

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JAN 10 2007

In the Matter of the Joint Application of Aquila, Inc.,)
d/b/a Aquila Networks - WPK ("WPK") and)
Mid-Kansas Electric Company, LLC ("MKEC"), Joint)
Applicants, for an Order Approving the Transfer to)
MKEC of WPK's Certificates of Convenience and)
Franchises with Respect to All of WPK's Kansas)
Electric Business, Including its Generation,)
Transmission and Local Distribution Facilities Located)
in the State of Kansas, and for Other Related Relief)

 Docket Room

Docket No. 06-MKEE-524-ACQ

JOINT MOTION FOR APPROVAL OF STIPULATION AND AGREEMENT

COME NOW the below signatories (collectively, "Movants") and submit the attached Stipulation and Agreement ("S&A") to the Kansas Corporation Commission ("Commission") for approval. The Movants further request that the Commission issue its Order approving the S&A at the Commission's earliest convenience. In support of this Motion, the Movants state as follows:

1. On November 15, 2005, Aquila, Inc. ("Aquila"), d/b/a Aquila Networks - WPK ("WPK") and Mid-Kansas Electric Company, LLC ("MKEC"), (referred to collectively as "Joint Applicants") filed a joint application for approval of transfer of WPK's certificate of convenience and franchises to MKEC. The Application seeks to transfer all WPK's electric business in Kansas to MKEC, including WPK's generation, transmission and local distribution facilities located in Kansas.

2. The following parties have been granted intervention in this docket: the Citizens' Utility Ratepayer Board ("CURB"), Midwest Energy, Inc. ("Midwest"),¹ Cargill Meat Solutions Corporation ("Cargill"), the National Beef Packing Co., LLC ("National Beef"), the Kansas Electric

¹Intervention was limited to issues articulated with particularity within Petition to Intervene. March 13, 2006 Order, ¶15.

Power Cooperative, Inc. (“KEPCo”,² the Kansas Municipal Utilities, Inc. (“KMU”), Local No. 304 of the International Brotherhood of Electrical Workers, AFL-CIO (“Local 304”), John Morrell & Co. (“John Morrell”), BOC Gases (“BOC”), Air Products and Chemicals, Inc. (“Air Products”), the Kansas Hospital Association (“KHA”), Westar Energy, Inc. and Kansas Gas and Electric Company (jointly referred to as “Westar”), National Helium, LLC (“NH”) and Southern Pioneer Electric Company (“Southern Pioneer”).

3. On August 11, 2006, Joint Applicants filed a Supplement to the Joint Application (“Supplement”). The Supplement includes documents and agreements that Joint Applicants state are necessary for a full review of the transaction.

4. On August 24, 2006, Staff filed a Motion to Adopt Proposed Procedural Schedule, noting that parties to this proceeding have informally discussed a procedural schedule to suggest to the Commission.

5. On September 13, 2006, the Commission issued an Order adopting the following procedural schedule:

Staff/Intervener Direct Testimony	November 22, 2006
Staff/Intervener Cross-Answering Testimony	December 11, 2006
Joint Applicants’ Rebuttal Testimony	December 20, 2006
Discovery and Prehearing Motions Cut-off	December 29, 2006

²Intervention was limited to issues articulated with particularity within Petition to Intervene. March 13, 2006 Order, ¶15.

Responses to Prehearing Motions	January 5, 2007
Prehearing Conference	January 5, 2007, at 10:00 a.m.
Evidentiary Hearing	January 16, 2007, at 9:00 a.m. and continuing through January 19, 2007
Simultaneous Posthearing Briefs	February 2, 2007 (based on next-day Transcripts)

6. Pursuant to the Commission's scheduling order, the following parties and their witnesses filed direct testimony on November 22, 2006:

STAFF

Larry W. Holloway
Jeffrey D. McClanahan
Adam H. Gatewood
David N. Dittmore

CURB

Andrea Crane

SOUTHERN PIONEER

Randall D. Magnison

KMU

Colin Hansen

BOC

Mark Zimmerman

7. On December 11, 2006, the following parties and their witnesses filed cross-answering testimony:

STAFF

Larry W. Holloway
Adam H. Gatewood

CURB

Andrea Crane

SOUTHERN PIONEER
Randall D. Magnison

NH
Dennis A. Stell

AIR PRODUCTS
John F. Del Pezzo

8. Pursuant to the Commission's scheduling order, the Joint Applicants filed rebuttal testimony for the following witnesses:

L. Earl Watkins
Carol A. Lowndes
Jon R. Empson
Terry Janson
Randall D. Magnison
Allan Miller
Neil K. Norman
Earl N. Steffens
David L. Schneider

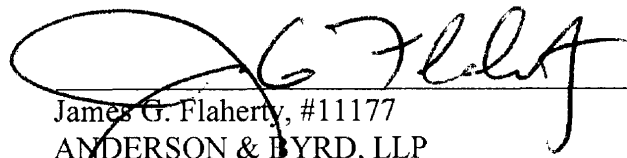
9. On December 14, 2006, the Commission held a public hearing in Great Bend, Kansas.

10. The parties in this proceeding have had discussions in an attempt to reach a S&A regarding WPK's request for authorization to transfer all of WPK's electric business in Kansas to MKEC.

11. As a result of those discussions, the signatories to the S&A have agreed to the terms and conditions contained in the S&A which is attached hereto and incorporated herein by reference.

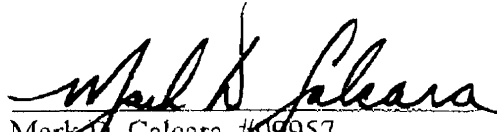
WHEREFORE, on behalf of their respective clients, the undersigned attorneys respectfully request that the Commission approve this S&A in its entirety and that the Commission issue an order

in this matter authorizing and approving those items set forth in paragraph 12 of the S&A, subject to the terms and conditions contained in paragraphs 13 through 39 of the S&A.

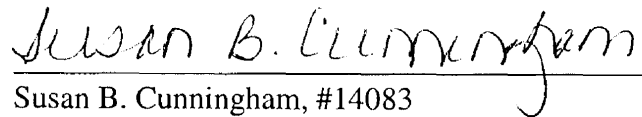
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KANSAS CORPORATION COMMISSION

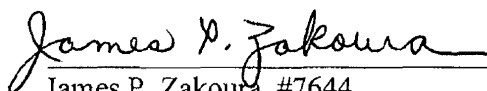
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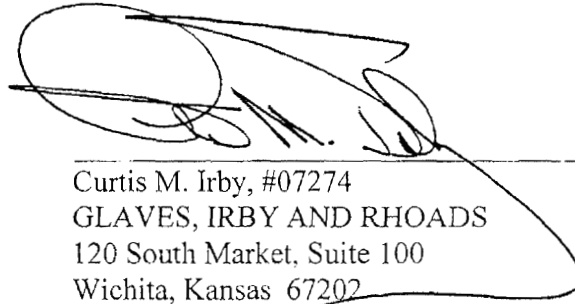
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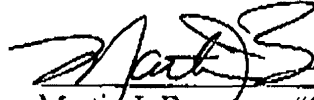
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~~National Beef Packing Co., LLC~~, John Morrell & Co.,
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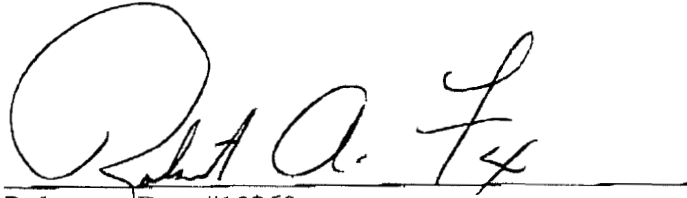
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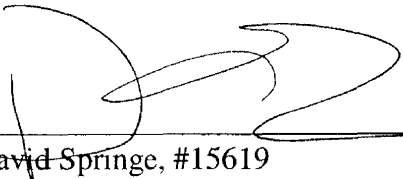


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A handwritten signature in black ink, appearing to read "R. A. Fox", written over a horizontal line.

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STIPULATION AND AGREEMENT

The signatories below have reached the following stipulations and agreements. This Stipulation and Agreement ("S&A") is submitted to the Kansas Corporation Commission ("Commission") for approval pursuant to the terms set forth herein.

I. BACKGROUND

1. On November 15, 2005, Aquila, Inc. ("Aquila"), d/b/a Aquila Networks - WPK ("WPK") and Mid-Kansas Electric Company, LLC ("MKEC") (referred to collectively as "Joint Applicants"), filed a joint application for approval of transfer of WPK's certificate of convenience and franchises to MKEC. The Application seeks to transfer all WPK's electric business in Kansas to MKEC, including WPK's generation, transmission and local distribution facilities located in Kansas.

