

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

Before Commissioners:            Thomas E. Wright, Chairman  
   Joseph F. Harkins

In the Matter of the Application of Sunflower            )  
Electric Power Corporation and Kansas Electric            )  
Power Cooperative, Inc. for an Order Approving            )     Docket No. 06-SEPE -1203-CON  
a New Wholesale Power Agreement.                            )

**ORDER APPROVING STIPULATION AND AGREEMENT**

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 makes the following findings and conclusions:

**I. Background**

1.        On May 12, 2006, Sunflower Electric Power Corporation (Sunflower) and Kansas Electric Power Cooperative (KEPCo) filed a joint application under this docket seeking to approve the Wholesale Power Agreement (WPA), dated May 11, 2006, between Sunflower and KEPCo.

2.        On July 17, 2006, the Commission issued an Order (2006 Order) approving the WPA and the rate structure as set forth in the WPA.

3.        The rate structure under the terms of the WPA provided Sunflower would sell and KEPCo would purchase power and energy from Sunflower at Sunflower's Member rate (WHM Rate) under Tariff Schedule WHM-04 plus an adder (collectively the WPA Rate).

4. At the time the WPA was entered into and approved, Sunflower and KEPCo had not exempted themselves from regulation as later authorized by K.S.A. 66-104d.

5. Subsequent to the approval of the WPA by the Commission, both Sunflower and KEPCo elected as provided by K.S.A. 66-104d to be exempt from regulation which the Commission approved.

6. On December 18, 2009, Sunflower's Board of Directors modified its WHM Rate to its members effective January 1, 2010, effectively replacing Tariff Schedule WHM-04 with Tariff Schedule WHM-10.

7. Sunflower notified KEPCo by letter dated December 30, 2009, of the modification to the WHM Rate and the modification to the WPA Rate accordingly.

8. In response, KEPCo notified Sunflower by letter dated January 8, 2010, that it did not concur with Sunflower's contention that the WPA Rate increased without Commission approval as a result of the modification of the WHM Rate.

9. On February 16, 2010, Sunflower filed an application in this docket seeking the Commission's approval of the change in billing to KEPCo under the WPA (Application), effective as of the date of filing, that would incorporate the WHM Rate under Tariff Schedule WHM-10 into the rates paid by KEPCo under the WPA Schedule A – Rate Schedule; and further stating that Sunflower believed the WPA rate schedule approved by the Commission in its 2006 Order was a valid automatic adjustment clause allowing Sunflower to adjust the WPA invoices to reflect any lawful change in the WHM Rate. KEPCo disputed that conclusion resulting in Sunflower submitting the request to the Commission without prejudice to the question of whether or not the WPA Rate is a valid automatic adjustment clause.

10. In response to the Sunflower Application, KEPCo filed a Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. The KEPCo petition sought (i) the transfer of the proceeding to a new rate proceeding docket, (ii) granting intervention without limitation, (iii) that Sunflower's service to KEPCo is subject to the full jurisdiction of the Commission, (iv) that the Sunflower charges to KEPCo, based upon Tariff Schedule WHM-10, are unlawful until those rates have been approved by the Commission and (v) that Sunflower must cease and desist from charging KEPCo under any rate other than the WHM-04 rate in Schedule A under the WPA until such time as a new rate is approved and made effective by order of the Commission for service to KEPCo.

11. On March 8, 2010, Sunflower filed a response to the Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. Sunflower stated that the Commission has exclusive jurisdiction to determine whether additional Commission review and approval of the WPA Rate to KEPCo under the WPA is required when the WHM Rate changes, as it did effective January 1, 2010. Furthermore, if the Commission by its 2006 Order established an automatic adjustment to the WPA Rate, then no further filing or approval is required. If it did not, then Sunflower acknowledges that the change in the charges to KEPCo requires application to and approval of the Commission and further clarification is sought from the Commission as to the form and content of the review and, ultimately, approval of those changes effective the date Sunflower's Application was filed.

