

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Joint Application of )  
Aquila, Inc., d/b/a Aquila Networks – WPK ) Docket No. 06-MKEE-524-ACQ  
 (“WPK”) and Mid-Kansas Electric )  
Company, LLC (“MKEC”), Joint )  
Applicants, for an Order Approving the )  
Transfer to MKEC of WPK’s Certificates of )  
Convenience and Franchises with Respect to )  
All of WPK’s Kansas Electric Business, )  
Including its Generation, Transmission and )  
Local Distribution Facilities Located in the )  
State of Kansas, and for Other Related )  
Relief. )

Received on  
SEP 30 2013  
by  
State Corporation Commission  
of Kansas

**SUPPLEMENTAL RESPONSE TO  
MKEC’S REPORT AND MOTION FOR RELIEF  
AND REPORT AND RECOMMENDATION OF CURB**

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”), and submits its Supplemental Response to the Report and Motion for Relief filed by Mid-Kansas Electric Company, LLC (“MKEC”). CURB further submits and attaches its Report and Recommendation, prepared by CURB’s Regulatory Analyst Stacey Harden. In support of its supplemental response, CURB states as follows:

**I. Background**

1. On January 20, 2007, a Joint Motion for Approval of Stipulation and Agreement was filed, seeking approval of a Stipulation and Agreement entered into between the signatory parties (“524 S&A”). CURB was a party to the 524 S&A.

2. On February 23, 2007, the Commission issued an Order Adopting Stipulation & Agreement (“Order Adopting S&A”), approving the 524 S&A.

3. The Commission's Order Adopting S&A approved the terms contained in the 524 S&A requiring refunds to customers when a MKEC Member's TIER exceeds 2.2:

18. Commencing January 1, 2009, the parties agree as follows:

b. MKEC or a Distribution Cooperative certified to provide service to the former Aquila WPK customers shall file a report with the Commission in this docket by March 31<sup>st</sup> of 2010, 2011 and 2012 supporting the TIER calculations for the preceding year's operations for MKEC or the Distribution Cooperatives' WPK division operations, as the case may be.

c. Should MKEC or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers' TIER exceed 2.2 for 2009, 2010 or 2011, and MKEC or any Distribution Cooperative meet their respective minimum loan covenants required by their lenders, MKEC or any affected Distribution Cooperative shall initiate a Revenue Refund Plan to refund or credit the difference in net margin required to achieve a TIER of 2.0 to Aquila WPK customers. The excess margins shall be refunded or credited pursuant to the Revenue Refund Plan which shall, to the extent practicable, provided that the refund or credit be paid or credited to those retail WPK customers who contributed the excess margins. In the event MKEC or a Distribution Cooperative can establish to the Commission through a separate filing that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to the customer by the refund, MKEC or the Distribution Cooperative may be granted a waiver of the refund obligation.<sup>1</sup>

4. In approving these provisions, the Commission's Order Adopting S&A cited the testimony of David Dittmore on behalf of Commission Staff, as follows:

The Agreement also calls for customer refunds if the co-ops achieve a TIER exceeding 2.2, equivalent to the excess in net margin above a TIER of 2.0. This provision is effective for years 2008-2011. This refund provision strikes a balance between providing current ratepayers with tangible benefits if earnings exceed benchmark levels, while at the same time providing co-ops some flexibility to retain margins for the purpose of enhancing their equity ratios. The refunds will not be made (or would be limited) if such refunds would prevent the co-ops from achieving

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<sup>1</sup> 524 S&A, ¶ 18(b), (c) (emphasis added).

the financial ratios established in their debt covenants or from making necessary capital expenditures.<sup>2</sup>

5. In approving these provisions, the Commission's Order Adopting S&A also cited the testimony of Earl Watkins, Jr., on behalf of MKEC, as follows:

Additionally, MKEC and/or the Distribution Cooperatives would be required to initiate a Revenue Refund Plan (Plan") if the times interest earned ratio ("TIER") of MKEC and/or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers exceeds 2.2 for 2008. The Plan would provide for the refund or credit of the difference in net margin required to achieve a TIER of 2.0 to Aquila WPK customers. A credit or refund would not be required under certain conditions. Paragraph 18 basically has the same provisions of paragraph 17 for years 2009 through 2011 except that a rate increase could be proposed for any reason.<sup>3</sup>

6. The 524 S&A required that each of the MKEC division distribution cooperatives to make a filing acknowledging the terms that affect them and agreement to be bound by such conditions and obligations.<sup>4</sup> Each of the MKEC divisions, including Victory and Prairie Land, acknowledged the terms of the 524 S&A and agreed to be bound by the conditions and obligations contained in the 524 S&A.<sup>5</sup>

7. The record reflects that Victory filed the TIER calculation reports required by the 524 S&A on: April 1, 2009 (year ending 2008); April 5, 2010 (year ending 2009); and February 22, 2013 (year ending 2012). However, Victory did not file the required TIER calculation reports in 2011 and 2012 for years ending 2010 and 2011, respectively.

