's approval of the Y Plan is an important consideration, but that the Commission must independently analyze the record developed in this proceeding to determine whether substantial evidence exists in light of the record as a whole to support a finding that necessity for the proposed electric transmission line has been established. K.S.A. 77-526; K.S.A. 77-621(c)(7). As stated above, the SPP filed testimony of witness Prewitt in this docket on March 24, 2011.

50. The SPP identified Prairie Wind's proposed transmission line as part of the Y Plan, which is one of the Priority Projects of the SPP, and provided information to detail the benefits provided by the Priority Projects to the SPP footprint as a whole and to Kansas specifically. Through its analysis of the Priority Projects, the SPP determined that Prairie Wind's proposed line as a portion of the Y Plan will provide a number of benefits which include reducing congestion of the grid and improving the aggregate study and generation interconnection queues by providing additional transfer capability across the SPP footprint to allow for additional transmission service requests to be granted. Prewitt Direct, p. 13. The Priority Projects also increase the ability to transfer power in an eastward direction by connecting the western and eastern areas of the SPP region. Prewitt Direct, p. 14. The construction of the

line will provide both quantitative and qualitative benefits across Kansas and the SPP footprint, which includes additional wind revenue benefits based on wind level analyses, enabling future markets, storm hardening, improving operating practices/maintenance schedules, lowering reliability margins, improving dynamic performance and grid stability during extreme events, and other societal economic benefits, all which result in a robust transmission system for the region. Prewitt, pp. 14-17; Tr. Vol. 2, pp. 301-305. The SPP also stated that there were economic benefits resulting from additional jobs related to the manufacture, installation, and operation of the Priority Projects, and that SPP had quantified economic impacts in: (1) the number of jobs created in the region, (2) the resulting personal income earned by employees in the region, and (3) the economic activity generated in the region. Prewitt, p. 17. Finally, the SPP pointed out that economic output and employment effects in Kansas would result from the new wind construction and operation, which contributes to greater resource source diversity with the greater utilization of renewable resources that would stem from construction of the Priority Projects. Prewitt, pp. 18-22.

51. As noted above, the SPP Board of Directors approved the Priority Projects, including this line proposed by Prairie Wind, with costs recovered as part of the Highway-Byway region-wide cost allocation method, which has been approved by FERC. Harrison Direct, Exhibit KBH-2. Prairie Wind has estimated the cost of its project will be approximately \$225 million to construct the proposed line. Harrison Direct, p. 15. This is a preliminary estimate based on the current costs of labor and materials and the cost to acquire the needed rights-of-way. The actual costs of construction may differ because this is an estimate that will be affected by the final route selected, structural design, changes in commodity prices, and labor rates. Application, ¶ 8.

52. Staff stated that the need for the Prairie Wind project has been largely driven by social policy intended to increase utilization of renewable energy resources, and that the transmission line is necessary because without it, renewable generation will not be built and select Kansas property owners will not receive income associated with wind leases. Direct Testimony of Thomas B. DeBaun, April 6, 2011, page 6 (DeBaun Direct, p. 6). Additionally, Staff stated that Prairie Wind's proposed transmission line would provide benefits to at least some consumers, and that The Brattle Group conducted rather extensive economic development studies on behalf of the SPP related to the Priority Projects. Staff stated that a consideration of costs and benefits was important in determining necessity, and pointed out that stand-alone studies for individual line segments of Prairie Wind's proposal compared to the larger project of both the Y Plan and the Priority Projects could be inconclusive. DeBaun Direct, pp. 6-8.

53. After reviewing the record as a whole, the Commission finds that substantial evidence in the record as a whole supports a finding of necessity for building Prairie Wind's proposed electric transmission line at 345 kV voltage. The Commission finds evidence in the record establishes the need for this line to increase reliability of the transmission infrastructure and to facilitate access to substantial wind generation resources, to reduce congestion in the SPP region, to facilitate the regional transfer of power, to provide economic benefit which includes creation of jobs within Kansas and throughout the region. No parties disputed the necessity for Prairie Wind's proposed project.

VII. Reasonableness

54. In deciding whether to issue a siting permit, the Commission also must determine the reasonableness of the location of the proposed electric transmission line. K.S.A. 2010 Supp. 66-1,180. The Commission may condition a siting permit as it "may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the

general public.” K.S.A. 2010 Supp. 66-1,180. Kansas courts have held that a condition is reasonable if it is based on substantial, competent evidence. *See Kansas Electric Power Coop., Inc. v. State Corporation Comm’n*, 235 Kan. 661, 665, 683 P.2d 1235, 1239 (1984) (Commission imposed lawful, reasonable conditions on a certificate of convenience).

55. Prairie Wind submitted its Application for a siting permit to construct a line from Westar’s Wichita substation to the Thistle substation, and from the Thistle substation to the Kansas/Oklahoma border. Application, ¶ 3. With its Application, Prairie Wind submitted maps showing where the proposed line would traverse through the four counties located in south central Kansas. *See* St. John Direct, Exhibit RMS-1, Appendix C.

56. Several landowner-proposed alternative routes have been presented for the Commission’s consideration during the 120-day period the Commission has to examine Prairie Wind’s Application. As stated above, the Commission has the ability to condition the siting permit as the Commission finds best protects the rights of interested parties and the general public. K.S.A. 2010 Supp. 66-1,180. The Commission finds that it has the authority to consider the landowner-proposed alternative routes presented to protect the interests of the public and in particular the interests of landowners upon whose property the transmission line is proposed to traverse. The Commission does not believe the intent of the Kansas Siting Act was to restrict the Commission from consideration of potential landowner-proposed alternative routes; such interpretation would be nonsensical in light of the opportunity provided to the public and landowners to submit comments for the Commission’s consideration through the public hearing process. *See* K.S.A. 66-1,178(b); K.S.A. 66-1,179. While the applicant is required to provide notice to those landowners of record whose property is proposed to be acquired in the Application, the Commission has recognized previously that notice provided to landowners of landowner-proposed alternative routes will not be the same as that afforded landowners initially

notified of the company's preferred route when the Application was filed, as discussed further below in paragraph 70.

