THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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State Corporation Commission
of Kansas

In the Matter of the Application of Mid-Kansas Electric Company, LLC for Approval of a Debt Service Coverage Formula Based Ratemaking Pilot Plan for the Geographic Territory Served by Its Member-Owner Southern Pioneer Electric Company.	))))))	Docket No. 13-MKEE-452-MIS

PETITION FOR RECONSIDERATION AND MOTION TO STRIKE OF THE CITIZENS' UTILITY RATEPAYER BOARD

The Citizens' Utility Ratepayer Board ("CURB"), pursuant to K.S.A. 66-118b, K.S.A. 77-529, and K.A.R. § 82-1-235, hereby petitions for reconsideration of the September 26, 2013, *Order Approving Non-unanimous Settlement Agreement* ("September 26th Order") issued by the Kansas Corporation Commission ("Commission"), and moves to strike from the record the *Statement of Chairman Mark Sievers,* which was filed separately in this docket on September 26, 2013.

I. Petition for reconsideration

1. In support of its Petition for Reconsideration, CURB states as follows: CURB seeks reconsideration of the Commission's September 26th Order approving the settlement agreement on the following grounds:

- The Commission failed to follow prescribed procedure; [1]
- The Commission's order is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole; [2] and
- The Commission took action otherwise unreasonable, arbitrary or capricious. [3]

[1] K.S.A. § 77-621(c)(5).
[2] K.S.A. § 77-621(c)(7).

2. In approving the settlement agreement, the Commission has failed to follow prescribed procedure because the September 26th Order does not explain the basic findings of fact and law made by the Commission to support its ultimate conclusion to approve a debt service coverage (DSC) formula rate plan and to approve an extraordinary departure from decades of rate base, rate of return ratemaking. The Commission's Order approving the target DSC of 1.75 for the formula rate plan is not supported by substantial competent evidence when viewed in light of the record as a whole, because the Commission has selectively disregarded and mischaracterized CURB's evidence demonstrating the target DSC of 1.75 is unreasonably high for the new DSC formula rate plan and supporting CURB's recommended target DSC of 1.4 to 1.6. Finally, the Commission's decision is otherwise unreasonable, arbitrary, and capricious for the reasons cited above, demonstrating the Order was not fairly and reasonably determined. As such, the overall effect of the September 26th Order is not within the zone of reasonableness as required by Kansas law, and does not result in just and reasonable rates.

3. The evidence in the record of this docket does not support the Commission's approval of the new formula rate plan with the 1.75 target DSC proposed by the settlement agreement and supports the target DSC of 1.4 to 1.6 recommended by CURB.

A. The Commission failed to follow prescribed procedure.

4. Appellate courts will consider whether the Commission has failed to follow prescribed procedure. [4]

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[3] K.S.A. § 77-621(c)(8).
[4] K.S.A. § 77-621(c)(5).

5. The Commission's September 26th Order failed to follow prescribed procedure because the September 26th Order does not explain the basic findings of fact and law made by the Commission to support its ultimate decision to approve a DSC formula rate plan and depart from the Commission's traditional rate base, rate of return ratemaking as required under Kansas law.

> Traditionally, utility rates are set by determining "(1) a rate base, (2) a fair rate of return, and (3) reasonable operating expense. In determining these factors, there are numerous elements pertaining to each which must be fairly and reasonably determined if a fair return is to result." [5]

6. Furthermore, the Commission expressly held in June, 2012, that Southern Pioneer would be treated like any other C-corporation and its applications analyzed in the same manner as all other C-corporations regulated by the Commission:

> Therefore, the Commission directs Southern Pioneer that unless Southern Pioneer makes a filing with the Commission within sixty (60) days of this Order declaring that it will either become a cooperative or merge with PECI (along with a plan and time line for doing so), the *Commission will, going forward, treat Southern Pioneer as any other C-corporation and will analyze Southern Pioneer's applications in the same manner it does all other C-corporations it regulates.* [6]

7. When an administrative agency deviates from a policy it had adopted earlier, it must explain the basis for the change. [7] Here, despite decades of utilizing traditional rate base, rate of return regulation *and* declaring that it would regulate Southern Pioneer in the same manner as any other C-Corporation, the Commission departed from traditional rate base, rate of return regulation it

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[5] *Farmland Industries v. State Corporation Commission,* 24 Kan. App. 2d 172, 188-89, 943 P.2d 470 (1997) (citing *Southwestern Bell Tel. Co.,* 192 Kan. at 47).

