

Received on

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

JAN 18 2013

by
State Corporation Commission
of Kansas

In the Matter of the Application of Mid-Kansas)
Electric Company, LLC for Approval of a Debt)
Service Coverage Ratemaking Pilot Plan for)
the Geographic Territory Served by Its)
Member-Owner Southern Pioneer Electric)
Company.)

Docket No. 13-MKEE-452-MIS

**STAFF'S MOTION FOR SCHEDULING CONFERENCE AND
RESPONSE TO MID-KANSAS ELECTRIC COMPANY, LLC'S
MOTION FOR PROCEDURAL SCHEDULE**

Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively) hereby files its response to Mid-Kansas Electric Company, LLC's ("MKEC") January 8, 2013, *Motion for Procedural Schedule* ("MKEC's Motion"). Staff requests the Commission issue an order denying MKEC's Motion. Staff moves the Commission to issue an Order Setting Scheduling Conference. In support of its Response, Staff states the following:

A. Background

1. On January 8, 2013, MKEC filed an Application for Commission approval of a Debt Service Coverage ("DSC") Formula Based Ratemaking ("FBR") Pilot Plan ("DSC-FBR Plan") to be effective for the geographic territory served by its member-owner, Southern Pioneer Electric Company ("Southern Pioneer").¹

2. MKEC filed simultaneously with its Application a Motion for Procedural Schedule based on a 180-day timeframe.

¹ Docket No. 13-MKEE-452-MIS, Application (Jan. 8, 2013), ¶ 1.

3. The Citizens' Utility Ratepayer Board filed a Petition for Intervention on January 10, 2013.

4. Staff counsel has been in discussions with counsel for MKEC regarding the procedural schedule. These discussions have been cordial and positions for and against different proposed procedural schedules have been respectfully exchanged. Unfortunately, Staff and MKEC have been unable to agree upon a joint procedural schedule.

5. Staff respectfully requests the Commission issue an order denying MKEC's Motion and issue an order setting a scheduling conference for the following reasons:

- Staff cannot perform its evaluation and present its recommendation to the Commission in the timeframe proposed in MKEC's Motion;
- MKEC's Application is not subject to a statutory timeframe;
- A scheduling conference would be more appropriate for resolution of a procedural schedule; and
- At least one party has filed for intervention and Staff counsel has been contacted by an additional potential intervenor.

B. Staff respectfully requests the Commission deny MKEC's Motion.

I. A 180-day procedural schedule does not allow Staff enough time to perform its investigation of MKEC's Application.

6. Staff has fully considered MKEC's Motion for Procedural Schedule. Staff has performed an initial review of MKEC's Application and has evaluated its internal workload to determine if Staff would be able to perform its investigation in the timeframe that MKEC has proposed. Unfortunately, Staff cannot agree to MKEC's proposed procedural schedule.

7. MKEC's DSC-FBR Plan raises unique regulatory policy issues that Staff must carefully evaluate. Additionally, MKEC's DSC-FBR Plan is extensive and there are multiple

areas of potential concern for Staff. Adequate time will be needed to perform an evaluation, present the results of that evaluation to the Commission, and afford the Commission adequate time to fully consider the merits and ultimate impact of MKEC's DSC-FBR Plan.

8. Staff cannot perform its evaluation of the DSC-FBR Plan in the timeframe proposed in MKEC's Motion for Procedural Schedule.

II. MKEC's Application is not subject to a statutory timeframe.

9. MKEC's Application is for approval of a revenue neutral DSC-FBR Pilot Plan.² A statutory timeframe does not apply to MKEC's Application.³ In its Motion, MKEC acknowledges that K.S.A. 66-117 does not apply;⁴ therefore, neither a 180-day nor 240-day timeframe statutorily applies. Staff counsel can find no other statutory timeframe that applies to MKEC's Application.

10. Staff acknowledges MKEC's request for timely resolution of this Application⁵ and Staff is willing to work with MKEC to develop a procedural schedule that helps accomplish that request. Furthermore, Staff has no intention to advocate for a procedural schedule that allows this matter to last in perpetuity. Staff recognizes the value of timely resolution of matters presented before the Commission, but a balance must be reached between timely resolution and adequate regulatory review.

11. As additional support for its Motion, MKEC asserts that its proposed procedural schedule will result in a Commission determination on the appropriateness of the DSC Ratemaking Pilot Plan before the next general rate proceeding for Southern Pioneer must be

² Id. at ¶ 5.

³ Docket No. 13-MKEE-452-MIS, Motion for Procedural Schedule (Jan. 8, 2013), ¶ 2.

⁴ Id.

⁵ See. Id.

filed.⁶ Staff does not, at this time, dispute MKEC's preference to have a Commission order on its proposed DSC Ratemaking Pilot Plan prior to Southern Pioneer's next general rate proceeding. However, Staff believes there are additional facts demonstrating that a 180-day procedural schedule is not necessary to accomplish this request. To illustrate Staff's point, it is anticipated that Southern Pioneer will file an abbreviated rate case prior to June 2013. This abbreviated rate case would be filed and decided upon prior to Southern Pioneer's general rate case filing. If, for example, Southern Pioneer files its abbreviated rate case on May 15, 2013⁷, and Staff's anticipated proposed procedural schedule in that abbreviated rate case is based on a 180-day timeframe, Southern Pioneer would likely have a Commission order as late as November 11, 2013. However, applying a 180-day timeframe to this docket would result in a Commission order on July 8, 2013⁸; a full 126 days before Southern Pioneer's abbreviated rate case would be resolved. To further illustrate why 180 days is not necessary in this docket, using a 240-day timeframe in this docket would result in a Commission order on September 5, 2013; a full 67 days before Southern Pioneer's abbreviated rate case would be resolved. Additionally, under MKEC's proposed DSC-FBR Plan, MKEC would not make its first DSC-FBR Plan filing until 2014⁹ since the first filing will have to include Southern Pioneer's financial data ending 2013.¹⁰

⁶ Docket No. 13-MKEE-452-MIS, Motion for Procedural Schedule (Jan. 8, 2013), ¶ 4.