8. The record further reflects that Prairie Land filed the following TIER calculation reports required by the 524 S&A on: March 30, 2009 (year ending 2009); March 22, 2010 (year

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<sup>2</sup> January 11, 2007, Testimony of David Dittmore in Support of Settlement, p. 5 (cited in the February 23, 2007 Order Adopting S&A, ¶ 15).

<sup>3</sup> January 11, 2007, Testimony of Earl Watkins, Jr. in Support of Stipulation and Agreement, p. 5 (cited in the February 23, 2007 Order Adopting S&A, ¶ 15).

<sup>4</sup> 524 S&A, ¶ 37.

<sup>5</sup> Acknowledgement of the Terms and Conditions of Stipulation and Agreement, March 19, 2007.

ending 2009); and February 1, 2013 (year ending 2012). Prairie Land failed, however, to file the required TIER calculation reports in 2011 and 2013 for years ending 2010 and 2011, respectively.

9. On July 16, 2013, MKEC filed a Report and Motion for Relief (“Motion”) requesting that the Commission issue an order making the following findings:

- The TIER reports required to be filed under the Commission’s February 23, 2007, Order are in compliance with the Stipulation and Agreement in this docket on January 10, 2007 (“S&A”);
- Waive any refunds found to be due under the S&A and February 23, 2007 Order, or in the alternative, find that no refund is required on the grounds that the benefits received by the customers exceed the benefits to the customers from a refund and excess margins, if any, have been credited to the customers through customer patronage; and
- Any other and further relief the Commission deems just and reasonable.

10. On August 20, 2013, the Commission granted Staff and CURB an extension of time, through September 30, 2013, to conduct discovery and file supplemental responses to MKEC’s Motion.

## **II. SUPPLEMENTAL RESPONSE AND REPORT AND RECOMMENDATION OF CURB.**

### **A. K-1 Non-Operating Income Should Not Be Considered In Determining Whether Refunds Should Be Made.**

11. MKEC acknowledges that both Prairie Land and Victory have exceeded the 2.2 TIER threshold set in the 524 S&A and the Commission’s Order Adopting S&A, but assert that K-1 non-operating income should be excluded from the calculation of TIER because of its non-cash nature.

12. CURB agrees with MKEC that K-1 non-operating income consists of non-cash items and should not be considered in determining whether refunds should be made pursuant to the

agreement contained in the 524 S&A approved in the Commission's Order Adopting Stipulation and Agreement.

13. Removing the K-1 non-operating income from Prairie Land's 2011 TIER calculation results in a TIER of 1.92.<sup>6</sup> No refund is due to Prairie Land customers because the TIER does not exceed the 2.2. TIER threshold required by the 524 S&A and Order Adopting S&A.

14. Removing the K-1 non-operating income from Victory's 2011 TIER calculation results in a TIER of 2.06.<sup>7</sup> No refund is due to Victory customers because the TIER does not exceed the 2.2. TIER threshold required by the 524 S&A and Order Adopting S&A.

15. However, removing the K-1 non-operating income from Victory's 2010 TIER calculation results in a TIER of 2.44.<sup>8</sup> Under the terms of the 524 S&A and the Commission's Order Adopting S&A, Victory customers are entitled to a refund of the overearnings difference between the actual TIER of 2.44 and the target TIER of 2.0 for 2010.

16. As a result, CURB's Supplemental Response and Report and Recommendation will only address issues related to whether refunds are required by MKEC for the Victory division in 2010 under the terms of the 524 S&A and the Commission's Order Adopting S&A.

**B. MKEC's Tier Reports Were Not Filed In Compliance With The Commission's Order Approving S&A.**

17. MKEC misleadingly and erroneously states in its Report and Motion for Relief that "[b]ecause the docket does not reflect reports for all calendar years in which the TIER reports were

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<sup>6</sup> CURB Report and Recommendation, p. 3; Application, ¶ 13.