[6] Order Approving Settlement Agreement with Modifications, June 25, 2012, p. 21, KCC Docket No. 12-MKEE-380-RTS.

[7] *Kansas Industrial Consumers Group, Inc. v. State Corp. Comm'n of State of Kan.,* 36 Kan. App. 2d 83, 90, 138 P.3d 338, 346 (Kan. App., 2006). *Western Resources Inc. v. Kansas Corporation Comm'n,* 30 Kan. App. 2d 348, Syl. 7, 42 P.3d 162, *rev. denied* 274 Kan 1119 (2002).

has utilized for utilities in Kansas for decades without adequately explaining the basis for the change.

8. A Commission Order must set forth the basic facts which persuaded the Commission in arriving at its decision. K.S.A. § 77-526(c) of the Kansas Administrative Procedures Act ("KAPA") states, in pertinent part:

> A final order or initial order *shall include, separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order*, ... Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings..[8] (emphasis added).

9. K.A.R. § 82-1-232 provides in pertinent part:

> **Orders of the commission.** (a) Form and content. Unless otherwise specified, each order of the commission shall contain the following:
> ...
>
> (3) a concise and specific statement of the relevant law and basic facts that persuade the commission in arriving at its decision; ...

10. In *Ash Grove Cement Company v. State Corporation Commission,* the court held:

> The purpose of findings of fact as mandated by K.A.R. 82-1-232(a)(3) is to facilitate judicial review and to avoid unwarranted judicial intrusion into administrative functions. The Commission must, therefore, express the basic facts upon which it relied with sufficient specificity to convey to the parties, and to the courts, an adequate statement of facts which persuaded the Commission to arrive at its decision."[9]

[8] K.S.A. § 77-526(c) (emphasis added).
[9] 8 Kan.App.2d 128, 132 (1982) (citations omitted).

11. "However, findings must be specific enough to allow judicial review of the reasonableness of the order. To guard against arbitrary action, conclusions of law *must be supported by findings of fact which are in turn supported by evidence in the record.*" [10]

12. The Commission must provide an analysis in the Order in order to ensure due process to litigants who are entitled to understand the rationale underlying an agency order which directly impacts them and who need such information when planning their cases for rehearing and judicial review. This requirement facilitates judicial review and helps assure more careful administrative consideration to protect against careless and arbitrary action by agencies. [11]

13. The need and necessary content for findings of fact by administrative boards and commissions was discussed in *Kansas Public Service Company*:

> When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. *In the absence of findings of fact the reviewing tribunal can determine neither of these things.* The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber method, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect of courts.
>
> In discussing the necessary content of findings of fact, it will be helpful to spell out the process which a commission properly follows in reaching a decision. The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute, are to be inferred, or not as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion. [12]

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[10] *Citizens' Utility Ratepayer Bd. v. State Corp. Comm'n,* 28 Kan.App.2d 313, 323-24 (2000).
[11] *Kansas Public Service Co. v. State Corp. Comm'n of Kansas,* 199 Kan. 736, 744 (1967).
[12] *Kansas Public Service Co.,* 199 Kan. at 745 (citing, *Saginaw Broadcasting Co. v. Federal* C. *Comm'n,* 96 F.2d 554, 559) (emphasis added).

