

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

Before Commissioners:

Mark Sievers, Chairman
Ward Loyd
Thomas Wright

Received
on

MAR 15 2012

In the Matter of the Application of The)
Kansas Power Pool, A Municipal)
Energy Agency, for Approval of its)
Annual Transmission Revenue)
Requirement (ATRR) for its)
Transmission Facilities)

by
State Corporation Commission
of Kansas

Docket No. 12-KPPE-630-MIS

**JOINT PETITION TO INTERVENE
AND COMMENTS ON APPLICATION OF SUNFLOWER ELECTRIC POWER
CORPORATION AND MID-KANSAS ELECTRIC COMPANY, LLC**

COMES NOW, Sunflower Electric Power Corporation (Sunflower) and
Mid-Kansas Electric Company, LLC (Mid-Kansas) and move the Corporation
Commission of the State of Kansas (hereinafter referred to as the Commission) for an
order pursuant to K.S.A. 77-521 and K.A.R. 82-1-225 permitting it to intervene in the
above captioned proceeding (Application). In support of this Joint Petition, Protest and
Response, Sunflower and Mid-Kansas state as follows:

I. COMMUNICATIONS AND SERVICE

1. All communications and correspondence to Sunflower and Mid-Kansas,
including service of all notices and orders herein, are requested to be sent to the
following named individuals:

Don Gulley
Senior Manager, Regulatory Relations and
Billing
Sunflower Electric Power Corporation
301 West 13th Street
P.O. Box 1020
Hays, Kansas 67601
(785) 623 6630 telephone
(785) 623 6629 facsimile
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Mark D. Calcara, #09957
Watkins Calcara, Chtd.
1321 Main Street, Suite 300
P. O. Drawer 1110
Great Bend, Kansas 67530
(620) 792 8231 telephone
(620) 792 2775 facsimile
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II. DESCRIPTION OF SUNFLOWER AND MID-KANSAS

2. Sunflower is a corporation and Mid-Kansas is a limited liability company, each duly organized under the laws of the State of Kansas, with its principal place of business at 301 West 13th Street, Hays, Kansas 67601. Each is authorized to do business and is conducting business in the State of Kansas.

3. Sunflower and Mid-Kansas are operating generation and transmission cooperatives (G&Ts) located in central and western Kansas and each is a transmission owning member (TO) of the Southwest Power Pool (SPP). Sunflower is operated on a non-profit basis and owned by six rural electric distribution cooperatives¹ that in turn serve approximately 50,000 retail meters located in 34 western Kansas counties. Sunflower also serves at wholesale, directly or indirectly, two additional distribution cooperatives and 11 small cities. Sunflower's baseload generation plant is a coal-fired, 360 MW steam unit located near Holcomb, Kansas. Sunflower also has 235 MW of natural gas-fired generation in Garden City, Kansas. Sunflower's high-voltage

¹ The six electric utilities (collectively the Members) and their headquarters are as follows: Lane-Scott Electric Cooperative, Inc., Dighton; Pioneer Electric Cooperative, Inc., Ulysses; Prairie Land Electric Cooperative, Inc., Norton; Victory Electric Cooperative Association, Inc., Dodge City; Western Cooperative Electric Association, Inc., WaKeeney; and Wheatland Electric Cooperative, Inc., Scott City.

transmission facilities, all of which are under the functional control of SPP, consist of a 221 mile 345 kV transmission line that extends from the Nebraska border to Holcomb and east to Spearville, Kansas and related substations. In total, Sunflower owns, leases, and operates more than 1,100 miles of 345 kV, 115 kV, and 69 kV transmission lines. Sunflower owns and operates 27 substations, 64 SCADA units, and 14 microwave sites. Sunflower is an electric public utility whose transmission services and wholesale sales to non-Members are regulated by the Commission. It is exempt from regulation under the Federal Power Act.²

4. Mid-Kansas is operated on a non-profit basis and is a coalition of five Sunflower Members and one corporation wholly owned by the sixth Member. They organized Mid-Kansas for the purpose of acquiring the Kansas electric utility assets of Aquila, Inc., d/b/a Aquila Networks – WPK. That acquisition closed April 1, 2007. Mid-Kansas is an electric public utility regulated by the Commission and, like Sunflower, is exempt from regulation under the Federal Power Act.³ Mid-Kansas serves a certificated service territory consisting of approximately 71,000 meters in 31 counties, and 22 full and partial wholesale requirements municipalities that serve approximately 23,000 meters. Mid-Kansas owns and operates approximately 1,083 miles of transmission line facilities and associated substation facilities and 395 MW of gas-fired generation. The transmission facilities consist of 932 miles of 115 kV, 76 miles of 138 kV and 171 miles of 230 kV transmission line, in addition to 40 substations. All of Mid-Kansas' transmission facilities are likewise under the functional control of SPP.

² See § 1291 Energy Policy Act of 2005, Pub. Law 109-058, amending 18 U.S.C. § 824(f).
³ *Id.*

III. MOTION TO INTERVENE

A. The Template is Not Limited to Costs Applicable to the Westar Zone

5. On February 17, 2012, KPP filed its Application requesting acceptance of its formula template for determining its Annual Transmission Revenue Requirement (ATRR) to be included in the rates charged by SPP for transmission service in the transmission pricing zone (Zone) of Westar Energy, Inc. (Westar). The Application covers lower-voltage facilities (those operated below 100 kV) whose costs are recovered solely from customers in the Westar Zone. While retail customers of Westar and others in the Westar Zone will bear a share of the KPP costs, customers in other parts of Kansas will not. For that reason, Sunflower and Mid-Kansas will not be directly affected by any approval of the rates proposed.

6. The impact on Sunflower and Mid-Kansas will come in the future, should TOs and their customers in other SPP Zones bear some of KPP's ATRR costs. This future impact is expressly acknowledged by KPP in the Application, which states that it has filed a formula template because it may wish to include the cost of other facilities in its ATRR as they are placed under SPP's functional control (Application, ¶ 6).⁴ Of course, if the Application made it clear that the template is limited to facilities operated at 69 kV and below located solely in the Westar Zone, then even future impacts would not affect Sunflower and Mid-Kansas ratepayers. However, Sunflower and Mid-Kansas have been unable to identify anything in the template itself or the Protocols that would limit its

⁴ The Application states as follows:
KPP anticipates that it may in the future wish to transfer control of other transmission facilities to SPP and recover the costs of other facilities *in the Westar Zone* which could be owned by either member cities or KPP itself, KPP chose to develop a formula template for determining its ATRR for all such facilities as they are placed under SPP's functional control from time to time.
Id., (emphasis added).

application to facilities whose cost is recovered solely in the Westar zonal rate, *i.e.*, those located in the Westar Zone operated below 100 kV.