2. The following parties have been granted intervention in this docket: the Citizens' Utility Ratepayer Board ("CURB"), Midwest Energy, Inc. ("Midwest"),¹ Cargill Meat Solutions Corporation ("Cargill"), the National Beef Packing Co., LLC ("National Beef"), the Kansas Electric Power Cooperative, Inc. ("KEPCo"),² the Kansas Municipal Utilities, Inc. ("KMU"), Local No. 304

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4. On August 24, 2006, Staff filed a Motion to Adopt Proposed Procedural Schedule, noting that parties to this proceeding had informally discussed a procedural schedule to suggest to the Commission.

5. On September 13, 2006, the Commission issued a Scheduling Order adopting the following procedural schedule that had been proposed by Staff:

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Order, ¶15.

³ Intervention was limited to issues involving the Transfer Agreement between Westar and Aquila, and the Participation Power Agreement between Westar and MKEC. September 29, 2006 Order.

Evidentiary Hearing

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continuing through January 19, 2007
February 2, 2007 (based on next-day
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Simultaneous Posthearing Briefs

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8. Pursuant to the Commission's scheduling order, on December 20, 2006, the Joint Applicants filed rebuttal testimony for the following witnesses:

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Terry Janson
Randall D. Magnison
Allan Miller
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Earl N. Steffens
David L. Schneider

9. On December 14, 2006, the Commission held a public hearing in Great Bend, Kansas.

10. The parties in this proceeding have had discussions in an attempt to reach a stipulation and agreement regarding WPK's request for authorization to transfer all of WPK's electric business in Kansas to MKEC.

11. As a result of those discussions, the signatories to this S&A have agreed to the terms and conditions contained in this S&A.

II. TERMS OF THE S&A

12. Subject to the terms and conditions contained in paragraphs 13 through 45 of this S&A, the signatories to this S&A agree and request that the Commission issue an order in this proceeding which:

- A. approves the transfer of WPK's certificates and franchises to MKEC;
- B. authorizes and directs MKEC to serve WPK's customers⁴ within the same area and at the same rates currently in effect and authorize WPK to cease providing electric service to customers in the area;
- C. grants a certificate to MKEC to serve the WPK service territory and authorizes MKEC to adopt WPK's tariffs in effect as of the date this S&A is approved by the Commission;
- D. authorizes MKEC to adopt WPK's wholesale and retail rates and regulations in effect as of the date this S&A is approved by the Commission;
- E. approves the Asset Purchase Agreement and Amendments to the Asset Purchase Agreement as filed;
- F. approves the Lease and Service Agreements between MKEC and its owners as filed;
- G. approves the Service and Operation Agreement between MKEC and Sunflower as filed;
- H. approves WPK's assignment and transfer of its leasehold and related interests in Jeffrey Energy Center to Westar pursuant to the terms and conditions contained in the Transfer Agreement between WPK and Westar as filed;
- I. approves the Participation Power Agreement between MKEC and Westar as

⁴ For purposes herein, when referring to WPK customers, the reference is to those customers in the former Aquila retail certificated service territory to be served by MKEC or the members of MKEC after the certificated

filed.

13. WPK customers shall earn patronage capital through the WPK customers' respective MKEC member distribution cooperative ("Distribution Cooperatives") beginning with the Effective Time as defined on page 7, section 4.1 of the Asset Purchase Agreement as amended (hereinafter referred to as "Effective Date," "Close" or "Closing").⁵ In addition, as soon as practicable following Closing, the Distribution Cooperatives shall take such action required to make WPK customers full voting members. WPK customers shall become full voting members of the WPK customers' respective Distribution Cooperative no later than August 1, 2007. Should a Distribution Cooperative(s) fail to provide patronage and voting rights to the former WPK customer, the Distribution Cooperative(s) shall inform the Commission of such failure and the Commission shall initiate a show cause proceeding to address that failure. This provision does not apply to Southern Pioneer.

14. The Distribution Cooperatives shall maintain separate books and records for their newly acquired WPK division until such time as acquired WPK retail customers and the acquiring Distribution Cooperatives' retail customers are served under the same general terms and conditions and rates.