A. Overview of Prairie Wind's Process

57. In its Application, Prairie Wind described the process it used to select the preferred route for the transmission lines. Prairie Wind began by assembling an internal project team consisting of employees from its real estate, transmission planning and construction, engineering, environmental, public affairs, regulatory and legal divisions. It then engaged the consulting firm of Burns & McDonnell (B&M) to assist with the transmission line siting process. B&M gathered and evaluated information regarding land uses, environmental concerns, and historic, cultural, and other criteria pertinent to the construction of the line, and studied a project area covering approximately 2,641 square miles in south-central Kansas, including parts of Sedgwick, Sumner, Harper, Kingman, and Barber Counties. St. John Direct, pp. 3-4, *see* Exhibit RMS-1, Figure 2.2. The objective of the routing analysis was to identify economically feasible routes that offered the most benefits of providing reliable electric power transmission but that also minimized adverse impacts to the social and natural environment. St. John Direct, p. 8. The following objectives were used to develop the preferred route: (1) maximize distance of line from existing homes, businesses and public buildings, (2) maintain reliable electric service, (3) minimize overall environmental impacts by maximizing use of existing road and transmission line rights-of-way, (4) minimize diagonal routes across tilled agricultural fields, (5) avoid private airstrips, (6) avoid crossing center pivot irrigation systems, (7) avoid placing the line directly over oil and water wells and oil storage tanks, and (8) minimize impacts to wetlands and other environmentally sensitive areas, threatened and endangered species and the lesser prairie chicken habitat. St. John Direct, pp. 8-9.

58. The route selection process utilized three forms of public input, which included: (1) letters to state and federal agencies, (2) meetings with public officials and local agencies, including county planning and zoning directors, and (3) public information meetings held by Prairie Wind in Medicine Lodge, Kiowa, Anthony/Harper, Garden Plain, and Kingman, Kansas. St. John Direct, p. 4. B&M contacted various state and federal agencies, as well as the Nature Conservancy, to get input on wildlife and permitting concerns, including the U.S. Army Corps of Engineers, the Federal Aviation Administration, U.S. Fish and Wildlife Services, the Natural Resources Conservation Services, Kansas Biological Survey, Kansas Department of Agriculture, KDHE, State Historic Preservation Office, Kansas Department of Transportation and the KDWP. St. John Direct, pp. 4-5.

59. Prairie Wind selected the preferred route presented in its Application after soliciting feedback from landowners to identify concerns with particular segments of the route. Prairie Wind conducted open houses in November 2010 and January 2011 in the areas along the potential routes. St. John Direct, p. 11. Primary concerns after open houses and meetings were maximizing distances from residences, public facilities and businesses, maintaining reliable electric service, and minimizing length across tilled agricultural land. St. John Direct, p. 19. Representatives from B&M drove route options to the extent it was possible to do so. St. John Direct, p. 10. A quantitative analysis of land use data, public input, and engineering criteria was employed in the final evaluation of route alternatives, which resulted in the selection of Prairie Wind's preferred route for the proposed line after assigning a weighted value to considerations to accurately assess the impact of various alternatives. St. John Direct, p. 20. The routing methodology used by Prairie Wind is the industry standard. Tr. Vol. 1, p. 196 (Wise).

60. When selecting the preferred route of its line, Prairie Wind considered the scoring criteria in many evaluated factors, including: length not along existing transmission lines,

residential proximity scores, businesses and public facilities within 300 feet, adjacent center-pivot irrigation systems, visibility rating, woodland and wetlands crossed, and critical habitat crossed. St. John Direct, p. 33. Prairie Wind states that it is preferable to follow existing lines from an overall property, land use and visual impact, although this does create some concern for the reliability of the transmission system. St. John Direct, p. 34. When evaluating the selection by a utility of the preferred route of its line, the Commission considers these and a number of other factors. The length and cost of the line are important factors for the Commission to consider, but are not the only factors for consideration. While the final route selected may not be the shortest or cheapest route for the line, the Commission acknowledges that it must weigh and balance a number of competing factors in determining how to protect the rights of all interested parties and those of the general public. K.S.A. 2010 Supp. 66-1,180.

61. Staff stated that finding a balanced solution to the reasonableness of a line is difficult and complex. Reasonableness is determined using a process that involves landowner input, understanding of the use of the land, length of the line, environmental concerns and impact, and finding a balanced solution to the needs of those directly affected by the line, which largely depends on the point of view of the individual, group, or organization making the decision. While no universally ideal route is possible, Staff pointed out that the Commission may decide that the route selected is the most acceptable solution in terms of providing the necessary transmission service in the least offensive manner with respect to varied interests, while not incurring unwarranted costs. One significant factor Staff considers in reviewing reasonableness is the length of the line; as the length of the line increases, so do the line-losses, reliability concerns, and costs. Direct Testimony of Michael J. Wegner, April 4, 2011, page 5 (Wegner Direct, p. 5).

62. Staff witness Wegner found Prairie Wind's route selection process and preferred route to be reasonable based on the Routing Study, testimony of St. John, Prairie Wind's responses to data requests, and Staff's reconnaissance of the preferred route. Wegner Direct, p. 6. To support its conclusion, Staff reviewed the eight criteria used to develop the economical routes and minimize the adverse social and environmental impacts, as summarized above. *Infra*, ¶ 57. B&M used the Routing Study with specific subjects that were assigned a weighting factor based on B&M's experience with transmission line projects, and weighted scores were applied to each route to produce a composite score. Prairie Wind selected a preferred route based on combination of segments that resulted in lowest combined score. Wegner Direct, p. 8. Prairie Wind and B&M sought public input during public workshops held in Medicine Lodge, Kiowa, Garden Plain, Harper, and Kingman, Kansas, where project routing details were presented to landowners and other interested parties. Wegner Direct, p. 9. Staff found that Prairie Wind's selection of the preferred route was a rigorous undertaking which considered both technical requirements and subjective personal preferences, and that the process was reasonable and resulted in a reasonable location of the preferred line. Wegner Direct, p. 10. Staff stated that its recommendation of reasonableness of the location of the line is a balancing of the public interest. The interests of those inconvenienced along that proposed line must be balanced against the benefits of the route pertaining to all other stakeholders along the line and others benefiting from its construction. Wegner Direct, p. 18.

63. Additionally, Staff witnesses Wegner and Fry conducted a visual inspection of the preferred transmission route filed in Prairie Wind's siting Application, to the extent possible on a two-day route inspection on March 14 and 15, 2011. Portions of the route in areas that were not able to be viewed from public access roadways were reviewed utilizing Google Earth, an aerial photography tool. In examining the route, Staff observed proximity to residences, position of

homes with respect to the line and any groves separating homes from the preferred route, cemeteries, terrain features, public parks and recreation areas, areas sensitive to wildlife and prairie vegetation native to area woodlands, line construction challenges, and impacts in the segments of the new 150-foot rights-of-way. Staff noted that the majority of the preferred line follows existing transmission lines. Wegner Direct, pp. 10-12.