<sup>7</sup> CURB Report and Recommendation, p. 3; Application, ¶ 14.

<sup>8</sup> CURB Report and Recommendation, p. 3; Application, ¶ 15.

to be made, Mid-Kansas submits this report to complete the record.”<sup>9</sup> The reports were required to be filed by the March 31<sup>st</sup> of 2011 and 2012, respectively. Refunds to customers would and should have been ordered for Victory customers for 2010, had the TIER report been timely filed by March 31, 2011.

18. The Commission’s Docket clearly shows that the required TIER reports were not filed by March 31<sup>st</sup> in 2011 for Victory, as required by the 524 S&A and the Order Approving S&A. Any claim by MKEC on behalf of Victory for a waiver of refunds should therefore have been made contemporaneously with the report to be filed by March 31, 2011, or refunds were required to be made under the express terms of the 524 S&A and the Order Approving S&A.

19. MKEC has not only failed to establish that the required TIER reports were filed in Compliance with the 524 Docket, but is now attempting to use its failure to file the timely reports to argue that the required refund for 2010 overearnings should be waived because of an alleged inability to meet RUS TIER loan covenants for 2013.<sup>10</sup> However, MKEC’s assertion fails for multiple reasons.

20. First, no refunds or minimal refunds would be made in 2013, since any implementation of a Commission refund order in this docket is likely not to occur until 2014. Second, the \$754,000 refund amount calculated by MKEC,<sup>11</sup> after removing K-1 income, is greater than the amount calculated from MKEC’s data request response to Staff-98, which CURB calculates to be \$583,227. Finally, whether Victory would meet loan covenants in 2014 is irrelevant; had the

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<sup>9</sup> Report and Motion for Relief, ¶ 9.

<sup>10</sup> Acknowledgement of the Terms and Conditions of Stipulation and Agreement, March 19, 2007.

<sup>11</sup> Report and Motion for Relief, p. 6, fn. 2.

Company filed a timely TIER report by March 31, 2011, refunds would have been made in 2011 and consideration of 2014 would not be relevant.

21. CURB therefore respectfully requests that the Commission find that MKECs tier reports for Victory and Prairie Land were not filed in compliance with the 524 Order Approving S&A.

**C. The Commission Should Not Waive Refunds Required By Its Order Approving S&A And Any Benefits Received By Customers Do Not Exceed The Benefits Of A Refund.**

22. The 524 S&A and Order Adopting S&A require that refunds be made to customers when the TIER for any year exceeds 2.2. The burden is therefore on MKEC to establish that it is entitled to waiver of the refund provisions. MKEC's arguments for waiver fail for the reasons set forth in Ms. Harden's Report and Recommendation.<sup>12</sup>

23. With respect to MKEC's argument that Victory customers received benefits related to the ECA customer refunds made in 2011, Ms. Harden noted the inequity of including the \$229,632 ECA over-recovery in both 2010 and 2011.<sup>13</sup> Removing the ECA over-recovery from 2010 still results in a TIER of 2.31,<sup>14</sup> which still results in refunds under the terms of the 524 S&A and Order Adopting S&A.

24. MKEC further argues that Victory customers received capital credits supports its requested waiver of refunds. However, the fact that Victory or Prairie Land are consumer-owned cooperatives and overearnings are recorded as capital credit or patronage capital is completely irrelevant to the Commission's decision to order refunds for Victory's overearnings. The issue of

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<sup>12</sup> CURB Report and Recommendation, pp. 3-5.

<sup>13</sup> *Id.*, pp. 3-4.

<sup>14</sup> *Id.*

capital credits for overearnings was considered and specifically mentioned in the 524 S&A and Order Adopting S&A,<sup>15</sup> but the parties to the 524 S&A still agreed to require refunds when overearnings exceeded a TIER of 2.2. All of the capital credits related to the difference between a 1.1 TIER to a 2.2 TIER would have accrued to Victory customers in any event, something fully contemplated by the parties to the 524 S&A. As a result, the capital credits do not provide Victory customers benefits that exceed the benefits of refunds.

