

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

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

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

ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

1. On February 13, 2012, Sunflower Electric Power Corporation (Sunflower) filed an Application with the Commission for approval of the Wholesale Power Agreement (WPA) Rate in Tariff Schedule WHM-12.

2. The Staff of the Commission (Staff) provided a Report and Recommendation on Sunflower's filing, which is attached hereto and made a part hereof by reference. Staff recommended the Commission approve the update to the WPA Rate, effective the date of this order.

3. The Commission adopts Staff's Report and Recommendation and approves the update to the WPA Rate in Tariff Schedule WHM-12.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Sunflower Electric Power Corporation's Application for approval of the Wholesale Power Agreement Rate in Tariff Schedule WHM-12 is hereby approved and is effective the date of this Order.


B. The parties have fifteen days, plus three days if service is by mail, from the date the order was served in which to petition the Commission for reconsideration of any issues decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Com.; Wright, Com.

Dated: MAR 16 2012


ORDER MAILED MAR 16 2012
Patrice Petersen-Klein
Executive Director

RB

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Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chairman Mark Sievers
Commissioner Ward Loyd
Commissioner Thomas E. Wright

FROM: Elena Larson

DATE: March 8, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 3/9/12

DATE SUBMITTED TO LEGAL: 3-12-12

DATE SUBMITTED TO COMMISSIONERS: 3-12-12

SUBJECT: 06-SEPE-1203-CON
In the Matter of the Application of Sunflower Electric Power Corporation and
Kansas Electric Power Cooperative, Inc. for an Order Approving a New
Wholesale Power Agreement

EXECUTIVE SUMMARY:

In this Report and Recommendation, Staff supports the endorsement of the Application for Approval of the Wholesale Power Agreement ("WPA") Rate filed by Sunflower Electric Power Corporation ("Sunflower", "Applicant").

BACKGROUND:

On February 13, 2012, Sunflower filed an Application for approval of the WPA Rate. Under the terms of the WPA, Sunflower would sell and the Kansas Electric Cooperative Inc. ("KEPCo") would purchase power and energy from Sunflower at Sunflower Member rate ("WHM Rate") plus an adder.

The original WPA Rate was approved by the Kansas Corporation Commission ("Commission", "KCC") in 2006 under the instant Docket. This Application represents the second instance of modification to the original rate. Such revisions of the WPA Rate result from periodic updates to its WHM component.

According to the Applicant, the latest update to the WHM component occurred on December 6, 2011, when Sunflower's Board of Directors modified its WHM Rate to its Members effective January 1, 2012, replacing the prior Tariff Schedule WHM-10 with the new Tariff Schedule WHM-12.

ANALYSIS:

1. Nature of the filing and jurisdiction

The Commission initially approved the WPA on July 17, 2006.¹ Subsequently, Sunflower and KEPCo had exempted themselves from certain regulation by the Commission as authorized by K.S.A. 66-104d. However, the WPA Rate remained KCC-jurisdictional: although K.S.A. 66-104d identifies certain electric cooperative public utilities not subject to Commission jurisdiction (and thus accurately describes Sunflower and its rates charged to its member cooperatives), the subsection 66-104 d(f) clarifies the following:

Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory; charges, fees or tariffs for transmission services; sales of power for resale, other than sales between a cooperative, as defined in subsection (a), that does not provide retail electric service and an owner of such cooperative; and wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments thereto [emphasis added].

Hence, according to K.S.A. 66-104d(f), the wholesale rates charged by Sunflower to any entities other than their own member-cooperatives are still KCC-jurisdictional. Accordingly, even after the Commission approved Sunflower's deregulation under K.S.A. 66-104d, Sunflower filed and the Commission approved a subsequent modification to the WPA Rate in 2010.² The instant Application by Sunflower represents another similar update to the WPA Rate caused by the Sunflower's revision to the WHM component. In other words, this is not a question of an approval of the entire WPA contract (as it was already approved by the Commission earlier); this is merely an update to the rate component specified in the WPA.

2. WPA Rate review

The prior Commission Order in the instant docket set out the following requirements³:

- Sunflower will engage in the discussions with KEPCo called for in the WPA and pursuant to the terms of the Commission-approved S&A; and
- Sunflower will file its proposed new WHM rate for the Commission approval for application to KEPCo.

From the evidence in the record, it is apparent the parties have complied with the requirements set out in the prior Commission Order.

As per rate structure, Staff points out the following:

- The entity that will be paying the contractual rate at issue — KEPCo — has no objections to the rate update, and only raised concerns about the effective date. Staff opines it is appropriate for the effective date of such wholesale rate charged by Sunflower to a non-member entity – in this case, KEPCo – to be set at a date which is no earlier than the date

¹ Order Approving Wholesale Power Agreement, issued on 7/17/2006 in the instant KCC Docket (06-SEPE-1203-CON)

² *Id.*

³ Order Approving Stipulation and Agreement, filed 04/09/2010 in the instant KCC Docket (06-SEPE-1203-CON)

of the Commission Order issued in response to Sunflower's filed Application for the change in rates.

- The ultimate receiver – i.e. the retail customer at the end of the full transaction chain involved [(a) Sunflower sells to KEPCo → (b) who re-sells to its own members → (c) who will then distribute the power to their retail load] does not fall within KCC jurisdiction. Hence, the terms/rates agreed upon by the KEPCo would most likely never re-surface in any future rate case and/or prudence-type scenarios before the Commission. The only exception would be due to the fact that Wheatland Electric Cooperative, Inc. ("WEC"), one of the Sunflower's Members, still remains jurisdictional to the KCC for its retail rates: if, in theory, the rate charged by Sunflower to KEPCo was deficient, Sunflower could potentially need to compensate for such deficiency via increases in charges to its own Members, which would possibly signal KCC's involvement per its retained jurisdiction over WEC. However, the KCC-approved WPA rate structure – i.e. the fact that the WPA Rate is equal to the Member WHM Rate *plus* an adder, - should alleviate any such concerns. In fact, quite the opposite should be true – any margin Sunflower would receive from KEPCo (revenues above their cost of service to KEPCo) should accrue to the benefit of Sunflower's Members, including WEC.

Considering that, in this case: (1) the rates and terms in the updated WHM-12 Tariff are agreed upon bilaterally by the WPA signatories; and (2) there seems to be no reason to believe such rates/terms are harmful to any other party over which KCC retains its jurisdiction as to rates/services, Staff finds the 2012 WPA Rate to be appropriate for application to KEPCo.

RECOMMENDATION:

Staff recommends the Commission approve the update to the WPA Rate, with the earliest applicable Effective Date being the date of its Order. However, if the Commission foresees a standard of review of jurisdictional wholesale contract rates to be different than what the Staff has provided, the Commission should clearly define such to be used as a future guidance for both applicants and Staff.

cc: Patrice Petersen-Klein, Executive Director
Jeff McClanahan, Acting Director of Utilities
Robert Glass, Chief of Economics and Rates

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
RAY BERGMEIER, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
STEPHEN PARR, EXEC VP & CEO KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW (66615) PO BOX 4877 TOPEKA, KS 66604-0877		
J. MICHAEL PETERS, GENERAL COUNSEL KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW (66615) PO BOX 4877 TOPEKA, KS 66604-0877		
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		

ORDER MAILED **MAR 16 2012**

The Docket Room hereby certified that on this _____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.