

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 the Kansas)
Power Pool, a Municipal Energy Agency, for)
Approval of Its Annual Transmission Revenue) Docket No. 12-KPPE-630-MIS
Requirement (ATRR) for Its Transmission)
Facilities.)

**PREHEARING OFFICER'S ORDER GRANTING INTERVENTION
TO SUNFLOWER ELECTRIC POWER CORPORATION,
MID-KANSAS ELECTRIC COMPANY, LLC AND WESTAR ENERGY, INC.,
AND ORDER GRANTING ADMISSION PRO HAC VICE TO N. BETH EMERY**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. The Commission designated Holly L. Fisher, Litigation Counsel, to act as Prehearing Officer in this proceeding.¹ Having reviewed the files and records, and being duly advised in the premises, the Prehearing Officer makes the following findings:

1. On February 17, 2012, the Kansas Power Pool (KPP) filed an Application for approval of its Annual Transmission Revenue Requirement (ATRR) for its transmission facilities. The Commission has jurisdiction over KPP's transmission rates pursuant to K.S.A. 12-8,111, 66-101, 66-101b, and 66-104. The Commission's jurisdiction over wholesale rates is not preempted by the Federal Energy Regulatory Commission (FERC) because Section 201 of the Federal Power Act exempts municipal energy agencies from federal jurisdiction.

3. On February 24, 2012, KPP and Commission Staff (Staff) filed a Joint Motion for an Order Setting Procedural Schedule and Discovery Order. On March 16, 2012, the

¹ Order Designating Prehearing Officer and Setting Procedural Schedule, issued March 16, 2012, paragraph 6 (March 16, 2012 Order, ¶ 6).

Commission issued its Order Setting Procedural Schedule, and on March 19, 2012, the Prehearing Officer issued a Discovery Order.

I. Joint Petition to Intervene of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC.

2. On March 15, 2012, Sunflower Electric Power Corporation (Sunflower) and Mid-Kansas Electric Company, LLC (Mid-Kansas) filed a Joint Petition to Intervene and Comments on Application.² In the March 15, 2012 Joint Petition, Sunflower and Mid-Kansas stated that they are operating generation and transmission cooperatives (G&Ts) located in central and western Kansas and each is a transmission owning member (TO) of the Southwest Power Pool (SPP).³ Sunflower stated that it is operated on a non-profit basis and owned by six rural electric distribution cooperatives that in turn serve approximately 50,000 retail meters located in 34 western Kansas counties and that it also serves at wholesale, directly or indirectly, two additional distribution cooperatives and 11 small cities.⁴ Sunflower also stated that its baseload generation plant is a coal-fired, 360 MW steam unit located near Holcomb, Kansas, that it also has 235 MW of natural gas-fired generation in Garden City, Kansas, and that its high-voltage transmission facilities, all of which are under the functional control of SPP, consist of a 221-mile, 345 kV transmission line that extends from the Nebraska border to Holcomb and east to Spearville, Kansas and related substations.⁵ Sunflower stated that in total, it owns, leases, and operates 27 substations, 64 SCADA units and 14 microwave sites, and that it is an electric public utility

² Joint Petition to Intervene and Comments of Application of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC, filed March 15, 2012 (March 15, 2012 Joint Petition).

³ March 15, 2012 Joint Petition, ¶ 3.

⁴ *Id.*

⁵ *Id.*

whose transmission services and wholesale sales to non-members are regulated by the Commission, and that it is exempt from regulation under the Federal Power Act.⁶

3. In the March 15, 2012 Joint Petition, Mid-Kansas stated that it is operated on a non-profit basis and is a coalition of five Sunflower members and one corporation wholly owned by the sixth member, which organized Mid-Kansas for the purpose of acquiring the Kansas electric utility assets of Aquila, Inc., d/b/a Aquila Networks – WPK, which acquisition closed on April 1, 2007.⁷ Mid-Kansas further stated that it is an electric public utility regulated by the Commission and is exempt from regulation under the Federal Power Act.⁸ Mid-Kansas also stated that it serves a certificated service territory consisting of approximately 71,000 meters in 31 counties and 22 full and partial wholesale requirements municipalities that serve approximately 23,000 meters, and that it owns and operates approximately 1,083 miles of transmission line facilities and associated substation facilities and 395 MW of gas-fired generation.⁹ Mid-Kansas stated that the transmission facilities consist of 932 miles of 115 kV, 76 miles of 138 kV and 171 miles of 230 kV transmission line in addition to 40 substations, which are under the functional control of SPP.¹⁰

4. In the March 15, 2012 Joint Petition, Sunflower and Mid-Kansas allege that the impact of the Kansas Power Pool (KPP) application will come in the future, if TOs and their customers in SPP zones other than the Westar Zone bear some of KPP's ATRR costs, which was acknowledged by KPP in its Application.¹¹ Sunflower and Mid-Kansas state that they could not identify anything in KPP's template or KPP's protocols that would limit its application to

⁶ March 15, 2012 Joint Petition, ¶ 3.