14. The Commission's discussion of its decision to depart from traditional ratemaking for Southern Pioneer is in stark contrast to these legal standards. The Commission states that allowing Southern Pioneer to be the *first* to implement this entirely new regulatory scheme is, in some unexplained way, not treating them differently than other C-corporation utilities, when no other C-corporation utility has ever been regulated in this manner. The formula rate plan will allow the company to increase base rates on a prospective basis and increase them as high as 10% a year with only minimal scrutiny over the underlying costs. The Commission has never set base rates prospectively, and has provided no findings or evidence to support this major change in ratemaking policy. Further, its decision that a 10% increase per year is reasonable is not supported by any findings or evidence that the potential 60% increase in rates over five years for the customers of Southern Pioneer without one finding of the Commission that such a result will be reasonable.

15. Simply adopting an ultimate finding on an issue, as the Commission has in approving the DSC formula rate plan, is insufficient:

> An ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. . . . Such an ultimate finding is not enough, in the absence of basic findings to support it. This court must first know what the basic findings are before it can give them conclusive weight. We have repeatedly emphasized the need for clarity and completeness in basic or essential findings on which administrative orders rest, and findings based on substantial evidence must embrace the basic findings which are needed to sustain the order." [13]

16. As the Supreme Court found in *Southwestern Bell Telephone Company v. State Corporation Commission,* "[t]he findings of the Commission must be based upon facts. It must be

[13] *Kansas Public Service Co. v. State Corp. Comm'n of Kansas,* 199 Kan. 736, 743-44 (1967).

possible for the reviewing court to measure the findings against the evidence from which they were deduced." [14]

17. The Commission's Order must therefore provide an analysis of the relevant evidence relied upon by the Commission to establish the basis for the ultimate decision reached. Such an analysis is not present in the Commission's September 26th Order approving the DSC formula ratemaking plan proposed by the settlement agreement. Appellate courts cannot be expected to hunt through the record on appeal to determine whether the evidence supports the Commission's conclusions:

> Moreover, it is equally well settled that the lack of express findings of fact by an administrative agency may not be supplied by implication, and where express findings are required as a matter of procedural law in order to support an administrative determination, it may be stated as a general rule that courts will not search the record in order to ascertain whether there is evidence from which the ultimate finding could be made."
> ...
> The reasons for requiring the findings of basic facts by an administrative agency are so powerful that the requirement has been imposed with undeviating uniformity by this court. The rationale of the rule as gleaned from the forgoing cases and others, is to facilitate judicial review, avoid judicial usurpation of administrative functions, assure more careful administrative consideration to protect against careless and arbitrary action, assist the parties in planning their cases for rehearing and judicial review, and keep such agencies within their jurisdiction as prescribed by the Legislature. [15]

18. While the Commission's findings are not required to set forth with minute particularity as to amount to a summation of all the evidence in the record, on issues of importance (such as adopting a new regulatory scheme or the target DSC to be utilized) the Commission must articulate the basic facts on which it relies with sufficient specificity to advise the parties and the

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[14] *Southwestern Bell Telephone Company v. State Corporation Commission,* 192 Kan. 39, 47 (1963).
[15] *Kansas Public Service Co.,* 199 Kan. at 744 (citations omitted).

appellate courts how it arrived at its decision.[16] "There must be findings on all applicable standards which govern the Commission's determination, and the findings must be expressed in language sufficiently definite and certain to constitute a valid basis for the order, otherwise the order cannot stand."[17]

19. How the Commission approved the DSC formula ratemaking plan proposed by the settlement agreement, and how the Commission evaluated the competing evidence referenced by CURB, is not adequately expressed in the Commission's September 26th Order. The weight given to the testimony of various experts is not explained, and the testimony by Company and Staff witnesses directly contradicting the basis for their settlement agreement is selectively disregarded in the Commission's Order. Further, the order contains mischaracterizations of CURB's arguments and evidence, erroneously concluding that (1) CURB's position supporting a lower DSC ratio in this case was illogically inconsistent with its support of a higher DSC ratio in a previous case, and (2) erroneously concluding that the settlement's cap of 10% calculated on an annual system-wide basis could not result in as much as a 40% increase as Andrea Crane testified, because there is no cap on non-fuel distribution rates, and (3) fails to recognize that base rates alone could increase as much as 60% over the period of the plan.

