BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS



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

**MID-KANSAS ELECTRIC COMPANY'S MOTION TO STRIKE TESTIMONY OF KANSAS ELECTRIC POWER COOPERATIVE'S WITNESS STEPHEN PAGE DANIEL**

COMES NOW, Mid-Kansas Electric Company, LLC ("Mid-Kansas") and respectfully files with the Kansas Corporation Commission ("Commission" or "KCC") this Motion to Strike portions of the direct testimony of Mr. Stephen Page Daniel, witness for Kansas Electric Power Cooperative ("KEPCo"). This Motion to Strike is directed at testimony related to the decision of the management of Southern Pioneer Electric Company ("Southern") to structure itself as a C-Corporation and testimony regarding classification and ownership of transmission assets. Mr. Daniels' testimony in these areas should be struck for the following reasons: (1) the testimony is irrelevant to the issues in the present docket, (2) this witness is not qualified to testify as an expert in the area for which testimony has been presented,[1] and (3) the testimony is based on

[1] *See* K.S.A. 60-419 (providing "[a]s a prerequisite for the testimony of a witness on a relevant or material matter, there must be evidence that he or she has personal knowledge thereof, or experience, training or education if such be required. Such evidence may be by the testimony of the witness himself or herself. The judge may reject the testimony of a witness that the witness perceived a matter if the judge finds that no trier of fact could reasonably believe that the witness did perceive the matter. The judge may receive conditionally the testimony of the witness as to a relevant or material matter, subject to the evidence of knowledge, experience, training or education being later supplied in the course of the trial.").

speculation, unsupported assumptions and conclusory allegations rather than a factual foundation.[2] In support of this Motion, Mid-Kansas states as follows:

## *I. BACKGROUND*

1. On November 15, 2005, Aquila, Inc. ("Aquila") and Mid-Kansas filed a joint application requesting Commission approval of the transfer of Aquila's certificate of convenience and Kansas electric franchises to Mid-Kansas in Docket No. 06-MKEE-524-ACQ ("524 Docket"). Included in the application were the transfer of certain Aquila assets to Southern and the structuring of Southern as a C-Corporation. A full investigation was conducted on the transaction, including comprehensive discovery, filing of testimony, and lengthy discussions between the interested parties. KEPCo was a party to the docket.

2. On January 10, 2007, the following parties to the 524 Docket filed a Stipulation for Commission consideration and approval ("524 Stipulation"): Aquila, Mid-Kansas, Commission Staff ("Staff"), Southern Pioneer (a wholly owned subsidiary of Pioneer Electric Cooperative, Inc., ("Pioneer"), a deregulated Kansas Electric Cooperative), the Citizens' Utility Ratepayer Board ("CURB"), Cargill Meat Solutions Corporation ("Cargill"), John Morrell & Co. ("John Morrell"), Kansas Hospital Association ("KHA"), Kansas Municipal Utilities, Inc., ("KMU"), Air Products and Chemicals, Inc. ("Air Products"), National Helium, LLC ("National Helium"), and Westar Energy, Inc. ("Westar"). KEPCo was not a signatory, but did not object to the settlement agreement. The 524 Stipulation recommended that the Commission approve the transfer of the certificate and franchises from Aquila to Mid-Kansas, and identified certain terms

[2] *See Kuxhausen v. Tillman,* 291 Kan. 314, 318 (2010) (rejecting expert testimony based on speculation); *State v. Papen,* 274 Kan. 149, 259 (2002) (finding expert must have factual basis for his or her opinions in order to separate them from speculation); *State v. Struzik,* 269 Kan. 95, 99 (2000) (concluding facts underlying expert's opinion and conclusions should be reasonably accurate, not based on guess or conjecture).

and conditions applicable to the transfer as agreed to by the signatory parties. Although the parties were given the opportunity to present testimony on the proposed stipulation and to file post-hearing briefs, KEPCo did not present any such testimony or file a brief.

3. On February 23, 2007, the Commission issued an order in the 524 Docket approving the 524 Stipulation ("524 Order"). In the 524 Order, the Commission specifically addressed the fact that Southern was organized as a C-Corporation but would operate "like any other similarly situated taxable, non-profit entity through the application of generally accepted industry business practices".[3] The Commission listed the terms specifically applicable to Southern, stating, "[t]he Commission approves each provision of the Agreement that sets forth specific conditions involving Southern."[4] Those terms are as follows:

a. Southern will not remit dividends to Pioneer absent Commission and lender approval,
b. Southern will establish an advisory group consisting of acquired WPK [Aquila] customers to provide input regarding issues impacting ratepayers,
c. Southern and Pioneer will jointly file a status report every three years, if a combination has not occurred, informing the Commission of the prospect of combination,
d. Southern will file a report each year supporting the Tier and DSC calculations for the preceding year's operations, and
e. Southern agreed to specific conditions regarding the Revenue Refund Plan.

4. On March 29, 2010, Southern and Pioneer filed the first report required under the terms of the 524 Stipulation (item "c" above). In the report, the Companies set forth the basis for their decision that combining Pioneer and Southern at that point in time was still not in the best interests of the Companies and their members/customers. No responses were filed or other action taken by Staff, the Commission or any other entity subsequent to the March 29, 2010 report.

[3] 524 Order, p. 9, para. 16.

[4] *Id.*

5. Mid-Kansas filed the present rate case on December 20, 2011. KEPCo filed to intervene on December 30, 2011, and Mid-Kansas filed a response on January 3, 2012 requesting that KEPCo's intervention be limited to issues related to the local access charge ("LAC") since that is the only issue impacting KEPCo. On January 30, 2012, the Commission issued an order granting KEPCo's intervention, but limiting KEPCo's intervention "to issues articulated in its Petition regarding matters involving the local access line."[5]

6. On April 20, 2012, KEPCo prefiled the direct testimony of its witnesses, including Mr. Daniels. Mr. Daniels testifies extensively about the form of operation of Southern as a C-Corporation rather than a cooperative, and makes punitive recommendations based upon his assumption that the form of operation chosen by Southern was incorrect or somehow imprudent. He also offers testimony on the appropriateness of the spin-down of the 34.5 kV assets from Mid-Kansas to Southern. Mr. Daniel's testimony regarding these issues should be stricken as the matters are not relevant to the issues in this docket. Even if they were relevant, he is not qualified to provide an expert opinion on the propriety of the form of operation of Southern. In addition, his opinions are based upon speculation and conjecture, contrary to Kansas law regarding expert testimony. If KEPCo wishes to pursue this issue and obtain a Commission investigation into the prudence of the management decision of Southern and Pioneer regarding the form of operation of Southern, the appropriate docket in which such matter should be brought before the Commission is the 524 Docket.

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[5] *Prehearing Officer's Report and Recommendation and Order Granting Intervention to KEPCo and CURB*, issued January 30, 2012, p. 9, para. 17.

## II. *MR. DANIELS' DIRECT TESTIMONY REGARDING THE FORM OF BUSINESS OPERATION OF SOUTHERN SHOULD BE STRICKEN AND NOT ALLOWED INTO THE RECORD OF THIS DOCKET.*

### *A. Mr. Daniels' Direct Testimony Regarding the Form of Business Operation of Southern Is Irrelevant to the Issues in this Proceeding.*

7. KEPCo is attempting, through the unqualified and unsupported testimony of Mr. Daniels, to use this rate application docket to revisit and reevaluate the acquisition issues in the 524 Docket. This rate case is not about the form of operation of Southern; it is about setting just and reasonable rates for Southern as Southern presently exists. If KEPCo wants to reopen the business structure issue, it should make a request in the 524 Docket asking the Commission to do so. This rate case is not the forum to re-litigate the matter. A docket subject to the 240-day limitations of K.S.A. 66-117 is not the appropriate place to engage in conjecture about the potential cost of service for a hypothetical cooperative company and the actual cost of service of the applicant. Nor is it the appropriate forum to argue that the form of operation chosen by the hypothetical company is better than the form chosen by the applicant. These are issues to be raised in the docket where the merger/acquisition was presented for consideration, or in a formal complaint filed for the purpose of bringing before the Commission the prudence of the form of operation chosen by a company. Such dockets are not subject to the 240-day time frame of K.S.A. 66-117.

8. At this time, the form of operation of Southern is deemed prudent, and if questioned in the appropriate forum (the 524 Docket), Southern and Pioneer will establish this fact through evidence and testimony of the individuals who were involved in performing the analysis and making the decision. It was a decision based upon the advice and counsel of tax experts, attorneys and accountants hired in the course of Pioneer's undertaking of due diligence in evaluating the Aquila acquisition. However, in this rate case, the prudence of the decision of

management to operate Southern as a C-Corporation is not at issue; what is at issue is the level of just and reasonable rates for the Southern division of Mid-Kansas *as it exists today*. Attempts in this docket to propose rate adjustments or decisions regarding Southern's rates or DSC rate plan based upon *an unproven assumption* that Southern is not prudently structured is impermissible. The testimony of Mr. Daniels which attempts to refocus this docket on the form of operation of Southern rather than the just and reasonable rate for Southern's customers to be charged should not be permitted.

*B. Mr. Daniels Is Not Qualified to Testify as an Expert on the Form of Operation of Southern.*

9. Mr. Daniels is an outside consultant retained by KEPCo for the purpose of providing testimony in this proceeding. He states that one purpose of his testimony is to address "the appropriate balancing of the respective interest of Southern Pioneer and its customers."[6] In furtherance of this purpose, he expresses his opinions on the form of operation of Southern, presumably as an "expert witness." Mr. Daniels' testimony indicates he received a Bachelor degree in Industrial Engineering and a Master of Business Administration. His experience appears to be primarily in the area of engineering and consulting on utility rates, forms of regulation, transmission resources and access, power supply planning, market power issues, and cost of service analysis. The education and experience identified by Mr. Daniels in his testimony does not qualify him as an expert in the area of evaluating corporate versus cooperative business structures, tax implications, and accounting issues related to such matters. In evaluating various forms of operations for a company, the legal and accounting ramifications of options available are the fundamental issues requiring professional analysis. Mr. Daniels has failed to establish

[6] Direct Testimony of Daniels, p. 6.

that he is qualified to present an expert opinion in this highly specialized area of law and accounting.

10. To qualify to provide expert testimony a witness must show that (1) the subject on which he is testifying is so distinctively related to a field of science, profession, business or occupation as to be beyond the knowledge or experience of the Commission, *and* (2) the witness has such knowledge, skill or experience that his opinion will aid the Commission in making its determination on the evidence presented.[7] Expert testimony must also be based upon facts or data perceived by or personally known or made know to the witness at the hearing[8], and cannot be based on guess or conjecture.[9]

11. The testimony presented by Mr. Daniels on the form of operation of Southern fails on the second prong of this test. There is no evidence indicating that Mr. Daniels has knowledge or experience *beyond* that of the Commission to address this issue. Although the testimony of an expert explaining the complicated and highly technical impacts of the form of business operation of an entity may be beneficial to the Commission, there is no evidence that Mr. Daniels has any demonstrable knowledge, skill or experience in this area that would aid the Commission in this regard.

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[7] *See* Barbara on Evidence, Section 2.10, 4th Edition, 1997. This follows the standards set forth in K.S.A. 60-456(b):

> If the witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (1) based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of the special knowledge, skill, experience or training possessed by the witness."

[8] *Williams v. Amoco Production Co.,* 241 Kan. 102, 112 (1987) (holding an expert's testimony that is based on speculation, rather than fact, lacks foundation and is not admissible); *Reazin v. Blue Cross and Blue Shield of Kan., Inc.,* 663 F.Supp. 1360, 1479 (D. Kan. 1987) (holding that theoretical speculation, unsupported assumptions and conclusory allegations advanced by an expert are neither admissible at trial, nor are they entitled to any weight when raised in opposition to motion for summary judgment).

[9] *Kuxhausen,* at 318; *Struzik,* at 99.

12. A witness testifying as to his opinion, inference or conclusion which requires special knowledge, training or experience *must first* be qualified as an expert in the field. The "field" in this instance is the assessment of various potential forms of business operations and the underlying legal and accounting analysis that must provide the foundation for any form of operation chosen. Before expert testimony may be received in evidence, a foundation must be laid showing that the area upon which an opinion is rendered is within the scope of the special knowledge, skill, experience or training possessed by the witness. Based on the information provided in the direct testimony of Mr. Daniels, there is no evidence that he possesses any special knowledge, training or expertise in this area to make him competent as an expert witness on this subject matter. "For a witness to testify as an expert on a particular subject, the witness must have skill or experience in the business or profession to which the subject relates."[10] "Furthermore, an expert witness, "must be qualified to impart to the jury knowledge within the scope of his special skill and experience that is otherwise unavailable to the jury from other sources.'"[11] The expert witness must be an expert in the area upon which testimony is being presented – in this case, the prudency of the form of operation chosen by Pioneer and Southern's management. It is irrelevant that Mr. Daniels may be experienced in other matters involving regulatory proceedings or utility operations such as rate structure, transmission access or wholesale power contracts.

13. If the Commission is not inclined at this time to strike the testimony of Mr. Daniels on the basis of his lack of qualifications as an expert, then Mid-Kansas requests that KEPCo be required to make an immediate supplemental filing establishing his qualifications in

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[10] *Dieker v. Case Corp.*, 276 Kan. 141, 143 (2003) (quoting *Choo-E-Flakes, Inc. v. Good*, 224 Kan 417, 419) (1978); *see also State v. Willis*, 256 Kan. 837, 839 (1995) (citing *State v. McClain*, 216 Kan. 602, 606 (1975)).

[11] *State v. Willis*, 256 Kan. 837, 840-41 (1995).

this area. The evidence previously submitted at this point in the proceeding fails to meet the legal standards for allowing Mr. Daniels to testify on this matter in this proceeding.

*C. Mr. Daniels Opinion is Based Upon Speculation and Unsupported Assumptions of Fact and Law.*

14. In addition to Mr. Daniel's lack of personal qualifications as an expert, the testimony he presents regarding the form of operation of Southern is superficial and in many ways is based on factual speculation, constituting mere guess and conjecture. Consequently, his testimony on this issue fails to meet the legal standard for admissibility and should be stricken and not allowed into the record of this docket.

15. As the Commission recently opined in another proceeding addressing expert testimony,

> To the extent expert testimony is allowed to address the issue of rate case expense, the Commission notes that *facts relied upon* by an expert for an opinion should afford a reasonably accurate basis for the conclusion as distinguished from mere guess or conjecture. Expert witnesses should confine their opinions to relevant matters that are *certain* or *probable*, not those which are merely possible."
>
> Evidence regarding expert testimony in the form of opinions or inferences must be limited to opinions that are not only within the scope of the expert's special knowledge, skill, experience, or training, but also *must be based on facts or data perceived by or personally known to the witness* in order to be sure an expert has a *factual basis* for an opinion *and can separate opinion from mere speculation.*"[12] (Emphasis added.)

16. Contrary to the Commission's instructions quoted above in a previous docket, Mr. Daniels repeatedly speculates about facts of which he has no knowledge, experience or training, relying upon those speculative facts to support his conclusion that certain negative or punitive action should be taken against Southern because of the business form of operation it has established. The type of speculation engaged in by Mr. Daniels as a proposed expert witness in

[12] Docket No. 10-KCPE-415-RTS, *In the Matter of the Application of Kansas City Power & Light Company to Modify it Tariffs to Continue the Implementation of its Regulatory Plan,* Order issued February 21, 2011, p. 15-16, para. 27.

this case has been specifically rejected by the Commission in the past.[13] Mr. Daniels is required to provide a reasonable basis for the conclusions he reaches, showing that each conclusion is, more likely than not, accurate.[14]

17. For example, Mr. Daniels states that, "[a]ll earnings of Southern Pioneer go to the owner, in this case Pioneer, and not to the benefit of Southern Pioneer's customers, as would be the case were Southern Pioneer structured as a not-for-profit cooperative."[15] He continues, "[t]o the extent Southern Pioneer's customers are charged more than is just and reasonable, based upon prudently incurred costs, the excess charges inure to the benefit of Pioneer to the detriment of Southern Pioneer's customers."[16] These conclusions completely ignore the situation that existed for these customers prior to Mid-Kansas acquiring the service territory. He also ignores the fact that Southern has agreed to operate like a cooperative, that no dividends can be paid to Pioneer without Commission approval, that earnings are to be used to make major and costly – and much needed – improvements to the system to serve customers better, and that improvements in Southern's equity level provide benefits to its customers. Mr. Daniels has no *actual facts* upon which to base his conclusion that earnings do not go to the benefit of Southern's customers, and therefore, his conclusions regarding the prudence of the form of

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[13] *Id.*, Order issued November 22, 2010, p. 32 - concluding "the 'holistic' approach used by Staff's expert, which resulted in many attempts to 'assess reasonable percentage disallowances,' is prone to being speculative and arbitrary. Not only is the method far afield from a reasoned, auditable methodology, we agree with KCPL that it runs afoul of standards articulated by our Court for expert testimony" (citing *Kuxhausen, Papen and Struzik*).

[14] *State v. Struzik,* 269 Kan. at 99 ("It is necessary that the facts upon which an expert relies for his or her opinion should afford a reasonably accurate basis for his or her conclusions as distinguished from mere guess or conjecture. Expert witnesses should confine their opinions to relevant matters which are certain or probable, not those which are merely possible."); *see also Rhoten v. Dickson,* 290 Kan. 92, 114-15 (2010) (holding that to satisfy the plaintiff's burden of proof on the causation element, the plaintiff must produce evidence that 'affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was the cause in fact of the result.'").

[15] Daniel's Direct, p. 8.

[16] *Id.*at p. 9.

operation of Southern are not accurate. This is not permissible "expert testimony", and the Commission has specifically forbidden this type of opinion testimony.

18. In another example, Mr. Daniels looks only generically at the income tax impact of Southern being a C-Corporation and then concludes, without considering any other *actual facts* underlying the form of operation chosen, that "there is an obvious dichotomy in the interest of Southern Pioneer and its sole shareholder, Pioneer on the one hand and Southern Pioneer's customers who have no vested ownership-interest in Southern Pioneer on the other."[17] He concludes, "there are substantial differences in the interest of the stockholder(s) of a for-profit, taxable C-corporation and the interest of its customers."[18] By being blind to the entirety of the situation Mr. Daniels purports to evaluate, he has failed to provide *a reasonable basis* for the conclusion he reaches.[19] He opines that the imposition of the income tax effect on Southern's customers has a "clear and *unjustifiable* negative effect" on them, but fails to consider the *actual* and complicated facts and law relevant to understanding why the C-corporation form of operation was chosen, the risks of adopting the cooperative structure, or the positive impacts of Southern providing service rather than Aquila. Without analyzing the real facts underlying the business form structure, his conclusion that the effects of the structure are "*unjustifiable*" is merely speculation on his part. His opinion testimony does not meet the standards for an admissible "expert opinion".

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[17] *Id. at* p. 11.

[18] *Id.*

[19] *State v. Struzik,* 269 Kan. at 99 ("It is necessary that the facts upon which an expert relies for his or her opinion should afford a reasonably accurate basis for his or her conclusions as distinguished from mere guess or conjecture. Expert witnesses should confine their opinions to relevant matters which are certain or probable, not those which are merely possible."); *see also Rhoten v. Dickson,* 290 Kan. 92, 114-15 (2010) (holding that to satisfy the plaintiff's burden of proof on the causation element, the plaintiff must produce evidence that 'affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was the cause in fact of the result.'").

19. Mr. Daniels' testimony relies upon his speculation as to the reasons for Southern adopting its present form of operation, the ongoing relationship between Pioneer and Southern, the goals of Pioneer and Southern's management, and the overall impact on Southern's customers of the business structure chosen. His "expert opinion" is that the structure chosen is unjustifiable when, in fact, it is fully justified. He imputes to Pioneer a goal of increasing equity for their own benefit at the expense of Southern's customers, when the facts show the opposite. He assumes a lack of alliance between the desires of Southern's management and its customers, when the goals expressed by management are wholly consistent with the desires of its customers, and the actions of management since the acquisition are consistent with those stated goals. His testimony is replete with conclusions based upon conjecture and speculation, not based in fact, and it should be stricken and disregarded.

## *III. MR. DANIELS' DIRECT TESTIMONY REGARDING THE IMPACT OF MID-KANSAS' SPIN-DOWN OF SUBTRANSMISSION ASSETS TO SOUTHERN SHOULD BE STRICKEN AND NOT ALLOWED INTO THE RECORD OF THIS DOCKET.*

20. Mr. Daniels includes a section in his testimony wherein he argues that, had Mid-Kansas retained ownership of sub-transmission facilities that were spun down to Southern, Mid-Kansas would be seeking revenues associated with those facilities that are based upon lower DSC and MFI financial metrics than what Southern is requesting. He argues that, since the spin-down results in a higher revenue requirement for these facilities, "this factor is illustrative of yet another decision with regard to the structuring of Southern that has an adverse effect upon its customers."[20] This testimony should be stricken on the basis that it is irrelevant to the issues in

[20] Daniels Direct, p. 24.

this rate case proceeding and because his opinion is based upon conjecture and speculation and is not based in fact.

