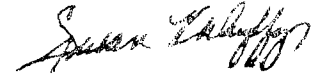


BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

FEB 23 2010



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

PETITION TO INTERVENE OF
KANSAS ELECTRIC POWER COOPERATIVE, INC.
AND MOTION TO OPEN SEPARATE DOCKET

Comes now Kansas Electric Power Cooperative, Inc. (KEPCo) and submits this
Petition to Intervene in this Docket and in support thereof alleges and states as follows:

I. PETITION TO INTERVENE

1. On February 16, 2010, Sunflower Electric Power Corporation (Sunflower) filed with the State Corporation Commission of the State of Kansas (Commission) an Application in letter form (Letter Application) which it styles a "Request for Change in Billing". In the Letter Application, Sunflower requests that a new tariff, Schedule WHM-10 (WHM-10), be incorporated into the Wholesale Power Agreement (WPA) Schedule A between Sunflower and KEPCo. Sunflower erroneously describes the WPA Rate Schedule as an "automatic adjustment clause" which will be addressed in detail below. Although the Letter Application was filed in Docket No. 06-SEPE-1203-CON, KEPCo believes the Application should be filed in a separate Docket which will be addressed further below.

2. KEPCo was originally a joint applicant in this Docket and joined in the Application to approve the Wholesale Power Agreement (WPA), which was eventually approved in this Docket by Order dated July 17, 2006. Because KEPCo does not join in

all of the allegations and requests of the most recent filing of Sunflower, KEPCo submits this Petition to Intervene as a vehicle to express its concerns and disagreements with Sunflower's Letter Application.

3. KEPCo is the sole purchaser of the wholesale electric services under the WPA and the new rate tariff, WHM-10, would substantially and materially increase the rates KEPCo is to pay under the WPA. No other party can or will represent the interests of KEPCo in this matter. KEPCo clearly qualifies as an intervenor under K.A.R. 82-1-225 and KEPCo respectfully requests that it be granted status as an intervenor with all rights and privileges thereof without limitation. KEPCo specifically requests the full opportunity to be heard by argument, brief, or otherwise regarding the issues raised by the Letter Application.

II. BACKGROUND

4. KEPCo is a generation and transmission cooperative utility which supplies electric power and energy to 19 member cooperatives. KEPCo is a "public utility" under KSA 66-104 and holds a certificate of public convenience and necessity to operate in the State of Kansas although, pursuant to K.S.A. 66-104d, KEPCo has elected to be exempt from the jurisdiction of the Commission for certain purposes. That exemption does not affect KEPCo's rights under the WPA.

5. Sunflower is a generation and transmission company headquartered in Hays, Kansas. Sunflower has six member cooperatives. On September 28, 2009, in Docket No. 10-SEPE-072-DRC, the Commission issued its Order Affirming Sunflower Electric Power Corporation's Election to Deregulate. This order effectively deregulated Sunflower as to rates for its members. Pursuant to K.S.A. 66-104d(f), Sunflower remains

a utility subject to the jurisdiction of the Commission as to its WPA with KEPCo as KEPCo is not a member of Sunflower.

6. Sunflower provides approximately 55 megawatts (MW) of electric power and associated energy to KEPCo in the control area of Sunflower and Aquila, Inc. (now owned and operated by Mid-Kansas Electric Company (MKEC)) under the WPA. KEPCo provides electric service to two of its members from the power and energy purchased from Sunflower under the WPA.

7. The WPA was approved by the Commission by Order dated July 17, 2006 in Docket No. 06-SEPE-1203-CON. The WPA establishes the terms and rates Sunflower must adhere to for service covered by the agreement. Under Kansas law, a tariff setting forth the terms and conditions of the relationship between a utility company and its customers, when filed with the Commission, is more than a mere contract, it is the law. *Shehi v. Southwestern Bell Telephone Company*, 71 P.U.R.3d 244, 382 F.2d 627 (1967). Once approved by the Commission, the WPA contains the rates and terms governing the relationship between Sunflower and KEPCo as to any service qualifying under the agreement. Amendments to the WPA are not effective unless approved by the Commission. *Southwestern Bell Telephone v. State Corporation Commission of the State of Kansas*, 233 Kan. 375, 664 P.2d 798 (1983). There have been no prior amendments to the WPA.

8. Schedule A of the WPA incorporates Sunflower's Schedule WHM-04 (WHM-04) by reference to establish the rate to be charged to KEPCo by Sunflower. WHM-04 was approved by the Commission on January 13, 2005 in Docket No. 04-SEPE-1091-RTS. On February 7, 2005, Sunflower filed the conforming WHM-04 with

the Commission in that Docket. Schedule A recognizes that WHM-04 may be changed by action of the Sunflower Board and the Commission.