20. The September 26th Order is therefore unlawful because it failed to follow prescribed procedure or meet the standards necessary to advise the parties and the appellate courts as to the basis for the Commission's adoption of the new formula rate plan to replace traditional rate base, rate of return regulation, as required by Kansas law. [18]

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[16] *Id.*, at 744-45. (citations omitted).
[17] *Id.*, at 745 (citations omitted).
[18] K.S.A. § 77-621(c)(5).

B. The Commission decision is not supported by evidence that is substantial when viewed in light of the record as a whole.

21. Appellate courts will consider whether the Commission's action is supported by substantial competent evidence. [19] Since it was amended during the 2009 legislative session, the Kansas Judicial Review Act ("KJRA") requires that review courts "determine whether the evidence supporting the [agency's] factual findings is substantial when considered in light of ***all*** the evidence."[20] This is based on the provisions in K.S.A. § 77-621(c)(7) and (d), which state:

> (c) The court shall grant relief only if it determines any one or more of the following:
> ...
> (7) The agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act.
> (d) For purposes of this section, "in light of the record as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact shall be judged in light of all the relevant evidence in the record cited by any party that detracts from such finding as well as all of the relevant evidence in the record compiled pursuant to K.S.A. 77-620, and amendments thereto, cited by any party that supports such finding, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witness and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. In reviewing the evidence in light of the record as a whole, the court shall not reweigh the evidence or engage in de novo review. (Emphasis added).

22. The statute, as revised, requires the reviewing court to (1) review the evidence both supporting and contradicting the agency's findings; (2) examine the presiding officer's credibility

[19] K.S.A. 77-621(c)(7).
[20] *Herrera-Gallegos v. H & H Delivery Service, Inc.*, 42 Kan.App.2d 360, 362, 212 P.3d 239 (2009) (emphasis in original).

determinations, if any; and (3) review the agency's explanation as to why the evidence supports its findings. [21]

23. To meet this standard on appeal, the findings in the September 26th Order must establish that all relevant evidence both supporting and contradicting the agency's findings was accurately considered and weighed, and the Commission's analysis of such evidence and why it supports its findings must be explained in the Order. Because the overwhelming majority of CURB's evidence related to the unreasonableness of the new formula rate plan and the 1.75 target DSC was selectively disregarded and mischaracterized in the Commission's September 26th Order, the Commission has not shown that evidence supporting the Commission's factual findings is substantial when considered in light of ***all*** the evidence. [22]

24. The Commission disregarded and mischaracterized the testimony of CURB witness Andrea Crane with respect to why the 1.75 target DSC is unreasonable for a formula rate plan. The Commission erroneously concluded CURB's testimony opposing the 1.75 target DSC as excessive was not credible based on its determination that "CURB failed to offer any explanation for its change of heart" in opposing the 1.75 target DSC as excessive in the proposed new DSC formula rate plan, when CURB agreed to a 1.8 DSC in the last Southern Pioneer rate case. [23]

25. The order mistakenly asserts that there is no logical reason for CURB to take a different position on the DSC level in this case than it did in the previous case, even though Andrea Crane explained why it was logical: the difference in risk or uncertainty in a traditional rate case like

[21] *Redd v. Kansas Truck Center,* 291 Kan. 176, 239 P. 3d 66 (2010).
[22] *Herrera-Gallegos,* 42 Kan.App.2d at 362 (emphasis in original).
[23] Order Approving Non-Unanimous Settlement Agreement ("Order"), ¶ 30.

the 380 Docket is greater than there is in the proposed alternative DSC formula ratemaking mechanism:

> **Q. Why are you recommending a DSC ratio of 1.40 when you recommended a DSC ratio of 1.75 in the Company's last base rate case?**
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> A. The DSC ratio that I recommended in the last case was based on the assumption that rates would be in effect for a period of longer than one year. Moreover, the margin recommended in the last case was designed to provide some cushion to the Company for variations in any revenue requirement component. Thus, there was significantly more uncertainty in that case than there is in my recommended alternative ratemaking mechanism. In this case, we are dealing with a situation where the only variable is debt service costs, which can typically be projected with a high degree of certainty. In addition, I am not opposed to the true-up mechanism proposed by Southern Pioneer whereby rates would be adjusted for the difference between actual and projected debt service costs. Therefore, I do not believe that any further cushion should be required. [24]

26. Ms. Crane further emphasized the 1.8 DSC agreed to in the settlement was more appropriate in a traditional rate case because it would set rates for a "prospective indefinite period of time," [25] which she explains in her direct testimony quoted above involves "significantly more uncertainty" than the risk inherent when rates are adjusted annually, and where debt service costs can be projected with a "high degree of certainty," therefore supporting her recommendation that no "further cushion should be required." [26]

27. In other words, the difference in Ms. Crane's positions is rational, and justified by the different degrees of risk faced by the company under the two different methods of setting rates that were considered in the two cases. The concept that a smaller cushion is sufficient when risk is

[24] Crane D. Test., pp. 27-28;
[25] Tr., p. 162.
[26] Crane D. Test., pp. 27-28.

reduced is a simple concept that any undergraduate finance major would understand, yet the Commission found fault with CURB's conclusion because it was "inconsistent" with its position in the 380 Docket. Of course it was, because Ms. Crane recognized that the facts were different. It is not "inconsistent" to believe that the DSC ratio should be adjusted to reflect the level of risk. The company faces a greater risk that revenues won't cover costs when rates are adjusted less often, and a lesser risk when revenues are adjusted more often.

28. Further, as she pointed out, rates under the formula rate plan will be adjusted based on projected costs, not historical costs. The increased frequency of rate adjustments and the ability to adjust revenues based on projections significantly reduce the risk that the company revenues won't cover costs or meet its loan covenants. This is not an unusual concept. It is a well-accepted concept that explains why payday loans have higher interest rates than U.S. Treasury bills: more risk, more cushion; less risk, less cushion. CURB's conclusion that the company's reduced risk under the DSC plan justifies a smaller cushion than what it recommended in the company's last traditional base rate case is not irrational or baffling to anyone who understands that the DSC plan will substantially reduce Mid-Kansas' risk of not meeting its costs and its loan requirements.

29. Thus, while there may be room for argument about just how large that cushion should be, there is no room for argument that CURB failed to make a sound, rational argument that the reduced risk produced by annual rate true-ups on projected costs justifies a smaller cushion under the proposed formula plan than was appropriate under the traditional base rate case approach to setting rates utilized in the 380 Docket.

30. When presented with conflicting evidence, the Commission may not selectively disregard or reject highly relevant evidence related to the issues in its order.[27] The Commission's disregard and mischaracterization of Ms. Crane's testimony is therefore erroneous and not supported by evidence that is substantial when considered in light of ***all*** the evidence."[28]

31. Commission decisions must be based on "substantial competent evidence which possesses *something of substance and relevant consequence*, and which *furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved."*[29] The Commission's Order fails to meet this standard. A reasoned decision or order cannot result from an analysis that ignores and mischaracterizes the entirety of the testimony, evidence, and argument presented regarding the unreasonableness of the 1.75 target DSC utilized in this completely new regulatory scheme.