15. The Distribution Cooperatives that are regulated by the Commission shall file separate annual reports with the Commission for each cooperative division, as well as, a combined annual report until such time as acquired WPK retail customers and the acquiring Distribution

territory is transferred to the respective MKEC members.

⁵ "Effective Time" is 12:01 a.m. (Great Bend, Kansas time) the day the transaction closes.

Cooperatives' retail customers are served under the same general terms and conditions and rates. The Distribution Cooperatives that are not regulated by the Commission shall file annual reports with the Commission for only the WPK cooperative division. In addition, deregulated Distribution Cooperatives shall provide to the Commission Staff annual financial statements for the deregulated portion of their operations.

16. The acquired WPK retail customers shall have access to all publicly available documents and such corporate records as may be available pursuant to the Distribution Cooperatives' policies and practices. Nothing in this section shall be construed to waive a WPK retail customer's right to challenge a Distribution Cooperative's refusal to provide access to any requested records.

17. There shall be no rate moratorium as proposed by MKEC in the Joint Application. Commencing with the Effective Date as defined in the Asset Purchase Agreement, as amended, and until March 2009, the parties agree as follows:

a. MKEC, a Distribution Cooperative certificated to provide service to the former Aquila WPK customers or Southern Pioneer may file for a retail rate reduction, but may not file for a rate increase that would affect the WPK customers until March 2009; provided, however, said limitation to increase rates shall not preclude MKEC, a Distribution Cooperative or Southern Pioneer from proposing an increase in rates: (i) to recover appropriate costs under its Commission-approved energy cost adjustment clause ("ECA"); (ii) to comply with new Commission rules or policies relating to such matters as establishing non-traditional rate structures, unbundling rules, furnishing new types of services and

providing incentive rates; (iii) to seek recovery through rates the costs related to investment in transmission facilities required by a governmental agency, Regional Transmission Organization, or required to comply with North American Reliability Council criteria; or (iv) to seek recovery of costs related to storm damage or *force majeure* events. Nothing in this section shall be construed to waive a WPK retail customer's right to challenge the reasonableness of any request filed under this subsection.

b. Should the times interest earned ratio ("TIER")⁶ of MKEC or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers⁷ exceed 2.2 for 2008 and should MKEC or any Distribution Cooperative meet their respective minimum loan covenants required by their lenders, MKEC or any affected Distribution Cooperative shall initiate a Revenue Refund Plan to refund or credit the difference in net margin required to achieve a TIER of 2.0 to Aquila WPK customers. The excess margins shall be refunded or credited pursuant to the Revenue Refund Plan which shall, to the extent practicable, provide that the refund or credit be paid or credited to those retail WPK customers who contributed the excess margins. In the event MKEC or a Distribution Cooperative can establish to the Commission through a separate filing that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to the customer by the refund, MKEC or the Distribution Cooperative may be granted a waiver of the refund obligation.

⁶ TIER is calculated as net margin plus interest on long-term debt divided by interest on long-term debt.

⁷ For purposes of a potential refund, the TIER calculation shall be determined from the operating revenues and expenses solely from the operation of the WPK division and not the Distribution Cooperatives' system-wide operations.

This refund provision shall not apply to any Distribution Cooperative that elects to be deregulated as provided for in paragraph 25 below.

c. Staff shall not request a show cause proceeding regarding the justness and reasonableness of MKEC and/or a Distribution Cooperative's rates for the acquired WPK customers except for extraordinary circumstances.

d. In no event shall any such revenue refund prohibit MKEC and/or Distribution Cooperative(s) from meeting minimum loan covenants, as required by lender(s); the timely completion of scheduled capital projects as identified by MKEC and/or Distribution Cooperatives in a construction work plan or similar document; developing adequate working capital; maintaining sufficient operating reserves for catastrophic events or other extraordinary expenses; providing reliable customer service; and will not result in borrowing funds or increasing rates to provide such refund.

e. MKEC or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers shall file a report with the Commission in this docket by March 31st of 2009 supporting the TIER and debt service coverage ("DSC") calculations for 2008 operations for MKEC or the Distribution Cooperatives' WPK division, as the case may be.

Subparagraphs (b), (c), (d) and (e) in this paragraph do not apply to Southern Pioneer. Nor do the provisions for a refund and TIER reporting apply to MKEC after all of the former Aquila WPK certificated territory is transferred to Southern Pioneer and the Distribution Cooperatives.

