

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of Mid-)
Kansas Electric Company, LLC, Lane-Scott) Docket No. 13-MKEE-447-MIS
Electric Cooperative, Inc., Prairie Land Electric)
Cooperative, Inc., Southern Pioneer Electric)
Company, Victory Electric Cooperative)
Association, Inc., Western Cooperative Electric)
Association, Inc., and Wheatland Electric)
Cooperative, Inc., Joint Applicants, for an Order)
Approving the Transfer of Certificates of)
Convenience With Respect to All of Mid-)
Kansas' Retail Electric Services and for Other)
Related Relief.)

Received
on

JUN 28 2013

by
State Corporation Commission
of Kansas

**MOTION TO MODIFY
APRIL 26, 2013 ORDER ON JURISDICTION
AND STANDING AND FOR EXPEDITED RULING**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and files this Motion to Modify the Commission's April 26, 2013, Order on Jurisdiction and Standing, and for Expedited Ruling. In support of its motion, CURB states as follows.

1. On April 26, 2013, the Commission issued its Order on Jurisdiction and Standing ("April 26th Order"). In the April 26th Order, the Commission limited CURB's intervention to issues related to Issue #7, the Joint Applicants attempt to abrogate the right of former Aquila customers to vote on whether the electric service provided to them should remain regulated by the Commission or be deregulated. The Commission noted in its April 26th Order that CURB had indicated its primary interest in this docket related to Issues #1 and #7.¹ CURB advised the Commission it was not opposing the request by the Mid-Kansas Electric Company, LLC (MKEC) Members to adopt all of MKEC's applicable retail rates, rules, and tariffs with respect to MKEC's local distribution and retail

¹ April 26th Order, ¶ 10.

electric utility services because CURB was involved in the rate cases that resulted in those rates, rules, and tariffs² and the Joint Application did not propose to change any previously authorized MKEC rates, rules, or tariffs that the MKEC were seeking to adopt.

2. On June 19, 2013, counsel for MKEC provided all parties in this docket with a copy of a Modification Agreement entered into between Victory Electric Cooperative Association (Victory), Prairie Land Electric Cooperative, Inc. (Prairie Land), Kansas Electric Power Cooperative (KEPCo), Sunflower Electric Power Corporation (Sunflower), and Mid-Kansas Electric Company, LLC (MKEC). At the June 26, 2013 Settlement Conference, the Joint Applicants and KEPCo indicated they would be filing testimony in support of the Modification agreement and request approval of the Modification Agreement by the Commission in this docket. If approved, the Modification Agreement will change previously authorized MKEC rates, rules, and tariffs, which was not requested in the Joint Application. Without going into minute detail, the Modification Agreement results in an adder or "Make Whole Payment" related to power supplied to Victory and Prairie Land by KEPCo, yet socializes the cost of the adder to all MKEC Members and customers (not just Victory and Prairie Land), thereby raising rates of Members (and customers) who were not parties to the KEPCo power supply agreement.

3. The requested approval of the terms of the Modification Agreement in this docket constitutes a material alteration of the Joint Application, as the new relief requested by Joint Applicants is substantially different from the relief requested in the Joint Application and testimony filed in support of the Joint Application.³ The testimony of Joint Applicants indicated that allowing

² Transcript of April 5, 2013 Oral Argument (Tr.), p. 25.

³ Testimony of Joint Applicants indicated there was no ration justification or economic basis for an adder to be charged by KEPCo.

a KEPCo adder is not just and reasonable ⁴ and has no rational justification or rational economic basis. ⁵

4. Joint Applicants' recently expressed intent to seek approval of the Modification Agreement constitutes a last-minute material amendment to the Joint Application and changes this docket from merely requesting approval to spin down MKEC's certificates and previously approved rates, to a rate proceeding in which the rates of MKEC customers will be increased without notice to customers.

5. The rights, rates paid, and the service received by residential and small business customers will be substantially affected by any Commission Order related to the requested approval of the Modification Agreement and the socialization of the adder or "Make Whole Payment" to all MKEC Members and customers. CURB is the statutory "*official intervenor*" in proceedings before the Commission under Kansas statutes, a fact recognized by the Kansas Supreme Court.⁶ CURB has specific statutory authority to "represent residential and small commercial ratepayers before the state corporation commission" and to "function as an *official intervenor* in cases filed with the state corporation commission, *including rate increase requests.*"⁷ The request to socialize the adder or "Make Whole Payment" in the Modification Agreement to all MKEC Members and customers constitutes a rate increase request. No other party to this proceeding is authorized to represent residential and small commercial ratepayers before the Commission or to function as an official intervenor in cases filed with the Commission.

