

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of ITC)
Great Plains, LLC for a Limited Certificate)
of Public Convenience to Transact the)
Business of an Electric Public Utility in the)
State of Kansas)

STATE CORPORATION COMMISSION
Docket Nos. 08-ITCE-936-COC
08-ITCE-937-COC
08-ITCE-938-COC
MAY 28 2008
Susan K. Duffy Docket Room

MOTION TO INTERVENE OF
SUNFLOWER ELECTRIC POWER CORPORATION
AND
MID-KANSAS ELECTRIC COMPANY, LLC

COMES NOW Sunflower Electric Power Corporation (“Sunflower”) and Mid-Kansas Electric Company, LLC (“MKEC”) and petition the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) for an order granting Sunflower and MKEC intervention in the above-captioned proceedings involving the filings by ITC Great Plains, LLC (ITC), to amend its certificate of convenience and authority (“Certificate”) relating to the construction of transmission projects identified within the Southwest Power Pool (“SPP”) transmission planning process (an “SPP Transmission Project”). Sunflower and MKEC also submit comments regarding Sunflower and MKEC’s rights of first refusal applicable to construction of their portions of SPP Transmission Projects in the above-captioned proceeding.

I. BACKGROUND

1. Sunflower is a consumer-owned corporation operated on a not-for-profit basis by six rural electric distribution cooperatives (Sunflower Members) that serve retail customers located in 34 western Kansas counties.¹ From inception, Sunflower has been principally financed by the United States Government, acting by and through the Administrator of the Rural

¹ The Sunflower Member Cooperatives are Lane-Scott Electric Cooperative, Inc.; Pioneer Electric Cooperative, Inc.; Prairie Land Electric Cooperative, Inc.; The Victory Electric Cooperative Association, Inc.; The Western Cooperative Electric Association, Inc.; and Wheatland Electric Cooperative, Inc.

Electrification Administration (REA) and its successor, the Rural Utilities Service (RUS).

Sunflower is a public utility fully regulated by the Commission under K.S.A. 66-104.

2. MKEC is a limited liability company operated on a not-for-profit basis that was formed by the Sunflower Members² to bid for the Kansas electric assets of Aquila, Inc. That transaction was approved by the Commission on February 23, 2007 in Docket No. 06-MKEE-524-ACQ and closed effective April 1, 2007. MKEC, like Sunflower, is a public utility fully regulated by the Commission under K.S.A. 66-104.

3. On June 5, 2007, the Commission issued an *Order Approving Stipulation and Agreement and Addressing Application of Statutes* in Docket No. 07-ITCE-380-COC (“380 Order”), granting ITC a Certificate to transact business in the state of Kansas for the limited purpose of building and operating SPP Transmission Projects, subject to specific conditions set forth in the *Stipulation and Agreement* in Docket No. 07-ITCE-380-COC (“Stipulation”). The conditions are outlined in paragraph 11 of the Stipulation, and state:

- a. ITC will construct only SPP Transmission Projects for which each Affected Incumbent Transmission Owner has declined to exercise its right of first refusal as provided herein.
- b. ITC will adhere to the SPP Membership Agreement and Federal Energy Regulatory Commission (“FERC”) approved regional tariff documents.
- c. ITC agrees that each Affected Incumbent Transmission Owner shall have the right of first refusal to construct SPP Transmission Projects. ITC understands that in some situations, more than one Affected Incumbent Transmission Owner will have a right of first refusal to construct an SPP Transmission Project and that in such situations each such Affected Incumbent Transmission Owner shall have the right of first refusal to construct its portion of the SPP Transmission Project that connects to its transmission system.
- d. An Affected Incumbent Transmission Owner that has exercised its right of first refusal and accepted the obligation to build an SPP Transmission

² The members of MKEC are the same as the Sunflower Members with the exception of Southern Pioneer Electric Company, which is a wholly-owned subsidiary of Pioneer Electric Cooperative, Inc.

