

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Received  
on

MAY 14 2012

Before Commissioners: Mark Sievers, Chairman  
Ward Loyd  
Thomas E. Wright

by  
State Corporation Commission  
of Kansas

In the Matter of the Application of the Kansas )  
Power Pool, a Municipal Energy Agency, for )  
Approval of Its Annual Transmission Revenue )  
Requirement (ATRR) for Its Transmission )  
Facilities. )

Docket No. 12-KPEE-630-MIS

**MOTION TO STRIKE STAFF'S  
REPORT AND RECOMMENDATION**

COMES NOW the Kansas Power Pool (KPP), a Municipal Energy Agency hereinafter referred to as KPP and respectfully moves the State Corporation Commission of the State of Kansas (Commission) for an order striking the STAFF Report and Recommendation filed in this docket on Thursday, May 3rd, 2012, because it violates the Letter Agreement entered into by the parties on the January 23rd, 2012 (Letter Agreement) which is attached hereto and incorporated herein as Exhibit 1.

**ARGUMENT**

1) KPP is a municipal energy agency and one of its members, the City of Winfield, owns a certain 69kV transmission facility that the City of Winfield transferred functional control of to KPP. KPP then went through the proper steps to become a transmission owner with the Southwest Power Pool (SPP) and in turn transfer functional control of the Winfield transmission facilities to SPP. In Federal Energy Regulatory Commission (FERC) Docket ER12-140-000, SPP filed certain modification to its SPP Open Access Transmission Tariff (OATT) to incorporate KPP's formula template and include KPP's ATRR in Westar's zonal rates.

2) The procedural history of ER12-140-000 is well highlighted in the testimony filed by KPP, counsel will not delve into detail regarding the same. Suffice to say that the Kansas Corporation Commission (KCC) intervened in that docket and that it became clear that the KCC

believed that KPP should have filed its ATRR with the KCC before SPP filed KPP's ATRR with FERC.

3) Without conceding this jurisdictional issue, but in an effort to avoid delays and potentially facilitate an overall settlement of the issues regarding the inclusion of KPP's ATRR in the SPP rates, KPP agreed to enter into the Letter Agreement with the KCC STAFF identified as Exhibit 1. In Paragraph 1 of the Letter Agreement, KPP agreed to file its ATRR with the KCC, and the KCC STAFF agreed not to oppose the essential elements of the filing KPP would make, all of which was set forth as follows (emphasis added):

1. KPP will file an application with the Kansas Corporation Commission (KCC) which would consist of and include the following components:

KPP will file proxies currently contained in the KPP formula rate as filed before the Federal Energy Regulatory Commission (FERC) consisting of:

- A. A rate of return based upon the host transmission zone.
- B. A depreciation rate based upon the host transmission zone.
- C. An initial operation and maintenance cost recovery based upon the host transmission zone.
- D. KPP shall be able to file estimated original costs.
- E. KPP may request to recover payments made in lieu of taxes.

*The STAFF agrees the foregoing components are appropriate for filing and further agrees that STAFF will not oppose or object to said filing. STAFF reserves its right to conduct discovery and request additional information regarding the filing.*

4) It is also relevant to point out that in the next sentence "STAFF reserved its right to conduct discovery and request additional information regarding the filing." STAFF conducted discovery which was attached to their Report and Recommendation filed on May 3rd, 2012.