III. SUNFLOWER'S ATTEMPTED RATE INCREASE VIOLATED THE TERMS OF THE WHOLESALE POWER AGREEMENT AND APPLICABLE LAW.

9. On December 30, 2009, by letter over the signature of L. Earl Watkins, Jr., Sunflower notified KEPCo that its Board had raised Sunflower's tariff to its members (the WHM Rate) and stated that the new rate schedule would become effective for services beginning January 1, 2010 and billed in February. The letter included a copy of a new rate schedule titled "Schedule WHM-10". The referenced WHM-10 is the same tendered with the Letter Application. A copy of the December 30, 2009 letter with the Schedule is attached hereto as Exhibit 1.

10. As of December 30, 2009, WHM-10 had not been filed in any way with the Commission and had not been approved as a change to Schedule A of the WPA as contemplated in the WPA. Accordingly, on January 8, 2010, counsel for KEPCo sent a letter to counsel for Sunflower explaining that the purported change violated the WPA and billing under the new rate schedule before filing it for Commission approval would be unlawful. KEPCo's letter to Sunflower is attached hereto as Exhibit 2.

11. Subsequent to receiving Exhibit 2, Sunflower agreed to a meeting among technical staff of Sunflower and KEPCo to discuss the basis for the new WHM-10. This meeting was held on January 29, 2010 and, together with responses to follow up questions, substantially clarified for KEPCo the basis for the new rates.

12. The WPA contemplates that prior to implementing a Rate Modification, KEPCo would have (1) the right to audit the cost-based calculations associated with the WHM rate and any changes to the WHM rate proposed by Sunflower; (2) adequate documentation and information from Sunflower such that KEPCo could understand and comment on any rate actions considered by Sunflower pertaining to the WHM rate; and (3) an opportunity to engage in good faith efforts with Sunflower to resolve any issues prior to Sunflower's filing for modification of the WHM Rate with the KCC. (Emphasis supplied). See paragraph 4-E. of the WPA.

13. While the discussions referred to in paragraph 11 were partially in compliance with the WPA in that they preceded the filing of the Letter Application, they were wholly subsequent to Sunflower's final Board action and thus could not have affected the outcome of Sunflower's rate determination. Most importantly, they were wholly subsequent to Sunflower's originally demanded effective date of January 1, 2010.

14. Notwithstanding KEPCo's demand that Sunflower comply with the WPA and with statutory and case law governing the effectiveness of rate changes, Sunflower, on February 15, 2010, issued to KEPCo its bill for services rendered in January, 2010, which bill reflects the change in Sunflower's rate to its members, under WHM-10. Accompanying the bill is a letter dated February 15, 2010 from Sunflower which purports to constitute a "forbearance" of KEPCo's obligation to pay a disputed bill, subject to refund with interest, and allows KEPCo to pay the bill under the original rates. The February 15 letter is attached as Exhibit 3.

15. In the Letter Application, Sunflower raises the completely unsupported claim that the WPA Rate Schedule is an "automatic adjustment clause allowing

Sunflower to adjust the WPA invoices to reflect any lawful change in its WHM rate.” KEPCo completely disagrees with this characterization of the WPA Rate Schedule and contends that any change in the Schedule A rate must be filed with and approved by the Commission before it can become effective. Further, KEPCo contends that any change in the WHM tariff, upon which the Schedule A rate is based, must be filed with and approved by the Commission before it can become effective for purposes of establishing the rate for Sunflower’s wholesale service to KEPCo, a non-member of Sunflower.

16. The interpretation of the WPA and Schedule A are in the exclusive jurisdiction of the Commission, subject only to judicial review of the lawfulness and reasonableness of the Commission’s determination. *Grindsted Products v. Kansas City Power & Light Co.*, 21 Kan.App.2d 435, 901 P.2d 20 (1995).

17. In entering into the WPA KEPCo relied on review by the Commission to help insure that a reasonable rate was being charged to KEPCo. KEPCo understood that a rate the Commission approved for the Sunflower members, so long as it was non-discriminatory as to KEPCo, would be a suitable rate to refer to for a rate for KEPCo. This is the clear meaning of paragraph 4.-D. of the WPA which states, in part: “Rates for service provided by Sunflower hereunder shall be billed in accordance with Schedule A attached hereto and made a part hereof using Sunflower’s ongoing tariff rate to its members (the WHM rate) as filed with and approved by the Kansas Corporation Commission . . .” (Emphasis supplied).

18. Paragraph 4.-E. of the WPA addresses rate modification and, again, unambiguously states that the WHM rate “will be modified from time to time, subject to approval by the KCC.” (Emphasis supplied).

19. Further, Schedule A unambiguously provides that KEPCo's charges would be the same that apply under the WHM-04 rate "or any succeeding schedule or schedules as approved by the Sunflower Board and the KCC (the "WHM Rate"), for electric service to Sunflower's Member systems." (Emphasis supplied.) KEPCo entered into this agreement under the full understanding that any rate change applicable to KEPCo, whether caused by an amendment to the WPA, Schedule A or the applicable Schedule WHM, would be subject to Commission approval. KEPCo does not in any manner waive that right.