Project but has failed, after commercially reasonable efforts, to meet any in-service target date related to completion of such SPP Transmission Project or any part of such project shall not, as a consequence of such failure, forfeit its right of first refusal. However, any party to this Agreement may initiate proceedings at the Commission asserting that such forfeiture has or has not occurred.

- e. Once each of the Affected Incumbent Transmission Owners determines that it will not construct a particular SPP Transmission Project and ITC determines that it wishes to build such SPP Transmission Project, ITC will file an application with the Commission to amend its Certificate and obtain authorization from the Commission to construct, own and operate such SPP Transmission Project. Such application to amend shall:
 - (1) Set forth the beginning and end points of the proposed transmission line and shall generally describe the proposed route,
 - (2) Be provided to each Affected Incumbent Transmission Owner as a service copy.
- f. After approval of the amendment to its Certificate, ITC will file a siting application pursuant to K.S.A. 66-1,177, *et seq.*, if required.
- g. ITC will file a “transmission only” certificate application in accordance with the same requirements for retail electric suppliers pursuant to K.S.A. 66-1,170, *et seq.* This filing will provide evidence that ITC has obtained a Letter of Intent or Memorandum of Understanding from the applicable Affected Incumbent Transmission Owner(s) that sets forth the terms and conditions relating to the proposed interconnections contained in the SPP Transmission Project that is the subject matter of said application. Should the transmission project require a siting application, ITC will file such a “transmission only” certificate application following Commission approval of the transmission line siting.
- h. ITC will make all required “EL” filings for any transmission line that it builds.

Stipulation, at ¶11.

The Stipulation also defined terms relevant to the aforementioned conditions applicable to ITC’s Certificate. Such terms germane to this Motion are as follows:

- a. “Incumbent Transmission Owner” means any Kansas electric utility that is an SPP Member and that has executed the SPP Membership Agreement as a transmission owner, and their successors, as of the date of this Agreement.
- b. “Affected Incumbent Transmission Owner” means any Incumbent Transmission Owner that has facilities that would interconnect with a SPP Transmission Project.
- c. “SPP Transmission Project” means any transmission project identified within the SPP transmission planning process.

Stipulation, at ¶¶7-9.

4. On April 11, 2008, ITC submitted its *Application to Amend Certificate of Public Convenience* in Docket Nos. 08-ITCE-936-COC, 08-ITCE-937-COC, and 08-ITCE-939-COC (“ITC Applications”), requesting the authority to construct, own and operate a transmission project referred to as the “V-Plan.” The V-Plan involves economic upgrades to the transmission systems of south central Kansas and north central Oklahoma, and stems from a larger plan identified by SPP, known as the “X-Plan.” On July 16, 2007, Carl Huslig, President of ITC, requested that SPP include the V-Plan in the SPP Transmission Expansion Plan (STEP). *Motion of Westar Energy, Inc. and Kansas Gas and Electric Company to Intervene, to Consolidate and to Dismiss*, Docket Nos. 08-ITCE-936-COC, 08-ITCE-937-COC, and 08-ITCE-939-COC (Westar Motion), Exhibit 1. In response, Carl Monroe, Senior Vice President and Chief Operating Officer of SPP, stated that SPP would include the V-Plan in the SPP Planning Process and would ask its Board of Directors to include the Project in the 2007 STEP. ITC Applications, Exhibit A. The SPP Board of Directors subsequently approved the addition of the V-Plan in the STEP as viable economic upgrades. ITC Applications, Exhibit B.

5. In the ITC Applications, ITC states that the “V-Plan” consists of three segments and therefore has filed an application pertaining to each segment. The “initial” segment is to run from Sunflower’s Spearville substation in Ford County to the switchyard that ITC intends to

construct in Comanche County or Clark County. The “middle segment” would run from the proposed ITC switchyard to a new MKEC/ITC substation located near Medicine Lodge in Barber County, which would interconnect with MKEC transmission facilities. The “final segment” would run from the proposed Medicine Lodge substation to a Westar substation near Wichita.