7. Because the Application expressly states that its adoption will “allow[] KPP and its members to appropriately recover current and future costs of the transmission facilities they transfer to SPP’s functional control,” (Application, ¶ 19), there is a substantial probability that Mid-Kansas (and perhaps Sunflower) customers will bear future costs under the filed template. Should KPP wish to take control of member city facilities located in Sunflower’s or Mid-Kansas’ Zone, Sunflower and Mid-Kansas (and their ultimate retail customers) would bear all or a majority of the costs of such “future” KPP transmission facilities.

8. The most likely future would directly affect Mid-Kansas, which serves KPP wholesale delivery points within the SPP Mid-Kansas Zone. Should KPP seek to place certain facilities under SPP that are located in the Mid-Kansas Zone, 100% of those costs would be recovered from Mid-Kansas Zone customers. Because KPP is presently about 2.8% of the load ratio share of the Mid-Kansas Zone, the potential exists for a municipality that is currently bearing 100% of the cost of existing facilities to shift at least 97.2% of those costs to others⁵.

9. Sunflower does not serve KPP, but there are non-KPP member municipal systems served off of transmission and local delivery facilities in Sunflower’s Zone. The precedent established in this proceeding could likewise set the stage for future cost shifting should KPP expand into the Sunflower Zone.

⁵ The retail customers served by Mid-Kansas pay 65% of the Zonal charges.

10. Moreover, should KPP seek to include any new facilities operated above 100 kV into SPP's Open Access Transmission Tariff (OATT), all SPP transmission customers will bear at least one-third of those costs, under SPP's "highway/byway" rate approach. Thus, even if all facilities are in the Westar Zone, because the template is not limited to facilities of a certain size, the potential for Sunflower's and Mid-Kansas' customers to bear future costs is real.

11. The use of a formula creates the potential for future, significant effects on others, even if the initial charges under the formula do not directly affect those customers. Even were the Commission to expressly limit the formula's application to lower-voltage facilities in the Westar Zone and require KPP to make a new application should it expand to higher-voltage facilities or to other Zones, future intervenors would be saddled with having to show why a formula approved by the Commission in this docket would not be just and reasonable simply because KPP wished to apply it to facilities in another Zone. That is why it is imperative for Sunflower and Mid-Kansas to speak up now, as the initial formula is set.

B. The Application Raises Important Issues of Commission Jurisdiction and Comparable Treatment of State-Regulated TOs

12. There is a second basis for finding that Sunflower and Mid-Kansas are directly affected parties. This proceeding is the first time that the Commission has been asked to review activities of KPP that affect the rates of retail Kansas customers other than customers of KPP member cities. When KPP is setting rates for its member cities it is entirely appropriate for the Commission to consider those arrangements in a different light. But in this instance, KPP is establishing a cost of service that will be passed on to

all residential consumers in the Westar Zone by load ratio share. And, as explained above, the Application sets the stage for similar pass-throughs to other Kansas retail consumers if higher-voltage facilities are added or KPP acquires facilities in other Zones.

13. KPP's witness Larry Holloway would have the Commission believe that this filing is not really setting rates and that in any event the Federal Energy Regulatory Commission (FERC) has exclusive jurisdiction over the rates because they are collected by SPP. That argument is flawed.

14. Like Sunflower and Mid-Kansas, KPP is exempt from regulation by FERC pursuant to the Federal Power Act.⁶ However, KPP is regulated by this Commission "in the same manner as a public utility" as to, *inter alia*, transmission rates.⁷ The fact that the KPP ATRR is collected through a FERC-approved SPP rate does not preempt whatever state regulation would apply to the establishment of KPP's cost of service.

15. This is a difference between KPP and, for example, Westar. FERC regulation of Westar's wholesale sales and transmission rates preempts state regulation. But the Federal Power Act does not preempt wholesale rate or transmission service regulation of public power entities or most cooperatives, who are, by statute, exempt from Federal Power Act regulations. Like Sunflower or Mid-Kansas (or Midwest Energy,

⁶ 16 U.S.C. § 824(e) (2006).

⁷ K.S.A. 12-8,111:

Certificates of public convenience for municipal energy agencies; jurisdiction of corporation commission.

(a) The provisions of K.S.A. 12-885 to 12-8,109, inclusive, and any provisions amendatory or supplemental thereto, shall constitute a certificate of public convenience, and any municipal energy agency is authorized to operate as a public utility pursuant to such provisions without obtaining a certificate described in K.S.A. 66-131 or any amendments thereto.

(b) Except with respect to such certificate described in subsection (a), any municipal energy agency created under the provisions of K.S.A. 12-885 to 12-8,109, inclusive, and any provisions amendatory or supplemental thereto, shall be subject to the jurisdiction of the state corporation commission in the same manner as a public utility.

Inc. (MWE); Kansas Electric Power Cooperative, Inc. (KEPCo), or Kansas Municipal Energy Agency (KMEA)), KPP is not regulated by FERC. Kansas law gives the *Commission* the power to regulate transmission rates of cooperatives and joint action agencies (like KPP). It is a direct and substantial interest of Sunflower and Mid-Kansas to ensure that this Commission's regulation be comparable as to all Commission-regulated entities. Otherwise, the ultimate customers – Kansas retail customers – would be unduly discriminated against.

16. Witness Holloway asserts a legal conclusion that is wrong:

KPP never considered that the Commission's approval was needed, because the KPP ATRR is simply an input into rates charged by SPP, and those rates are subject to FERC's exclusive jurisdiction. KPP is not charging any customer a rate for transmission service. KPP is simply getting its costs included in the zonal transmission rates collected by SPP. It is possible, although not entirely clear, that KPP might need to get Commission approval if KPP itself were to have its own transmission tariff and charge customers for use of its facilities. But that is not the situation here. All that is at issue is the costs that will be included in SPP's FERC-regulated rates for the service SPP itself provides.

Direct Testimony of Larry W. Holloway (Holloway Direct), p. 11, l. 24 – p. 12, l. 5

(emphasis in original). Under this legal analysis, FERC would not need to approve the Westar formula – rather it would simply approve the SPP formula. That, of course, is not what happens.⁸ Likewise, the Commission would not need to approve the state-regulated transmission cost-of-service for Sunflower and Mid-Kansas that is included in the SPP rate, which, of course, it must. *All* transmission service of Kansas TOs over facilities transferred to SPP's functional control is through SPP. Sunflower and Mid-Kansas have ATRRs approved by the Commission that are included in the SPP

⁸ See *Westar Energy, Inc.*, Letter Order, Docket No. ER11-2395-000 (Feb. 10, 2011) in which FERC accepted the most recent updates to Westar formula. It was placed into the SPP OATT by separate filing, see *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER11-3133-000 (May 3, 2011).