20. In paragraph 3 of its July 17, 2006 Order in Docket No. 06-SEPE-1203-CON, the Commission expressly recognized that the rates paid by KEPCo would be "... the same rates that Sunflower charges its own members, under its Commission-approved wholesale tariff, plus an adder."

21. The WPA and Schedule A thereto are wholly unlike the kinds of true automatic adjustment clauses that have been approved by the Commission, such as clauses providing for the periodic tracking and recovery of property taxes and energy and transmission costs. Each such adjustment clause was explicitly approved to operate as such and is designed to periodically track and recover costs over which the utility has limited or no control and which are generally set or established by governmental act (property taxes), another agency (such as the Federal Energy Regulatory Commission in the case of transmission costs) or the prevailing, often volatile, energy markets. Typically, such tracking clauses have been designed to provide a level of transparency to regulators and customers about the prices to which utility services are subject. This transparency is crucial, because it allows some assurance that rates remain just and

reasonable, when exercising due diligence. When KEPCo signed the WPA and supported the filing for Commission approval, it believed that the terms of the WPA likely afforded the Commission and KEPCo an adequate opportunity to conduct due diligence to ensure that any revised rate subsequently charged under the WPA would be just and reasonable. Absent any requirement for Sunflower to file and receive Commission approval for a revised rate under the WPA, KEPCo believes that its ability to ensure that any subsequent rates charged under the WPA remain just and reasonable would be compromised.

22. In its Letter Application, Sunflower morphs “approval by the Sunflower Board and the KCC” into any “lawful change” presumably to reflect that Sunflower’s rates to its members are deregulated. Sunflower appears to believe that its deregulation under K.S.A. 66-104d somehow excuses it from full compliance with the WPA and with the statutes requiring it to submit rate changes for KEPCo to the Commission for approval. Sunflower is simply wrong.

23. First, Sunflower’s deregulation is of no effect in its relationship with KEPCo. Under K.S.A. 66-104d(f), service to KEPCo as a non-member of Sunflower is clearly still jurisdictional to the Commission.

24. Second, the statutory requirements for rate changes are not ambiguous or unclear. K.S.A. 66-109 clearly states:

No common carrier or public utility governed by the provisions of this act shall, knowingly or willfully, charge, demand, collect or receive a greater or less compensation for the same class of service performed by it within the state, or for any service in connection therewith, than is specified in the printed schedules or classifications . . . or demand, collect or receive any rate . . . not specified in such schedule or classification . .

(Emphasis supplied.) Of course, to this date, WHM-10 is not specified in any schedule or classification applicable to KEPCo.

25. Further, K.S.A. 66-117 clearly states in relevant part:

Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate . . . or schedule of charges . . . except by filing the same with the commission at least 30 days prior to the proposed effective date. . . .

Prior to the Letter Application, there has been no such filing of WHM-10 in any proceeding before the Commission showing any intent to vary or change the terms of Schedule A of the WPA as approved by the Commission on July 17, 2006.

26. Even if by some twist of reasoning Sunflower were to argue that KEPCo had in some manner agreed to the application of a new rate to substitute for the WHM-04 rate without the oversight of the Commission, such a rate could not go into effect unless and until it were filed with and approved by the Commission. This is the clear mandate of the Kansas Court of Appeals in *Sunflower Pipeline Company v. State Corporation Commission*, 5 Kan.App.2d 715, 624 P2d. 466 (1981). In this case, the court held that even where the utility and the customer agreed by written contract to the increased rate, that rate could not go into effect without Commission authority. The court held that special contracts which provide for rates different than legal rates published and filed with the Commission are in violation of statute, and therefore void and illegal. The court went on to approve the requirement of refunds because “K.S.A. 66-109 does not allow deviation from approved rates without filing with the KCC. Furthermore, partial refunds would amount to retroactive ratemaking by the commission.” 625 P2d. at 472. The court observed that Sunflower Pipeline, having previously failed to properly invoke

commission jurisdiction to approve the new rates, could not ask the commission to effectively put them into effect retroactively by allowing Sunflower to keep all or part of the payments made under the illegal rates.

27. Utility customers are entitled to look to the Commission files to determine the rate they are obligated to pay. No matter how Sunflower determined the rate it intended to charge, that rate could not be an effective rate until spread upon the record at the Commission and approved.

28. WHM-10 is unambiguously a new and different rate from WHM-04 within the meaning of K.S.A. 66-117 and other applicable law. The WPA is most assuredly not some kind of “automatic adjustment clause” allowing billing changes without the prior review and approval of the Commission. There is not a word to be found within the four corners of the WPA that would excuse such review and approval altogether.