18. Commencing January 1, 2009, the parties agree as follows:
 - a. MKEC and/or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers may file an application to change rates.
 - b. MKEC or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers shall file a report with the Commission in this docket by March 31st of 2010, 2011 and 2012 supporting the TIER calculations for the preceding year's operations for MKEC or the Distribution Cooperatives' WPK division operations, as the case may be.
 - c. Should MKEC or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers' TIER exceed 2.2 for 2009, 2010 or 2011, and MKEC or any Distribution Cooperative meet their respective minimum loan covenants required by their lenders, MKEC or any affected Distribution Cooperative shall initiate a Revenue Refund Plan to refund or credit the difference in net margin required to achieve a TIER of 2.0 to Aquila WPK customers. The excess margins shall be refunded or credited pursuant to the Revenue Refund Plan which shall, to the extent practicable, provided that the refund or credit be paid or credited to those retail WPK customers who contributed the excess margins. In the event MKEC or a Distribution Cooperative can establish to the Commission through a separate filing that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to the customer by the refund, MKEC or the Distribution Cooperative may be granted a waiver of the refund obligation.

d. In no event shall any such revenue refund prohibit MKEC and/or Distribution Cooperative(s) from meeting minimum loan covenants, as required by lender(s); the timely completion of scheduled capital projects as identified by MKEC and/or Distribution Cooperatives in a construction work plan or similar document; developing adequate working capital; maintaining sufficient operating reserves for catastrophic events or other extraordinary expenses; providing reliable customer service; and will not result in borrowing funds or increasing rates to provide such refund.

e. Commencing March 2009, Staff may request a show cause proceeding in the form of a comprehensive rate review to determine whether MKEC and/or each Distribution Cooperative's rates for the acquired WPK customers are just and reasonable if, after conducting an informal review and discussing preliminary opinions with MKEC and/or a Distribution Cooperative, it believes rates are excessive. MKEC and/or a Distribution Cooperative shall not oppose Staff's request for such a comprehensive rate review.

The provisions of this paragraph do not apply to Southern Pioneer. Nor do the provisions for a refund and TIER reporting apply to MKEC after all of the former Aquila WPK certificated territory is transferred to Southern Pioneer and the Distribution Cooperatives.

19. The Distribution Cooperatives shall develop cost allocation procedures to make an appropriate assignment of costs between divisions. When developing cost allocation procedures, the Distribution Cooperatives agree to apply the following principles:

a. If only one division causes a cost to be incurred or benefits from a cost, that

cost shall be directly assigned to that entity to the greatest extent practicable.

b. If more than one division causes a cost to be incurred or benefits from a cost, that cost shall be fairly and equitably allocated among divisions that cause the cost to be incurred or benefit from the cost to the greatest extent practicable.

c. If more than one division causes a cost to be incurred or benefits from a cost and that cost can not be fairly and equitably allocated to the entities based on the principles outlined in (a) and (b) above, a general allocation shall be used to allocate costs.

20. The Distribution Cooperatives shall require employees to record their time on timesheets in a manner which properly charges payroll and benefit costs between divisions. The Distribution Cooperatives shall maintain such timesheets.

21. The Acquisition Premium (“AP”) relating to this transaction shall be amortized over a thirty-year period beginning with the Effective Date, and shall be included below-the-line in subsequent MKEC, Distribution Cooperative(s) and Southern Pioneer rate proceedings. The AP shall be considered for purposes of calculating TIER and other financial ratios and shall be considered in the calculation of TIER for purposes of determining if a refund is due as provided for herein. Notwithstanding, the signatories agree that in subsequent retail rate case(s) filed after the Effective Date by MKEC, Distribution Cooperative(s) or Southern Pioneer, the determination of the total revenue requirement shall be sufficient to take into consideration generally acceptable financial covenants, debt costs and acceptable levels of equity and cash reserves of MKEC, the Distribution Cooperative(s) or Southern Pioneer, as the case may be. Hereafter, estimated savings associated with

this transaction shall not be subject to review in subsequent rate case(s) filed by MKEC, Distribution Cooperative(s) or Southern Pioneer.