5) On May 3rd, 2012, the Commission STAFF issued its Notice of Filing of STAFF Recommendation which stated, "STAFF recommends the Commission dismiss KPP's filing in this docket and that KPP refile its request for a transmission formula rate once it has completed the recommendations listed on pages 5 and 6 of Staff's Report and Recommendation." At pages 5 and 6 STAFF sets forth the following recommendations:

STAFF recommends the Commission dismiss KPP's application without prejudice. STAFF recommends KPP repair the following short-comings of its proposal prior to refileing before this Commission:

- 1) Prepare an accounting manual to aid Winfield accounting staff (and subsequent municipalities contributing transmission assets to KPP) in tracking investments in and expenses related to the Winfield Transmission Assets using the FERC Uniform Chart of Accounts (USoA);
- 2) Submit the accounting manual to the KCC for approval;
- 3) Complete one year of tracking transmission related assets, revenues, and expenses using the accounting manual and following the USoA;
- 4) Hire an outside, independent auditor to conduct annual audits of its transmission related financial records and certify that KPP has followed its accounting manual and USoA;
- 5) Each year file an annual report with the KCC using FERC Form 1 format; and
- 6) Work with STAFF to produce protocols.

6) The STAFF Report and Recommendation repudiates the KCC STAFF's express commitment in the Letter Agreement that it "will not oppose or object to" KPP's filing. KPP STAFF has not identified any respect in which KPP's filing deviated from the contours of the filing that the parties agreed to as set forth in Paragraph 1 of the Letter Agreement. Indeed, KPP has fully complied with all of the commitments it made in the Letter Agreement. KCC STAFF's completely unjustified violation of the Letter Agreement should not be countenanced by this

Commission. The Commission should therefore strike the Report and Recommendation and give it no weight.

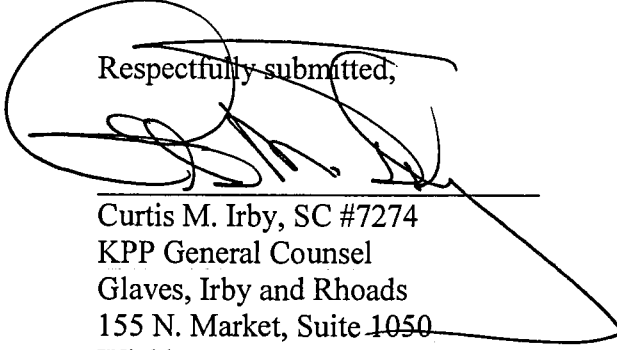
7) A primary reason for KPP agreeing to the Letter Agreement was its desire to have any proceeding before this Commission concluded expeditiously. Accordingly, in Paragraph 9 of the Letter Agreement the parties agreed to “cooperate in every reasonable way” to expedite the resolution of this proceeding and the related FERC proceeding. The KCC STAFF’s Report and Recommendation also violates this commitment, in that adoption of the recommendations therein would significantly delay resolution of issues that have been raised with respect to KPP’s ATRR.

8) KPP expressly reserved the right to terminate the Letter Agreement in the event that this Commission were to establish a schedule that exceeds 150 days or the KCC STAFF were to violate its commitment in Paragraph 1 of the Letter Agreement. KPP believes that the Report and Recommendation gives KPP grounds to terminate the Letter Agreement. Without prejudice to its future exercise of its termination right (on grounds of KCC STAFF’s violation of the Letter Agreement or otherwise), KPP has chosen not to terminate the Letter Agreement or withdraw its filing in this docket *at this time*, in the hope that this dispute may yet be promptly resolved by the Commission concluding (based on the briefs that it has requested) that it lacks jurisdiction over the KPP ATRR component of SPP’s transmission rates, or that it will accept KPP’s filing without modification no later than July 17 in accordance with the current procedural schedule.

9) In keeping with its continued good faith effort to bring this proceeding to a conclusion that both KPP and the Commission can live with, KPP has with this Motion filed supporting and responsive testimony which addresses various issues raised by STAFF and provides further support for the filing made by KPP and the proxies which it has utilized. This testimony, together with KPP’s original filing, provides ample support for the Commission to issue a timely order accepting KPP’s ATRR filing.

**WHEREFORE**, the Kansas Power Pool (KPP) a Municipal Energy Agency respectfully requests that the Commission should strike the STAFF's Report and Recommendation from the record.