12. Sunflower further submitted in its response that KEPCo's intervention was, by contract, limited to the question of whether the revised charges are discriminatory as provided in Section 4. E. of the WPA. Sunflower further objected to opening a new docket, contending the WPA is a special contract and the proper docket is the current docket. Also, Sunflower stated in

its response that many of KEPCo's arguments are related to interpretation of the contract which may not fall within the purview of the Commission, and reserved the right to address the jurisdictional questions when and where appropriate. Finally, Sunflower responded that the Commission has the authority to approve an automatically adjusting rate without the need for full rate hearings, and contended that the 2006 Order contemplated such treatment.

13. On April 7, 2010, the parties entered into a unanimous Stipulation and Agreement (S&A) to resolve all issues in this docket. The parties to the agreement are KEPCo, Sunflower, and Staff.

## **II. Analysis**

14. The Commission uses the following five-part test for reviewing settlement agreements as originally set forth in Docket No. 08-ATMG-280-RTS:

- 1) Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement;
- 2) Whether the stipulation and agreement is supported by substantial competent evidence;
- 3) Whether the stipulation and agreement conforms with applicable law;
- 4) Whether the stipulation and agreement results in just and reasonable rates;
- 5) Whether the results of the stipulation and agreement are in the public interest, including the interest of the customers represented by the party (CURB) not consenting to the agreement.

15. A copy of the S&A is attached and its terms will not be repeated. The S&A conforms to the five-part test for Commission review.

16. The parties to the S&A have agreed that the terms are fair and reasonable and have been fully negotiated between the parties.

17. The Commission finds that all parties were given the opportunity to participate and had a full and fair opportunity to be heard and the S&A is supported by substantial and competent evidence that has been exchanged between the parties.

18. The Commission finds no provision of the S&A that is in violation of applicable state or federal law.

19. The Commission finds that the results of the S&A are in the public interest. This is a function of the negotiation and unanimous agreement reached by all the parties in the docket and the resulting agreement that this S&A will result in fair and equitable rates for Sunflower and KEPCo ratepayers.

20. After careful review and consideration of the evidence in the record and the history of the parties' communications and negotiations, the Commission finds that the WHM-10 rate is just and reasonable and is to be effective May 1, 2010, as requested by the parties in the S&A.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The April 7, 2010, Stipulation and Agreement entered into between Sunflower Electric Power Corporation, Kansas Electric Power Cooperative, and Commission Staff is approved.

B. The WHM-10 rate is approved and shall be effective May 1, 2010.

C. In the event of future changes to the WHM Rate, Sunflower will, after engaging in the discussions with KEPCo called for in the WPA and pursuant to the terms of the S&A, file

its proposed new WHM rate for Commission approval for application to KEPCo, to be approved and reviewed under such scope of review as may be determined by the Commission.

D. The parties have fifteen days, plus three days if service of this Order is by mail, from the date of service of this Order in which to request rehearing on any matter decided herein. K.S.A. 66-118b, K.S.A. 2009 Supp. 77-529(a)(1).

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

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

Wright, Chmn.; Harkins, Com.

Dated: **APR 19 2010** \_\_\_\_\_

**ORDERED MAILED**

APR 20 2010

 **EXECUTIVE  
DIRECTOR**

\_\_\_\_\_  
Susan K. Duffy  
Executive Director

PTS:rob

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

In the Matter of the Application of	)	
Sunflower Electric Power Corporation and	)	
Kansas Electric Power Cooperative, Inc.	)	Docket No. 06-SEPE-1203-CON
for an Order Approving A New Wholesale	)	
Power Agreement	)	