64. During the field investigation, Staff spoke to Mr. Wetta, a landowner near Colwich, Kansas. Mr. Wetta's concern was that the preferred route would triangulate or box-in his property. Staff confirmed that Prairie Wind representatives were working on an alternative route with Mr. Wetta. Wegner Direct, p. 11. In addition to this potential conflict along the route of the preferred line, Staff observed a second potential conflict which was the routing through land on the south side of Colwich, Kansas, where there is no existing transmission line, versus routing through land on the north side of Colwich, Kansas, where there is already an existing line. Wegner Direct, p. 12. These potential conflicts are discussed in more detail below.

65. Staff recognized that, in addition to this siting permit, Prairie Wind will need to obtain additional permits, endorsements, and may need to complete additional studies for other agencies. Staff noted that it is important for the public, and specifically landowners that are affected by the route, to be able to provide input so the project decision makers can understand the use of the land. Although not required by law, Prairie Wind conducted public workshops to receive comments from the public before filing its Application. Staff noted that Prairie Wind had worked toward resolving issues presented through public feedback as the preferred route was finalized for its Application. Staff's opinion was that Prairie Wind was working with the public to make small adjustments to the route presented at public workshops. Wegner Direct, pp. 15-16. After evaluating the Application, the routing process, landowner concerns, geography, and environmental and other concerns, Staff concluded that Prairie Wind's study of the possible

routes was comprehensive and the preferred route proposed was reasonable with two exceptions. Wegner Direct, pp. 17-18.

66. The first exception was a recommendation of segment routes near the Thistle substation outside Medicine Lodge, Kansas. Staff witness Fry provided a recommendation in testimony concerning segments the Commission approve and deny, which are that the Commission deny segments 21, 23, 24 North of the existing line, and 26c, and approve segments 1b, 3a, 24 South of the existing line, 25, and 35. Direct Testimony of Andy Fry, April 4, 2011, pages 4-6 (Fry Direct, pp. 4-6). The second exception was a recommendation that the preferred route in line segment 7 remain parallel to the existing route near the Wetta farm, which keeps the line parallel to the existing line. Wegner Direct, p. 18. Staff witness Fry also recommended the Commission deny Prairie Wind's request for leniency or flexibility in context with the Thistle substation, or any similar situations in this docket, due to the potential procedural and siting complications and complexities. Staff encouraged the Commission to allow for slight variations to account for siting variations where details were not known prior to a final decision in the docket, but suggested Prairie Wind bring potential post-Commission decision line variations to the Commission for review. Fry Direct, pp. 4-6.

67. In Supplemental Testimony filed April 20, 2011, Prairie Wind witness St. John responded to comments made at the Harper public hearing. St. John provided testimony describing the landowner-proposed alternative routes, with maps depicting several of the landowner-proposed alternatives. St. John also provided an estimate of the difference in cost between the Prairie Wind proposed route and each of the landowner-proposed alternative routes. Supplemental Testimony of Robert M. St. John, April 20, 2011 (St. John Supplemental). Staff also responded to comments made at the Harper public hearing discussing the reasonableness of

the landowner-proposed alternative routes. Response to Public Hearing Comments of Michael J. Wegner, April 20, 2011 (Wegner Response).

68. In Second Supplemental Testimony filed April 27, 2011, St. John responded to written comments received by the Commission by email, U.S. mail, or telephone during the public comment period. Second Supplemental Testimony of Robert M. St. John, April 27, 2011 (St. John Second Supplemental). At the evidentiary hearing, St. John addressed public input received after filing his Second Supplemental Testimony, including comments from landowners that will be discussed in more detail below. Tr. Vol. 1, pp. 67-115.

69. In response to comments received at the Harper public hearing and written comments submitted to the Commission's PACP Office, Prairie Wind developed a number of landowner-proposed alternative routes for consideration to accommodate landowner concerns with Prairie Wind's proposed route, and addressed these landowner-proposed alternative routes through live testimony at the evidentiary hearing. Prairie Wind recommended approval of some of these landowner-proposed alternative routes and recommended the Commission not approve other alternative routes. Landowner-proposed alternative routes will be discussed further below. To the extent Prairie Wind did not recommend approval of a landowner-proposed alternative route as viable, the Commission will only briefly discuss such route.

70. The Commission has previously found that in deciding whether an alternative route is reasonable, additional costs directly related to the alternative route is a consideration. The mere fact that an alternative route is estimated to cost more than the applicant's preferred route does not preclude a finding that an alternative route is reasonable and should be adopted. Additional cost is one of several factors the Commission should take into account when balancing the interests of those impacted by the route selected for an electric transmission line. 09-729 Siting Order, ¶ 58. Other factors to consider include benefits gained by choosing the

alternative route and the harm that will be avoided by moving the preferred route. 10-557 Siting Order, ¶ 47. The Commission has also previously found that viable landowner-proposed alternative routes are not rare or isolated incidents in siting proceedings, and has allowed members of the public to address the location so the Commission can make a better informed decision that is in the public interest. The Commission held that in future proceedings under the Kansas Siting Act, an applicant must give notice to new landowners impacted by landowner-proposed alternative routes developed by the Applicant in response to public comments that are found to be viable. The Commission recognized that this additional notice will not be the same as that afforded landowners initially notified of the company's preferred route when the Application was filed. 09-729 Siting Order, ¶ 63.

71. The Commission finds that Prairie Wind worked diligently to evaluate landowner-proposed alternative routes, promptly reported its conclusions regarding those alternatives, and provided notice to landowners impacted by alternative routes that Prairie Wind concluded were viable. Prairie Wind provided written notice to those landowners impacted by landowner-proposed alternative routes, and continued to work with landowners at and after the second public hearing ordered by the Commission to be held in Colwich, Kansas. The Commission finds that the notice Prairie Wind gave landowners potentially impacted by landowner-proposed alternative routes complied with the Commission's expectations, and these landowners were afforded an opportunity to comment through the extended public comment period. A discussion of the Petitioners Group alternative route and notice to potentially affected landowners is discussed below.