25. MKEC's argument that the capital improvements made by Victory to improve reliability and service in some way provided an additional benefit to customers should likewise be disregarded. Capital improvements are a normal and necessary consequence of running a utility, and were clearly anticipated when the S&A was signed.<sup>16</sup> Capital improvements are expected to be made continuously as utilities seek to meet their service obligations, and are therefore not a benefit that exceeds the benefit of the refunds due and owing to Victory customers for 2010.<sup>17</sup>

26. MKEC's assertion that providing adequate customer service provided benefits exceeding the benefit of refunds likewise fails.<sup>18</sup> Good customer service is a required responsibility of public utilities, not an extra benefit as alleged by MKEC. Victory should not be allowed to retain \$583,227 in overearnings simply because it increased its customer service to a reasonable level. The cost of the customer service additions is likewise already accounted for and reflected in the TIER calculation for the years the costs were incurred.

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<sup>15</sup> 524 S&A, ¶ 13; Order Adopting Stipulation and Agreement, ¶¶ 10, 15.

<sup>16</sup> 524 S&A, ¶¶ 17d, 18d, 36.

<sup>17</sup> CURB Report and Recommendation, pp. 3-5.

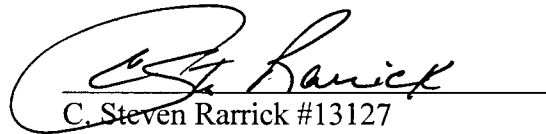
<sup>18</sup> *Id.*, p. 5.



### III. CONCLUSION

27. WHEREFORE, CURB respectfully requests the Commission deny MKEC's Motion for Relief as it pertains to the requested waiver for Victory Electric Division for 2010, order refunds be paid to Victory ratepayers in the amount of \$583,227 for 2010, and for such and further relief as the Commission deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line. The signature is cursive and somewhat stylized.

C. Steven Rarrick #13127

David Springe #15619

Niki Christopher #19311

Citizens' Utility Ratepayer Board

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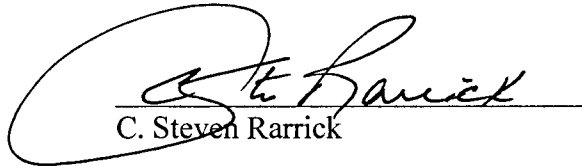
(785) 271-3116 Fax

VERIFICATION

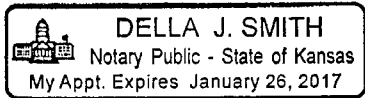
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing document, and upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 30<sup>TH</sup> day of September, 2013.



  
Notary Public

My Commission expires: 01-26-2017

# Citizens' Utility Ratepayer Board

## Board Members:

Robert L. Harvey, Chair  
Ellen K. Janoski, Vice-Chair  
Brian Weber, Member  
Bob Kovar, Member  
vacant, Member



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## REPORT AND RECOMMENDATION

**TO:** Chairman Mark Sievers  
Commissioner Thomas E. Wright  
Commissioner Shari Feist Albrecht

**FROM:** Stacey Harden

**DATE:** September 30, 2013

**SUBJECT:** In the Matter of the Joint Application of Aquila, Inc., d/b/a Aquila Networks – WPK (“WPK”) and Mid-Kansas Electric Company, LLC (“MKEC”), Joint Applicants for an Order Approving the Transfer to MKEC of WPK’s Certificates of Convenience and Franchises with Respect to All of WPK’s Kansas Electric Business, Including its Generation, Transmission, and Local Distribution Facilities Located in the State of Kansas and for Other Related Relief; KCC Docket No. 06-MKEE-524-ACQ.

### EXECUTIVE SUMMARY

On July 16, 2013, Mid-Kansas Electric Company, LLC (“MKEC”) provided information relative to the TIER reporting requirements established in the 06-MKEE-524-ACQ (“524 Docket”) Stipulation and Agreement (“S&A”). According to MKEC’s Report and Motion, the Prairie Land Division achieved a TIER 3.16 in 2011, while the Victory Division achieved TIERS of 2.83 and 2.78 in 2010 and 2011, respectively. MKEC is requesting a waiver of refund obligations, as established in the S&A in the 524 Docket.

I support MKEC’s request that a waiver should be granted for the Prairie Land Division during 2011 and the Victory Division during 2011. However, it is my opinion that the Commission should order a refund of \$583,227 for the Victory Electric Division for 2010.