⁷ See Docket No. 13-MKEE-452-MIS, Prefiled Direct Testimony of Richard J. Macke (Jan. 8, 2013), p. 20, line 20 thru p. 21, line 1.

⁸ Docket No. 13-MKEE-452-MIS, Motion for Procedural Schedule (Jan. 8, 2013), ¶ 3.

⁹ See Docket No. 13-MKEE-452-MIS, Prefiled Direct Testimony of Richard J. Macke (Jan. 8, 2013), p. 6, lines 14-17.

¹⁰ Id. at p. 40, lines 3-4.

C. Staff respectfully requests the Commission issue an Order Setting Scheduling Conference to allow the parties to this docket an opportunity to mutually resolve their respective positions on an appropriate procedural schedule.

12. Resolution of a procedural schedule would best be accomplished by having open dialog amongst the parties to afford the opportunity to present their respective positions on this issue. A scheduling conference would accomplish this.

13. As stated above, Staff acknowledges MKEC's request for timely resolution of its Application and Staff recognizes that a scheduling conference will slightly add additional time to that end. However, as of the date of the filing of this response and motion, only 10 days has elapsed since MKEC filed its application. Therefore, Staff does not believe that a scheduling conference will unnecessarily delay this proceeding. To the contrary, a scheduling conference will better facilitate timely resolution of this matter.

14. Additionally, a scheduling conference will afford the parties to this docket an open dialog to discuss their procedural timeframe concerns and this open dialog will help prevent potential contested procedural issues as this docket continues. MKEC has acknowledged the benefit of establishing an open dialog as it pertains to consideration of its Application.¹¹ Staff believes this open dialog applies equally to the procedural schedule on this Application.

15. The only reason Staff is filing this response and motion is so that Staff is on record regarding this issue. Pursuant, to K.A.R. 82-1-218(d), Staff had 10 days to file its responsive pleading to MKEC's Motion or risk forfeiting its opportunity to opine on this issue. Staff's response is due today. It is Staff's intention to continue to work with MKEC to find a mutual resolution of the procedural schedule.

16. Additionally, there are potentially other parties to consider at this time. CURB has filed for intervention in this docket. Staff posits that CURB will request an opportunity to

¹¹ Docket No. 13-MKEE-452-MIS, Application (Jan. 8, 2013), ¶ 5.

participate in discussions with Staff and MKEC regarding appropriate and necessary timeframes. Also, on January 16, 2013, Staff counsel was contacted by counsel for an industrial customer in Southern Pioneer's service territory and was informed that intervention will likely be sought by that industrial customer.

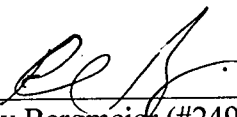
17. Therefore, Staff believes it is in the public interest to afford the parties, and the foreseeable additional parties in this matter, an opportunity to participate in discussions and work together to mutually agree on a procedural schedule to prevent complications and contested issues as this docket continues.

18. MKEC acknowledges that it is unknown how extensive the procedural schedule needs to be and that if a modified process is preferred by the Commission, the parties can consider that and provide input at the initial prehearing conference.¹² Staff agrees with MKEC's assertion and believes that it is, at this time, premature to know how extensive the procedural schedule needs to be. Staff does not, however, believe that it would serve the parties or the Commission to establish a premature procedural schedule only to anticipate modifying it after open dialog has occurred among the parties. Staff posits that a better approach is to have the prehearing, or scheduling, conference to sort out potential issues and present to the Commission a jointly agreed upon schedule in which all parties are in agreement. Once again, this would serve to prevent contested procedural issues as this docket develops.

WHEREFORE, Staff respectfully requests the Commission deny MKEC's *Motion for Procedural Schedule*. Staff respectfully moves the Commission to issue an Order Setting Scheduling Conference.

¹² Docket No. 13-MKEE-452-MIS, Motion for Procedural Schedule (Jan. 8, 2013), ¶ 3.

Respectfully submitted,




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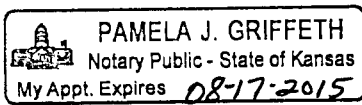
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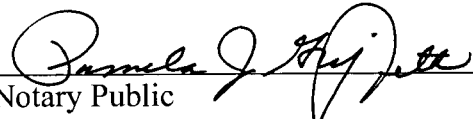
Ray Bergmeier, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Motion for Scheduling Conference and Response to Mid-Kansas Electric Company, LLC's Motion for Procedural Schedule* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Ray Bergmeier # 24974
Litigation Counsel
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 18th day of January, 2013.





Notary Public

My Appointment Expires: August 17, 2015

CERTIFICATE OF SERVICE

13-MKEE-452-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Motion for Scheduling Conference and Response to Mid-Kansas Electric Company, LLC's Motion for Procedural Schedule was placed in the United States mail, postage prepaid, or hand-delivered this 18th day of January, 2013, to the following:

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CERTIFICATE OF SERVICE

13-MKEE-452-MIS

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