29. KEPCo respectfully requests the Commission to order that no rate other than the one filed with and approved by the Commission may be charged by Sunflower to KEPCo and that any change in rate be effective only upon approval by the Commission.

IV. MOTION TO OPEN SEPARATE DOCKET

30. Sunflower made reference to Docket No. 06-SEPE-1203-CON in the subject line of its Letter Application and it is possible the Commission staff simply filed the Letter Application in this Docket for that reason. Docket No. 06-SEPE-1203-CON is a closed Docket and the Letter Application does not include either a request for or a justification for reopening this Docket which existed for the approval of the underlying

WPA. The Letter Application, rather, constitutes a request to make a new Sunflower rate schedule, Schedule WHM-10 effective for service to KEPCo under the WPA. As such, the Letter Application should be placed in its own docket under rate proceedings (RTS).

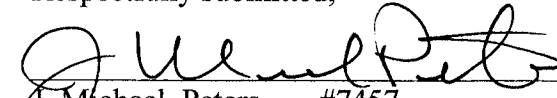
31. In the event the Commission agrees to transfer this proceeding to a new rate proceeding docket, KEPCo requests that its Petition to Intervene be deemed to be made in that Docket as well.

V. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, KEPCo requests that the Commission issue an order making the following findings and orders:

- (A) Transferring this proceeding to a new rate proceeding docket;
- (B) Granting KEPCo's intervention without limitation including the right to be heard through evidence, argument, or brief as is appropriate;
- (C) That the WPA between Sunflower and KEPCo contains a Schedule A providing for the rates for service to KEPCo to be governed by Sunflower Schedule WHM-04 for service to its members;
- (D) That Sunflower's service to KEPCo is subject to the full jurisdiction of the Commission;
- (E) That Sunflower's charges to KEPCo, based on its Schedule WHM-10, are unlawful until those new rates have been approved by the Commission;
- (F) That Sunflower must cease and desist from charging KEPCo under any rate other than the WHM-04 rate in Schedule A to the WPA until such time as a new rate is approved and made effective by order of the Commission for service to KEPCo;

Respectfully submitted,


J. Michael Peters #7457

Kansas Electric Power Cooperative, Inc.
600 Corporate View
Topeka, Kansas 66615
(785) 273-7010 phone
(785) 271-4888 fax

CERTIFICATE OF SERVICE
(06-SEPE-1203-CON)


I, the undersigned, hereby certify that a true and correct copy of the above and foregoing was placed in the United States mail, postage prepaid, this 23rd day of February, 2010, addressed to the following:

Patrick T Smith, Litigation Counsel
Kansas Corporation Commission
1500 Sw Arrowhead Road
Topeka, Ks 66604-4027

W. Thomas Stratton, Chief Litigation Counsel
Kansas Corporation Commission
1500 Sw Arrowhead Road
Topeka, Ks 66604-4027


L. Earl Watkins, Jr., CEO & President
Sunflower Electric Power Corporation
301 W. 13th
Po Box 1020 (67601-1020)
Hays, Ks 67601

Mark D. Calcara, Attorney
Watkins Calcara Chtd.
1321 Main Street Suite 300
Po Drawer 1110
Great Bend, Ks 67530


J. Michael Peters



SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy[®] Cooperative 

December 30, 2009

Mr. Stephen E. Parr
Executive Vice President and CEO
Kansas Electric Power Cooperative, Inc
600 S.W. Corporate View
PO Box 4877
Topeka, KS 66604-0877

RE: Notice of Sunflower Rate Increase

Dear Steve:

At Sunflower's December board meeting, the Board found it necessary to raise Sunflower's tariff to its members (the "WHM Rate") to a level sufficient to achieve a 1.15 Debt Service Coverage ratio (DSC) for 2010 since we expect to experience a 1.05 DSC for 2009 and we need to maintain a 1.10 average. The new WHM Rate is as set forth on the attached revised rate schedule and will become effective for services rendered beginning January 1, 2010 and billed in February.

The new WHM Rate will be applicable to all of the Sunflower members and will reset KEPCo's rate (WHM Rate plus \$.004 per kWh) under the Wholesale Power Agreement, dated May 11, 2006 (the "New WPA"). The new rate to KEPCo is cost based, non-discriminatory and consistent with Sunflower's all-requirements wholesale power contracts with its members.

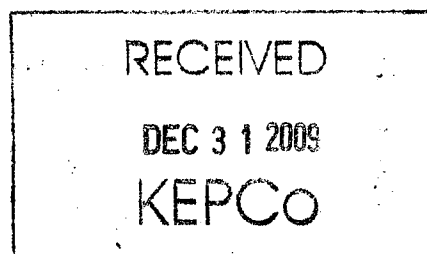
To understand the new rate and comment, we extend an offer to KEPCo to discuss the new rate, how it was derived and the impact the rate change may have on KEPCo. Should you wish to discuss the new rate, please call me, or you may work through the Coordination Committee. We appreciate your cooperation in this matter.

