

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

JUL 20 2012

In the Matter of the Application of Mid-Kansas)
Electric Company, LLC for Approval to Make)
Certain Changes in its Charges for Electric) Docket No. 12-MKEE-380-RTS
Services in the Geographical Service Territory)
Served by Southern Pioneer Electric Company.)

by
State Corporation Commission
of Kansas

**RESPONSE OF THE
CITIZENS' UTILITY RATEPAYER BOARD TO
MKEC'S PETITION FOR RECONSIDERATION AND CLARIFICATION**

The Citizens' Utility Ratepayer Board ("CURB") hereby files its Response to Mid-Kansas Electric Company, LLC's Petition for Reconsideration and Clarification of the Commission's June 25, 2012, Order ("MKEC PFR"). In support of its Response, CURB states as follows:

A. The Abbreviated Rate Case

1. The Company seeks reconsideration of the Commission's finding that the abbreviated rate case contemplated by the parties be limited to additional debt service (including debt coverage) related to additional debt levels directly related to completion of the elements of the work plan. In stating "the parties did *not expressly* intend to limit the abbreviated rate case for debt 'directly related to completion of the Work Plan,'" the Company appears to suggest¹ that the parties did not contemplate or discuss that the additional debt levels would be directly related to the Work Plan. This is simply incorrect, and MKEC has offered no evidence in the record to support its assertion.

¹ The Company appears to qualify its suggestion by including the word "expressly", leaving one to surmise the Company admits that the parties did intend to limit the abbreviated rate case for debt related to capital expenditures contemplated under the Work Plan.

2. The parties had specific and lengthy discussions about the Work Plan during settlement discussion, and these discussions included the Company's need for the abbreviated rate case as a result of the capital expenditures being made under the Work Plan. Contrary to the Company's suggestion, the ongoing Work Plan expenditures were central to the discussion about the need for the abbreviated rate case. CURB would not have agreed to an abbreviated rate case for additional debt for unidentified expenditures unrelated to Work Plan capital costs.

3. The Commission is entitled to impose this modification to the agreement in any event. The finding by the Commission is not arbitrary and capricious, and is supported by substantial evidence in the record (Crane testimony).

4. However, CURB is not opposed to clarification of the Commission's Order to allow consideration of additional debt in the abbreviated rate case directly related to capital costs associated with projects that are necessary and prudent for the provision of utility service. This would allow the Company to accommodate and react to customer demands and market conditions, and is consistent with the intent of the parties.

B. The Mid-Kansas Income Tax Agreement

5. MKEC argues that the italicized language "*on behalf of Southern Pioneer before the Commission*" was not part of the 524 Settlement and does not reflect the purpose of the provision regarding MKEC income taxes. CURB disagrees.

6. The Stipulation and Agreement in the 524 Docket contains the following language:

(6) MKEC agrees to not include an income tax expense component *in any MKEC rate filing* before the Commission.²

² Stipulation and Agreement, KCC Docket 06-MKEE-524-ACQ, ¶24 (emphasis added).

7. In the 524 Order Adopting Stipulation and Agreement, the Commission specifically approved this agreement:

Because of the nature of this transaction, the Commission finds it appropriate to expressly approve the following items listed in the Agreement:

...
MKEC's agreement not to include an income tax expense component resulting from this Agreement *in any MKEC rate filing* before the Commission. Agreement, ¶ 24; Watkins, 7.³

8. Notwithstanding the spin MKEC attempts to put on the 524 Stipulation and Agreement and the 524 Order approving the Stipulation and Agreement, the parties agreed and the Commission ordered that MKEC would not include an income tax component in *any MKEC rate filing* before the Commission. This is an MKEC rate filing, as will be future rate filings unless or until MKEC spins down the certificate to Southern Pioneer. MKEC is the certificated regulated utility, not Southern Pioneer, and MKEC clearly and unequivocally agreed not to include an income tax component *in any MKEC rate filing* with this Commission.