### BACKGROUND

The S&A in the 524 Docket provides the following:

18. Commencing January 1, 2009, the parties agree as follows:

18. Commencing January 1, 2009, the parties agree as follows:

...

c. Should MKEC or a Distribution Cooperative certificated to provide service to the former Aquila WPK customers' TIER exceed 2.2 for 2009, 2010, or 2011, and KMEC or any Distribution Cooperative meet their respective minimum loan covenants required by their lenders, MKEC or any affected Distribution Cooperative shall initiate a Revenue Refund Plan to refund or credit the difference in net margin required to achieve a TIER of 2.0 to Aquila WPK customers. The excess margins shall be refunded or credited pursuant to the Revenue Refund Plan which shall, to the extent practicable, provided that the refund or credit be paid or credit to those retail WPK customers who contributed the excess margins. In the event MKEC or a distribution Cooperative can establish to the Commission through a separate filing that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to the customer by the refund, MKEC or the Distribution Cooperative may be granted a waiver of the refund obligation.<sup>1</sup>

MKEC acknowledges that both Prairie Land and Victory have exceeded the 2.2 TIER threshold. However, MKEC has requested a waiver of refund under paragraph 18. C. of the 524 S&A. MKEC explains that the inclusion of K-1 income (non-operating income) caused the TIER ratio to exceed 2.2 for Prairie Land and Victory in 2011. MKEC is requesting that the K-1 income be excluded from the TIER calculations. When K-1 income is removed, the TIER for Prairie Land and Victory in 2011 no longer exceeds the 2.2 level established in the S&A in the 524 Docket.

MKEC also requests K-1 income be removed from Victory's TIER ratio in 2010. However, despite removing all K-1 income from the TIER calculation, Victory's TIER ratio is 2.44. Because Victory's 2010 TIER exceeds the 2.2 TIER level approved in the S&A in the 524 Docket, MKEC has requested a waiver of refund requirements due to other factors such as a capital improvement plan, a refund of 2010's over collection of its energy cost adjustment ("ECA"), increases to customer service, and the issuance of capital credits.

### **ANALYSIS**

The TIER is calculated as  $\text{Net Income} + \text{Interest on Long Term Debt} / \text{Interest on Long Term Debt}$ . In the simplest of terms, the TIER ratio identifies the company's ability to pay the interest on its long term debt with the net income of its company. For example, a company with a TIER of 1.0 would be breaking even. This company would not be able to build equity, as every dollar earned would be applied to the interest payments on its long term debt. As the TIER ratio exceeds 1.0, a company is now able to build equity. For an investor owned utility, this equity could be distributed though dividends. For a cooperative like MKEC, equity is distributed

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<sup>1</sup> Stipulation and Agreement, ¶18(c), KCC Docket No. 06-MKEE-524-ACQ.

through capital credits. These capital credits are a normal consequence when a cooperative utility, like Victory, achieves a TIER that exceeds 1.0.

MKEC reports that the Prairie Land Division for 2011 and Victory Division for 2010 and 2011 exceeded a TIER of 2.2. MKEC explains that the current TIER calculations include K-1 non-operating income. K-1 non-operating income is Prairie Land's and Victory's share of income as reported on MKEC's federal tax forms. The K-1 non-operating income is not a cash distribution, but a recognition of Prairie Land's and Victory's allocation of the same.<sup>2</sup>

I agree that it is inappropriate to include K-1 non-operating income in the TIER calculation. When the K-1 non-operating income is removed from Prairie Land's 2011 TIER calculation, the TIER is 1.92.<sup>3</sup> Because Prairie Land's TIER in 2011 does not exceed the 2.2 threshold established in the S&A in the 524 Docket, there is no refund due.

When the K-1 non-operating income is removed from Victory's 2011 TIER calculation, the TIER is 2.06.<sup>4</sup> Because Victory's TIER in 2011 does not exceed the 2.2 threshold established in the S&A in the 524 Docket, there is no refund due. When the K-1 non-operating income is removed from Victory's 2010 TIER calculation, the TIER is 2.44.<sup>5</sup> Because Victory's TIER in 2010 exceeds the 2.2 threshold established in the S&A in the 524 Docket, a refund should be issued to Victory's customers that effectively reduces Victory's TIER to 2.0.

MKEC acknowledges that even with the exclusion of K-1 non-operating income, Victory's 2010 TIER exceeds the level established in the S&A in the 524 Docket. However, MKEC is requesting the Commission grant a waiver of its refund obligation due to other factors.

First, MKEC asserts that it should be granted a waiver of refund obligation due to customer benefits that were provided in 2010. MKEC explains that benefits were provided to Victory customers in 2010 through their ECA provision and provided customer refunds in the amount of \$370,345. During the discovery process in this proceeding, MKEC acknowledged that the actual amount refunded to customers through the ECA provision was only \$229,632.<sup>6</sup> This refund took place in 2011, after it was determined that MKEC over-recovered the amount in 2010.