OATT. The SPP charges are passed through to Sunflower's and Mid-Kansas' customers. The same is true for Westar and every other Kansas TO.

17. Examples of how things are done in Oklahoma (or California) are inapposite, because neither state regulates non-FERC jurisdictional cooperatives and public power entities. KPP's ATRR will be charged to all customers in Westar's Zone. It may in the future result in charges to all customers in other Zones. The Commission has clear regulatory authority to regulate KPP "in the same manner as a public utility," which would mean a public utility exempt from regulation under the Federal Power Act, *i.e.*, Sunflower, Mid-Kansas, KEPCo, or MWE, whose cost of service is being charged to non-Members (*i.e.*, Westar retail customers).

18. A second issue is difficult because it does not directly affect Sunflower and Mid-Kansas today, but rather creates the potential of foreclosing Sunflower's and Mid-Kansas' ability to raise the issue should KPP wish to transfer functional control of member city facilities to SPP that are located in Sunflower's or Mid-Kansas' Zone. As more fully discussed below in the protest, the Commission has consistently applied K.S.A. 66-136 to all public utilities seeking to transfer functional control of facilities to SPP. Because any transfer attempted without Commission necessary approval is void,⁹ SPP apparently has no present authority to collect for use of the facilities. But, of

⁹ The Commission approved the transfer of functional control of the transmission systems of all jurisdictional Kansas electric utilities other than Sunflower in 2006. See paragraph 40, of the September 19, 2006 Order Adopting Stipulation and Agreement and Granting Applications in Docket Nos. 06-SPPE-202-COC and 06-WSEE-203-MIS (That included the approval for Aquila, Inc., which was confirmed as to Mid-Kansas upon Mid-Kansas acquiring the Aquila assets, per the Commission's Order on February 23, 2007 in Docket No. 06-MKEE-524-ACQ. The Commission approved Sunflower's application on April 17, 2007 in Docket No. 07-SEPE-957-MIS. Two subsequent dockets addressed this issue for newly-formed transmission-only Kansas utilities -- ITC Great Plains, LLP, June 5, 2007 Order in Docket No. 07-ITCE-380-COC. and Prairie Wind Transmission, LLC, Oct. 5, 2009 Order in Docket No. 08-PWTE-1022-COC.

course, this is not an issue that presently affects Sunflower and Mid-Kansas. Rather, the issue concerns whether the Commission's findings in this docket would preclude examination of whether a future transfer from a Mid-Kansas or Sunflower Zonal city to KPP and then to SPP would be in the public interest. Sunflower and Mid-Kansas want to be sure that their rights are preserved in the case of such a future transfer.

19. In summary, the Application presents the following issues of direct concern to Sunflower and Mid-Kansas

- a. First, decisions made by the Commission regarding the Application are relevant to how similar issues will be decided by the Commission in the current application of Mid-Kansas for a formula-based rate (Commission Docket No. 12-MKEE-650-TAR) and the Sunflower application that will be filed in the near future – all involving formula rates for establishing the ATRR to be collected by SPP under the SPP OATT.
- b. Second, Sunflower's and Mid-Kansas' ability to challenge whether a future transfer of facilities in their Zones meets the standards K.S.A. 66-136 could be eliminated if the Commission follows prior practice and looks at the issue only when the first transfer is made.
- c. Third, unless the Commission otherwise orders, KPP is already enjoying the cash flow benefits of collecting its rates, subject to refund, because it bypassed filing with the Commission prior to

Holloway Direct, p. 11, ll. 24-26, "KPP never considered that the Commission's approval was needed, because the KPP ATRR is simply an input into rates charged by SPP, and those rates are subject to FERC's exclusive jurisdiction."

asking SPP to file KPP's Attachment H formula at FERC. It is the understanding of Mid-Kansas and Sunflower that a Kansas state-regulated utility must first obtain Commission approval for its rate before SPP can begin to collect it on behalf of KPP, even if subject to refund.

20. As similarly situated non-FERC-regulated Kansas public utilities, as TOs likely to bear future costs of KPP transmission facilities, and as representatives of the wholesale and retail customers who will ultimately bear any such costs, Sunflower and Mid-Kansas are parties with unique interests that cannot be represented by any other entity. They respectfully submit that the Commission should grant their joint petition to intervene in this docket.

IV. PROTEST

21. While a simple petition to intervene is often what parties file in rate cases, Sunflower and Mid-Kansas note that Commission Staff has entered into a settlement with KPP that would expedite this proceeding. Moreover, as the Application makes clear, KPP apparently sees no basis for Commission jurisdiction over its ATRR.¹⁰ For efficiency, Sunflower and Mid-Kansas therefore provide a summary of their concerns with the Application, which presents a number of issues, including:

- First, and most significantly, the proper application of the Commission's rate and other jurisdiction to KPP's various activities;

¹⁰ Holloway Direct, p. 11, ll. 24-26, "KPP never considered that the Commission's approval was needed, because the KPP A TRR is simply an input into rates charged by SPP, and those rates are subject to FERC's exclusive jurisdiction."

- Second, whether KPP's Application meets the Commission's requirements for cost-based rates; and
- Third, whether a decision in this proceeding will preclude Sunflower and Mid-Kansas from raising legitimate concerns about the actual control obtained over facilities that KPP then seeks to transfer to SPP.
- Because of these issues, Sunflower and Mid-Kansas respectfully submit that there are substantial and material issues of fact that must be determined by evidentiary hearing and that the Commission's findings are necessary before there can be lawful collection of rates for the provision of service over such facilities.

A. The Application is Governed by K.S.A. 66-101c and is Deficient

(1) *KPP is Not Entitled to Collect its ATRR in Advance of Commission Approval*

22. Sunflower's and Mid-Kansas' immediate concerns with the Application go to the policies that will be established by the Commission's order in this docket.

Mid-Kansas recently filed a formula-based rate for establishing its ATRR for inclusion in the SPP OATT, under K.S.A. 66-101c.¹¹ Under that statute, Mid-Kansas must wait for Commission approval before turning the ATRR over to SPP for filing to be collected under the SPP OATT.