22. The AP shall be assigned to each Distribution Cooperative and Southern Pioneer at such time as the distribution assets of MKEC are transferred to the Distribution Cooperative and Southern Pioneer. The AP shall be allocated to the Distribution Cooperatives and Southern Pioneer on the same percentage as the percentage allocation of the purchase price for the distribution assets, as set forth in the testimony of Dennis Eicher, and also comply with other relevant financial covenants. (*See* testimony of J. Andrew Don, p. 9.)

23. The transfer of the distribution assets is an important aspect in providing benefits to the WPK customers and should be accomplished as quickly as possible. Therefore, MKEC will file a request to transfer the distribution assets and certificated territory as soon after the Effective Date as reasonably possible.

24. MKEC agrees to not include an income tax expense component in any MKEC rate filing before the Commission.

25. The acquired WPK customers of Lane Scott, Western and any other MKEC member that may have the ability to choose deregulation must vote to deregulate before allowing deregulation of Commission jurisdiction over the rates and services to these customers. The steps required for this process include: a) the WPK customers shall be given full cooperative membership rights, and b) the deregulation petition and voting process, as set out in K.S.A. 66-104d, for the acquired WPK customers shall be limited to only the acquired WPK customers. In the event a Distribution

Cooperative votes to deregulate in accordance with this paragraph, the provisions applicable to regulated Distribution Cooperatives shall no longer apply.

26. Southern Pioneer agrees that it will not remit dividends to Pioneer Electric Cooperative, Inc. ("Pioneer"), absent Commission and lender approval. This condition is contained within the July 7, 2006, executed Services Agreement between Southern Pioneer and Pioneer, page 4, section 3.

27. Southern Pioneer shall establish an advisory group consisting of acquired WPK customers. The advisory group shall be representative of WPK's customer classes, including urban and rural representation, and provide input regarding issues impacting ratepayers.

28. Pioneer and Southern Pioneer will jointly file a report every three years, in the event combination has not occurred, to inform the Commission on the status of the prospective combination

29. Southern Pioneer shall file a report by March 31st of each year supporting the TIER and DSC calculations for the preceding year's operations.

30. Southern Pioneer agrees to the following additional provisions:

a. At such time as Southern Pioneer's TIER exceeds 2.2, as calculated December 31 and each calendar year-end thereafter, and Southern Pioneer meets other minimum loan covenants (*i.e.*, DSC, Equity to Asset, etc.) required by its lender(s), Southern Pioneer will initiate a Revenue Refund Plan to reduce its TIER to 2.0 and submit such Revenue Refund Plan to Commission Staff for consideration and approval.

b. If after review by Staff, and informal discussions with Southern Pioneer, it is mutually determined that Southern Pioneer's current and projected financial condition permits refunding revenues, the excess margins shall be refunded or credited pursuant to the Revenue Refund Plan which shall, to the extent practicable, provide that the refund or credit be paid or credited to those customers who contributed the excess margins.

c. Any such revenue refund will not prohibit Southern Pioneer from meeting its minimum loan covenants, as required by lender(s), or maintaining a 2.0 TIER; timely completing scheduled capital projects as identified in Southern Pioneer's Construction Work Plan; developing adequate working capital; maintaining sufficient operating reserves for catastrophic events or other extraordinary expenses; and providing reliable customer service. Furthermore, any such refund or credit obligation will not result in borrowing funds or increasing rates to provide such refund.

31. Aquila agrees to use the proceeds received by Aquila for selling the WPK assets to retire existing Aquila debt and liabilities or other obligations in the most economic manner possible and report back to the Commission on how the proceeds are actually used by Aquila. In the context of this proceeding, debts and liabilities are those specified in paragraph A of the May 25, 2006 Order in Docket No. 02-UTCG-701-GIG and shall include those items set forth in paragraph 33 of this S&A.

32. Aquila shall provide a report in the context of all Aquila, Inc., d/b/a Aquila Networks - KGO ("KGO") rate filings submitted within the next five years demonstrating cost

containment efforts taken by Aquila and KGO to reduce costs allocated to KGO operations as a result of the WPK/MKEC transaction. Staff reserves the right in future KGO rate cases to make adjustments to KGO's cost of service to protect KGO customers from costs allocated to KGO operations as a result of the WPK/MKEC transaction.