21. The testimony is irrelevant because the ownership and classification of these assets were addressed and determined by the Commission in the 524 Docket and in Docket No. 11-GIME-597-GIE ("597 Docket").[21] These matters are not at issue in this rate proceeding. In fact, KEPCo was a signatory to the Settlement Agreement in the 597 Docket wherein the parties agreed that these 34.5 kV assets are not "transmission facilities" and thus not recoverable through Mid-Kansas Formula Based Transmission Rate.[22] It is perplexing that KEPCo would attempt now to undermine the Stipulation it signed in this earlier docket. This matter is resolved, and KEPCo's testimony in this case attempting to re-litigate the issue - in direct conflict with its representations in the 597 Docket - should be stricken and not allowed into the record of this case.

22. The testimony should also be stricken as it falls far short of the standard set forth above for "expert testimony". Mr. Daniels presents a theoretical "what if" exercise wherein he opines that rates would be lower if Mid-Kansas kept ownership of the facilities because Mid-Kansas uses a lower financial metric than proposed for Southern in this case. As stated above,

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[21] *In the Matter of a General Investigation Into the Classification as Transmission or Distribution of Certain 34.5 kV Facilities Owned by Certain Members of Mid-Kansas Electric Company, LLC and Into Certain Agreements Relating to the Provision of Wholesale Service by Mid-Kansas Electric Company, LLC to Kansas Power Pool and Kansas Electric Power Cooperative, Inc. on Such Facilities.*

[22] See December 1, 2011 Stipulation and Agreement in the 597 Docket, pp. 1-2, which provides:

> a. The 34.5 kV facilities at issue were characterized by the prior owner as "sub" or "local" transmission and now are owned by non-SPP member distribution utilities. The Signatories stipulate and recommend that the Commission should find, given its discretion as to how to weigh the various components of the Seven Factor Test, that the facilities at issue are not "transmission facilities" as contemplated in Attachment AI to SPP's Open Access Transmission Tariff (OATT).
> b. A necessary condition for inclusion of the Mid-Kansas Member 34.5 kV facilities in the SPP transmission system and under the SPP OATT has not been met because the ownership and control of those facilities resides with non-members of SPP and no party has asserted that it has or intends to meet SPP's requirements for control by a non-owner to place the facilities under SPP's functional control.

an expert's opinion must be based upon a factual foundation, and cannot be based on speculation, unsupported assumptions and conclusory allegations. Mr. Daniels makes a comparison that only considers one factor - the financial metrics of the two companies - and fails to consider other important factors triggered by his hypothetical scenario, such as the pivotal fact that keeping the facilities at Mid-Kansas would have required additional metering at a cost of $6.8 million. Ignoring this and other such compelling *facts* disqualifies his testimony from being adequate as an "expert opinion".

## *IV. SPECIFIC TESTIMONY TO BE DISALLOWED*

23. The following sections of Mr. Daniels' prefiled testimony should not be permitted into the record in this docket:

Page 8, line 8 through page 14, line 17;

Page 22, line 25 through page 24, line 14;

Page 25, line 21 – strike "business structure and",

Page 26, line 1 – strike "structural and";

Page 26, lines 4 through 11;

Page 27, lines 5 through 11;

Page 27, line 12 – strike "structural and";

Page 27, line 15 beginning with "Absent a …" through line 19;

Page 27, line 21 – strike "structural and";

Page 28, line 9 beginning with "If, going forward, …" through line 14; and

Page 30, line 9 beginning with "Requiring such …" through line 11.

WHEREFORE, for the reasons set forth above, Mid-Kansas respectfully requests that the Commission grant this Motion to Strike portions of the prefiled testimony identified above and disallow its admission into the record in this docket.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above *Motion* was electronically served, hand-delivered or mailed, postage prepaid, this 27th day of April, 2012 to:

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