23. In contrast, KPP first sought authority to collect its ATRR by asking SPP to file its costs (ATRR) at FERC, in Docket No. ER 12-140-000. Not surprisingly, the Commission intervened and noted that its jurisdiction over KPP required KPP to seek

¹¹ In the Matter of the Application of Mid-Kansas Electric Company, LLC for Approval to Adopt and Implement a Formula-Based Rate for Recovery of Transmission Costs and to Amend its Open Access Transmission Tariff, KCC Docket No. 12-MKEE-650-TAR (filed Feb. 24, 2012) (MK FBR Application).

first KPP approval of the rate. (See Application, ¶ 8.) Sunflower and Mid-Kansas also intervened in that proceeding, as did Westar.¹² Notwithstanding the Commission's pleading, FERC allowed the rate to go into effect, subject to refund. But doing so is not a preemption of Kansas' authority.¹³ Only after "extensive negotiation" with Commission Staff did KPP agree to make the instant Application. *Id.* As discussed in ¶¶ 12-17, *supra*, the fact that FERC found the Commission arguments inapplicable to FERC regulation of SPP's rate does not constitute FERC preemption of Commission regulation of KPP's cost-of-service.

24. KPP expressly and incorrectly asserts that it is FERC, not this Commission under K.S.A. 66-101c, that has primary jurisdiction to review the rates and any rate changes:

Q. What is the reason for KPP making its filing before the Commission in this proceeding?

A. KPP elected to make this filing in response to the Commission's objections raised in the FERC proceeding. On November 10, 2011 the Commission intervened in the FERC docket, expressing the belief that KPP was trying to circumvent the Commission's jurisdiction.

Thus, the KCC opposes SPP's filing as an attempt to improperly circumvent the KCC's jurisdiction and authority over KPP, a Kansas municipal energy agency that controls transmission facilities in the state of Kansas. The KCC is not challenging FERC's jurisdiction over SPP. Instead, the KCC believes that KPP's proposed rate recovery must first be filed with the KCC for its approval, rather than first under the Tariff for the consideration and approval of FERC. The KCC's primary interest in this proceeding is ensuring that only just and reasonable costs are allocated to the Kansas ratepayers who ultimately bear the burden of paying for public utility transmission service. As noted earlier, KPP is a KCC-jurisdictional

¹² Motion to Intervene and Protest of Westar Energy, Inc. and Kansas Gas and Electric Company, FERC Docket No. ER12-140 (Nov. 9, 2011); Joint Motion to Intervene and Protest of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC, FERC Docket No. ER12-140 (Nov. 10, 2011).

¹³ *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,197 (Dec. 15, 2011).

municipal energy agency and the KCC has a statutory obligation for ensuring the regulation of the rates, charges, and terms of conditions of service of such a Kansas public utility.

Q. Why did KPP not seek the Commission's approval of the KPP ATRR before filing at the FERC?

A. KPP never considered that the Commission's approval was needed, because the KPP ATRR is simply an input into rates charged by SPP, and those rates are subject to FERC's exclusive jurisdiction. KPP is not charging any customer a rate for transmission service. KPP is simply getting its costs included in the zonal transmission rates collected by SPP. It is possible, although not entirely clear, that KPP might need to get Commission approval if *KPP itself were* to have its own transmission tariff and charge customers for use of its facilities. But that is not the situation here. All that is at issue is the costs that will be included in SPP's FERC-regulated rates for the service SPP itself provides.

Holloway Direct, p. 11, l. 3 – p. 12, l. 5 (emphasis in original).

25. FERC did not make any finding about the *Commission's* authority over KPP, but rather stated the obvious – that once the KPP costs are proposed to be included in the *SPP* regulated rate, FERC has the ability to determine under the Federal Power Act whether the rates are just and reasonable:

We disagree with the Kansas Commission's contention that the instant filing is an attempt to circumvent the Kansas Commission's jurisdiction and authority over KPP. As a municipal agency, KPP is not a public utility within the meaning of section 201 of the FPA;¹⁴ hence, KPP is not within the Commission's jurisdiction under FPA section 205. *However, the Commission does have jurisdiction under section 205 and 206 of the FPA over the rates for transmission service provided by SPP, a regional transmission organization (RTO) that is a public utility.* Court decisions have made clear that when a non-jurisdictional transmission owner voluntarily joins an RTO and has its revenue requirement recovered as part of the RTO's rates, the Commission can examine the non-jurisdictional utility's revenue requirement to ensure that the RTO's rates will ultimately be just and reasonable.¹⁵ Thus, we find that, based on

¹⁴ 16 U.S.C. § 824(e) (2006).

¹⁵ See, e.g., *Pac. Gas & Elec. Co. v FERC*, 306 F.3d 1112, at 1116 (D.C. Cir. 2002). See also *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

the court's rulings, it is appropriate to apply the just and reasonable standard of FPA section 205 to SPP's revisions to its OATT to implement KPP's proposed formula rate for transmission service, including KPP's revenue requirement in SPP's zonal rates. *Accordingly, it is unnecessary to require SPP to document why it isn't obligated to seek Kansas Commission approval for the proposed rates, as Sunflower asserts. Our findings here are not intended to make any determination as to KPP's obligations, if any, under Kansas state law to make filings before the Kansas Commission. Our concern is focused on the justness and reasonableness of proposed wholesale rates under SPP's OATT.* To determine the justness and reasonableness of these rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

Southwest Power Pool, Inc., 137 FERC ¶ 61,197, P. 15 (Dec. 15, 2011) (emphasis added).

26. Even if SPP is entitled to collect rates subject to refund, that provision of the Federal Power Act does not preempt the state law requirement that KPP obtain Commission approval of its cost-of-service before it is submitted to SPP for inclusion in the SPP OATT. If the Commission concludes that this is not the correct interpretation of K.S.A. 66-101c, Sunflower and Mid-Kansas respectfully request such guidance as soon as possible so that Mid-Kansas can provide its FBR to SPP for immediate filing and collection subject to refund upon FERC acceptance.

(2) *The Protocols Must Be Amended to Reflect KCC, not FERC, Regulation*

27. The Protocols included in the application assume that any questions raised and/or future challenges will be at FERC, not before the Commission.¹⁶ As noted earlier, notwithstanding Mr. Holloway's incorrect legal assertion that the transmission service

¹⁶ Exhibit LWH-3, Protocols, Section III.A.: "If KPP and Interested Parties have not resolved all Issues identified pursuant to Section II.E above within thirty (30) calendar days from the Notice Date, any Interested Party may file an action pursuant to Section 206 or Section 306 of the FPA challenging the Annual Update. . . ."