33. Aquila agrees to provide funding (from the proceeds of the WPK sale transaction) to its KGO Voluntary Employee Beneficiary Association ("VEBA") account in an amount equal to the current estimate of the unfunded accumulated post retirement benefit obligation, estimated at \$1.8 million as of September 30, 2005, as calculated under Financial Accounting Standard ("FAS") 106. In addition, Aquila agrees to provide funding to its pension fund in an amount equal to KGO's unfunded pension liability, estimated at \$3.463 million as of September 30, 2006, as calculated under FAS 87, with the two contributions not to exceed \$4.6 million. If these two contributions combined are less than \$4.6 million, the difference will be used to retire existing Aquila debt and liabilities or other obligations in the most economic manner possible, consistent with paragraph 31 above.

34. Aquila agrees to provide full and complete accounting records that include (but are not necessarily limited to):

- a. a complete WPK General Ledger detail for the three-year period ending December 2006;
- b. a complete set of ad valorem tax records for 2005 and 2006;
- c. all WPK property accounting records;
- d. all information deemed necessary by MKEC, the Distribution Cooperatives

and Southern Pioneer to make a rate filing containing the information proscribed in K.A.R. 82-1-231; and

e. agreement to cooperate with any subsequent record request from MKEC (or its successors), or Distribution Cooperatives and Southern Pioneer.

35. To the extent possible, Aquila also agrees that it will comply with data requests and otherwise make any retained records or employed personnel available to Staff or any party to a subsequent rate case filed by MKEC, Southern Pioneer or by any Distribution Cooperative to which a former Aquila WPK customer is transferred through this S&A.

36. MKEC commits to make capital expenditures to the WPK system in order to achieve the fuel savings estimated in the Joint Application. (*See generally* testimony of MKEC witness Dennis R. Eicher; *see also* testimony of Staff witness Larry Holloway.) To that end, MKEC will submit annual reports, commencing one year after the date of the Effective Date detailing the capital expenditures made for system improvements. In the event MKEC can establish to the Commission through a separate filing that the capital expenditures identified in the Joint Application as needed to achieve estimated fuel savings are not necessary, MKEC may be granted a waiver of the requirement to make such capital expenditure.

37. Because certain terms of this S&A necessarily affect the Distribution Cooperatives, the Distribution Cooperatives are required to make a filing, within thirty days of the Commission's order and prior to the Effective Date, acknowledging the terms that affect them and agreement to be bound by such conditions and obligations.

38. KMU and Sunflower/MKEC have entered into a settlement agreement concerning the various issues raised by KMU in the pre-filed testimony of Colin Hansen on behalf of KMU on November 22, 2006. Pursuant to attachment CH-1 to Mr. Hansen's direct testimony, twenty-two Kansas cities, that are wholesale customers of Aquila (WPK), are being transferred from Aquila (WPK) to MKEC under the proposed transaction in this docket. Those affected cities have been regulated under the wholesale rates of Aquila (WPK) by the Federal Energy Regulatory Commission ("FERC"). By this transaction these cities will now be regulated under the jurisdiction of this Commission. KMU and Sunflower/MKEC have entered into a settlement agreement regarding the issues raised by KMU in this docket and addressing how these two parties will work together to resolve such issues as power supply, acquisition of base load generation for the KMU cities, transmission service, metering, the fuel adjustment clause and other issues. In that settlement agreement the parties specifically acknowledged and agreed that the specific terms and conditions of any contemplated agreements were beyond the scope of the S&A and would require further action by the parties in good faith to complete those negotiations. The settlement agreement between KMU and Sunflower/MKEC has not been filed as a part of this docket. The S&A does not modify the understanding of KMU and Sunflower/MKEC in the settlement agreement. Likewise, the Commission's approval of the S&A does not constitute Commission approval of the settlement agreement between KMU and Sunflower/MKEC.

39. Should a large load customer become a signatory to this S&A, MKEC agrees to have serious, meaningful discussions with said WPK large load customers regarding possible changes to

the structure of the ECA in order to mitigate the disconnected swings experienced under the WPK ECA.

III. RESERVATIONS

40. Except as specifically provided above, this S&A represents a negotiated settlement for the sole purpose of disposing of this case and none of the signatories of this S&A shall be prejudiced or bound in any manner by the terms of the S&A in any other proceeding or in this proceeding should the S&A not be accepted by the Commission in its entirety, or should the acquisition not occur.

41. Except as otherwise specifically provided herein, the parties to this S&A shall not be deemed to have approved or acquiesced to any rate making principle, valuation method, depreciation principle or method, or rate design proposal underlying or allegedly underlying this S&A. Further, and except as otherwise specifically provided herein, this S&A does not foreclose Staff or other parties from challenging the appropriateness of any cost of service in any future rate case filed by MKEC or the Distribution Cooperatives.