⁷ March 15, 2012 Joint Petition, ¶ 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ March 15, 2012 Joint Petition, ¶ 6.

facilities whose cost is recovered solely in the Westar zonal rate.¹² Mid-Kansas and Sunflower stated that there is a substantial possibility that Mid-Kansas' (and possibly Sunflower's) customers will bear future costs under the filed template, and if KPP wished to take control of member city facilities located in Sunflower's or Mid-Kansas' zone, Sunflower and Mid-Kansas (and their ultimate retail customers) would bear all or a majority of the costs of such future KPP transmission facilities.¹³ Sunflower and Mid-Kansas further stated that should KPP seek to include any new facilities operated above 100 kV into SPP's Open Access Transmission Tariff (OATT), all SPP transmission customers will bear at least one-third of those costs under SPP's "highway/byway" approach, and that the potential for Sunflower's and Mid-Kansas' customers to bear future costs is real.¹⁴

5. Sunflower and Mid-Kansas stated that a second reason for their March 15, 2012 Joint Petition was that KPP's Application presented the following issues of direct concern to Sunflower and Mid-Kansas:

a. First, decisions made by the Commission regarding the Application are relevant to how similar issues will be decided by the Commission in the current application of Mid-Kansas for a formula-based rate (Commission Docket No. 12-MKEE-650-TAR) and the Sunflower application that will be filed in the near future – all involving formulas for establishing the ATRR to be collected by SPP under the SPP OATT.

b. Second, Sunflower's and Mid-Kansas' ability to challenge whether a future transfer of facilities in their Zones meets the standards of K.S.A. 66-136 could be eliminated if the Commission follows prior practice and looks at the issue only when the first transfer is made.

c. Third, unless the Commission otherwise orders, KPP is already enjoying the cash flow benefits of collecting its rates, subject to refund, because it bypassed filing with the Commission prior to asking SPP to file KPP's Attachment H formula at FERC. It is the understanding of Mid-Kansas and Sunflower that a Kansas state-regulated utility must first obtain Commission

¹² March 15, 2012 Joint Petition, ¶ 6.

¹³ March 15, 2012 Joint Petition, ¶ 7.

¹⁴ March 15, 2012 Joint Petition, ¶ 10.

approval for its rate before SPP can begin to collect it on behalf of KPP, even if subject to refund.¹⁵

6. Sunflower and Mid-Kansas assert that they are parties with unique interests that cannot be represented by any other entity.

7. The Commission has broad discretion to grant a petition for intervention if it is in the interest of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating its legal rights, duties and privileges, immunities or other legal interests may be substantially affected by the proceeding.¹⁶ Furthermore, at any time during a proceeding, the Commission may impose limitations on an intervenor's participation.¹⁷

9. The Prehearing Officer finds and concludes that Sunflower and Mid-Kansas have met the requirements of K.A.R. 82-1-225 and should be granted intervention in this Docket. Sunflower and Mid-Kansas will be added to the mailing list, service of pleadings, communications, and correspondence should be delivered to counsel of record, as follows:

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Email: mcalcara@sunflower.net

10. In addition to the counsel of record for Sunflower and Mid-Kansas listed above, service of electronic notices, pleadings, and correspondence should be delivered to Sunflower's and Mid-Kansas' other designee:

¹⁵ March 15, 2012 Joint Petition, ¶ 19.

¹⁶ K.S.A. 77-521; K.A.R. 82-1-225.

¹⁷ K.S.A. 77-521(c).