KPP provides is not subject to Commission regulation, this Commission has jurisdiction in the first instance to review annual updates and any changes, not FERC. The Protocols need to reflect the Commission's jurisdiction as the first step in any annual update or filing to change the formula

28. A second problem is a limitation in the Protocols. Although KPP does not discuss the issue in the Application, KPP has defined "Interested Parties" under the Protocols too narrowly:

For purposes of these Protocols, "Interested Parties" shall mean any Transmission Owner in whose SPP zonal rates KPP's ATRR will be included, any load serving entity whose customers will be allocated all or a portion of KPP's ATRR, and any state utility commission or consumer advocate operating in a state in which customers that will be allocated all or a portion of KPP's ATRR are located.

At a minimum, any entity granted intervention in this docket should be an "Interested Party" for purposes of future review of the costs. The better approach would be to follow the form of protocols adopted in other Kansas TO formula-based rates, such as that recently filed by Mid-Kansas, which allows any "interested party" (not defined) the right to comment.

29. In summary, Mid-Kansas and Sunflower respectfully submit that the Application is one for approval of just and reasonable rates, pursuant to K.S.A. 66-101c. Until such rates are approved by the Commission, there is no legal basis for KPP to collect those rates through the SPP OATT. Alternatively, Mid-Kansas and Sunflower should be allowed to implement their formula based rates (FBRs) in a comparable manner, with only the need for an SPP FERC filing and order allowing the rates to go into effect subject to refund, rather than pre-approval from the Commission, before SPP

begins to collect the charges. Further, any annual updates, pursuant to the Protocols, must provide for information to be provided to the Commission and disputes to be resolved before the Commission.

B. The Proposed Costs Are Not Adequately Justified

30. Another issue raised by the Application is whether the proposed formula and Protocols and the proffered cost justification is sufficient for Commission approval under Kansas law. In particular:

- There is no support for the actual cost of the facilities (original book less depreciation) that KPP proposes to place into the SPP rates; and
- KPP improperly uses the costs of a different utility (Westar) rather than establishing the costs actually incurred for providing the service.

31. As KPP's Application admits in the Direct Testimony of Paul D. Reising (Reising Direct), p. 6, l. 18 – p. 7, l. 6:

The City of Winfield does not maintain its books and records for the electric utility in accordance with the FERC's Uniform System of Accounts, nor do the City's financial reports separate plant in service, accumulated depreciation or operating expenses by function. Data were not available to determine the exact costs attributable to the City's 69 kV transmission facilities. As a result, it was necessary to estimate the gross plant in service, accumulated depreciation and net Exhibit K-1 plant in service by first computing the cost to reproduce that system in 2010 costs and index those costs back to the original installation date using the Handy-Whitman Index for electric utility construction costs for the North Central Region, which encompasses the State of Kansas. The results of the asset valuation process for the Winfield 69 kV facilities are presented in the "Investment Analysis" worksheet of Exhibit K-4. The results of the asset valuation process for the Winfield 69 kV facilities (which I prepared in November 2011) are presented in Part II of the "KPP Transmission Investment" worksheet of Exhibit ___ PDR-3.

FERC, which is by statute precluded from regulating public power entities, has allowed such entities to use proxies when seeking to include costs in *FERC-regulated* Regional Transmission Organization (RTO) tariffs. FERC has also allowed for proxies in other contexts, such as when non-traditional public utilities, such as independent TOs and power producers propose to use hypothetical capital structures.

32. Mid-Kansas has proposed a hypothetical capital structure in its FBR filing and agrees that KPP should be treated comparably. However, KPP has cited no authority (other than the letter agreement with Commission Staff) for the proposition that a *regulated* Kansas public utility may justify other elements of its cost-of-service to this Commission by using a proxy, specifically to establish net book costs and, on a going-forward basis, for changing A&G, property taxes, and depreciation.

33. Under Kansas law, rates are supposed to be cost based. An asserted lack of proper recordkeeping is no justification for adopting proxy numbers based on costs of an investor-owned utility with a different organizational structure, cost of capital, and (likely) operating standards. Agreeing to record actual costs going forward does not insulate KPP from the need to demonstrate the cost basis of the initial charges. Since KPP has made it clear that this is the first of what may be many future filings to include the cost of existing municipally-owned assets into the SPP rate, it is imperative that the Commission demand as part of the “template” that KPP provide appropriate, fact-based cost of service evidence not just going forward, but also for the rates put into effect initially.

34. An evidentiary hearing and related discovery, to explore what cost records exist, whether any payment in lieu of taxes is appropriate to charge, and other inquiries, is a necessary predicate to any finding that the initial rate is lawful. Clear requirements for record-keeping, use of an acceptable uniform system of accounts, and limitation of any Westar proxies to facilities in the Westar Zone, are likewise necessary predicates for a just and reasonable and not unduly discriminatory KPP rate.

C. KPP Has Failed to Address K.S.A. 66-136

35. Finally, as noted above,¹⁷ K.S.A. 12-8,111 exempts KPP from the requirements of K.S.A. 66-131, but otherwise KPP is subject to Commission regulation “in the same manner as a public utility.” This would appear to include the requirements of K.S.A. 66-136. The Commission has approved the transfer of functional control to SPP for every other SPP TO operating in Kansas, under K.S.A. 66-136. In the first of those dockets, the Commission also analyzed and approved SPP’s acceptance of such transfer of control.¹⁸

36. Sunflower’s principal concern in raising this issue now is that it has been the Commission’s practice to consider the issue of transfer of functional control to SPP only once. Thus, this docket could result in Sunflower and Mid-Kansas being unable to raise concerns about any future transfer involving facilities in their Zones. Of course, there is a very real distinction between the prior dockets and KPP’s Application – ownership. In all prior dockets, the TO owned the facilities being transferred to SPP. If

¹⁷ See n. 6.

¹⁸ See, n. 9, *supra*. In Docket No. 06-SPPE-202-COC (202 Docket) Commission Staff submitted testimony describing the various ways in which SPP would be subject to Commission jurisdiction. This summary is instructive as the Commission considers how to address the statutory requirement that KPP be regulated “in the same manner as a public utility”. See n. 8. An excerpt from that testimony is provided at **Exhibit A** hereto.

the Commission were to rule that KPP must seek separate approval each time it seeks to transfer control of facilities owned by a member city, not its own facilities, then Sunflower and Mid-Kansas would be able to await the future proceeding where KPP sought to transfer facilities located in one of their Zones.

