

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Mid-Kansas)
Electric Company, LLC for an Order Approving) Docket No. 18-MKEE- ~~014-MIS~~
the Conversion of Mid-Kansas Electric Company, LLC)
to Mid-Kansas Electric Company, Inc.)

DIRECT TESTIMONY OF

STUART S. LOWRY

ON BEHALF OF

MID-KANSAS ELECTRIC COMPANY, LLC

JULY 12, 2017

1 **Q. Please state your name.**

2 A. My name is Stuart S. Lowry.

3 **Q. Are you an officer of Mid-Kansas Electric Company, LLC (“Mid-Kansas”)?**

4 A. Yes, I am the President and Chief Executive Officer of Mid-Kansas and have
5 been since August 2011.

6 **Q. By whom are you employed and what is your business address?**

7 A. I am employed by Sunflower Electric Power Corporation (“Sunflower”). My
8 business address is 301 W. 13th Street, Hays, Kansas. I am not an employee of
9 Mid-Kansas as it has no employees. By contract approved by the Kansas
10 Corporation Commission (“KCC”), Sunflower, through its employees, operates
11 Mid-Kansas.

12 **Q. What is your educational and professional background?**

13 A. I am a graduate of the University of Kansas and Washburn University School of
14 Law. Just prior to joining Mid-Kansas, I served as Executive Vice-
15 President/General Counsel at Kansas Electric Cooperatives, Inc., the statewide
16 trade organization for electric cooperatives. Prior to that, I was in the private
17 practice of law, focusing primarily on electric cooperative matters.

18 **Q. What is the purpose of your testimony?**

19 A. The purpose of my testimony is to provide background information on Mid-
20 Kansas and support for the statutory conversion of Mid-Kansas Electric
21 Company, LLC, a Kansas limited liability company, to Mid-Kansas Electric
22 Company, Inc., a Kansas corporation.

1 **Q. Please provide an overview of the history of Mid-Kansas.**

2 A. Mid-Kansas is a Kansas limited liability company with its principal place of
3 business located in Hays, Kansas. Mid-Kansas is owned by five (5) Kansas
4 consumer-owned cooperatives and one subsidiary of a consumer-owned
5 cooperative who organized Mid-Kansas for the purposes of acquiring and
6 operating what was known as the former Aquila-WPK electric utility business and
7 operations in Kansas.¹ The Members of Mid-Kansas are the Member owners of
8 Sunflower with the exception of Southern Pioneer Electric Company which is a
9 wholly-owned subsidiary of Pioneer Electric Cooperative, Inc., which is a Member
10 owner of Sunflower.

11 **Q. Why was Mid-Kansas formed by the Members of Sunflower?**

12 A. There were two primary reasons Mid-Kansas was formed in 2005. First, Aquila-
13 WPK was a vertically-integrated utility providing both retail and generation
14 transmission services. As a condition to bidding for the purchase of the assets,
15 Aquila required a single purchaser for the fully integrated services and assets.
16 Sunflower and its Members had separated the retail or distribution services from
17 the generation and transmission services. The Members operated the retail or
18 distribution services and assets and Sunflower operated the generation and
19 transmission service. Therefore, the business structure of Sunflower could not
20 serve as a single purpose bidder. Additionally, Sunflower was a borrower of the

¹ The six electric utilities, collectively referred to as "Mid-Kansas Members or Members," and their headquarters are as follows: Lane-Scott Electric Cooperative, Inc., Dighton; Prairie Land Electric Cooperative, Inc., Norton; Southern Pioneer Electric Company, Ulysses; The Victory Electric Cooperative Association, Inc., Dodge City; Western Cooperative Electric Association, Inc., WaKeeney; Wheatland Electric Cooperative, Inc., Scott City.

1 Rural Utility Services (RUS) and to purchase the Aquila-WPK assets, it would
2 have required RUS approval prior to its ability to submit a bid. The RUS agency
3 indicated such an approval could not be granted in a timely fashion and
4 suggested the Members create a separate legal entity to bid and, if successful,
5 acquire the vertically-integrated electric assets of Aquila-WPK. Those two factors
6 were the primary drivers compelling the Members to form Mid-Kansas. This
7 approach worked, and Mid-Kansas was the successful bidder. The acquisition
8 was approved by the Commission in 2007 and Mid-Kansas began operating the
9 assets on April 1, 2007.