72. The Commission has reviewed all the comments received from members of the public at the Harper public hearing, at the Colwich public hearing, and all comments submitted to the Commission's PACP Office during the public comment period and the extended public

comment period. Because it would unnecessarily extend the length of this Order, the Commission will not specifically address every comment received from the public. Having reviewed these comments, the Commission notes that St. John addressed public comments in his Supplemental Testimony and Second Supplemental Testimony. The Commission finds St. John reviewed concerns expressed by each member of the public and responded to each of the issues, including generally: safety and health issues, St. John Supplemental, pp. 9-12 and St. John Second Supplemental, pp. 24-25; opposition to customers having to pay for the proposed line, St. John Second Supplemental, p. 26; avoiding center pivot irrigation systems, St. John Second Supplemental, pp. 26-28; and payments to compensate landowners, St. John Supplemental, pp. 8-9, 41-43 and St. John Second Supplemental, pp. 30-31; to name a few.

73. The Commission finds St. John's testimony has sufficiently addressed concerns expressed by members of the public and declines to discuss these issues further in this Order. The Commission will review comments received from members of the public that suggested a landowner-proposed alternative route to Prairie Wind's preferred route found to be viable by the Applicant, and will evaluate the viable alternatives in comparison to the preferred route below.

B. Chermac's Arguments

74. As noted above and described in Prairie Wind's initial brief, Chermac intervened in this docket and argues that the Commission should compare the Medicine Lodge-Kansas/Oklahoma border portion of Prairie Wind's proposed route to a "Western Route" extending from a substation in Clark County, Kansas to the Kansas/Oklahoma border, and determine whether a "Western Route" would be more reasonable than Prairie Wind's preferred route. Prairie Wind Initial Brief, ¶ 36. The Commission ruled in the evidentiary hearing that Prairie Wind is the applicant in this docket, and Prairie Wind proposes a route that does not include a Western Route preferred by Chermac, and therefore any consideration of evidence

relating to a Western Route was not relevant and outside the scope of this docket. *See* Tr. Vol. 1, pp. 15-18. The Commission stated that parties were free to question the reasonableness of the route proposed by Prairie Wind. Tr. Vol. 1, p. 16. As the Commission has stated, the Commission must determine whether the line proposed by Prairie Wind is necessary and reasonable. The Commission finds that the line proposed by Prairie Wind is reasonable, based upon a review of the record of the whole, and that there is substantial competent evidence showing that Prairie Wind consulted with a number of interested parties, including landowners, state and federal governmental agencies, and environmental groups, in selecting its proposed route prior to the submission of its Application. The Commission finds that statements made by Chermac in its post-hearing brief relating to a Western Route are not relevant, as Prairie Wind, the Applicant, does not propose to construct a Western Route.

75. In its Responsive Post-Hearing Brief, Chermac attempts to argue that the Medicine Lodge-Kansas/Oklahoma border route selected by Prairie Wind was unreasonable. Responsive Post-Hearing Brief of Chermac Energy Corporation, June 7, 2011, paragraphs 80-83 (Chermac Brief, ¶¶ 80-83). Prairie Wind correctly states that its consideration of environmental impacts of its preferred route helps avoid opposition from state and federal wildlife agencies, non-governmental environmental organizations, and landowners, which could result in significant additional costs for the project as well as significant time delays in its construction. Memorandum in Support of Proposed Findings of Fact and Conclusions of Law of Prairie Wind Transmission, LLC, May 31, 2011, page 6.

C. *Stolz Alternative 1*

76. In its initial post-hearing brief, Prairie Wind first addressed the alternative routes presented by Tom Stolz, who provided comments to the Commission through its PACP Office and at the Harper public hearing. St. John described the Stolz Alternative 1 and Stolz Alternative

2 routes in detail, and attached a map of each route. St. John Supplemental, pp. 15-21, *see* attached map of Stolz Alternative No. 1 at p. 48. St. John stated that B&M used the same scoring methodology and criteria to assign a score to the proposed Stolz Alternative 1, and it scored 101.67% more favorable than Prairie Wind's proposed route. St. John Supplemental, pp. 19-21; Proposed Findings of Fact and Conclusions of Law of Prairie Wind Transmission, May 31, 2011, paragraph 44 (Prairie Wind Initial Brief, ¶ 44). Additionally, Prairie Wind used the same methodology to calculate the cost estimates for Stolz Alternative 1 compared to Prairie Wind's proposed route, and stated it would cost approximately \$2,507,900 less to construct Stolz Alternative 1 than Prairie Wind's proposed route. St. John Supplemental, pp. 20-21. Based upon its evaluation, Prairie Wind recommended approval of the Stolz Alternative 1 route. Staff reviewed the Stolz Alternative 1 and also recommended approval. Joint List of Disputed Issues, May 3, 2011, paragraph 4, subparagraph b (Joint List, ¶ 4b).

77. Having reviewed comments submitted to the Commission and the recommendation of Prairie Wind and Staff to approve the Stolz Alternative 1 route, the Commission finds that the Stolz Alternative 1 route is reasonable and approves this alternative.

D. Stolz Alternative 2

78. As noted above, Prairie Wind also addressed the Stolz Alternative 2 route presented by Tom Stolz. St. John Supplemental, pp. 21-22, *see* attached map of Stolz Alternative No. 2 at p. 49. Prairie Wind stated that the Stolz Alternative 2 route did not score as well as Prairie Wind's preferred route, and would cost approximately \$3,763,000 more to construct, and therefore did not recommend approval of Stolz Alternative 2. Prairie Wind Initial Brief, ¶ 45. Staff reviewed Stolz Alternative 2 and did not support approval of this alternative route. Joint List, ¶ 4c.

79. Having reviewed comments submitted to the Commission and the recommendation of Prairie Wind and Staff to not approve the Stolz Alternative 2 route, the Commission finds that the Stolz Alternative 2 route is not reasonable and does not approve this alternative.

E. Martin Alternative 1

80. Prairie Wind addressed the alternative routes presented by Leon and Mary Kay Martin, who provided comments to the Commission through its PACP Office and also through their attorney, Kenneth Jack, at the Harper public hearing. St. John Supplemental, pp. 29-33. St. John described the Martin Alternative 1 route in detail, and attached a map of the route. St. John Supplemental, pp. 30-31, *see* attached map of Martin Alternative at p. 51. Prairie Wind used the same methodology to calculate the cost estimates for Martin Alternative 1 compared to Prairie Wind's proposed route, and stated that it would cost approximately \$101,200 less to construct Martin Alternative 1 than Prairie Wind's proposed route. St. John Supplemental, p. 31.