**STIPULATION AND AGREEMENT**

In an effort to resolve the disputed issues in the above captioned matter, the Staff of the State Corporation Commission of the State of Kansas (Staff), Sunflower Electric Power Corporation (Sunflower) and Kansas Electric Power Cooperative, Inc. (KEPCo) engaged in discussions aimed at resolving such disputed issues and reaching a settlement which would result in fair and equitable rates for Sunflower and KEPCo ratepayers, and provide Sunflower with sufficient revenue to continue to provide safe and reliable electric utility service. As a result of those negotiations, the signatories have reached a unanimous settlement and hereby submit to the State Corporation Commission of the State of Kansas (Commission) for consideration and approval the following Stipulation and Agreement (Agreement):

**I. Sunflower's Application**

1. On May 12, 2006, Sunflower and KEPCo filed a joint application under this docket seeking to approve the Wholesale Power Agreement (WPA), dated May 11, 2006, between Sunflower and KEPCo.
2. The Commission issued an order dated July 17, 2006, approving the WPA and the rate structure as set forth in the WPA (2006 Order).
3. The rate structure under the terms of the WPA provided Sunflower would sell and KEPCo would purchase power and energy from Sunflower at Sunflower's Member rate (WHM Rate) under Tariff Schedule WHM-04 plus an adder (collectively the WPA Rate).
4. At the time the WPA was entered into and approved, Sunflower and KEPCo had not exempted themselves from regulation as later authorized by K.S.A 66-104d.

5. Subsequent to the approval of the WPA by the Commission, both Sunflower and KEPCo elected as provided by K.S.A 66-104d to be exempt from regulation which the Commission approved.
6. On December 18, 2009, Sunflower's Board of Directors modified its WHM Rate to its members effective January 1, 2010, effectively replacing Tariff Schedule WHM-04 with Tariff Schedule WHM-10.
7. Sunflower notified KEPCo by letter dated December 30, 2009, of the modification to the WHM Rate and the modification to the WPA Rate accordingly.
8. In response, KEPCo notified Sunflower by letter dated January 8, 2010, that it did not concur with Sunflower's contention that the WPA Rate increased without Commission approval as a result of the modification of the WHM Rate.
9. On February 16, 2010, Sunflower filed an application in this docket seeking the Commission's approval of the change in billing to KEPCo under the WPA (Application), effective as of the date of filing, that would incorporate the WHM Rate under Tariff Schedule WHM-10 into the rates paid by KEPCo under the WPA Schedule A – Rate Schedule; and further stating that Sunflower believes the WPA Rate schedule approved by the Commission in its 2006 Order is a valid automatic adjustment clause allowing Sunflower to adjust the WPA invoices to reflect any lawful change in the WHM Rate. KEPCo disputed that conclusion resulting in Sunflower submitting the request to the Commission without prejudice to the question of whether or not the WPA Rate is a valid automatic adjustment clause.
10. In response to the Sunflower Application, KEPCo filed a Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. The KEPCo petition sought (i) the transfer of the proceeding to a new rate proceeding docket, (ii) granting intervention without limitation, (iii) that Sunflower's service to KEPCo is subject to the full jurisdiction of the Commission, (iv) that the Sunflower charges to KEPCo, based upon Tariff Schedule WHM-10, are unlawful until those rates have been approved by the Commission and (v) that Sunflower must cease and desist from charging KEPCo under any rate other than the WHM-04 rate in Schedule A under the WPA until such time as a new rate is approved and made effective by order of the Commission for service to KEPCo.
11. On March 8, 2010, Sunflower filed a response to the Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. Sunflower stated

that the Commission has exclusive jurisdiction to determine whether additional Commission review and approval of the WPA Rate to KEPCo under the WPA is required when the WHM Rate changes, as it did effective January 1, 2010. Furthermore, if the Commission by its 2006 Order established an automatic adjustment to the WPA Rate, then no further filing or approval is required. If it did not, then Sunflower acknowledges that the change in the charges to KEPCo requires application to and approval of the Commission and further clarification is sought from the Commission as to the form and content of the review and, ultimately, approval of those changes effective the date Sunflower's Application was filed.