37. If the Commission wishes to preclude future inquiries into whether a transfer is in the public interest, as required under K.S.A. 66-136, Sunflower and Mid-Kansas respectfully submit that a template needs to be established in this docket for the indicia of actual control KPP must obtain if it wishes to transfer facilities to SPP and recover their costs through the SPP OATT.

38. Again, Sunflower and Mid-Kansas are willing to wait and deal with any issues in a future docket. But to understand how those issues might arise, it is useful to summarize exactly what type of control SPP must be given in order for the facilities to be included in SPP's rates. In its application to the Commission seeking authority to accept the transfer of functional control of Kansas assets, SPP's then Vice President of Regulatory Policy, described "functional control" exercised by SPP as follows:

Although the term, "functional control," is not defined in the governing documents of SPP, the SPP Membership Agreement (SPP MA) provides a concise definition of SPP's authority to control the transmission system. Section 2.1.1 (k) of the SPP MA states, "SPP shall have the authority to direct the day-to-day operations of the Tariff Facilities in order to carry out its responsibilities as a Transmission Provider and Reliability Coordinator as described in SPP's Operational Authority Reference document. . . ." Section 1.17 defines Tariff Facilities as "[t]he Electric Transmission system and the Distribution Facilities subject to SPP's tariff administration." Finally, the Operational Authority Reference document lists the functions that are included in SPP's authority and that involve functional control. These functions are as follows:

- Scheduling authority over tariff facilities,
- Determining the Available Transmission Capacity under the SPP OATT,

- Coordinating with other regions,
- Directing transmission construction under coordinated planning criteria or under the SPP OATT,
- Acting as a reliability coordinator,
- Directing control areas to maintain adequate reserves,
- Coordinating reliability with other regions,
- Directing the emergency response of any of SPP's members including the shedding of firm load,
- Monitoring and coordinating voltage schedules,
- Directing redispatch of generation in accordance with the SPP OATT,
- Reviewing and coordinating transmission and generation maintenance schedules, and
- Redirecting maintenance outage schedules for reliability reasons and providing compensation.

Direct Testimony of Leslie E. Dillahunt on Behalf of Southwest Power Pool, Inc.,
Docket No. 06-SPEE-202-COC (filed Aug. 31, 2005).

Perhaps Westar has information not in the record that gives it comfort that KPP has provided SPP with sufficient control to ensure the safety and proper operation of the interconnected facilities. Perhaps that is even covered in a pre-existing interconnection agreement. The only evidence in the Application of the type of "control" in the record, however, is a short resolution that seems primarily focused on the ability of City of Winfield to obtain rate revenue from other customers:

WHEREAS, the City of Winfield, Kansas operates transmission facilities within its electric system; and

WHEREAS, the City of Winfield appears to be eligible to receive revenue for its investment and maintenance of its current transmission facilities; and

WHEREAS, the City of Winfield can transfer functional control of the 69 kV facilities to the Kansas Power Pool (KPP) which will allow the Southwest Power Pool (SPP) to sell transmission service to third parties;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The Governing Body of the City of Winfield, Kansas, hereby approves the transfer of functional control of the City of Winfield's 69 kV facilities to KPP, effective upon completion of all necessary documents, revocable at the City of Winfield's discretion upon a two year notice to KPP.

Section 2. This resolution shall be in full force and effect from and after its adoption and upon execution.

39. In the future, for facilities that, *e.g.*, are located in the Mid-Kansas Zone, Mid-Kansas (and Sunflower as balancing authority) would want to ask, among other things: Has KPP leased the facilities? Who is operating them? How are instructions from SPP carried out and by whom? Most importantly, is it clear that reliability can be assured under the arrangements? Is it clear who bears liability for harm to the interconnected systems if SPP requirements are not met? In short, what contract terms govern the exercise by KPP of its “functional control” over facilities owned by the City and are those contractual links equivalent to the ones that would bind the owner of the facilities were it the SPP TO?

40. Sunflower and Mid-Kansas respectfully submit that each time KPP seeks to transfer facilities to SPP that it does not own, it should seek approval under K.S.A. 66-136 so that the Commission can determine whether the transfer of functional control by KPP to SPP is in the public interest.

V. JOINT MOTION ON PROCEDURAL SCHEDULE

41. Sunflower and Mid-Kansas do not oppose the Joint Motion to decide this matter on an expedited basis. In fact, Sunflower and Mid-Kansas appreciate Staff’s efforts to deal with this issue and are encouraged that Staff has expressed a willingness to move along a rate case quicker than the time periods in K.S.A. 66-117. Sunflower and Mid-Kansas believe similar speed would be in the public interest with respect to their FBR applications.

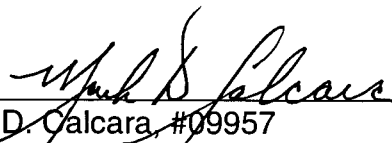
VI. CONCLUSION

WHEREFORE, Sunflower and Mid-Kansas pray that the Commission enter an Order as follows:

- A. Allowing each of them to intervene herein;
- B. Directing KPP to refund all rates collected prior to Commission approval in this docket or, in the alternative, clarifying that Mid-Kansas may immediately forward it's proposed FBR to SPP for filing with FERC and collection subject to refund;
- C. Directing KPP to amend the Protocols to reflect the jurisdiction of the Commission under K.S.A. 66-101c;
- D. Clarifying that any decision on transfer of control of facilities owned by the City of Winfield does not control the need for future findings when facilities owned by other entities are involved; and
- E. Providing for all other relief that the Commission deems just and proper.

Respectfully submitted this 15th day of March, 2012.

**SUNFLOWER ELECTRIC POWER CORPORATION
MID-KANSAS ELECTRIC COMPANY, LLC**


By: 
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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF ELLIS) ss:

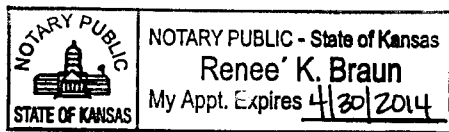
Mark D. Calcara, of lawful age, being first duly sworn on oath states:

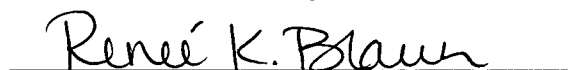
That he is General Counsel of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; that he has read the foregoing pleading and knows the contents thereof; and that the facts therein are true and correct to the best of his knowledge, information, and belief.



Mark D. Calcara

SUBSCRIBED AND SWORN to before me this 15th day of March, 2012.