Respectfully submitted,



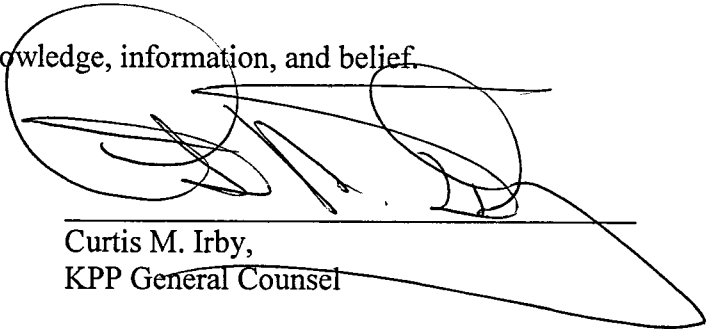
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STATE OF KANSAS        )  
                                  )ss.  
COUNTY OF SEGWICK    )

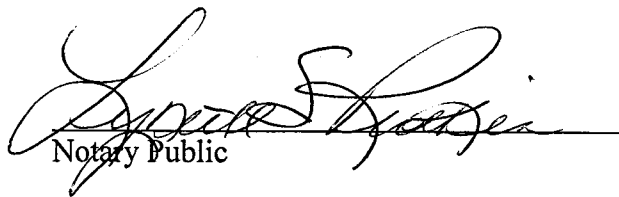
**VERIFICATION**

Curtis M. Irby, being duly sworn upon his oath deposes and states that he is the General Counsel of The Kansas Power Pool, that he has read and is familiar with the foregoing Motion to Strike STAFF's Report and Recommendation and attests that the statements contained therein are true and correct to the best of his knowledge, information, and belief.



Curtis M. Irby,  
KPP General Counsel

Subscribed and sworn to before me this 14<sup>th</sup> day of May, 2012.



Notary Public

My Appointment Expires:

\_\_\_\_\_

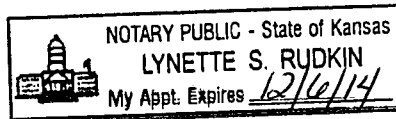


Exhibit 1  
Letter Agreement

**LETTER AGREEMENT**

Kansas Power Pool (KPP) and the Staff of the Kansas Corporation Commission (KCC Staff or Staff) agree that:

1. KPP will file an application with the Kansas Corporation Commission (KCC) which would consist of and include the following components:

KPP will file proxies currently contained in the KPP formula rate as filed before the Federal Energy Regulatory Commission (FERC) consisting of:

- A. A rate of return based upon the host transmission zone.
- B. A depreciation rate based upon the host transmission zone.
- C. An initial operation and maintenance cost recovery based upon the host transmission zone.
- D. KPP shall be able to file estimated original costs.
- E. KPP may request to recover payments made in lieu of taxes.

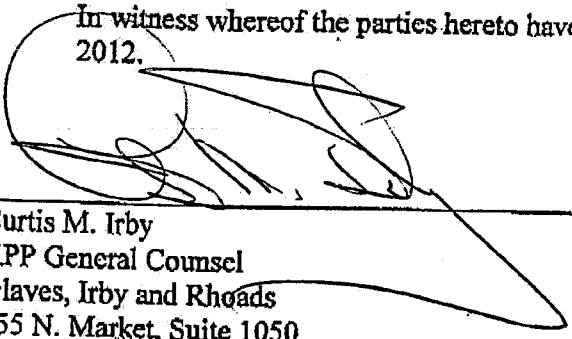
The Staff agrees the foregoing components are appropriate for filing and further agrees that Staff will not oppose or object to said filing. Staff reserves its right to conduct discovery and request additional information regarding the filing.

2. KPP will use actual recorded repair, replacement, upgrade, maintenance and other operating costs in subsequent annual updates of its formula based rate.
3. All parties in the proceeding contemplated by the filing of KPP's application will have the ability and access to review all calculations and data used for development of the formula rate.
4. KPP shall file an original application which shall include testimony from at least one KPP witness and shall include the testimony, exhibits, and documentation filed in support of the filing made through SPP in FERC Docket No. ER12-140-000.
5. The parties (KPP and the KCC Staff) additionally agree that KPP in its application will request an expedited hearing and a pre-hearing conference to be held as soon as possible.
6. The parties further agree that the proceedings contemplated by the parties will be completed within 150 days from the date of filing, subject to the Commission's approval of a procedural schedule.
7. The parties agree that immediately after the filing KPP and the KCC staff will meet to discuss the case and agree upon a procedural schedule.
8. The parties agree that they will jointly recommend to the Chief Judge of the FERC in Docket No. ER12-140-000, that the proceedings before the FERC should be held in abeyance pending resolution of the KCC proceeding and further agree that KPP shall be entitled to continue to collect the rate authorized by the FERC subject to refund during the time that these

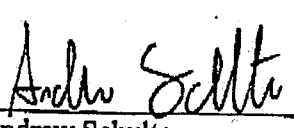
proceedings are held in abeyance. The KCC Staff has been authorized to approve this paragraph on behalf of the KCC who is the party to Docket No. ER-12-140-000.

9. The parties further agree that they will cooperate in every reasonable way to expeditiously resolve the filing to be made before the Kansas Corporation Commission, assist each other in communicating with intervenors and other interested parties in both the FERC proceedings and before the KCC to avoid delay and expedite the resolution of proceedings before both bodies.
10. KPP advises the KCC Staff that it has vetted its proposal to hold the FERC proceeding in abeyance to both Mid-Kansas Electric Company and Westar and has not as of yet had any major opposition from either party.
11. The parties further agree that if this Agreement is not implemented as a part of the procedural schedule in accordance with the agreement of the parties all parties are released from this agreement and this Agreement shall be of no further force and effect unless the parties affirm their intent to be bound by any changes to this agreement. KPP will be able to terminate this Agreement in the event of any of the following circumstances;
  - a. If the KCC establishes a procedural schedule which exceeds 150 days;
  - b. If the KCC Staff deviates from paragraph No. 1 of this Agreement by opposing KPP filing the components contained specifically in paragraph 1.(A-E) of this Agreement.
  - c. If the FERC or an Administrative Law Judge acting for and on behalf of that agency does not approve the abeyance as contemplated in paragraph No. 8 above.
12. KPP will file its application with the Kansas Corporation Commission no later than February 17, 2012, unless the parties mutually agree to an extension.

In witness whereof the parties hereto have entered into this Letter Agreement this 23<sup>rd</sup> day of January, 2012.



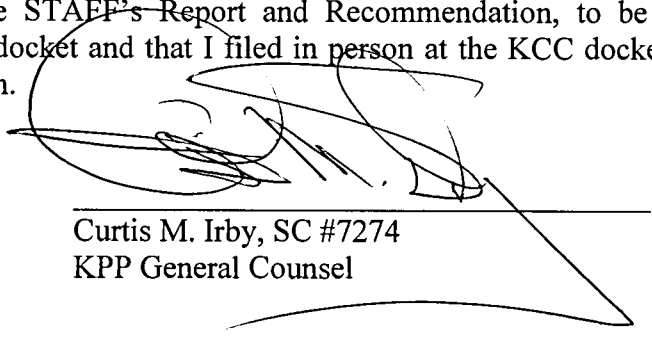
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Attorney for Commission Staff

**CERTIFICATE OF SERVICE**

I, Curtis M. Irby, hereby certify that on the 14th day of May, 2012, I caused a true and correct copy of the Motion to Strike STAFF's Report and Recommendation, to be served electronically upon each party in this docket and that I filed in person at the KCC docket room the original and 7 copies of said Motion.

A handwritten signature in black ink, appearing to read "Curtis M. Irby", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Curtis M. Irby, SC #7274  
KPP General Counsel