42. The signatories to this S&A agree that the prefiled testimony and exhibits filed by the signatories in this case shall be admitted and referred into the record without cross-examination from the other signatories. The signatories also reserve their right to present witnesses, cross-examine witnesses, and present oral argument or written briefs to the Commission in support of this S&A in the event the Commission orders a hearing on the Joint Motion. To the extent that any party opposes this S&A and proceeds to hearing in opposition to this S&A, the signatories reserve their respective

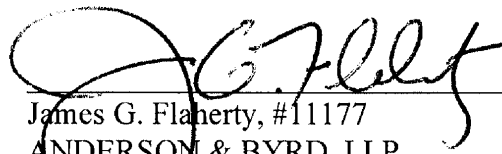
rights to present witnesses, cross-examine witnesses and present oral argument and written briefs to the Commission rebutting those parties that are opposed to this S&A.

43. In the event the Commission accepts the specific terms of this S&A, the signatories to this S&A waive their rights to request reconsideration of a Commission order approving this S&A and waive their rights to seek judicial review of any such order. The signatories to this S&A acknowledge that an order issued by the Commission approving this S&A would constitute a final, non-appealable order as to the issues agreed upon by them herein.

44. The terms set forth in the S&A are the result of extensive negotiations among the signatory parties. Because the terms are interdependent, if the Commission does not approve and adopt all of the terms of this S&A, this S&A shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

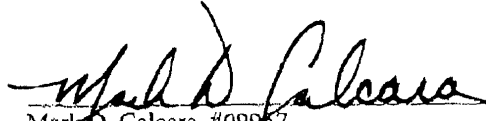
45. This S&A may be executed in several counterparts and all so executed shall constitute but one and the same instrument binding all parties hereto, notwithstanding that all of the parties are not signatory to the same counterparts, each of which shall be fully effective as an original.

WHEREFORE, on behalf of their respective clients, the undersigned attorneys respectfully request that the Commission approve this S&A in its entirety and that the Commission issue an order in this matter authorizing and approving those items set forth in paragraph 12 of this S&A.

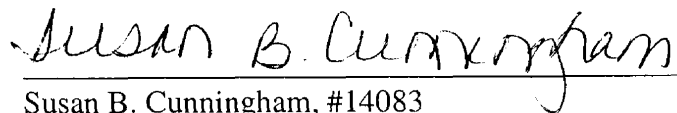
A handwritten signature in black ink, appearing to read "J.G. Flaherty", is written over a horizontal line.

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STIPULATION AND AGREEMENT
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Page 22



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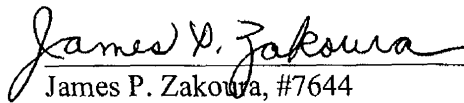
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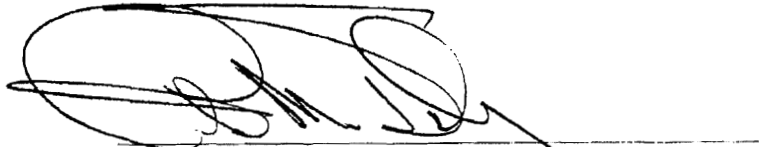
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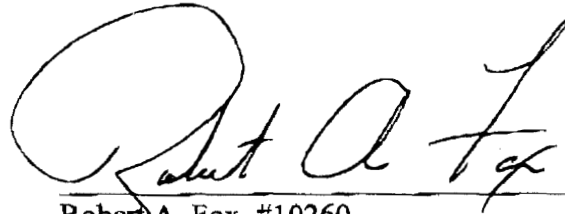
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STIPULATION AND AGREEMENT
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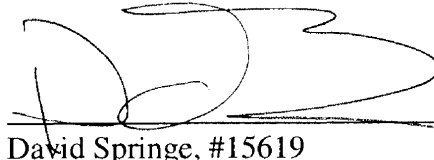


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STIPULATION AND AGREEMENT
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A handwritten signature in black ink, appearing to read "Robert A. Fox", written over a horizontal line.

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06-MKEE-524-ACQ

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Motion For Approval of Stipulation and Settlement Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 11th day of January, 2007, to the following:

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