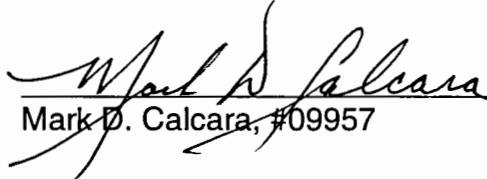


Notary Public

My Commission expires: April 30, 2014

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 15th day of March, 2012, the above and foregoing was faxed to Patrice Petersen-Klein, Executive Director, Kansas Corporation Commission (785-271-3303), with the original and nine copies mailed via USPS regular mail to the Commission and to the parties listed below.


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Direct Testimony of Larry W. Holloway
Docket Nos. 06-SPPE-202-COC & 06-WSEE-203-GIE

1 ~~A. As SPP has pointed out, the Commission has additional influence through the RSC,~~
2 ~~than it has not had in traditional FERC jurisdictional settings.³⁹ SPP RTO Bylaws~~
3 ~~provide for the creation of the RSC and delegate the RSC as having the primary~~
4 ~~responsibility in determining certain aspects of transmission funding, rate design and~~
5 ~~congestion management that have traditionally been the sole domain of the FERC. In~~
6 ~~fact, it was the RSC who determined the current cost allocation plan for reliability-~~
7 ~~based transmission upgrades. This cost allocation plan was developed by the RSC,~~
8 ~~approved by the SPP board of directors and subsequently approved by the FERC.~~

9 This is just one example where Staff believes approving the SPP RTO results
10 in greater Commission influence over traditional FERC regulation. However, it is
11 important to note, that none of these benefits, or increased influence in the FERC
12 decision making process will be realized without approving the applications. In
13 summary, approving these applications has little if no effect on the Commission's
14 jurisdiction, but denying these applications may result in decreased reliability and
15 higher costs for Kansas transmission users, as well as a decrease in the Commission's
16 ability to shape FERC transmission policy in the region.

17 **Q. Do you believe that the Commission should rule that certain Kansas statutes do**
18 **not apply to SPP?**

19 A. While I am not an attorney, I believe it should not. First, I believe that SPP's role in
20 providing transmission service is, by definition, that of a public utility under K.S.A.
21 66-104;⁴⁰

³⁹ See the Direct testimony of Leslie E. Dillahunty, pp. 9-10.

⁴⁰ Emphasis added.

Direct Testimony of Larry W. Holloway
Docket Nos. 06-SPPE-202-COC & 06-WSEE-203-GIE

1 66-104 (a) The term "public utility," as used in this act, shall be construed to
2 mean *every corporation, company, individual, association of persons, their*
3 *trustees, lessees or receivers, that now or hereafter may own, control, operate*
4 *or manage, except for private use, any equipment, plant or generating*
5 *machinery, or any part thereof, for the transmission of telephone messages or*
6 *for the transmission of telegraph messages in or through any part of the state,*
7 *or the conveyance of oil and gas through pipelines in or through any part of*
8 *the state, except pipelines less than 15 miles in length and not operated in*
9 *connection with or for the general commercial supply of gas or oil, and all*
10 *companies for the production, transmission, delivery or furnishing of heat,*
11 *light, water or power. ...*
12

13 As described, SPP will be a company providing transmission service over
14 transmission facilities owned by the Joint Applicants, and for this reason is a public
15 utility under Commission jurisdiction. However, regardless of whether or not SPP is
16 a Commission jurisdictional public utility under Kansas statute, its transmission
17 service, like that of Westar, KCPL, EDE, SPS and WPK is FERC jurisdictional.
18 While their transmission service makes them a public utility under Kansas law, the
19 Commission is preempted by FERC jurisdiction in most matters related to
20 transmission service and wholesale sales. Since SPP's primary jurisdictional activity
21 is that of providing transmission service, the Commission's jurisdiction over SPP's
22 transmission rates and services is similarly pre-empted by FERC jurisdiction. Just as
23 the Commission does not currently require Westar, KCPL, EDE, SPS and WPK to
24 comply with the same regulations and requirements for transmission service and
25 wholesale sales that apply to retail rates and services, the same would apply to SPP.

26 Simply put, the Commission does not need to grant SPP's request to
27 determine that certain Kansas statutes are not applicable to SPP. They are applicable,
28 but many are pre-empted by Federal law. As long as SPP's activities remain FERC
29 jurisdictional, SPP's efforts to comply should be minimal. Should SPP undertake

Direct Testimony of Larry W. Holloway
Docket Nos. 06-SPPE-202-COC & 06-WSEE-203-GIE

1 activities that are not covered by FERC jurisdiction, these would be regulated by the
2 Commission. This approach is entirely consistent with the approach the Commission
3 has historically taken for FERC jurisdictional activities of Westar, KCPL, EDE, WPK
4 and SPS. Nonetheless some clarification may be necessary to provide guidance to
5 SPP. The following lists each of the statutes SPP has requested a ruling on, a brief
6 description and Staff's recommendation:

7 **K.S.A. 66-101b**

8 **Description:** Requirements for efficient and sufficient service as well as just and
9 reasonable rates.

10 **Analysis:** Currently, SPP services and rates are FERC approved. KCC
11 jurisdiction is pre-empted by the FERC.

12 **Staff Recommendation:** The Commission does not need to take any action. This
13 would only affect any future activities by SPP that affect Kansas rates and services
14 and are not addressed by FERC.
15

16 **K.S.A. 66-101c**

17 **Description:** Requirements for filing and publishing rates, rules, regulations and
18 contracts pertaining to jurisdictional services.

19 **Analysis:** Currently, applicable SPP rates, rules, regulations and contracts are
20 FERC approved. KCC jurisdiction is pre-empted by the FERC.

21 **Staff Recommendation:** The Commission does not need to take any action. This
22 would only affect any applicable future activities by SPP that are Kansas
23 jurisdictional and are approved by FERC.
24
25

26 **K.S.A. 66-101d**

27 **Description:** Addresses powers of the Commission to investigate and establish just
28 and reasonable rates.

29 **Analysis:** Currently, SPP services and rates are FERC approved. KCC
30 jurisdiction is pre-empted by the FERC.

31 **Staff Recommendation:** The Commission does not need to take any action. This
32 would only affect any future activities by SPP that affect Kansas rates and services
33 and are not addressed by FERC.
34

Direct Testimony of Larry W. Holloway
Docket Nos. 06-SPPE-202-COC & 06-WSEE-203-GIE

1 **K.S.A. 66-101e**

2 **Description:** Requirements for investigating complaints regarding rates, rules and
3 regulations of an electric public utility.