81. Prairie Wind recommended conditional approval of Martin Alternative 1 if the Commission approved a route that includes the eastern portion of Prairie Wind's Route Segment W6. Prairie Wind Initial Brief, ¶ 46. Staff reviewed Martin Alternative 1 and did not support approval of this alternative route. Joint List, ¶ 4e.

82. Having reviewed comments submitted to the Commission and the conditional approval of Prairie Wind and Staff's recommendation to not approve the Martin Alternative 1 route, and for reasons discussed below in consideration of Martin Alternative 2, the Commission finds that the Martin Alternative 1 route is not reasonable and does not approve this alternative.

F. Martin Alternative 2

83. As noted above, Prairie Wind also addressed the Martin Alternative 2 route presented by the Martin family. St. John Supplemental, pp. 31-33, *see* attached map of Martin

Alternative No. 2 at p. 53. Prairie Wind stated that it would cost approximately \$1,099,300 less to construct Martin Alternative 2 than Prairie Wind's proposed route, and would move the proposed transmission line away from the Martins' home. St. John Supplemental, p. 33. Staff reviewed Martin Alternative 2 and also recommended approval. Joint List, ¶ 4f. Prairie Wind and Staff support the Martin Alternative 2 if the Commission approves Stolz Alternative 1, since Martin Alternative 2 would connect to Stolz Alternative 1 and connect the Duell Modified Alternative route, as discussed below. St. John Supplemental, pp. 31-33; Prairie Wind Initial Brief, ¶ 47.

84. Having reviewed comments submitted to the Commission and the recommendation of Prairie Wind and Staff to approve the Martin Alternative 2 route, the Commission finds that the Martin Alternative 2 route is reasonable and approves this alternative.

G. Duell Modified Alternative

85. Prairie Wind addressed the alternative route presented by Randy Duell, who provided comments to the Commission through its PACP Office and at the Harper public hearing. St. John described the Duell Original Alternative and attached a map of the route as proposed by Duell. St. John Supplemental, pp. 3-7, *see* attached map of Duell Original Alternative at p. 45. Prairie Wind worked with Duell to propose moving the alternative slightly to the west of the original proposal to conform to Prairie Wind's normal practice of generally routing a line along property line rather than through the middle of a tract of land, which resulted in the Duell Modified Alternative. St. John Supplemental, *see* attached map of Duell Modified Alternative at p. 46. Duell indicated he approved of this Prairie Wind modification. St. John stated that the Duell Modified Alternative would have less impact on rural homes located in the area. After using the same methodology to calculate the cost estimate for the Duell Modified Alternative compared to Prairie Wind's proposed route, St. John noted that it would cost an

additional \$2,085,000 to construct the alternative. St. John Supplemental, pp. 5-7. Prairie Wind and Staff support approval of this alternative, noting it increases the distance of the proposed transmission line from many homes in the area. Prairie Wind Initial Brief, ¶ 48; Joint List, ¶ 4a.

86. Taking into consideration the lesser impact of this alternative proposal as well as the costs associated with it, and having reviewed comments submitted to the Commission and the recommendation of Prairie Wind and Staff to approve the Duell Modified Alternative route, the Commission finds that the Duell Modified Alternative route is reasonable and approves this alternative.

H. Wetta Alternative

87. Prairie Wind addressed the alternative route proposed by Louis and Earl Wetta, who provided comments to the Commission through its PACP Office and at both the Harper and Colwich public hearings. St. John described the Wetta Alternative route in detail and attached a map of the route. St. John Supplemental, pp. 35-37, *see* attached map Wetta Alternative Sketch at p. 55. St. John explained that the Wettas requested the Prairie Wind line run parallel to the existing Westar transmission line near the northwest corner of the Wetta farmstead, so as to not surround the property with transmission lines. Prairie Wind used the same methodology to calculate the cost estimates for the Wetta Alternative compared to Prairie Wind's proposed route, and found it would reduce the estimated cost of the Prairie Wind transmission line by \$848,086, which also took into account costs for miscellaneous related expenses on the Wetta property. St. John Supplemental, p. 37. Based upon evaluation and review, both Prairie Wind and Staff recommended approval of the Wetta Alternative route. Joint List, ¶ 4g; Prairie Wind Initial Brief, ¶ 49. Staff in particular found that placing the new line parallel to the existing line was reasonable. Wegner Response, p. 3.

88. Having reviewed comments submitted to the Commission and the recommendation of Prairie Wind and Staff to approve the Wetta Alternative route, the Commission finds that the Wetta Alternative route is viable and approves this alternative.

I. Carr Alternative

89. Prairie Wind addressed the alternative route presented by the Carr family, who provided comments to the Commission through its PACP Office and at the Colwich public hearing. At the evidentiary hearing, St. John described the Carr Alternative in detail, and provided a map of the route. Tr. Vol. 1, pp. 107-108, *see* Prairie Wind Exhibit 5 (map). The Carr Alternative follows Prairie Wind's preferred route for a short distance, then goes south and west along portions of two highways before reaching the Kansas/Oklahoma border. B&M used the same scoring methodology and criteria as used for Prairie Wind's preferred route, and St. John testified that the Carr Alternative scored rather poorly due to presence of four homes within approximately 300 feet of the alternative as well as a great deal active oil development in the area. Prairie Wind used the same methodology to calculate the cost estimates for the Carr Alternative compared to Prairie Wind's proposed route, and stated it would cost approximately \$3,382,600 more to construct than Prairie Wind's proposed route. Tr. Vol. 1, pp. 107-108; *and see* Prairie Wind Exhibit 1 (Landowner Alternatives Tracking Sheet). As a result of both higher public impact and higher cost, Prairie Wind recommended the Commission not approve the Carr Alternative. Tr. Vol. 1, p. 108. Staff found this alternative was not reasonable due its very low score, and did not support approval of the alternative. Tr. Vol. 2, pp. 446-447; Prairie Wind Initial Brief, ¶ 51.

90. Taking into consideration the additional cost and higher impact of this alternative proposal, and having reviewed comments submitted to the Commission and the recommendation

of Prairie Wind and Staff to not approve the Carr Alternative, the Commission finds the Carr Alternative route is not reasonable and does not approve this alternative.