⁴ Allan J. Miller Direct, p. 14.

⁵ Terry Janson Direct, pp. 8-9.

⁶ K.S.A. 66-1223(b). See, *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 24 Kan. App.2d 63, 68, rev. den., 262 Kan. 959 (1997) ("*CURB v. KCC*"). See also, *Farmland Industries, Inc. v. Kansas Corp. Comm'n*, 29 Kan.App.2d 1031, 1047-48, 37 P.3d 640 (2001) ("The bulk of current customers otherwise entitled to receive refunds are statutorily represented by CURB. See K.S.A. 66-1223(a)")

⁷ K.S.A. 66-1223(a) and (b).

6. Rather than ask the Commission to dismiss the Joint Application or re-start the statutory clock on this proceeding because of the last-minute material alteration of the Joint Application, CURB agreed to a proposed revised procedural schedule in return for agreement by Joint Applicants not to object to CURB's participation in discovery and hearing on issues related to the Modification Agreement and the socialization of the adder or "Make Whole Payment" to all MKEC Members and customers.

7. The position taken by CURB previously that it did not oppose the relief requested in Issue #3 (for MKEC Members to adopt previously approved MKEC rates, rules, and tariffs) did not contemplate this last-minute, yet-to-be-filed amended request by Joint Applicants. CURB therefore requests that the Commission modify its April 26th Order to allow CURB to conduct discovery and participate in all aspects of this docket with respect to the issues related to the Modification Agreement and socialization to all MKEC Members and customers of the costs of the adder or "Make Whole Payment" related to power supplied to Victory and Prairie Land.

8. Joint Applicants, Staff, and the Western Kansas Industrial Electric Customers do not object to CURB's motion.

9. Due to the last-minute nature of this issue, CURB requests that the Commission determine CURB's motion on an expedited basis to allow CURB to conduct discovery and file testimony if necessary on the issues related to the Modification Agreement and the socialization of the adder or "Make Whole Payment" to all MKEC Members and customers.

10. WHEREFORE, CURB respectfully requests that the Commission issue an order, on an expedited basis, modifying its April 26, 2013, Order on Jurisdiction and Standing to allow CURB to participate in discovery, file testimony, and participate at any evidentiary hearing of this matter on

all issues related to the Modification Agreement and the socialization of the adder or “Make Whole Payment” to all MKEC Members and customers.

Respectfully submitted,



C. Steven Rarrick #13127

David Springe #15619

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

(785) 271-3116 Fax

CERTIFICATE OF SERVICE

13-MKEE-447-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 28th day of June, 2013, to the following parties who have waived receipt of follow-up hard copies:

GLEND A CAFER, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606
glenda@caferlaw.com

BRIAN G. FEDOTIN, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
b.fedotin@kcc.ks.gov

TERRI PEMBERTON, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606
terri@caferlaw.com

DOW MORRIS, ASST GENERAL MANAGER
LANE-SCOTT ELECTRIC COOPERATIVE,
INC.
410 S HIGH (67839)
PO BOX 758
DIGHTON, KS 67839-0758
dow.morris@lanescott.coop

DAVID H. SNAPP, ATTORNEY
DAVID H. SNAPP, LC
100 MILITARY PLZ STE 211
DODGE CITY, KS 67801-4945
dsnapp3@starrtech.net

DON GULLEY, VP REGULATORY &
MARKET AFFAIRS
MID-KANSAS ELECTRIC COMPANY, LLC
301 WEST 13TH STREET
PO BOX 980
HAYS, KS 67601
dgulley@sunflower.net

E. JAY DEINES, ATTORNEY
DEINES & DEINES
110 N MAIN
PO BOX 398
WAKEENEY, KS 67672
ejdeines@ruraltel.net

STEPHEN J. EPPERSON, CEO
PIONEER ELECTRIC COOP. ASSN., INC.
1850 W OKLAHOMA (67880)
PO BOX 368
ULYSSES, KS 67880-0368
sepperson@pioneerelectric.coop