It is my opinion that the ECA factors should be removed from this analysis of Victory's TIER calculation and refund obligation. If it is true that MKEC over recovered \$229,632 from customers in 2010 and then refunded that amount in 2011, then this refund would already be incorporated in the Company's TIER calculation for 2011. Since this refund was used to reduce

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<sup>2</sup> MKEC response to CURB Data Request No. 132.

<sup>3</sup> Application at ¶13.

<sup>4</sup> Application at ¶14.

<sup>5</sup> Application at ¶15.

<sup>6</sup> MKEC response to Staff Data Request No. 98.

the 2011 TIER, it should not also be considered when calculating the 2010 TIER. Removing the ECA over-recovery and refund from 2010 and 2011, results in TIER ratios of 2.31 and 2.18, respectively.<sup>7</sup> Even after removing the effects of the over-collection of ECA revenues during 2010, Victory's TIER remains above the 2.2 threshold established in the S&A in the 524 Docket.

Additionally, MKEC cites the allocation of \$2,674,308 in capital to credits to Victory customers in 2010 as another reason why it should be granted a waiver of refund obligation. Principally, while I do not disagree that the allocation of capital credits provides a benefit to customers – albeit a delayed benefit – it is not an appropriate reason to waive Victory's obligation to refund negotiated and agreed upon in the Commission-approved 524 S&A.

As a not-for-profit cooperative utility, capital credits are Victory's mechanism that returns any revenues over and above the cost of doing business to its customers. Recalling my earlier example of a company with a TIER of 1.0 – if a cooperative utility had a TIER of 1.0, it would not be able to issue any capital credits. However, a TIER above 1.0 indicates that the utility received revenues over and above the cost of doing business, at which point capital credits would be issued. Capital credits for each customer are determined by the Board of Trustees based upon the company's annual margins. Once the appropriate amount of capital credit is determined, it is allocated to each customer and permanently appears on the financial records of Victory. In the short-term, the allocation of capital credits provides little benefit to customers, as the cash payment may not occur for as many as 20 years, or until the capital credits are retired and a check is issued to the customer.

I disagree with MKEC's assertion that it should be granted a waiver of refund obligation because it allocated capital credits to its customers in 2010. Capital credits are a normal consequence of a TIER that exceeds 1.0. The S&A in the 524 Docket establishes a target TIER level of 2.0, but did not require refunds until a utility's TIER exceeded 2.2, so capital credits would have been anticipated in the S&A. During 2010, Victory achieved a TIER of 2.31 – well above the 1.0 minimum required for the issuance of capital credits. Had Victory earned at the target level of 2.0, it still would have been required to issue capital credits to its customers. As it stands, Victory's TIER exceeded the 2.2 threshold established in the 524 S&A during 2010, but rather than refunding the cash over payment to customers, Victory asserts the required capital credits accounting entry - that may not benefit customers for 20 years - constitutes an additional benefit to customers. In my opinion, Victory's assertion that the allocation of capital credits should nullify its refund obligation should be rejected by the Commission. The Commission should order Victory to refund \$583,227 in accordance with the S&A in the 524 Docket, which would reduce Victory's 2010 TIER to 2.0

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<sup>7</sup> In its response to Staff Data Request No. 98, MKEC agreed that the TIER for Victory after removing the ECA over payment was 2.31.

Second, MKEC reports that Victory had a significant capital improvement plan to increase reliability and provide adequate service to its customers. MKEC further reports that in 2010, Victory spent \$3,029,650 on capital improvements.<sup>8</sup> MKEC explains that being able to complete these capital improvements without the need for a rate increase is a benefit to customers that relieves MKEC's refund obligation. However, capital improvements are a normal and necessary consequence of running a utility. Capital improvements were clearly anticipated when the S&A was signed. In fact, capital improvements are expected to be made continuously as utilities seek to meet their service obligations. These capital improvements then should not be relied upon as a rationale for avoiding the requirements in the S&A.

Further, because MKEC does not provide the comparison of benefits as contemplated in the 524 S&A, its capital improvement plan cannot be justified as a reason to waive Victory's refund obligation. Additionally, I would add that the Commission has a pre-approval process by which a utility can present a large capital improvement plan for approval. This process is not a rate case, but rather a mechanism that allows a utility to implement a capital improvement plan, with a level of certainty regarding recovery, and with lessened rate shock to consumers. If the Company believed that its capital improvement plan was extraordinary in some way, it could have used this pre-approval process. It did not do so, suggesting that these improvements were just part of the normal upgrades required by any utility to meet changing circumstances.