J. McCracken Alternative 1 and McCracken Alternative 2

91. Prairie Wind addressed the proposals presented by C. Harris McCracken, who provided comments to the Commission through its PACP Office and at both the Harper and Colwich public hearings. St. John described the McCracken Alternative 1 and McCracken Alternative 2 in detail in testimony, and maps of the two alternative routes were provided at the evidentiary hearing. St. John Second Supplemental, pp. 16-21; Tr. Vol. 1, pp. 113-114; *and see* Prairie Wind Exhibit 5 (map). The McCracken Alternative 1 is a relocation of the line that connects with the Thistle substation and proceeds south to the Kansas/Oklahoma border, and the mileage is shorter when compared to Prairie Wind's proposed route. The same scoring methodology and criteria was used to score the McCracken Alternative 1, which scored 84.60% as well as Prairie Wind's proposed route. Prairie Wind prepared cost estimates comparing the McCracken Alternative 1 to the Prairie Wind proposed route, and stated it would cost approximately \$2,419,200 less, or approximately 1.25% of the estimated cost of the Medicine Lodge-Woodward line, to construct than the Prairie Wind proposed route. St. John Second Supplemental, pp. 18-19. Prairie Wind and Staff took no position on the McCracken Alternative 1. Joint List, ¶ 4i.

92. The McCracken Alternative 2 is also a relocation of the line that connects from the Thistle substation south to the Kansas/Oklahoma border and is located slightly west of the McCracken Alternative 1, and the mileage is also shorter when compared to Prairie Wind's proposed route. The same scoring methodology and criteria was used to score the McCracken Alternative 2, which scored 65.68% as well as Prairie Wind's proposed route. Prairie Wind prepared cost estimates comparing the McCracken Alternative 2 to the Prairie Wind proposed

route, and stated it would cost approximately \$6,312,100 less, or approximately 3.26% of the estimated cost of the Medicine Lodge-Woodward line, to construct than the Prairie Wind proposed route. St. John Second Supplemental, pp. 19-21. Prairie Wind and Staff took no position on the McCracken Alternative 2. Joint List, ¶ 4j.

93. As noted above, cost is not the only factor by which the Commission makes a determination of whether a proposal is reasonable. The Commission reviewed comments submitted to the Commission, which showed significant opposition to both McCracken Alternative 1 and McCracken Alternative 2, and has considered the recommendations of Prairie Wind and Staff. Prairie Wind did not identify or recommend these alternatives to be viable, and such alternatives are a relocation of the line rather than a modification to Prairie Wind's proposed line. Although both proposals would slightly reduce the cost of the Medicine Lodge-Woodward portion of the line, the scores for each of these alternatives were low when compared to Prairie Wind's proposed route. The Commission finds that neither the McCracken Alternative 1 nor the McCracken Alternative 2 are reasonable and does not approve these relocations.

K. Stockwell Alternative

94. Prairie Wind addressed the alternative route proposed by Kelly Stockwell, who provided comments to the Commission through its PACP Office. St. John described the Stockwell Alternative in detail, and provided a map of the alternative route at the evidentiary hearing. Tr. Vol. 1, pp. 109-114; Prairie Wind Exhibit 5 (map). The Stockwell Alternative is located in the vicinity north of Medicine Lodge, and was proposed because Prairie Wind's proposed route would run very close to a new home site on the Stockwell property for which he has already obtained a building permit. Tr. Vol. 1, p. 109; Prairie Wind Initial Brief, ¶ 50. Prairie Wind prepared cost estimates comparing the Stockwell Alternative to the Prairie Wind proposed route, and stated it would cost approximately \$722,300 more to construct than the

Prairie Wind proposed route. Prairie Wind Initial Brief, ¶ 50. Based upon evaluation and review, both Prairie Wind and Staff recommended approval of the Stockwell Alternative route. Tr. Vol. 2, p. 447; *see* Prairie Wind Exhibit 5 (map); Joint List, ¶ 4k; Prairie Wind Initial Brief, ¶ 50.

95. Having reviewed the facts associated with this proposed alternative route, and the recommendation of Prairie Wind and Staff to approve the Stockwell Alternative route, the Commission finds that the Stockwell Alternative route is reasonable and approves this alternative.

L. Hostetler Alternative 1 and Hostetler Alternative 2

96. Prairie Wind addressed alternative routes proposed by the Hostetler family, who provided comments to the Commission through its PACP Office. St. John described the Hostetler Alternative 1 and Hostetler Alternative 2 in detail, and provided maps of the alternative route proposals at the evidentiary hearing. St. John Second Supplemental, pp. 28-29; Tr. Vol. 1, pp. 101-07; Prairie Wind Exhibits 3 (Hostetler Alternative No. 1 map) and 4 (Hostetler Alternative No. 2 map). The Hostetler Alternative 1 follows an existing 138 kV line that runs in and out of Mid-Kansas' Harper substation located in the northwest corner of Harper, Kansas, and was suggested by the Hostetlers to move the transmission line out of visibility of their property. St. John Second Supplemental, p. 28; Tr. Vol. 1, pp. 101-102; *see* Prairie Wind Exhibit 3 (map of Hostetler Alternative No. 1). St. John stated there is a significant amount of congestion in the area where the alternative was proposed to be constructed due to the presence of the Burlington Northern Santa Fe railway tracks and various buildings near the highway, and that due to the presence of a home close to the 138 kV line, there would not be room to place Prairie Wind's proposed line. Tr. Vol. 1, pp. 102-103. Additionally, Hostetler Alternative 1 would cost an additional \$2,470,400 to construct than Prairie Wind's proposed route. *See* Prairie Wind Exhibit

1. Prairie Wind recommended the Commission not approve Hostetler Alternative 1. Tr. Vol. 1, pp. 102-103. Staff found this alternative was not reasonable, due to the congestion in the area, and did not support approval of the alternative. Tr. Vol. 2, pp. 445-446; Prairie Wind Initial Brief, ¶ 52.