II. MOTION TO INTERVENE

6. Sunflower and MKEC both have direct interests in the above-captioned proceedings as potential builders, owners and operators of new transmission facilities in the state of Kansas and as “Affected Incumbent Transmission Owners.” Sunflower and MKEC currently own, operate and maintain transmission and provide and use transmission service in the state of Kansas. Sunflower and MKEC also desire to continue providing such services through upgrades to their existing facilities and the construction of new facilities to service its load requirements, to reduce congestion, to facilitate the economical purchase and sale of electric power and energy and to help facilitate an effective and competitive electric market in Kansas and the SPP region. More importantly, portions of the proposed wholesale electric transmission facilities would interconnect to Sunflower’s Spearville substation and MKEC transmission facilities, designating Sunflower and MKEC as Affected Incumbent Transmission Owners.³

7. The interests of Sunflower and MKEC would be substantially affected by the outcome of this proceeding, and the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention. Therefore, Sunflower and MKEC ask that the Commission grant their request to intervene and fully participate as interested parties in these proceedings.

³ A portion of the V-Plan will traverse the existing certified service territory of MKEC and the operation of such facilities will have a direct impact on the operations of MKEC.

III. COMMENTS

8. Sunflower and MKEC respectfully submit the following comments regarding the ITC Applications, specifically regarding the implication in ITC's applications that Sunflower and MKEC have relinquished their rights of first refusal to construct their portions of the V-Plan.

9. As noted above, Sunflower and MKEC are Affected Incumbent Transmission Owners with respect to the projects subject to the Applications, specifically, as to those portions of the V-Plan that interconnect to Sunflower's or MKEC's facilities and traverse MKEC's certified territory.⁴ As set forth under the conditions of the Stipulation, Sunflower and MKEC each has a right of first refusal to build its portions of the V-Plan, once authorized by SPP.

10. Any "right of first refusal" arises pursuant to the Stipulation, however, Sunflower and MKEC respectfully submit that for Economic Upgrades, no right exists unless and until SPP includes the Economic Upgrade in the Transmission System planning model. A specific endorsed Economic upgrade "will be included in the Transmission System planning model upon execution of a contract that financially commits a Project Sponsor to such upgrade. . . ." SPP Tariff, Transmission Planning Process, Section VIII, Original Sheet 300I. The SPP Tariff also has one additional step:

After a new transmission project has been approved for construction in the SPP Transmission Expansion Plan, required pursuant to a Service Agreement, or required pursuant to an interconnection agreement, the Transmission Provider will authorize the appropriate Transmission Owners to begin implementation of the project for which financial commitment is required prior to the approval of the next update of the SPP Transmission Expansion Plan. If the project forms a connection between facilities of a single Transmission Owner, that Owner will be designated to provide the new facilities. If the project forms a connection between

⁴ Westar contends that although the V-Plan will traverse MKEC territory, it does not qualify MKEC as an Affected Incumbent Transmission Owner as defined in the Stipulation. Westar Motion, at ¶22. As stated above and as ITC stated in its Response, a portion of the V-Plan would connect with a new MKEC and/or ITC Substation located in the Medicine Lodge area which would interconnect with MKEC transmission facilities, rendering MKEC an Affected Incumbent Transmission Owner. *Response of ITC to Motion of Westar to Intervene, to Consolidate and to Dismiss*, Docket No. 08-ITCE-937-COC (ITC Response), at ¶22.

facilities owned by two different Transmission Owners or between a new facility and the facilities of a Transmission Owner, both entities will be designated to provide the new facilities. The two entities will agree between themselves how much of the project will be provided by each entity. If agreement cannot be reached, the Transmission Provider will facilitate the ownership determination process.

Section IX.(4), Original Sheet No. 300K.