12. Sunflower further submitted in its response that KEPCo's intervention is, by contract, limited to the question of whether the revised charges are discriminatory as provided in Section 4. E. of the WPA. Sunflower further objected to opening a new docket, contending the WPA is a special contract and the proper docket is the current docket. Also, Sunflower stated in its response that many of KEPCo's arguments are related to interpretation of the contract which may not fall within the purview of the Commission, and reserved the right to address the jurisdictional questions when and where appropriate. Finally, Sunflower responded that the Commission has the authority to approve an automatically adjusting rate without the need for full rate hearings, and contended that the 2006 Order contemplated such treatment.

## **II. Agreement**

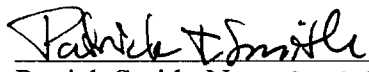
13. Sunflower, KEPCo and Staff, for purposes of this Agreement and to resolve the matter upon the terms and conditions herein, concur that the WPA Rate based upon the WHM-10 rate is just and reasonable and seek the Commission's approval of the new WPA Rate based upon the WHM-10 rate effective as to services rendered as of the first day of the month following Commission approval of this Agreement and Tariff Schedule WHM-10. For purposes of this Agreement and limited to the rate increase as provided under the proposed WPA Rate, KEPCo has no substantive objection to the contents of the WPA Rate as filed. As a result, the signatories hereto request the Commission to act as soon as possible to approve the WPA Rate based upon the Tariff Schedule WHM-10 for prospective application to KEPCo.
14. Sunflower, KEPCo and Staff stipulate and agree that for future changes to the WHM rate, Sunflower will, after engaging in the discussions with KEPCo called for in the WPA, file its proposed new WHM rate for Commission approval for application to KEPCo, to be reviewed under such scope of review as may be determined by the Commission. Each

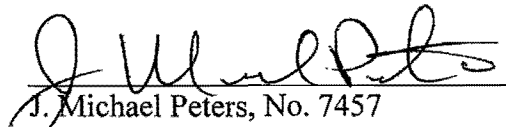
party may argue for such scope of review as it deems appropriate at the time of such filing but Commission approval of the WPA Rate shall be required.

### **III. Miscellaneous Provisions**

15. Except as provided above, this Agreement fully resolves all issues among the signatories. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.
16. The terms and provisions of this Agreement have resulted from negotiations among the signatories.
17. Unless (and only to the extent) otherwise specified in this Agreement, the signatories shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in its entirety or in any way conditions its approval of the same. The Commission's approval of this Agreement shall have no precedential effect in any other proceeding.
18. If the Commission accepts this Agreement in its entirety and incorporates the same into its final order in this docket, the signatories intend to be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's Order on those issues.

IN WITNESS WHEREOF, the signatories have executed and approved this Agreement effective as of the 7th day of April, 2010, by subscribing their signatures below.

  
Patrick Smith, No. 18275  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604  
785-271-3110  
785-271-3167 fax  
[p.smith@kcc.ks.gov](mailto:p.smith@kcc.ks.gov)  
Attorneys for Commission Staff



J. Michael Peters, No. 7457

Kansas Electric Power Cooperative, Inc.

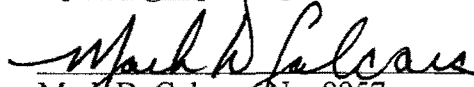
P.O. Box 4877

Topeka, KS 66604-0877

785-273-7010

785-271-4888 fax

[mpeters@kepcq.org](mailto:mpeters@kepcq.org)



Mark D. Calcara, No. 9957

Lindsay Shepard, No. 23276

Counsel for Sunflower

Watkins Calcara Chtd.

1321 Main Street Suite 300

PO Drawer 1110

Great Bend, KS 67530

Fax: 620-792-2775

[mcalcara@sunflower.net](mailto:mcalcara@sunflower.net)

[lshepard@sunflower.net](mailto:lshepard@sunflower.net)