97. Hostetler Alternative 2 also follows the existing Mid-Kansas 138 kV line, but stops just short of Harper to avoid crossing the Burlington Northern Santa Fe railway tracks, and follows a highway before reconnecting up with the 138 kV line. Tr. Vol. 1, pp. 104-105; *see* Prairie Wind Exhibit 4 (Hostetler Alternative No. 2 map). St. John said this alternative has a higher landowner impact than Prairie Wind's proposed route, since it runs within 1,000 feet of approximately six homes or farmsteads, whereas Prairie Wind's proposed route has no homes located within 1,000 feet of homes or farmsteads. Tr. Vol. 1, p. 105. Additionally, Hostetler Alternative 2 would cost an additional \$2,212,500 to construct than Prairie Wind's proposed route. *See* Prairie Wind Exhibit 1. Prairie Wind recommended the Commission not approve Hostetler Alternative 2. Tr. Vol. 1, p. 105. Staff found this alternative was not reasonable, due to the fact that this alternative would pass by or closer to more homes than Prairie Wind's proposed route would, and did not support approval of the alternative. Tr. Vol. 2, p. 446; Prairie Wind Initial Brief, ¶ 52.

98. The Commission has taken into consideration the additional cost and higher impact of each of these alternative proposals, has reviewed comments submitted to the Commission, which showed significant opposition to both alternatives, and has considered the recommendations of Prairie Wind and Staff. The Commission finds that neither the Hostetler Alternative 1 nor the Hostetler Alternative 2 are reasonable and does not approve these alternatives.

M. Newberry/Petitioners Group Alternative

99. As noted above, the Petitioners Group was granted intervention by the Commission in this docket, to give the landowners who are members of the group the opportunity to participate since their interests might be substantially affected in the proceedings. The Petitioners Group owns several parcels of land west of the town of Harper, Kansas, in which they have both farming and oil and gas development interests. Tr. Vol. 1, p. 68. Specifically, the Petitioners Group claim that where Prairie Wind's route is proposed to be located would cause issues with the location of a tank battery and an oil/water separator apparatus on property of the Petitioners Group, as well as a number of active wells and other oil-related activities. Tr. Vol. 1, pp. 69, 78.

100. Staff counsel questioned Prairie Wind witness St. John at the evidentiary hearing about non-Petitioner Group individuals who would be affected by the Newberry/Petitioners Group Alternative. *See* Tr. Vol. 1, pp. 70-73, 87. At the evidentiary hearing, the Petitioners Group presented an agreement made with Prairie Wind and Staff for an alternative route that would avoid interests of the Petitioners Group discussed above. Tr. Vol. 2, pp. 365-372; *see* Petitioners Group Exhibits 2 (map of agreed-upon alternative route) and 3 (Direct Testimony of Joan Newberry Helm, Dennis W. Newberry, Penny Newberry, Randell J. Newberry, and Rebecca Sue Newberry).

101. The Stipulation and Agreement between the Petitioners Group, Prairie Wind, and Staff is as follows: within 90 days of the Commission's Order, the Petitioners Group would obtain written consent of any fee owner of record who is not represented in the Petitioners Group upon whose land the proposed alternative route would traverse as indicated on Petitioners Group Exhibit 2. If the Petitioners Group was unable to obtain this consent from said landowners, the Petitioners Group would be amenable to Prairie Wind constructing its originally proposed route

through Petitioners Group land. Tr. Vol. 2, p. 366. Staff also noted an element of the agreement was that if the proposed line does violate anyone's mineral or landowner rights and is in violation of the agreement, then construction of the line would revert back to the originally proposed route. Tr. Vol. 2, pp. 367-368. The Petitioners Group stated that they would obtain the consent of two landowners, who had already been notified of the location of their property to the original line, but who were not notified that the line might actually be located on their property as opposed to adjacent to their property. Tr. Vol. 2, pp. 370-371; *see* Petitioners Group Exhibit 2². Prairie Wind estimated the agreed-upon alternative proposal would cost \$1,810,000 more than the route originally proposed by Prairie Wind. Prairie Wind Exhibit 10. Prairie Wind stated that if the consent discussed above is not obtained and notice of such consent is not provided to the Commission and the parties on the service list in this docket, the alternative should not be approved. Prairie Wind Initial Brief, ¶ 53. Staff also stated in its Reply Brief that "consent must be obtained from people and/or entities with authority to give such consent as it relates to the easement, construction, and operation of the line at issue in this docket." Response of Staff to Prairie Wind Transmission, LLC's Proposed Findings of Fact and Conclusions of Law and Prairie Wind Transmission, LLC's Memorandum in Support, June 7, 2011, paragraphs 2-4 (Staff Brief, ¶¶ 2-4) (emphasis added).

102. The Commission has reviewed the Stipulation and Agreement submitted during the evidentiary hearing, as well as the Direct Testimony submitted by members of the Petitioners Group and the proposed Petitioners Group Alternative route in Petitioners Group Exhibit 2. The Commission has considered the additional costs associated with this alternative as well as the impact the Prairie Wind proposed route would have on the land interests and operations of the

² Highlighted portions on Petitioners Group Exhibit 2 note Robinson, Inc. and Antrim are at least two landowners upon whose property the Petitioners Group Alternative route would traverse.

Petitioners Group. The Commission conditionally approves the Stipulation and Agreement and the Petitioners Group Alternative route. The Commission conditions its approval of this alternative route on the Petitioners Group obtaining written consent of any fee owner of record upon whose land or interest this alternative would traverse or located within 660 feet of the center line of the easement where this alternative is proposed to be located as shown on Petitioners Group Exhibit 2, within 90 days of the issuance of this Order, which is September 20, 2011. The written consent of any affected fee owner of record shall be unqualified and unconditional, and executed in a manner that will permit such instrument to be filed of public record in the office of the register of deeds of the county where such property is situated.

103. The Commission orders the Petitioners Group to make a joint filing in this docket with Prairie Wind and Staff, no later than September 23, 2011, confirming that written consent has been obtained within the 90-day timeframe and indicating that all affected parties agree that the terms of the Stipulation and Agreement have been met according to the Commission's expectations. If the Petitioners Group fails to obtain written consent, and fails to file the required documentation as stated in this paragraph, the conditional approval shall lapse, the Petitioners Group Alternative route will be deemed not to be reasonable for lack of Commission jurisdiction over any affected landowners, and the preferred route originally proposed by Prairie Wind shall be deemed to be approved.

104. The Petitioners Group filed two motions, as listed above in paragraph 27. The first was a Motion to Dismiss the Application (PG Motion to Dismiss), and the second was a Motion for Leave to Submit the Direct Testimony Out of Time and Participate in the Docket Proceedings (PG Motion for Leave). Due to the Stipulation and Agreement reached between the Petitioners Group, Prairie Wind, and Staff, and the Commission's approval of the Stipulation and Agreement which includes Direct Testimony submitted by members of the Petitioners Group, the

Commission finds that the PG Motion to Dismiss is denied and the PG Motion for Leave is moot.