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Senior Manager, Regulatory Relations and Billing
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II. Petition of Westar Energy, Inc. to Intervene

11. On March 21, 2012, Westar Energy, Inc. (Westar) filed its Petition to Intervene.¹⁸ In the March 21, 2012 Petition, Westar stated that it is a vertically integrated electric utility, serving over 687,000 retail and over 75 wholesale customers in the State of Kansas, that it is a transmission-owning member of the SPP Regional Transmission Organization (RTO) and is an active market participant in the SPP-administered energy market.¹⁹ Westar asserts that as a member of SPP, and as a transmission customer of SPP, Westar and its wholesale and retail customers will ultimately bear a portion of the costs of KPP's transmission facilities, and as such, Westar has unique interests that cannot be represented by any other entity.²⁰

12. The Commission has broad discretion to grant a petition for intervention if it is in the interest of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating its legal rights, duties and privileges, immunities or other legal interests may be substantially affected by the proceeding.²¹ Furthermore, at any time during a proceeding, the Commission may impose limitations on an intervenor's participation.²²

¹⁸ Petition of Westar Energy, Inc. to Intervene, filed March 21, 2012 (March 21, 2012 Petition).

¹⁹ March 21, 2012 Petition, ¶ 2.

²⁰ March 21, 2012 Petition, ¶ 7.

²¹ K.S.A. 77-521; K.A.R. 82-1-225.

²² K.S.A. 77-521(c).

13. The Prehearing Officer finds and concludes that Westar has met the requirements of K.A.R. 82-1-225 and should be granted intervention in this Docket. Westar will be added to the mailing list, service of pleadings, communications, and correspondence should be delivered to counsel of record, as follows:

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14. In addition to the counsel of record for Westar listed above, service of electronic notices, pleadings, and correspondence should be delivered to Westar's other designees:

Kelly B. Harrison
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III. Motion for Admission Pro Hac Vice of N. Beth Emery as Attorney for Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC.

15. On March 19, 2012, Sunflower's and Mid-Kansas' counsel, Mark D. Calcara, pursuant to Supreme Court Rule 116, filed a motion for Admission Pro Hac Vice of N. Beth Emery to appear and participate as counsel for Sunflower and Mid-Kansas in this proceeding.

16. The motion stated that Mr. Calcara would act as co-counsel with Ms. Emery, that Ms. Emery is not a Kansas resident but a licensed attorney in good standing in Texas and the District of Columbia. The motion stated that Ms. Emery has never been suspended, disbarred or

resigned as a result of a disciplinary charge, investigation, or proceeding from the practice of law in any jurisdiction. The motion was accompanied by a verified affidavit of Ms. Emery indicating that Ms. Emery is counsel for Sunflower and Mid-Kansas, Sunflower and Mid-Kansas are represented by Kansas counsel Mark D. Calcara, that Ms. Emery is admitted to practice in Texas and the District of Columbia, and that she is in good standing in Texas and the District of Columbia, has never been suspended, disbarred nor resigned from the practice of law in any jurisdictions as a result of a disciplinary charge, investigation or proceeding, and is not currently the subject of disciplinary action or proceeding in any jurisdiction. The affidavit set forth an address for N. Beth Emery, Husch Blackwell LLP, 755 East Mulberry, Suite 200, San Antonio, Texas, 78212.

17. No party has objected to the motion. The Prehearing Officer grants the motion and finds that N. Beth Emery be admitted Pro Hac Vice in this docket.

WHEREFORE, the Prehearing Officer finds and concludes as follows:

(A) Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC are granted intervention in the above-captioned proceeding. Counsel of record for the petitioner, and its other designees, shall receive service of all pleadings in this matter, as set forth above.

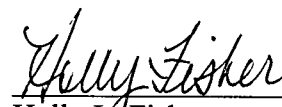
(B) Westar Energy, Inc. is granted intervention in the above-captioned proceeding. Counsel of record for the petitioner, and its other designees, shall receive service of all pleadings in this matter, as set forth above.

(C) The Motion for Admission Pro Hac Vice of N. Beth Emery as counsel for Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC is granted, as discussed above.

(D) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

(E) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

Dated: March 22, 2012



Holly L. Fisher
Prehearing Officer

HF

ORDER^e MAILED MAR 22 2012

CERTIFICATE OF SERVICE

MAR 22 2012

12-KPPE-630-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Prehearing Officer's Order was served by electronic service on this 22nd day of March, 2012, to the following parties who have waived receipt of follow-up hard copies.

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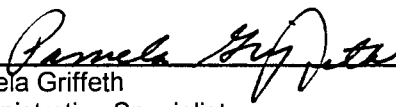
CERTIFICATE OF SERVICE

MAR 22 2012

12-KPPE-630-MIS

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Pamela Griffeth
Administrative Specialist

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