9. MKEC argues that it “could not foresee at that time that the parties would later attempt to argue that Mid-Kansas, a non-taxable entity, should be *precluded* from seeking recovery, in establishment of the retail rate for the Southern Pioneer’s (sic) division, a legitimate business expense – such as income tax expense – incurred by Mid-Kansas’ service provider.” This statement is simply unbelievable in light of the express language contained in the 524 Stipulation and Agreement and the 524 Order to the contrary. The Company agreed to not include an income tax expense component *in any MKEC rate filing* before the Commission, yet seeks to include income tax expense notwithstanding its express agreement.

³ Order Adopting Stipulation and Agreement, KCC Docket 06-MKEE-524-ACQ, ¶ 15 (emphasis added).

10. Further, for the reasons discussed in the direct testimony of CURB witness Andrea Crane⁴ and Staff witness Laura Bowman,⁵ the income tax expense claimed by MKEC for Southern Pioneer is not a “legitimate business expense”⁶ at all.

C. K.A.R. 82-1-228(e)(3)

11. MKEC misreads K.A.R. 82-1-228(e)(3) in suggesting that it does not apply to stipulations contained in settlement agreements. Settlement agreements, including the Settlement Agreement in this docket, contain stipulations as to facts and issues, including but not limited to the stipulation that the revenue requirement and other matters agreed to by the parties will result in just and reasonable rates.

WHEREFORE, CURB respectfully requests that the Commission deny MKEC’s Petition for Reconsideration in its entirety.

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

⁴ Andrea Crane Direct Testimony, pp. 37-43.

⁵ Laura Bowman Direct Testimony, pp. 21-24.

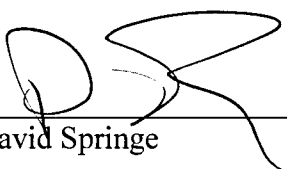
⁶ MKEC PFR, ¶ 10, p. 6.

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

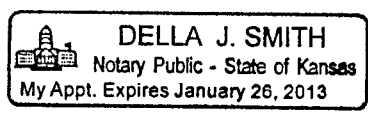
I, David Springe, of lawful age, being first duly sworn upon his oath states:

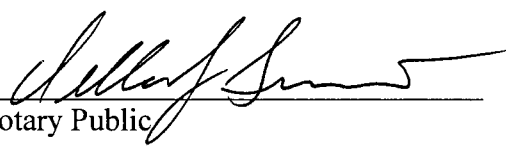
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



David Springe

SUBSCRIBED AND SWORN to before me this 17th day of July, 2012.

 DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2013



Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

12-MKEE-380-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 20th day of July, 2012, to the following parties:

GLEND A CAFER, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

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

RAY BERGMEIER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

HOLLY FISHER, ATTORNEY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

MARK DOLJAC, DIR RATES AND REGULATION
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

DON GULLEY, SENIOR MANAGER REGULATORY RELATIONS AND BILLING
MID-KANSAS ELECTRIC COMPANY, LLC
301 WEST 13TH STREET
PO BOX 980
HAYS, KS 67601

RANDY MAGNISON, CHIEF OPERATING OFFICER
SOUTHERN PIONEER ELECTRIC COMPANY
PO BOX 368
1850 W OKLAHOMA
ULYSSES, KS 67880-0368

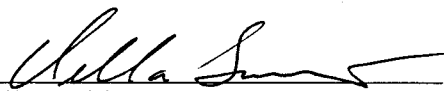
MARK D. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN STREET SUITE 300
PO DRAWER 1110
GREAT BEND, KS 67530

LINDSAY A. SHEPARD, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN STREET SUITE 300
PO DRAWER 1110
GREAT BEND, KS 67530

CURTIS M. IRBY, ATTORNEY
GLAVES IRBY & RHOADS
SUITE 1050
155 NORTH MARKET
WICHITA, KS 67202

LARRY HOLLOWAY, OPERATIONS MANAGER
KANSAS POWER POOL
200 WEST DOUGLAS, SUITE 601
WICHITA, KS 67202

COLIN M. WHITLEY, CEO/GENERAL MANAGER
KANSAS POWER POOL
200 WEST DOUGLAS, SUITE 601
WICHITA, KS 67202


Della Smith
Administrative Specialist