

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

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

**ORDER DENYING MID-KANSAS ELECTRIC COMPANY, LLC'S MOTION TO
STRIKE TESTIMONY OF KANSAS ELECTRIC POWER COOPERATIVE INC.'S
WITNESS STEPHEN PAGE DANIEL**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and makes the following findings and conclusions:

1. On April 27, 2012, Mid-Kansas Electric Power Company, LLC (Mid-Kansas) filed a Motion to Strike Testimony of Kansas Electric Power Cooperative's Witness Stephen Page Daniel.¹ Kansas Electric Power Cooperative, Inc. (KEPCo) filed its Answer in Opposition to Motion to Strike of Mid-Kansas Electric Company on May 7, 2012.²

2. In the April 27, 2012 Motion to Strike, Mid-Kansas asserts that Mr. Daniel's testimony should be struck because (1) the testimony is irrelevant to the issues in the present docket; (2) this witness is not qualified to testify as an expert in the area for which testimony has

¹ Motion to Strike Testimony of Kansas Electric Power Cooperative's Witness Stephen Page Daniel, filed April 27, 2012 (April 27, 2012 Motion to Strike).

² Answer of Kansas Electric Power Cooperative, Inc. in Opposition to Motion to Strike of Mid-Kansas Electric Company, filed May 7, 2012 (May 7, 2012 Answer).

been presented; and (3) the testimony is based on speculation, unsupported assumptions and conclusory allegations rather than a factual foundation.³ Mid-Kansas argues that matters related to the form of operation of Southern Pioneer as a C-Corporation and the appropriateness of the spin-down of the 34.5 kV assets from Mid-Kansas to Southern Pioneer are not relevant to this docket.⁴ Additionally, Mid-Kansas questions the qualifications of Mr. Daniel to act as an expert in the matters in which he filed testimony.⁵ Mid-Kansas identified specific portions in Mr. Daniel's testimony that it argued should not be permitted.⁶

3. In its May 7, 2012 Answer, KEPCo pointed out that its intervention was premised on its interest in the local access charge (LAC) and that any cost, allocation or practice that affects the LAC rate is relevant to that interest.⁷ KEPCo further avers that Mr. Daniel has 42 years of experience in the utility industry and has identified specific experience related to his testimony.⁸ In addition, KEPCo states that the facts relied upon by Mr. Daniel are found in the materials filed with the application in this docket or other Commission dockets.⁹

4. The Commission declines Mid-Kansas' request to strike Mr. Daniel's testimony. The Commission notes that it has discretion in determining the admissibility of expert witness testimony.¹⁰ Additionally, the Commission may relax the rules of evidence if it is in the public interest to do so.¹¹ "The Commission, as the trier of fact, has the right to determine the credibility of the witnesses and the weight such testimony is to be given."¹²

³ April 27, 2012 Motion to Strike, pp. 1-2.

⁴ *Id.*, ¶ 6.

⁵ *See generally*, April 27, 2012 Motion.

⁶ *Id.*, ¶ 23.

⁷ May 7, 2012 Answer, ¶ 2.

⁸ *Id.*, ¶ 9.

⁹ *Id.*, ¶ 10.

¹⁰ *Kansas Gas & Elec. Co. v. Kansas Corp. Comm'n*, 14 Kan. App. 2d 527, Syl. 3, 538 P.2d 1165 (1990).

¹¹ K.A.R. 82-1-230(a).

¹² *Trees Oil Co. v. State Corp. Comm'n*, 279 Kan. 209, 222, 105 P.3d 1269, 1278-79 (2005).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) Mid-Kansas' Motion to Strike Testimony of Kansas Electric Power Cooperative's Witness Stephen Page Daniel is denied. The Commission will give appropriate weight to the testimony presented in light of the experience, qualifications and knowledge of each witness, and will determine the relevance of the witness' testimony to the matters in this docket.


(B) The Commission orders service of this order be made by electronic mail, with a note that no hard copy of this order will follow. This is a procedural order and constitutes non-final agency action.¹³ Parties have fifteen (15) days from the date of electronic service of this order in which to petition the Commission for reconsideration of any issue or issues decided herein.¹⁴

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

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: MAY 17 2012


ORDER MAILED MAY 17 2012
ELECTRONIC
Patrice Petersen-Klein
Executive Director

HF

¹³ K.S.A. 77-607(b)(2).

¹⁴ K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(1).

CERTIFICATE OF SERVICE

MAY 17 2012

12-MKEE-380-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Denying Mid-Kansas Electric Company, LLC's Motin to Strike Testimony of Kansas Electric Power Cooperative Inc.'s Witness Stephen Page Daniel was served by electronic service on this 10th day of May, 2012, to the following parties who have waived receipt of follow-up hard copies.

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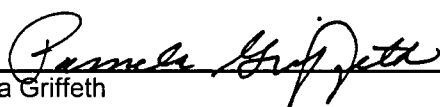
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