11. In short, Sunflower and MKEC (and Westar) do not have any rights of first refusal to relinquish applicable to construction of their portions of the V-Plan because SPP has not authorized anyone to build the proposed facilities to date. ITC states that SPP has only endorsed placing the V-Plan in the STEP. ITC Response, at ¶7. In order for SPP to authorize construction of the project, there must first be a “sponsor” of the V-Plan, in which an entity like ITC must establish the ability to finance the project. Once there is a “sponsor” who will take financial responsibility for the project, SPP will issue a Notice to Construct to all Affected Incumbent Transmission Owners of the V-Plan. Upon receipt of the Notice to Construct, the Affected Incumbent Transmission Owners can either accept or decline to build the project.

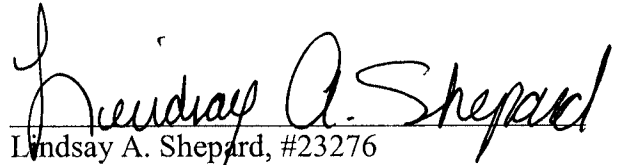
12. A further clarification is also in order. ITC states that Sunflower and MKEC have indicated that they have no interest in building any portion of the V-Plan facilities and ITC is willing to build those portions of the V-Plan that connect to Sunflower’s Substation and MKEC’s transmission facilities. ITC Response, at ¶¶9, 10. Although Sunflower and MKEC have had and will continue to have discussions with ITC concerning each party’s interest in constructing their portions of the V-Plan, Sunflower and MKEC have made no commitments to ITC or otherwise concerning construction of the V-Plan.

13. Sunflower and MKEC recognize the need for the construction of transmission in the State of Kansas and support construction of the V-Plan. Sunflower and MKEC have not, however, relinquished any rights granted to them under the conditions of the Stipulation,

including any right of first refusal applicable to the construction of their portions of the proposed V-Plan as of this filing.

WHEREFORE, Sunflower and MKEC respectfully request that the Commission allow Sunflower and MKEC to intervene in the above-captioned proceedings and consider their comments and responses.

Respectfully submitted,

A handwritten signature in black ink that reads "Lindsay A. Shepard". The signature is written in a cursive style with a large initial "L".

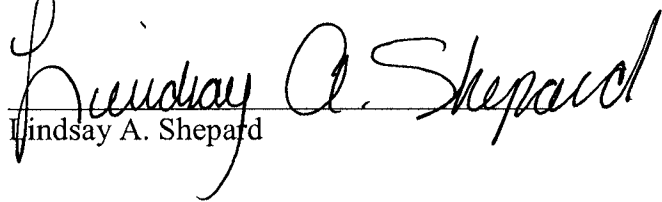
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VERIFICATION

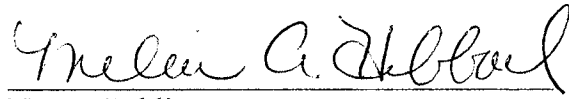
STATE OF KANSAS)
)
COUNTY OF BARTON) ss:

Lindsay A. Shepard of lawful age, being first duly sworn on oath states:

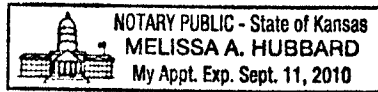
That she is the attorney for Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC, named in the foregoing Motion to Intervene; that she has read the foregoing Motion, and knows the contents thereof; and that the facts therein are true and correct to the best of her knowledge, information and belief.


Lindsay A. Shepard

SUBSCRIBED AND SWORN to before me this 28th day of May, 2008.


Notary Public

My commission expires:



CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 28th day of May, 2008, a true and correct copy of the above and foregoing document was mailed, postage prepaid, or hand-delivered to:

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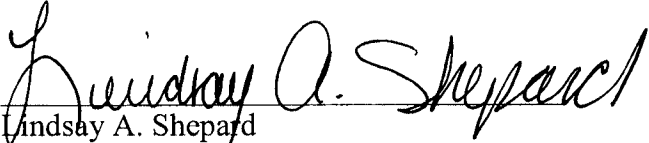
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