32. The Commission's September 26th Order approving the DSC formula rate plan with a 1.75 target DSC is therefore not supported by factual findings that are substantial when considered in light of ***all*** the evidence.[30] The order selectively disregards or mischaracterizes CURB's arguments and evidence that the company faces substantially reduced risk under the formula rate plan, which justifies a substantially lower DSC ratio than the ratio that was approved in its last traditional base rate case.[31] As a result, the Commission's September 26th Order approving the DSC formula rate plan with the 1.75 target DSC should be reconsidered on the basis that it is not supported by evidence that is substantial when viewed in light of the record as a whole.[32]

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[27] *Kansas Industrial Consumers,* 30 Kan. App. 2d at 345.
[28] *Herrera-Gallegos v. H & H Delivery Service, Inc.,* 42 Kan.App.2d 360, 362, 212 P.3d 239 (2009) (emphasis in original).
[29] *Jones v. Kansas Gas and Electric Co.,* 222 Kan. 390, Syl. ¶ 3, 565 P.2d 597 (1977).
[30] *Herrera-Gallegos,* 42 Kan.App.2d at 362.
[31] *Kansas Industrial Consumers,* 30 Kan. App. 2d at 345.
[32] K.S.A. § 77-621(c)(7).

C. The Commission decision is otherwise unreasonable, arbitrary, and capricious.

33. Appellate courts will consider whether the Commission took action that was otherwise unreasonable, arbitrary, and capricious. [33]

34. The Commission's September 26th Order approving the DSC formula rate plan with the 1.75 target DSC proposed in the settlement agreement is otherwise unreasonable, arbitrary, and capricious because the decision is not "fairly and reasonably determined" as required in *Farmland Industries v. State Corporation Commission:*

> Traditionally, utility rates are set by determining "(1) a rate base, (2) a fair rate of return, and (3) reasonable operating expense. In determining these factors, there are numerous elements pertaining to each which must be *fairly and reasonably determined* if a fair return is to result." [34]

35. The rationale presented above in Arguments A[35] and B[36] demonstrate that the Commission's September 26th Order is otherwise unreasonable, arbitrary, and capricious because the elements related to the DSC formula rate plan and the 1.75 target DSC were not fairly and reasonably determined.

36. The Commission's September 26th Order is not fairly and reasonably determined because the Commission failed to follow established procedure by departing from traditional rate base, rate of return regulation *and* approving regulatory treatment of Southern Pioneer different from its regulation of all other C-corporations, all without finding facts that justify the shift in

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[33] K.S.A. § 77-621(c)(8).

[34] *Farmland Industries v. State Corporation Commission,* 24 Kan. App. 2d 172, 188-89, 943 P.2d 470 (1997) (citing *Southwestern Bell Tel. Co.,* 192 Kan. at 47) (emphasis added).

[35] The Commission's failure to follow prescribed procedure as required by K.S.A. § 77-621(c)(5).

[36] The Commission's September 26th Order is based on determinations of fact that are not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole as required by K.S.A. § 77-621(c)(7).

longstanding Commission policy against basing rates on projected costs or the reversal of its prior assertion that Southern Pioneer should be treated like other utilities that are C-corporations.

37. The Commission's September 26th Order is not fairly and reasonably determined because the Commission selectively disregarded CURB's rational arguments and the evidence presented by CURB witness Andrea Crane that explained why a 1.75 target DSC is unreasonable for a new DSC formula rate regulatory plan. By selectively disregarding and mischaracterizing this evidence, the order fails to address the evidence and arguments that do not support its adoption of the 1.75 target DSC ratio for the formula rate plan. It is arbitrary and capricious to ignore, dismiss and mischaracterize substantial and competent evidence that contradicts the evidence supporting the Commission's determination. The order offers no rational analysis or explanation for the Commission's finding that despite the reduced risk to the company with annual rate increases of projected costs under the formula rate plan, the DSC ratio should not be smaller to reflect the reduced risk. There is no indication that the Commission considered the evidence that different levels of risk justify different levels of cushion in setting rates. By setting the DSC ratio at virtually the same level as it was set under a traditional ratemaking scenario, the Commission failed to fairly and reasonably ensure that the company's rates under this plan will fall within the zone of reasonableness or that the plan will result in just and reasonable rates.

38. Therefore, the Commission's September 26th Order approving the DSC formula rate plan with the 1.75 target DSC must be reconsidered because it was unreasonable, arbitrary or capricious.[37]

[37] K.S.A. § 77-621(c)(8).