JOSEPH D. GASPER
GASPER LAW OFFICE
419 MAIN ST
PO BOX 251
STOCKTON, KS 67669
gasper.hmbcr@sbcglobal.net

ALLAN MILLER, CEO
PRAIRIE LAND ELECTRIC COOPERATIVE,
INC.
14935 U.S. HIGHWAY 36 (67654)
PO BOX 360
NORTON, KS 67654-0360
amiller@prairielandelectric.com

RAY BERGMEIER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
r.bergmeier@kcc.ks.gov

SAMUEL FEATHER, LITIGATION
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
s.feather@kcc.ks.gov

JOHN F. MCCLYMONT, ATTORNEY
RYAN, WALTER & MCCLYMONT, CHTD.
120 S STATE STREET
PO BOX 364
NORTON, KS 67654
jfmc@att.net

RANDY MAGNISON, EXEC VP & ASST
CEO
SOUTHERN PIONEER ELECTRIC
COMPANY
1850 W OKLAHOMA
PO BOX 368
ULYSSES, KS 67880
rmagnison@pioneerelectric.coop

TERRY JANSON, GENERAL MANAGER
VICTORY ELECTRIC COOPERATIVE
ASSN., INC.
3230 NORTH 14TH ST
PO BOX 1335
DODGE CITY, KS 67801-1335
terry@victoryelectric.net

KEEN K. BRANTLEY, ATTORNEY
WALLACE, BRANTLEY & SHIRLEY
325 MAIN STREET
PO BOX 605
SCOTT CITY, KS 67871
kbrantley@wbsnet.org

MARK D. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN STREET SUITE 300
PO DRAWER 1110
GREAT BEND, KS 67530
mcalcara@wcrf.com

JAMES M. MCVAY, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN STREET SUITE 300
PO DRAWER 1110
GREAT BEND, KS 67530
jmconvay@wcrf.com

RENEE K. BRAUN, CORPORATE
PARALEGAL, SUPERVISOR
MID-KANSAS ELECTRIC COMPANY, LLC
301 W 13TH ST
PO BOX 1020
HAYS, KS 67601
rbraun@sunflower.net

DAVID L. SCHNEIDER, MANAGER
WESTERN COOPERATIVE ELECTRIC
ASSN., INC.
635 S 13TH STREET
PO BOX 278
WAKEENEY, KS 67672-0278
davesch@westerncoop.com

BRUCE W. MUELLER, GENERAL
MANAGER
WHEATLAND ELECTRIC COOPERATIVE,
INC.
101 MAIN STREET
PO BOX 230
SCOTT CITY, KS 67871
bmueller@weci.net

CURTIS M. IRBY, ATTORNEY
GLAVES, IRBY AND RHOADS
155 N. MARKET, SUITE 1050
WICHITA, KS 67202
cmirby@sbcglobal.net

MARK DOLJAC, DIR RATES AND
REGULATION
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
mdoljac@kepco.org

WILLIAM G. RIGGINS, SR VICE PRES AND
GENERAL COUNSEL
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
briggins@kepco.org

FRANK A. CARO, JR., ATTORNEY
POLSINELLI SHUGHART
6201 COLLEGE BLVD STE 500
OVERLAND PARK, KS 66211-2435
fcaro@polsinelli.com

LINDSAY SHEPARD, EXECUTIVE
MANAGER
CORPORATION COMPLIANCE
MID-KANSAS ELECTRIC COMPANY, LLC
301 W 13TH ST
PO BOX 1020
HAYS, KS 67601
lshepard@sunflower.net

JAMES BRUNGARDT,
REGULATORY AFFAIRS ADMINISTRATOR
MID-KANSAS ELECTRIC COMPANY, LLC
301 W 13TH ST
PO BOX 1020
HAYS, KS 67601
jbrungardt@sunflower.net

MARK RONDEAU
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
mrondeau@wcrf.com

TIMOTHY J. SEAR, ATTORNEY
POL SINELLI SHUGHART
6201 COLLEGE BLVD STE 500
OVERLAND PARK, KS 66211-2435
tsear@polsinelli.com



Della Smith
Administrative Specialist