Finally, MKEC argues that it should be granted waiver of refund obligation because it made significant investments in customer service related activities while not increasing rates. Providing good customer service is the expected responsibility of the utility, not something extraordinary. If Victory determined that it needed to make major improvements in its customer service activities, and lacked the financial capability to do so, then an application should have been made to the Commission. MKEC's suggestion that Victory be allowed to retain \$583,227 because it enhanced its customer service activities is unreasonable. The cost of the customer service additions is likewise already accounted for and reflected in the TIER for the years the costs were incurred. Accordingly, the Commission should not grant MKEC a waiver of its refund obligation due to Victory's increased customer service activities.

### **CONCLUSION & RECOMMENDATION**

The 524 S&A agreed upon by Victory and approved by the Commission clearly requires that when a MKEC distribution utility exceeds a TIER of 2.2, a refund be issued to customers to reduce the TIER to 2.0. The 524 S&A further elaborates that in the event MKEC or a distribution Cooperative can establish to the Commission through a separate filing that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to the

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<sup>8</sup> Application at ¶15.

customer by the refund, MKEC or the Distribution Cooperative may be granted a waiver of the refund obligation

In 2010, MKEC's Victory Division recorded a TIER of 2.31 after removal of the ECA overpayment.<sup>9</sup> MKEC's application does not include the required analysis demonstrating that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to customers by the refund. Therefore, it is my recommendation the Commission order MKEC to refund \$583,227 to the customers in its Victory Division.

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<sup>9</sup> MKEC Response to Staff Data Request No. 98.



**CURB'S SUPPORTING SCHEDULES**

SMH-1: TIER CALCULATION

**CURB EXHIBITS**

MKEC Response to CURB-132

MKEC Response to CURB-138

MKEC Response to Staff-98

SCHEDULE SMH-1

Victory TIER Calculation

	<u>CURB-138</u>	<u>Adjusted</u>	<u>Refund</u>
<u>Without K-1 (operating margins only Line 10, Form 7)</u>			
Operating Margins Line 20, Form 7	\$2,657,920	\$1,845,061	\$583,227
Less: ECA over recovery	(\$229,632)	\$0	
Interest on Long Term Debt Line 15, Form 7	<u>\$1,845,061</u>	<u>\$1,845,061</u>	
Total	\$4,273,349	\$3,690,122	
Operating TIER	2.31	2.0	

**Citizens' Utility Ratepayer Board**

**Information Request**

Request No: 132

Company Name                    MID-KANSAS ELECTRIC COMPANY, LLC - MKEE

Docket Number                06-MKEE-524-ACQ

Request Date:                 August 26, 2013

Date Information Needed    September 10, 2013

RE:    Data Requests to Mid-Kansas Electric Company, LLC

**Please Provide the Following:**

Please a) describe fully and quantify the source of the 2011 non-cash K-1 income referenced in paragraph 13 of the Petition for Prairie Land, b) state how this K-1 income is booked on the Company's balance sheet and income statement, and c) state how and when this income is distributed to customers, if applicable.

**Response:**

a) MKEC forwards the Schedule K-1 (Form 1065), Partner's Share of Income, Credits, Deductions, etc., filed on the IRS Form 1065 U.S. Return of Partnership Income for Mid-Kansas Electric Company, LLC. The K-1 is reported to Prairie Land generally after MKEC has audited and closed its financial records for the previous year. The amounts reported lines 1-20 of the Schedule K-1 represent Prairie Land's allocation of income, credits, deductions, and other information to be reported on the appropriate lines of our tax return. It is not a cash distribution, but a recognition of their allocation of the same.

b) Prairie Land books the K-1 based on the value indicated in Part II, Section L, Current year increase (decrease). Below is the general ledger entry that is booked annually for the K-1 distribution.

DB    Investment in Associated Organization - MKEC  
CR        Miscellaneous Non-Operating Income  
          Schedule K-1, Partner's Share of Income

Assets are increased by the K-1 posting and Misc - Non-operating income is also increased by the posted value.

