

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of)	
Wheatland Electric Cooperative, Inc. for)	Docket No. 14-WHLW-218-RTS
Approval to Make Certain Changes in Its)	
Charges for Water Service to Tyson Fresh)	
Meats, Inc.		

MOTION OF TYSON FRESH MEATS, INC. TO DISMISS

In support of its Motion to Dismiss, Tyson Fresh Meats, Inc. ("Tyson") states:

1. On or about November 13, 2012, Wheatland Electric Cooperative, Inc. ("Wheatland") filed its application in this matter for approval to make certain changes in its charges for water service to Tyson. On December 3, 2013, the State Corporation Commission of the State of Kansas ("Commission") issued its order consolidating three other pending applications seeking approval of special rate contracts to three other of its water customers into Wheatland's application to change its rates under its contract with Tyson. In each of the four consolidated dockets, Wheatland proposed to implement significant increases in rates to its customers. The Commission suspended the effective date of each of the proposed increases to July 11, 2014. By separate order, the Commission assigned a Prehearing Officer to preside over any prehearing conference but did not order the convening of such a conference.

2. On December 19, 2013, the Commission issued its Order granting Tyson's motion to intervene.

3. On December 22, 2013, the Prehearing Officer set a Scheduling Conference for January 22, 2014 at the Commission's offices for the purpose of establishing a procedural schedule for this matter.

4. According to its Application, Wheatland's total operating revenue in calendar year 2011 (the base period used in its Application) was over \$5.2 million. Application at

Schedule A-1.0. As defined in the Commission's regulations, a water utility is a Class A utility if its annual operating revenues are \$750,000 or more. K.A.R. 82-1-204a(b)(1). Consequently, Wheatland is a Class A water utility.

5. The Commission has set forth minimum filing requirements for Class A utilities that file a major rate application. A filing is a major rate application if any of the following conditions is met:

(A) The application relates to a general increase in revenues for the purpose of obtaining an alleged fair rate of return.

(B) Material changes in operations, facilities, or cost of service occur subsequent to the test year employed in any major rate decision, except for proposals that are for the sole purpose of compensating for the increased production or purchase cost of a principal product.

(C) The application will, in the opinion of the commission, materially affect the public interest if it is granted.

K.A.R. 82-1-231(b)(4). Wheatland's Application clearly meets the first criterion because, as stated at paragraph 3 of the Application, the purpose of the filing is to increase Wheatland's rates to produce "return margins acceptable to the KCC." Also, although the basis for the proposed rate change is not explicitly stated, as required by the Commission's regulations, K.A.R. 82-1-231(c)(4)(B)(v), it appears likely that Wheatland's Application also meets the second criterion.


6. In its filing, Wheatland has failed to follow the format established by the Commission's requirements at K.A.R. 82-1-231(c)(4). None of its sections conform to those regulatory requirements and, more importantly, Wheatland has failed to provide all of the information required by the regulations. For instance, although required to provide "year-end plant investment for the three calendar years preceding the test year, for the test year, and for the 12-month period preceding the test year," as required by K.A.R. 82-1-231(c)(4)(D)(ii), Wheatland provided only test year data. Application, Schedule C-2.0. Further, Wheatland failed

to provide “schedules that shall show by functional classification, using dates corresponding with the dates of plant investment data submitted under section 4, the balances of the reserve accounts in which the credits representing provisions for depreciation, amortization, depletion, any adjustments thereto, and jurisdictional allocations are accumulated.” K.A.R. 82-1-231(c)(4)(E). Wheatland also failed to provide historical data related to its debt costs, K.A.R. 82-1-231(c)(4)(G)(iii), and its financial and operating data. K.A.R. 82-1-231(c)(4)(H).

7. These defects in Wheatland’s Application render it incomplete, in violation of the Commission’s regulations governing such filings. Wheatland’s failure to comply with the requirements will greatly complicate the work of analyzing the Application. Wheatland’s Application should therefore be dismissed. Should it desire to continue to pursue its rate increase for Tyson, Wheatland has the option of refiling an application that conforms to the Commission’s regulatory requirements.

WHEREFORE, Tyson moves the Commission to dismiss Wheatland’s Application in this matter in its entirety and for such other and further relief as may be appropriate.

Respectfully submitted,

By 
Martin J. Bregman, KBE # 12618
Sarah Toevs Sullivan, KBE #20041
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
Tel.: (816) 691-3195
Fax: (816) 691-3495
marty.bregman@stinsonleonard.com
sarah.sullivan@stinsonleonard.com


ATTORNEYS FOR INTERVENOR,
TYSON FRESH MEATS, INC.

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS) ss.

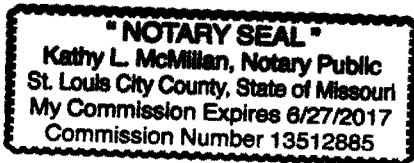
VERIFICATION

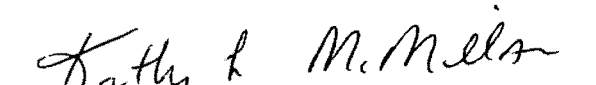
Martin J. Bregman, of lawful age, being first duly sworn, upon oath states:

That he is one of the attorneys for the Intervenor, Tyson Fresh Meats, Inc., and that he has read the above and foregoing **Motion to Dismiss**, knows the contents thereof, and knows that all of the statements made therein are true.


Martin J. Bregman

Subscribed and sworn to before me this 15th day of January, 2014.

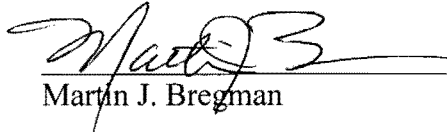



Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2014, the above and foregoing document has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States mail, postage prepaid, addressed to the following parties of record:

kbrantley@wbsnet.org
slowry@sunflower.net
mmuirhead@garden-city.org
sarah.sullivan@stinsonleonard.com
lfreese@weci.net
will.higginbotham@tyson.com
s.feather@kcc.ks.gov
m.neeley@kcc.ks.gov
m.sprecker@kcc.ks.gov



Martin J. Bregman