10 **Q. Why is Mid-Kansas requesting the Commission approve the conversion of**
11 **Mid-Kansas as a limited liability company to a nonprofit, non-stock**
12 **membership corporation?**

13 A. Under the Stafford Act, persons that own private, nonprofit facilities damaged or
14 destroyed by a major disaster may be compensated for the repairs and
15 replacement of such facilities by the federal government. In the early years of
16 Mid-Kansas' existence, Mid-Kansas received public assistance for storm
17 damages in April 2012 and again in 2013. However, in 2015, the Federal
18 Emergency Management Agency ("FEMA"), which administers the program,
19 denied the eligibility of Mid-Kansas and its claim for public assistance. At the
20 time, the claim was very small and it was not worth litigating and reaching an
21 unfavorable ruling. It was hoped that FEMA would reconsider the denial and that
22 the problem would solve itself when Mid-Kansas was merged into Sunflower as
23 expected in 2017. Sunflower as a nonprofit, non-stock membership corporation

1 has never been denied eligibility. However, the decision to merge is pending
2 further analysis and it is not anticipated the Members will decide to merge or not
3 to merge Mid-Kansas and Sunflower until early 2018. With the delay in the
4 decision, the possibility that the two companies will not merge and with the
5 significant damage to the Sunflower system due to the recent ice storm, the Mid-
6 Kansas Members determined they should act now to resolve the risk of being
7 ineligible for public assistance.

8 **Q. Why is FEMA denying Mid-Kansas public assistance?**

9 A. Our General Counsel contacted FEMA officials as to the most recent denial.
10 FEMA determined that it could not verify that Mid-Kansas was organized as a
11 not-for-profit entity as the State of Kansas does not provide an acceptable form
12 of certification that limited liability companies are organized as not-for-profit.
13 Since Mid-Kansas could not provide a letter from the IRS that it was exempt
14 under Section 501 of the IRS Code nor satisfactory state-issued proof of not-for-
15 profit status in Kansas, FEMA denied eligibility.

16 **Q. May Mid-Kansas appeal the FEMA decision and overturn the decision?**

17 A. It is our understanding that one can appeal the decision, but the appeal is to
18 FEMA as the payment of public assistance is discretionary, and FEMA has
19 already ruled. Therefore, the success of having FEMA overrule itself is not likely.
20 Plus, the appeal process could take an extended period of time, and, in the
21 meantime, Mid-Kansas would be at risk. The Mid-Kansas Members felt strongly
22 they needed a more permanent solution. Since the structure of Sunflower has
23 always satisfied FEMA, and the Members are satisfied with the structure and

1 operation of Sunflower, the Mid-Kansas Members determined they should
2 convert Mid-Kansas from a limited liability company to a nonprofit, non-stock
3 membership corporation and operate in accordance with cooperative principles.
4 By mirroring Sunflower's structure, Mid-Kansas will receive the same eligibility
5 treatment that Sunflower receives. This is the most expedient and best route to
6 eligibility.

7 **Q. When do you anticipate converting to a corporation if approved by the**
8 **Commission?**

9 A. Mid-Kansas will convert immediately upon Commission approval. Until the
10 Commission approves the conversion, Mid-Kansas will be at risk of loss without
11 FEMA eligibility in the next natural disaster. It is my understanding that approval
12 of the conversion is governed by the merger process which pursuant to Kansas
13 statutes can take up to 300 days. The Mid-Kansas Members are hopeful that the
14 Commission will consider the potential risk of loss and the resulting impact on
15 ratepayers if FEMA eligibility is denied and act on the request for approval of the
16 conversion as soon as reasonably possible. A 300-day process will run Mid-
17 Kansas through the summer tornado season and into the winter storm season.
18 Therefore, we hope for an expedited process.

