

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

Before Commissioners: Thomas E. Wright, Chairman
 Joseph F. Harkins
 Ward Loyd

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. 11-MKEE-439-RTS
Service)
)

**ORDER DESIGNATING PREHEARING OFFICER, SETTING
SCHEDULING CONFERENCE, AND GRANTING REQUEST FOR
WAIVER OF FILING REQUIREMENTS**

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 of all matters of record, the Commission makes the following findings:

I. Introduction

1. On December 14, 2010, Mid-Kansas Electric Company, LLC (Mid-Kansas or MKEC) initiated this proceeding by filing an Application to make changes to its charges for electric service for its customers served by Wheatland Electric Cooperative, Inc. (Wheatland). Mid-Kansas stated it is a Kansas Limited Liability Company operated on a not-for-profit basis located in Hays, Kansas. Mid-Kansas stated that it is a coalition of five Kansas consumer-owned cooperatives and one corporation wholly owned by a sixth Kansas consumer-owned cooperative, who collectively organized Mid-Kansas for the purpose of acquiring Aquila, Inc., d/b/a/ Aquila Networks – WPK’s Kansas electric utility assets. These six electric utilities, collectively referred to as Mid-Kansas Members, and their headquarters are as follows: Lane-Scott Electric

Cooperative, Inc., Dighton; Southern Pioneer Electric Company, Ulysses; Prairie Land Electric Cooperative, Inc., Norton; Victory Electric Cooperative Association, Inc., Dodge City; Western Cooperative Electric Association, Inc., Wakeeny; and Wheatland, Scott City. Mid-Kansas stated that it is an electric public utility regulated by the Commission. Application, ¶ 1.

2. Mid-Kansas stated that it is filing for changes in its rates that reflect the cost of service for certain Mid-Kansas's customers within its designated certificated service territory, which is based on the cost to Mid-Kansas for services rendered by Wheatland. Under the terms of a service agreement with Wheatland, Wheatland provides services to these Mid-Kansas customers who are located within a designated geographical service area. Application, ¶¶ 2 – 11. Mid-Kansas seeks establishment of an energy cost adjustment (ECA2) for retail sales made by Mid-Kansas to retail customers, establishment of retail rates for sales made to retail customers by Mid-Kansas, and establishment of a local access charge for services by Mid-Kansas to customers accessing 34.5 kV sub-transmission facilities owned by Wheatland. Application, ¶ 4.

3. Mid-Kansas requested that the Commission waive the filing requirements contained in K.A.R. 82-1-231 and permit Mid-Kansas to file for purposes of this rate application the information it attached thereto. Application, ¶¶ 13-17. Mid Kansas stated its request and the information supplied is consistent with the Commission's May 8, 2009 Order Granting Waiver of Filing Requirements in Docket No. 09-MKEE-816-MIS. Application, ¶¶ 13-17. Mid-Kansas further stated that because historical information required by K.A.R. 82-1-231 is not available or inapplicable, Mid-Kansas requests a waiver of the filing requirements that pertain to the three calendar years

immediately preceding the test year. Application, ¶ 16. Mid-Kansas stated that the Commission staff (Staff) and the Citizen's Utility Ratepayers Board (CURB) do not oppose these requests. Application, ¶ 17.

4. Mid-Kansas stated it should be permitted to earn adequate and sufficient net margins to allow it to serve its customers with sufficient and efficient service and to continue to expand investment needed for public service. Mid-Kansas stated that the proposed revenues in its Application will permit it to recover revenues in excess of expenses that are in the public interest and necessary to: (1) assure continuing, adequate, efficient and reliable utility service; (2) provide for debt service and enable Mid-Kansas to make required interest and principal payments on its debt; (3) maintain the borrowing capability of Mid-Kansas necessary to maintain, replace, and expand electrical infrastructure; and (4) achieve financial covenant requirements contained within certain financing documents and protect financial integrity. Application, ¶ 19.

5. Mid-Kansas stated that schedules filed with its Application establish a gross revenue deficiency for electric customers in Mid-Kansas's certificated service territory served by Wheatland of approximately \$4,264,081, based on normalized operating results for the 12 months ending December 31, 2009, adjusted for known and measurable changes in revenues, operating and maintenance expenses, cost of capital and taxes, and other adjustments specified with the filed schedules. Mid-Kansas requested that this increase be phased in over two years. Phase I would involve an increase of \$2,384,968 effective upon Commission approval, resulting in a 10.87% increase. Phase II would involve an increase of \$1,879,113 to be effective one year from the effective date of the Phase I increase and result in a 7.72% incremental increase over Phase I.

Mid-Kansas stated that of the Phase I additional revenue, \$52,043 would be attributable to an increase in the local access charge (LAC) for third-party user(s) of the 34.5 kV line owned by Wheatland. Application, ¶ 20. Mid-Kansas asked that the Commission approve its revised rate schedules to produce the annual revenue it has stated it requires and that the new rate schedules be effective in accordance with the provisions of K.S.A. 66-117 and the rules and regulations of the Commission.

6. The Commission has jurisdiction over Mid-Kansas's Application under K.S.A. 66-117 and K.A.R. 82-1-231. In this Order, the Commission sets a scheduling conference and designates a prehearing officer. As Mid-Kansas has indicated that Staff and CURB do not object, the Commission will also address the request for waiver of filing requirements. This Application has been or will be suspended for 240 days from its filing date of December 14, 2010 in a separate Commission order. See K.S.A. 66-117. The Commission also notes an Order Assessing Costs was issued in this docket on December 17, 2010.

II. Scheduling Conference and Designation of Prehearing Officer

7. Having reviewed the Application, the Commission finds that a prehearing officer should be designated and a scheduling conference set to allow parties to discuss and present arguments, if any, regarding scheduling issues and to develop a procedural schedule to recommend to the Commission.

A. Designation of Prehearing Officer

8. Although the Commission will conduct any evidentiary hearing, the Commission designates a prehearing officer to conduct any prehearing conferences that may be needed and to address any matters that are appropriately considered in a

prehearing conference or addressed by the prehearing officer, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, by way of example and not limitation: conversion of the proceeding to another type; exploration of settlement possibilities; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; discovery orders and protective orders; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Charles Reimer, Advisory Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3361, email address c.reimer@kcc.ks.gov, to act as Prehearing Officer in this proceeding. K.S.A. 2009 Supp. 77-514; K.S.A. 77-516; K.S.A. 2009 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

B. Notice of Prehearing Scheduling Conference

9. Having concluded that a prehearing conference is needed to discuss scheduling, the Commission sets a Scheduling Conference for **Tuesday, January 4, 2011, beginning at 1:30 p.m. and concluding by 3:00 p.m., in the Third Floor Hearing Room (or such other room as may be designated if necessary) of the Commission's offices**, 1500 SW Arrowhead Road, Topeka, KS 66604-4027. This scheduling conference will focus on issues that relate to development of a procedural schedule for this docket. Parties should be prepared to discuss a procedural schedule,

discovery procedures, and any other prehearing issues that will promote the orderly and prompt conduct of this proceeding. K.S.A. 77-517; K.A.R. 82-1-222. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default under the KAPA. K.S.A. 77-516(c)(8); K.S.A. 77-520. At the prehearing conference, this proceeding without further notice may be converted into a conference hearing or a summary proceeding or disposition of the matter as provided by the KAPA. K.S.A. 77-516(c)(7). Parties may appear by telephone if necessary. Requests should be made to the Prehearing Officer as soon as possible.

III. Agency Attorneys of Record

10. The attorneys designated to appear on behalf of the agency in this proceeding are Terri Pemberton, telephone number 785-271-3119, and Matt Spurgin, telephone number 785-271-3279, 1500 SW Arrowhead Road, Topeka, KS 66604-4027. K.S.A. 2009 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

IV. Request for Waiver of Filing Requirements

11. The Commission finds waiver of the filing requirements of K.A.R. 82-1-231 including the filing requirements that pertain to the three calendar years immediately preceding the test year, as requested by Mid-Kansas, is appropriate in this case. Mid-Kansas has shown good cause to waive the filing requirements as it has requested, as agreed by CURB and Staff, and as consistent with the Commission's order in Docket No. 09-MKKEE-816-MIS. As noted above, Mid-Kansas has indicated that this filing is primarily based upon the costs of service of its retail load served by Wheatland. Generally, cooperatives such as Wheatland may be subject to the less stringent rate filing requirements of 82-1-231a for their native load customers. The Commission approved a

similar request by Mid-Kansas in its Order Granting Waiver of Filing Requirements, issued May 8, 2009, in Docket No. 09-MKEE-816-MIS. In accordance with that order, Mid-Kansas filed a rate application in 09-MKEE-969-RTS (09-969 Docket) for each designated geographical service area within its certificated service territory served by its respective Members under agreements with Mid-Kansas, other than the Mid-Kansas certificated territory served by Wheatland, that reflected the cost of service for Mid-Kansas within each specific geographical area. Mid-Kansas has indicated that the historical information required as part of the rate filing under K.A.R. 82-1-231 is not available or not applicable. Mid-Kansas has indicated that the information attached to its Application is consistent with Schedule 1 of the Commission's May 8, 2009 order in Docket 09-MKEE-816-MIS and the filings authorized by the Commission in the 09-969 Docket. CURB and Staff do not oppose the request. In granting Mid-Kansas's request, the Commission notes that, of course, Mid-Kansas may be subject to discovery by other parties in accordance with discovery order(s) of the Commission, and may also be required to provide such information as the Commission may deem valuable in the course of its investigation of Mid-Kansas's Application.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission appoints Charles Reimer to act as Prehearing Officer as discussed above in paragraph 8, and directs parties to attend a scheduling conference on Tuesday, January 4, 2011, beginning at 1:30 p.m. and concluding by 3:30 p.m., in the Third Floor Hearing Room, or such other room as may be designated if necessary, at the

Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604, as described above in paragraph 9.

B. Mid-Kansas's request for waiver of filing requirements is granted as requested by Mid-Kansas and as agreed by CURB and Staff, as discussed further above in paragraphs 3 and 11.

C. This is a procedural order and constitutes non-final agency action. K.S.A. 77-607(b)(2). A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Harkins, Com; Loyd, Com.

Dated: DEC 23 2010

ORDERED MAILED

DEC 23 2010

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

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