II. The *Statement of Chairman Mark Sievers* should be stricken from the record.

39. The *Statement of Chairman Mark Sievers* should be stricken from the record, because it has no legal force or meaning. As a document filed without endorsement of the majority of the Commission, the statement has no legal force. It was not filed as a concurrence or dissent and it is not appended to the Commission's order. Placing it on the record has no impact on the proceeding except to confuse the parties and the public as to whether the statement is an official act of the Commission and whether it is endorsed by the Commission.

40. Furthermore, the statement's entry upon the record is inconsistent with the usual practice of the Commission of refraining from including extraneous, irrelevant or incorrect information in the record. To the extent that the statement purports to further illuminate the Commission's deliberations on the issues of this case, it fails for lack of the other Commissioners' signatures on the document. To the extent the statement purports to criticize certain arguments made by CURB in this case, it fails to fairly and accurately represent those arguments. While the Chairman is entitled to disagree with CURB's arguments, the Chairman is not entitled to misstate or misrepresent CURB's arguments and then launch an *ad hominem* attack on the misstated position. As explained in CURB's testimony, briefs and the petition for reconsideration above, the question before the Commission is whether a 1.75 DSC ratio is reasonable given the entirely new regulatory framework proposed in the S&A. Whether CURB settled for a 1.75 DSC ratio a year ago, in a different case, under a different regulatory framework is wholly irrelevant to this case. There is nothing baffling about this simple distinction. To the extent that the statement misstates facts and misrepresents CURB's position in this case, the statement alters the verity of the record and reflects poorly on the Commission.

41. To the extent the statement reflects an antipathy toward the advocates and lawyers who seek to intervene in cases before the Commission and litigate to protect their clients' interests and due process rights, it fails to reflect respect for the exercise of their duty to zealously represent their clients' interests. To the extent that it reflects antipathy toward the adversarial process that is a mainstay of resolving disputed issues civilly in this nation, it reflects a disregard for the proceedings over which the statement's author presides. The sentiments expressed in the statement should be of great concern to all parties who seek redress before this tribunal with the expectation of receiving a fair and impartial hearing of the facts and the law.

42. For all of these reasons, the *Statement of Chairman Mark Sievers* simply has no place in the Commission's record. Therefore, CURB respectfully requests that the Commission strike the statement from the record and remove it from the Commission's website.

III. Conclusions

43. CURB respectfully requests that the Commission reconsider its September 26th Order approving the DSC formula rate plan with the 1.75 target DSC proposed in the settlement agreement, and find that a DSC ratio in the range of 1.4 to 1.6 is a more reasonable DSC ratio that reflects the reduced risk to the company under the new formula rate plan.

44. CURB respectfully requests that the Commission strike the *Statement of Chairman Mark Sievers* from the record of this case and from the Commission's website for the reasons stated above.

45. CURB respectfully requests any other such relief that may be justified by the Commission's review of its order and the record as a whole.

Respectfully submitted,

David Springe #15619
Niki Christopher #19311
C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

That she is an attorney for the above named petitioner; that she has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

Niki Christopher

SUBSCRIBED AND SWORN to before me this 11th day of October, 2013.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2017

Notary Public

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

13-MKEE-452-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 11th day of October, 2013, to the following parties who have waived receipt of follow-up hard copies:

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

JUDY JENKINS, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
j.jenkins@kcc.ks.gov

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

DON GULLEY, VP, Regulatory and Market Affairs
MID-KANSAS ELECTRIC COMPANY, LLC
301 WEST 13TH STREET
PO BOX 980
HAYS, KS 67601
dgulley@sunflower.net

RANDY MAGNISON
EXECUTIVE VICE PRESIDENT
SOUTHERN PIONEER ELECTRIC COMPANY
P.O. BOX 430
ULYSSES, KS 67880-0430
rmagnison@pioneerelectric.coop

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

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

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

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

Della Smith
Administrative Specialist