The K-1 for 2009 and 2010 were posted in the Prairie Land financials in April of 2010 and 2011. Since Prairie Land did not receive the K-1 prior to PLEC's requirement to complete our annual financial reporting obligations to RUS, we posted the K-1 values in the year they were received. However, starting in 2011, the K-1 was received and booked in the same years as indicated on the K-1.

Therefore, in 2011 the booked increase value for MKEC included both the margins for 2010 (991,710) and 2011 (598,005).

c) Since there is no cash value for the allocation, there was no allocation to members in 2011 or 2012. Per directive of the Board of Trustees, if MKEC pays Prairie Land a cash value for the booked K-1, then an allocation to the members will be done at that time.

See attached files "2010 PL K-1" and "2011 PL K-1"

Submitted By David Springe

Submitted To Mark D. Calcara

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Citizens' Utility Ratepayer Board**

**Information Request**

Request No: 138

Company Name                    MID-KANSAS ELECTRIC COMPANY, LLC - MKEE

Docket Number                06-MKEE-524-ACQ

Request Date:                 August 26, 2013

Date Information Needed    September 10, 2013

RE:    Data Requests to Mid-Kansas Electric Company, LLC

**Please Provide the Following:**

Please provide the 2011 and 2010 TIER calculations for Victory, showing the TIER calculation both with and without the K-1 income referenced in paragraphs 14 and 15 of the Petition.

**Response:**

**See attached spread sheet "TIER for KCC 2010-2011."**

Submitted By                 David Springe

Submitted To                 Mark D. Calcara

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

Curb 138

2011

With K-1 (Non operating margins included)

Gross Margins Line 28 Form 7 \$ 3,508,849.03  
Interest on Long Term Debt Line 15 Form 7 \$ 1,970,415.56  
Total \$ 5,479,264.59

Gross Tier 2.8 Formula  $\text{Gross Margins}(\text{Line 28}) + \text{Interest on Long term debt}(\text{line 15}) / \text{long term debt (line 15)}$

Without K-1 (operating margins only Line 20 Form 7

Operating Margins Line 20 Form 7 \$ 2,096,142.95  
Interest on Long Term Debt Line 15 Form 7 \$ 1,970,415.56  
Total \$ 4,066,558.51

Operating Tier 2.06 Formula  $\text{Patronage capital \& Operating Margins (Line 20) + Interest on Long term debt (line 15)} / \text{long term debt (line 15)}$

2010

With K-1 (Non operating margins included)

Gross Margins Line 28 Form 7 \$ 3,390,077.19  
Interest on Long Term Debt Line 15 Form 7 \$ 1,845,061.46  
Total \$ 5,235,138.65

Gross Tier 2.8 Formula  $\text{Gross Margins}(\text{Line 28}) + \text{Interest on Long term debt}(\text{line 15}) / \text{long term debt (line 15)}$

Without K-1 (operating margins only Line 20 Form 7

Operating Margins Line 20 Form 7 \$ 2,657,919.95  
Interest on Long Term Debt Line 15 Form 7 \$ 1,845,061.46  
Total \$ 4,502,981.41

Operating Tier 2.4 Formula  $\text{Patronage capital \& Operating Margins (Line 20) + Interest on Long term debt (line 15)} / \text{long term debt (line 15)}$



**Kansas Corporation Commission**  
**Information Request**

Request No: 98

5. Please provide a detailed explanation as to why Victory has included the ECA customer refund in calculating the 2010 TIER. The ECA over collection is included in line 1 of Form 7 (Operating Revenue and Patronage Capital). The ECA is applied to kwh each customer is billed for the month along with appropriate kwh charge, demand charge and minimum etc. and at month end this is journaled to each appropriate general ledger account. (see income statement Line 1) from question 1.

6. If the 2010 ECA over-recovery was refunded in 2011, please explain why the 2010 over-recovery balance is included in calculation of the 2010 TIER. See answer to question 5. The under recovery amount would reduce margins for 2011, as it was given back as a credit against kwh used on each customers bill. The over recovered amount in 2010 would have added to margins as we over collected on ECA.

Submitted By Tim Rehagen

Submitted To James Brungardt

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Paul Deunt

Date: 8-30-13



**CERTIFICATE OF SERVICE**

06-MKEE-524-ACQ

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 30<sup>th</sup> day of September, 2013, to the following parties:

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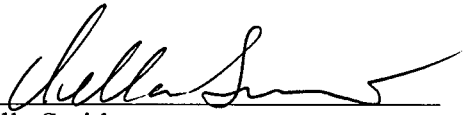
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