4 **Analysis:** Currently, SPP rates, rules and regulations are FERC approved. KCC
5 jurisdiction is pre-empted by the FERC.

6 **Staff Recommendation:** The Commission does not need to take any action. This
7 would only affect any future activities by SPP that affect Kansas rates and services
8 and are not addressed by FERC. Any complaints received by the Commission for
9 SPP FERC approved rates, rules and regulations should be rejected as FERC
10 jurisdictional, and the Commission should instead consider its intervention and
11 participation in the FERC proceeding.
12

13 **K.S.A. 66-101f**

14 **Description:** Addresses the Commission's authority to establish just, reasonable and
15 necessary rates and various requirements for Commission orders and ratesetting .

16 **Analysis:** Currently, SPP services and rates are FERC approved. KCC
17 jurisdiction is pre-empted by the FERC.

18 **Staff Recommendation:** The Commission does not need to take any action. This
19 would only affect any future activities by SPP that affect Kansas rates and services
20 and are not addressed by FERC.
21

22 **K.S.A. 66-117**

23 **Description:** Addresses various procedural and compliance requirements as well as
24 ratesetting considerations and deadlines.

25 **Analysis:** Currently, SPP services and rates are FERC approved. KCC
26 jurisdiction is pre-empted by the FERC.

27 **Staff Recommendation:** The Commission does not need to take any action. This
28 would only affect any future activities by SPP that affect Kansas rates and services
29 and are not addressed by FERC.
30

31 **K.S.A. 66-122**

32 **Description:** Requires supplying various accounts, reports and information to the
33 Commission.

34 **Analysis:** SPP provides numerous reports to the FERC and will have various
35 reports produced by independent auditors, and the IMM. Nonetheless, most of this
36 information is publicly available. Additionally the Commission and Staff participate
37 in SPP forums, committees, workshops, etc. where this information is shared.

38 Nonetheless, this statute could be enforced upon SPP if any information in the
39 possession of SPP is not provided when requested by the Commission or Staff

40 **Staff Recommendation:** It is not necessary for SPP to file any specific reports
41 with Staff or the Commission at this time, because that information is publicly

Direct Testimony of Larry W. Holloway
Docket Nos. 06-SPPE-202-COC & 06-WSEE-203-GIE

1 available. However, the Commission should make clear that SPP may be required to
2 provide information or reports in the future, if such information or reporting is not
3 publicly available or is determined necessary at a latter date.
4

5 **K.S.A. 66-123**

6 **Description:** Requires the filing of annual and special reports with the Commission.
7 **Analysis:** SPP provides numerous reports to the FERC and will have various
8 reports produced by independent auditors, and the IMM. Nonetheless, most of this
9 information is publicly available. Additionally the Commission and Staff participate
10 in SPP forums, committees, workshops, etc. where this information is shared.
11 **Staff Recommendation:** Because the information is publicly available, there is
12 no need for the SPP to file annual or special reports with the Commission at this time.
13 Nonetheless, SPP may be required to file such reports in the future if the Commission
14 determines that the publicly available information is not sufficient.
15

16 **K.S.A. 66-128 through 128p**

17 **Description:** These statutes list requirements for property used for ratemaking
18 purposes, generation investments, prudence of generation facilities, etc.
19 **Analysis:** Currently, SPP services and rates are FERC approved. KCC
20 jurisdiction is pre-empted by the FERC.
21 **Staff Recommendation:** The Commission does not need to take any action. This
22 would only affect any future activities by SPP that involve investments that are not
23 addressed by FERC approved rates and that are included in rates approved by the
24 Commission.
25

26 **K.S.A. 66-1,177 through 66-1,181**

27
28 **Description:** Requirements for the Commission to site transmission lines.
29 **Analysis:** SPP is concerned that it could be involved in transmission line siting
30 proceedings at the Commission. However, a reading of these statutes clearly
31 indicates that only the electric utility constructing the transmission line need make the
32 filing request with the Commission. While it would be expected that any such utility
33 would rely on transmission studies provided by SPP, SPP would act as a consultant in
34 such a proceeding and not an applicant.
35 **Staff Recommendation:** The Commission does not need to take any action. This
36 would only affect SPP if it proposed to construct transmission lines.
37

38 **K.S.A. 66-1501 through 66-1513**

39 **Description:** Pertains to the Commission's authority to assess expenses against a
40 utility for appeals, investigations, etc. Also addresses the Commission's ability to
41 hire outside consultants and experts and paying for such expenses.

Direct Testimony of Larry W. Holloway
Docket Nos. 06-SPPE-202-COC & 06-WSEE-203-GIE

- 1 **Analysis:** Because SPP's current activities are primarily FERC jurisdictional,
2 most of the involvement the Commission will have with SPP will be through either
3 participation in SPP meeting, committees, working groups, etc., or as an intervener in
4 FERC proceedings. Nonetheless, to the extent SPP files applications before the
5 Commission, the Commission should be able to assess any resulting costs to SPP.
6 However, the Commission should be aware that any SPP assessment will be passed
7 through to its member utilities and recovered from Kansas retail customers through
8 the utilities SPP transmission tariff and related fees.
- 9 **Staff Recommendation:** As a practical matter, Staff would recommend that
10 other than compensation provided by SPP for participation in RSC activities or other
11 SPP approved funding, SPP does not receive an assessment for Commission costs
12 other than those directly related to any SPP initiated proceeding (or valid complaint
13 against SPP) before the Commission.
- 14
- 15 **Q. Has Staff reviewed Joint Applicants' request to recover all SPP related costs in**
16 **the Applicants' Commission jurisdictional rates?**
- 17 **A. Yes.** In paragraph 36.C of the Application in 06-203, Joint Applicants request that:
18 "... the KCC issue its order: ...
- 19 **C. Acknowledging that if the KCC approves the Application, when properly**
20 requested for inclusion in such rates by any of the Applicants, the KCC will
21 include in the Applicants' KCC-jurisdictional rates:
- 22 i. all FERC-approved costs and fees under the SPP RTO tariff assessed
23 against and paid by Applicants;
- 24 ii. the prudently incurred costs of participating in the SPP RTO, which
25 Applicants have some ability to control;"
- 26 **Q. Should the Commission grant this request?**
- 27 **A. Absolutely not.** SPP approved costs will be, by and large, directly related to
28 transmission service. The Joint Applicants provide transmission service to their retail
29 customers and a variety of other transmission users. Charges for this transmission
30 service through the SPP tariff will be FERC jurisdictional. The intent of the FERC's