19 **Q. What is your understanding of the conversion process?**

20 A. The steps to the conversion process are for the Members of Mid-Kansas to
21 approve the conversion of Mid-Kansas from a limited liability company to a
22 corporation. Each Mid-Kansas Member has approved the conversion by
23 appropriate corporate action. Next is for the Members to execute a Conversion

1 Agreement that specifies the terms of the conversion. The Conversion
2 Agreement, to a large extent, is the approval of the proposed Articles of
3 Incorporation and Bylaws which Mid-Kansas will operate under upon conversion.
4 Again, the Members have unanimously approved the Conversion Agreement
5 attached to the Application. Thereafter, the conversion requires the approval of
6 the Commission. If approved, a Certificate of Conversion and the new Articles of
7 Incorporation are filed with the Kansas Secretary of State. Upon filing with the
8 Kansas Secretary of State, Mid-Kansas is officially converted to the new
9 business entity structure.

10 **Q. What is the effect on the operation of the converted entity?**

11 A. The Business Entity Transaction Act is very specific as to the implication and
12 effect on the converted business entity. Mid-Kansas becomes a corporation
13 which, as provided by the Act, is the same entity without interruption as the
14 limited liability company. All property of Mid-Kansas continues to be vested in the
15 corporation and all liabilities of Mid-Kansas continue as liabilities of the
16 corporation with all the same rights, privileges, immunities, powers and purposes
17 of Mid-Kansas. From a practical perspective, Mid-Kansas is the same as before
18 except with an Inc. after its name rather than LLC.

19 **Q. Are you familiar with the Commission's standards for approving a merger?**

20 A. Yes, I am. It is my understanding the Commission has to determine if the
21 conversion is in the public interest, and the Commission has adopted criteria
22 used to assess the question.

1 **Q. Do you understand the standard is typically applicable to conversions?**

2 A. I understand that according to the Business Entity Transaction Act, a conversion
3 requires Commission approval under the state statute typically applied to
4 mergers. A merger contemplates the joining of two legal entities into one or a
5 subsidiary of the acquiring utility. Factually, that is not what is happening with
6 conversion. In conversion, an entity is converting itself from one form of business
7 structure to another. Here, Mid-Kansas is transforming itself from a limited liability
8 company to a corporation. Regardless, the merger standards are instructive for
9 purposes of determining if the conversion is in the public interest.

10 **Q. Will the conversion have an effect on the consumer, including an effect on**
11 **the financial condition of Mid-Kansas, benefits to the ratepayer, operational**
12 **synergies and existing competition?**

13 A. Overall, the conversion will have no impact on the financial condition of Mid-
14 Kansas. As mentioned previously, the converted entity continues without
15 interruption, with the same rights and liabilities as before conversion, including all
16 rights, privileges, immunities, powers and purposes as before conversion. The
17 current rates, charges, classifications or schedule of charges, and any rule or
18 regulation or practice pertaining to the service or rates of Mid-Kansas will be the
19 same after conversion as before conversion. Conversion could create positive
20 impacts on the financial condition should a natural disaster damage or destroy a
21 substantial portion of Mid-Kansas' facilities and Mid-Kansas is eligible for public
22 assistance. Certainly, it is difficult to quantify the benefits to the ratepayer. The
23 dollar impact is a function of the number of natural disasters and the extent of the

1 damages. The estimated damages to Sunflower's facilities have exceeded \$8
2 million from the April 30, 2017 ice storm. Fortunately, Mid-Kansas experienced
3 minimal damages in the ice storm. Mid-Kansas was also very fortunate that the
4 recent tornado in Barton County barely missed Mid-Kansas' Great Bend Station.
5 A few hundred feet to the east and the damage could have been significant. As it
6 was, damage was limited to doors on a metal building. Of course, there is no
7 compensation, and therefore no premium or offsetting savings to consider.