N. Finding of Reasonableness

105. The Commission has evaluated each alternative proposed by members of the public and reviewed by Prairie Wind and Staff. The Commission states that it has an obligation to balance both the interests of landowners to minimize impact on their property with the costs associated with a project. As noted above, Staff found Prairie Wind's preferred route to be reasonable, as well as several of the alternative routes.

106. The Commission concludes the preferred route proposed by Prairie Wind in its Application is reasonable. However, after considering comments from landowners and members of the public, the Commission finds that certain modifications to Prairie Wind's preferred route are reasonable and their inclusion as part of this line is in the public interest. To this end, the Commission approves the following modifications to the preferred route: (1) Stolz Alternative 1, (2) Martin Alternative 2, (3) Duell Modified Alternative, (4) Wetta Alternative, and (5) Stockwell Alternative, and conditionally approves the (6) Newberry/Petitioners Group Alternative, as ordered above in paragraphs 99 through 103. After considering testimony in the record as a whole, and reviewing comments submitted in this proceeding, the Commission specifically declines to approve as reasonable the following landowner-proposed alternative routes for the reasons set forth in this Order: (1) Stolz Alternative 2, (2) Martin Alternative 1, (3) Hostetler Alternative 1, (4) Hostetler Alternative 2, (5) Carr Alternative, (6) McCracken Alternative 1, and (7) McCracken Alternative 2. Any other routes considered by Prairie Wind were not addressed at the evidentiary hearing or given approval by Prairie Wind or Staff, and are not approved by the Commission.

VIII. Reporting Requirements

107. Staff recommended the Commission monitor the status of construction budgets and scheduling for the Prairie Wind project as it proceeds, and suggests the Commission require Prairie Wind to submit quarterly project tracking reports on the status of the project, including information about actual expenditures in comparison with planned expenditures and construction schedule deviations and milestones, until such time as the project is in service. DeBaun Direct, pp. 15-16. Prairie Wind agreed to provide these periodic updates, but requested the proposed project budget and schedule remain confidential, since making the information public could lead to higher project costs for easement acquisition, materials, labor and other items. DeBaun Direct, p. 16. Staff also recommended that the Commission request a final report after line construction is completed, indicating the specific route with any modifications from the proposed route, the original cost provided to the Commission, and a final cost of the project. Wegner Response, p. 6.

108. The Commission finds that quarterly reports on the progress made and changes in construction of the line, costs incurred during actual construction of the line, and the final location of the route are important in understanding the complete impact of an electric transmission line. The Commission approves of Staff's recommendation for Prairie Wind to provide quarterly updates to the Commission on the status of the project and orders that these periodic updates be treated by Staff as confidential, as requested by Prairie Wind. The Commission also requires Prairie Wind submit a final report to the Commission after line construction is complete.

IX. Conclusion

109. In its Application, Prairie Wind proposed a route for its transmission line, and it is for the Commission to decide whether the proposed line is reasonable. The Commission finds that the proposed transmission line will provide benefits to the Kansas economy by improving

and expanding the transmission system, and will provide benefit to both consumers inside and outside of the state. The Commission finds that, based upon a review of the record as a whole in this proceeding, the electric transmission line that Prairie Wind proposed in its Application is necessary, and the location of Prairie Wind's preferred route is reasonable, and approves of certain landowner-proposed alternative routes as discussed above. The Commission conditions the Newberry/Petitioners Group Alternative route on the Petitioners Group obtaining written consent of fee owners of record with authority within 90 days of this Order, which is September 20, 2011. The Commission orders the Petitioners Group to file documentation jointly with Prairie Wind and Staff, on or before September 23, 2011, as discussed above in paragraphs 99 through 103, confirming that the appropriate consents have been obtained. As stated above, if the Petitioners Group fails to obtain consent, and fails to file the required documentation as stated above, the conditional approval shall lapse, the Petitioners Group Alternative route will be deemed not to be reasonable for lack of Commission jurisdiction over any affected landowners, and the preferred route originally proposed by Prairie Wind shall be deemed to be approved.

110. The Commission approves Staff's recommendation for Prairie Wind to provide quarterly reports to keep Staff and the Commission informed on the progress of the construction of the line and associated costs. The Commission specifically conditions the siting permit approved in this Order on Prairie Wind's continued flexibility in working with all affected landowners. The Commission approves of minor adjustments to the location of the line as necessary to minimize landowner impact, but requires that material, major adjustments, and any such adjustment for which landowners would not have received reasonable notice, be approved by the Commission before being implemented. Finally, the Commission emphasizes the importance of, to the extent reasonably possible, the duty of Prairie Wind to restore affected land

to the condition which existed prior to the construction once construction of the line is complete.
K.S.A. 66-1,183.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission finds the electric transmission line proposed in Prairie Wind's Application is necessary and reasonable, as modified by certain landowner-proposed alternative routes specifically approved in this Order. The Commission grants Prairie Wind's Application for a siting permit to construct an electric transmission line as proposed in its preferred route, conditioned on inclusion of certain landowner-proposed alternative routes approved in this Order. All other alternative proposals are rejected as unreasonable.

B. The Commission conditionally approves the Newberry/Petitioners Group Alternative route on obtaining written consent of the fee owners of record on or before September 20, 2011. The Commission orders the Petitioners Group to file documentation jointly with Prairie Wind and Staff on or before September 23, 2011, confirming that appropriate consents have been obtained to meet the Commission's expectations, as discussed above in paragraphs 99 through 103.

C. The Commission approves of Staff's recommendation for Prairie Wind to provide quarterly reports detailing the status and costs of the project as recommended by Staff, and notes that the information shall be maintained as confidential as requested by Prairie Wind. The Commission approves of minor adjustments to the location of the line as necessary to minimize landowner impact, but requires that material, major adjustments, and any such adjustment for which landowners would not have received reasonable notice, be approved by the Commission before being implemented.

D. This Order will be served by electronic mail. Parties have 15 days from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order, or orders, as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Loyd, Commissioner; Wright, Commissioner

Dated: JUN 28 2011



ELECTRONIC
ORDER MAILED JUN 28 2011

Patrice Petersen-Klein
Executive Director

mrd

CERTIFICATE OF SERVICE

JUN 28 2011

11-PWTE-600-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Granting Siting Permit was served by electronic mail this 28th day of June, 2011, to the following parties who have waived receipt of follow-up hard copies:

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