Sincerely,



L. Earl Watkins, Jr.
President and CEO

Enclosure (1)
c. Central File



SCHEDULE WHM-10

..... Sunflower Electric Power Corporation

(Name of Issuing Utility)

Replacing Schedule WHM-04 Sheet 1

..... Service Area

(Territory in which Schedule is applicable)

which was filed January 13, 2005

No supplement or separate understanding
shall modify the tariff as shown hereon

Sheet 1 of 3 Sheets

AVAILABILITY AND APPLICABILITY

Electric service available to the following member systems of Sunflower Electric Power Corporation:

Lane-Scott Electric Cooperative, Inc.
 Prairie Land Electric Cooperative, Inc.
 Pioneer Electric Cooperative, Inc.
 Western Cooperative Electric Association, Inc.
 Victory Electric Cooperative Association, Inc.
 Wheatland Electric Cooperative, Inc.

Without the prior approval of the Board of Directors of Sunflower Electric Power Corporation ("Sunflower"), electric service under this tariff shall not be available for resale to customers or member systems served under a contract to which Sunflower is a party.

DELIVERY VOLTAGE

Service hereunder shall be at 115 kV or such other voltage as may be agreed upon.

RATE

The rate for service hereunder shall be:

Demand Charge per kW-month of Coincident Demand:

Summer: \$13.26
 Other: \$ 10.60

Energy Charge (Margin) per kWh: \$.020325
 Fuel Charge: Charges as set forth in Sunflower's ECA

Customer Charge: \$105 per delivery point

Issued
 Month Day Year

Effective
 Month Day Year

By President & CEO
 Signature of Officer Title

SCHEDULE WHM-10

Sunflower Electric Power Corporation

(Name of Issuing Utility)

Replacing Schedule WHM-04 Sheet 2

Service Area

(Territory in which Schedule is applicable)

which was filed January 13, 2005

No supplement or separate understanding
shall modify the tariff as shown hereon

Sheet 2 of 3 Sheets

Summer Season: June 1 through August 31
 Other Season: September 1 through May 31

COINCIDENT DEMAND

Coincident demand shall be determined on a Sunflower system basis and shall be the arithmetic sum of the sixty minute demand(s) indicated at the time of Sunflower's highest native system demand during a billing period at the applicable delivery points.

BILLING PERIOD

The billing period shall be defined as that period beginning on the hour 0001 of the 1st day of a calendar month and ending on the hour 2400 of the last day of each calendar month.

ROUNDING

When the indicated demand or a calculated base or excess billing demand results in a fraction, the nearest unit kilowatt shall be used, that is, fractions of less than 0.5 will be disregarded and fractions of 0.5 or more will be considered one unit.

POWER FACTOR

The Member agrees to maintain unity power factor as nearly as practicable. The metered demand at each delivery point will be adjusted for power factor at the time of coincident demand for power factor lower than 90%. Such adjustment shall be made by increasing the metered demand at each delivery point by 1% for each 1% which the power factor at time of coincident demand is less than 90%.

In the event that Sunflower requests the Member to change its power factor to optimize system transmission voltage characteristics resulting in a power factor less than 90% then

Issued
 Month Day Year

Effective
 Month Day Year

By President & CEO
 Signature of Officer Title

SCHEDULEWHM-10.....

.....Sunflower Electric Power Corporation.....
(Name of Issuing Utility)

Replacing ScheduleWHM-04..... Sheet3.....

.....Service Area.....
(Territory in which Schedule is applicable)

which was filedJanuary 13, 2005.....

No supplement or separate understanding
shall modify the tariff as shown hereon

Sheet...3...of...3...Sheets

said demand at each delivery point effected by such request will not be adjusted for power factor demand correction during period of request.

METERING

Metering of power and energy hereunder shall be at the low voltage side of the delivery points. Meters shall be owned and maintained by Sunflower. Meters shall be tested no less than once each twelve months and buyer shall be notified in writing of said test no less than one week prior to testing of the meter.

MALFUNCTION IN METERING

If any malfunction of the demand recording device occurs in a billing period, the demand portion of the bill rendered to the buyer for that billing period will be based on the coincident demand calculated by applying a historical coincidence factor to the highest sixty minute demand indicated for the delivery point during the above mentioned billing period. The coincidence factor shall be determined from the historical records maintained by Sunflower on each delivery point.

EFFECTIVE DATE

This rate schedule is affective for service rendered on and after January 1, 2010.

Issued
Month Day Year

Effective
Month Day Year

By President & CEO ..
Signature of Officer Title



Kansas Electric Power Cooperative, Inc.

January 8, 2010

Mr. Mark Calcara
Watkins, Calcara, Chtd
1321 Main Street, Suite 300
Great Bend, KS 67530

RE: Sunflower 2010 Rate Change

Dear Mark:

Steve Parr has given me Earl Watkin's letter of December 30, 2009 which advises us of a new rate which Sunflower has approved for its members and which Sunflower intends to apply to KEPCo as of January 1, 2010. We have serious problems with this proposal which I will outline below.

First, this notice violates the letter and the spirit of the May 11, 2006 Wholesale Power Agreement (WPA). Paragraph 4E of the WPA sets out in three subparagraphs a procedure for audit, provision of documentation, and a commitment to resolve any issues "prior to Sunflower's filing for modification of the WHM Rate with the KCC." None of these procedures have been conducted. These procedures were provided in clear consideration of KEPCo's undertaking to only file an intervention at the KCC as a last resort.

Even if the recent deregulation of your rates to your members resulted in the reference in the WPA to filing with the KCC to be replaced, by implication, with action by the Sunflower Board and notice to KEPCo (which we dispute as described below), the procedures described in the WPA needed to take place before such Sunflower Board action was taken. They were not.

Earl's letter extends an offer to discuss the new rate after the fact. That is clearly not sufficient and not what was contemplated in the WPA. The procedures contemplated in the WPA must be afforded to KEPCo before any resulting rate can become effective. Accordingly, KEPCo will not consider the new WHM rate your Board approved to be effective as to KEPCo on January 1, 2010 and will dispute, in accordance with the provisions of the WPA, any bill rendered on any rate not in compliance with the WPA.

There is a further and more serious problem with the attempted rate change notice. As you know, Sunflower's service to KEPCo under the WPA remains regulated by the KCC. The rate change provisions of the WPA expressly provide that the "WHM rate will be modified from time to time, subject to approval by the KCC." Further, Schedule A expressly states that the demand charge "shall be the same Demand Charge that applies to the

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P.O. Box 4877
Topeka, KS 66604-0877

600 Corporate View
Topeka, KS 66615

Mark Calcara
January 8, 2010
Page 2

Class A Members of Sunflower under service schedule WHM-04 as approved by the KCC on January 13, 2005, as it may be amended from time to time, or any succeeding schedule or schedules as approved by the Sunflower Board and the KCC . . . “

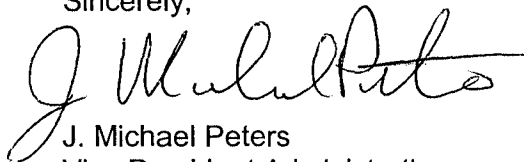
The deregulation of Sunflower did not affect KEPCo's rights under this contract or the law. The WPA and the rates applicable under it to KEPCo are clearly still jurisdictional to the KCC. KEPCo has not waived the application of the regulatory statutes to it and expressly has not and does not waive the applicability of the filed rate doctrine to Sunflower's service to KEPCo. Sunflower may only charge and KEPCo may only pay the rate approved by the KCC.

Clearly, at the execution of the WPA, all parties understood that while KEPCo's rate was to be set by reference to the WHM rate, that rate was fully subject to KCC review and approval. The deregulation of Sunflower may well have removed the necessity for KCC review of the WHM for purposes of application to the Sunflower members, however, KEPCo is fully entitled to the review and approval of the KCC of any rate change Sunflower intends to make for KEPCo.

KEPCo fully expects to participate in the review of your proposed rate as contemplated by paragraph 4D of the WPA prior to Sunflower filing that rate with the KCC. Participating in that process may well streamline the procedures once the rate is filed. In the meantime, please be advised that KEPCo will not recognize your proposed rate change until such rate is approved by the KCC. Because billing KEPCo on a rate not filed with and approved by the KCC would be unlawful, we expect that Sunflower will make such a filing before billing KEPCo the new rate. If this is not the case, KEPCo will dispute any bill rendered on any rate not filed with and approved by the KCC.

Please contact me at your convenience to discuss how we may move forward in this matter.

Sincerely,


A handwritten signature in black ink, appearing to read "J. Michael Peters". The signature is fluid and cursive, with the first name "J." being prominent and the last name "Peters" written in a more compact, cursive style.

J. Michael Peters
Vice President Administration
and General Counsel

cc: Stephen E. Parr



SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative 

February 15, 2010

Sent via Email and UPS 1ZF426741398703835

Stephen E. Parr
Executive Vice President/CEO
Kansas Electric Power Cooperative, Inc.
600 S.W. Corporate View
Topeka, Kansas 66604

Re: January 2010 Invoice and WPA Rates

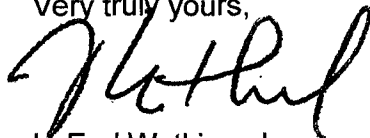
Dear Steve:

Enclosed is Sunflower's invoice for KEPCo's service under the WPA for January 2010. Pursuant to our discussions, this invoice reflects the change in Sunflower's rate to its Members, which was effective January 1, 2010.

Pursuant to the letter from Mike Peters, KEPCo's General Counsel, dated January 8, 2010, to Mark Calcara, Sunflower's General Counsel, as well as a follow-up telephone conversation and e-mail with Mark, we understand that KEPCo disputes Sunflower's legal authority to increase the charges under the WPA without a new filing with the Kansas Corporation Commission (KCC). We disagree but hereby acknowledge your dispute, effective the date of Mr. Peter's last e-mail, Thursday, February 11, 2010.

Mike Peters expressed KEPCo's concern that it is being placed in the position of paying an unlawful rate or being in breach of the WPA. We believe this matter can be resolved promptly and therefore agree KEPCo may pay the alternative bill (also enclosed) based on the previous Member rate, notwithstanding the obligation under the WPA to pay disputed bills in full. Until Sunflower otherwise advises KEPCo in writing, we will include the alternate bill each month and KEPCo may pay that lower rate. KEPCo's payment of the lower amount will evidence its agreement to pay interest at the WPA refund rate on any underpayment, once the dispute is resolved. This forbearance does not apply to an invoice of disputed amounts, plus interest, which Sunflower will send upon receipt of any order of the Kansas Corporation Commission, a court of competent jurisdiction, or other evidence of resolution of the dispute, even if KEPCo elects to appeal that decision.

Very truly yours,



L. Earl Watkins, Jr.
President and Chief Executive Officer

Enclosures (2)

C: Bob Bowser
Sunflower Records

**Sunflower Invoice****Invoice**

Kansas Electric Power Cooperative, Inc.
Attn: Mr. Bob Bowser
P.O. Box 4877
Topeka KS 66604-0877

Invoice Number: 1817

Service For: January 2010
Due Date: 3/2/2010

Invoice Summary

Contract	Demand	Energy	ECA	Other	Total
KEPCO Arkalon	\$120,403.36	\$249,774.71	\$0.00	\$0.00	\$370,178.07
WHM-10 KEPCO	\$313,134.60	\$492,893.41	\$296,192.97	\$15,122.52	\$1,117,343.50
Total Invoice	\$433,537.96	\$742,668.12	\$296,192.97	\$15,122.52	\$1,487,521.57

Please remit payment to :
Sunflower Electric Power Corp
Attn: Accounts Receivable
PO Box 1020
Hays, KS 67601

Please remit by wire or ACH to :
Bank and Branch – Commerce Bank
150 N. Main St., Wichita, KS 67201
ABA Number – 101000019
Account of – Sunflower Electric Power Corp
Account Number – 645722536

Please refer billing questions to :
Michael D. Jeffus 785-623-3316 or mdjeffus@sunflower.net

**Sunflower Invoice**

Invoice

Kansas Electric Power Cooperative, Inc.
Attn: Mr. Bob Bowser
P.O. Box 4877
Topeka KS 66604-0877

Invoice Number: 1817

Service For: January 2010

Due Date: 3/2/2010

Contract: KEPCO Arkalon**Recorder ID: 088CMCE ARKENE****Rate:****Billing Determinants**

Demand	Jan 06, 2010 at 2:00 pm	9,436.00 KW
CP Demand	Jan 06, 2010 at 2:00 pm	9,436.00 KW
NCP Demand 30	Jan 21, 2010 at 2:30 pm	10,577.00 KW
NCP Demand 60	Jan 21, 2010 at 3:00 pm	10,535.00 KW
Energy		5,889,524.00 KWH

Charges**Demand Charge SEPC KEPCO Arkalon**

Demand Charge SEPC KEPCO Arkalon	9,436.0 KW	X \$12.760000	=	\$120,403.36
Total Demand Charge SEPC KEPCO Arkalon				\$120,403.36

Energy Charge SEPC KEPCO Arkalon

Energy Charge SEPC KEPCO Arkalon	5,889,524 KWH	X \$0.042410	=	\$249,774.71
Total Energy Charge SEPC KEPCO Arkalon				\$249,774.71

Total Charges**\$370,178.07****Amount Due: \$370,178.07**

**Sunflower Invoice**

Invoice

Kansas Electric Power Cooperative, Inc.
Attn: Mr. Bob Bowser
P.O. Box 4877
Topeka KS 66604-0877

Invoice Number: 1817

Service For: January 2010

Due Date: 3/2/2010

Contract: WHM-10 KEPCO**Recorder ID: 088 041****Rate:****Billing Determinants**

Demand	Jan 06, 2010 at 2:00 pm	29,541.00 KW
Energy		20,669,433.00 KWH

Charges**Demand Charge**

Demand Charge	29,541.0 KW	X \$10.600000	=	\$313,134.60	
Total Demand Charge					\$313,134.60

Energy

Energy Charge	20,669,433 KWH	X \$0.024325	=	\$502,783.96	
Total Energy					\$502,783.96

OATT-KEPCO

OATT for City Energy	1,488,000 KWH	X \$0.008540	=	\$12,707.52	
Total OATT-KEPCO					\$12,707.52

OATT WAPA Credit

OATT WAPA Credit			=	(\$9,890.55)	
Total OATT WAPA Credit					(\$9,890.55)

ECA-02

ECA Charge	20,669,433 KWH	X \$0.014330	=	\$296,192.97	
Total ECA-02					\$296,192.97

Meter Charge

Meter Charge	23 Meters	X \$105.000000	=	\$2,415.00	
Total Meter Charge					\$2,415.00

Total Charges**\$1,117,343.50****Amount Due: \$1,117,343.50**

**Sunflower Invoice****Invoice**

Kansas Electric Power Cooperative, Inc.
Attn: Mr. Bob Bowser
P.O. Box 4877
Topeka KS 66604-0877

Invoice Number: 1817

Service For: January 2010
Due Date: 3/2/2010

Invoice Summary

Contract	Demand	Energy	ECA	Other	Total
KEPCO Arkalon	\$120,403.36	\$249,774.71	\$0.00	\$0.00	\$370,178.07
WHM-04 KEPCO	\$275,912.94	\$443,038.74	\$296,192.97	\$38,334.29	\$1,053,478.94
Total Invoice	\$396,316.30	\$692,813.45	\$296,192.97	\$38,334.29	\$1,423,657.01

Please remit payment to :
MKEC
Attn: Accounts Receivable
PO Box 980
Hays, KS 67601

Please remit by wire or ACH to :
Bank and Branch – Commerce Bank
150 N. Main St., Wichita, KS 67201
ABA Number – 101000019
Account of – Mid-Kansas Electric Co., LLC
Account Number – 645722826

Please refer billing questions to :
Ronald Chartier 785-623-3379 or rchartier@sunflower.net

**Sunflower Invoice****Invoice**

Kansas Electric Power Cooperative, Inc.
Attn: Mr. Bob Bowser
P.O. Box 4877
Topeka KS 66604-0877

Invoice Number: 1817

Service For: January 2010
Due Date: 3/2/2010

Contract: KEPCO Arkalon**Recorder ID: 088CMCE ARKENE****Rate:****Billing Determinants**

Demand	Jan 06, 2010 at 2:00 pm	9,436.00 KW
CP Demand	Jan 06, 2010 at 2:00 pm	9,436.00 KW
NCP Demand 30	Jan 21, 2010 at 2:30 pm	10,577.00 KW
NCP Demand 60	Jan 21, 2010 at 3:00 pm	10,535.00 KW
Energy		5,889,524.00 KWH

Charges**Demand Charge SEPC KEPCO Arkalon**

Demand Charge SEPC KEPCO Arkalon	9,436.0 KW	X \$12.760000	=	\$120,403.36
Total Demand Charge SEPC KEPCO Arkalon				\$120,403.36

Energy Charge SEPC KEPCO Arkalon

Energy Charge SEPC KEPCO Arkalon	5,889,524 KWH	X \$0.042410	=	\$249,774.71
Total Energy Charge SEPC KEPCO Arkalon				\$249,774.71

Total Charges				\$370,178.07
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Amount Due: \$370,178.07

**Sunflower Invoice****Invoice**

Kansas Electric Power Cooperative, Inc.
Attn: Mr. Bob Bowser
P.O. Box 4877
Topeka KS 66604-0877

Invoice Number: 1817

Service For: January 2010
Due Date: 3/2/2010

Contract: WHM-04 KEPCO**Recorder ID: 088 041****Rate:****Billing Determinants**

Demand	Jan 06, 2010 at 2:00 pm	29,541.00 KW
Energy		20,669,433.00 KWH

Charges**Demand Charge**

Demand Charge	29,541.0 KW	X \$9.340000	=	\$275,912.94	
Total Demand Charge					\$275,912.94

Energy

Energy Charge	20,669,433 KWH	X \$0.021913	=	\$452,929.29	
Total Energy					\$452,929.29

OATT-KEPCO

OATT for City Energy	1,488,000 KWH	X \$0.008540	=	\$12,707.52	
Total OATT-KEPCO					\$12,707.52

OATT WAPA Credit

OATT WAPA Credit			=	(\$9,890.55)	
Total OATT WAPA Credit					(\$9,890.55)

ECA-02

ECA Charge	20,669,433 KWH	X \$0.014330	=	\$296,192.97	
Total ECA-02					\$296,192.97

Meter Charge

Meter Charge	23 Meters	X \$105.000000	=	\$2,415.00	
Total Meter Charge					\$2,415.00

Property Tax Surcharge

Property Tax Surcharge	20,669,433 KWH	X \$0.001123	=	\$23,211.77	
Total Property Tax Surcharge					\$23,211.77

Total Charges**\$1,053,478.94****Amount Due: \$1,053,478.94**