8 **Q. Will the conversion have an impact on competition?**

9 A. Conversion will have a positive effect on competition. Having FEMA eligibility will
10 facilitate Mid-Kansas being cost-competitive. Mid-Kansas serves a significant
11 segment of the rural areas of Kansas. Cost per customer is higher in rural areas
12 than in more urban areas due to the cost of extensive transmission lines to serve
13 sparsely populated areas. Most of the losses incurred by Sunflower and Mid-
14 Kansas for which public assistance was received were for the repair of
15 transmission lines. Therefore, public assistance is certainly important to Mid-
16 Kansas in maintaining competitive, low cost, reliable service.

17 **Q. Will the conversion have an effect on the environment?**

18 A. It will have none.

19 **Q. Will the conversion be beneficial to the state and local communities served
20 by Mid-Kansas and its Members, or create harmful job dislocation?**

21 A. The conversion will have a positive effect on state and local economies and the
22 communities served by the Mid-Kansas Members. Federal assistance to replace
23 and repair destroyed or damage facilities will remove the burden of the cost of

1 the replacement and repair of such facilities from the ratepayers by the amount of
2 the public assistance received which otherwise would have been paid for by the
3 ratepayer. Generally, FEMA covers approximately 85% of the costs of the
4 replacement and repair of damaged or destroyed facilities. So not having public
5 assistance is a detriment when one is able to make itself eligible.

6 **Q. Will the conversion preserve the Commission's jurisdiction of Mid-Kansas?**

7 A. Mid-Kansas will remain subject to the Commission jurisdiction to the same
8 extent it does now, which is qualified due to the fact Mid-Kansas elected to
9 become self-regulated pursuant to K.S.A. 66-104d (which election will continue
10 after conversion).

11 **Q. Will the conversion have an effect on public utility shareholders?**

12 A. Mid-Kansas is not publicly held. Mid-Kansas will be a nonprofit, non-stock
13 membership corporation with no public or private shareholders.

14 **Q. Will the conversion change the ownership or governance structure of Mid-**
15 **Kansas.**

16 A. The owners of Mid-Kansas will remain the same. The same six member owners
17 of the limited liability company will continue as the owners after conversion. The
18 same is true of the Board of Directors. The same six Board of Directors of the
19 limited liability company will serve as the initial Board of Directors of the
20 corporation until the first annual meeting at which time the Board will be
21 increased to 12 directors, two from each member.

1 **Q. Will the conversion maximize the use of Kansas energy resources?**

2 A. Since this is a conversion, the use of Kansas energy resources will not be
3 affected.

4 **Q. Will the conversion reduce economic waste?**

5 A. From the perspective that Mid-Kansas will receive public assistance for the repair
6 and replacement of damaged utility property, the conversion avoids an economic
7 waste by taking advantage of public funds to defray costs that would otherwise
8 be recovered from the ratepayer.

9 **Q. Will the conversion impact public safety?**

10 A. The conversion will have no impact on public safety. Mid-Kansas places a high
11 priority on public safety which will not change as a result of the conversion.

12 **Q. Having addressed each of the criteria the Commission used to determine if**
13 **the conversion is in the public interest, do you believe the conversion is in**
14 **the public interest?**

15 A. Converting Mid-Kansas from a limited liability company to a nonprofit, non-stock
16 membership corporation is in the public interest and meets the standards the
17 Commission considers for approval. Ineligibility or even occasional ineligibility to
18 receive public assistance funds is of great concern. Considering the fact
19 converting will eliminate that concern with no impact on the customers, the
20 services provided or the cost, not converting to a corporation would be a public
21 disservice.

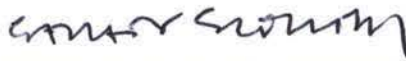
22 **Q. Does this conclude your testimony?**

23 A. Yes.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

STUART S. LOWRY, being first duly sworn, deposes and says that he is the STUART S. LOWRY referred to in the foregoing document entitled "DIRECT TESTIMONY OF STUART S. LOWRY" before the State Corporation Commission of the State of Kansas and that the statements therein were prepared by him or under his direction and are true and correct to the best of his information, knowledge and belief.



Stuart S. Lowry

SUBSCRIBED AND SWORN to before me this 12th day of July, 2017.



Notary Public

My Appointment Expires:

