

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Mid-Kansas)
Electric Company, LLC for Approval to Make) Docket No. 13-MKEE-699-RTS
Certain Changes in its Charges for Electric)
Services in the Geographic Service Territory)
Served by Southern Pioneer Electric Company.)

Received
on

JUL 29 2013

by
State Corporation Commission
of Kansas

**CURB RESPONSE TO MKEC'S
SECOND PETITION FOR RECONSIDERATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and submits its Response to the Petition for Reconsideration of Mid-Kansas Electric Company, LLC ("MKEC") of the Commission's Order Affirming Order Granting CURB's Petition to Intervene issued on July 3, 2013. In support of its response, CURB states as follows.

I. RESPONSE TO MKEC'S SECOND PETITION FOR RECONSIDERATION

A. The Commission Applied the Appropriate Standard of Review.

1. MKEC erroneously asserts the Commission's July 3, 2013, Order Denying Mid-Kansas's Petition for Reconsideration ("July 3rd Order") incorrectly shifted the burden in this matter from CURB to MKEC, and that MKEC was somehow denied the right to respond before the matter was initially decided.

2. First, contrary to MKEC's assertions, the Commission did require CURB to meet its burden of establishing it was entitled to intervention, and the Commission specifically determined that CURB "met its burden required under K.A.R. 82-1-225 and should be granted intervention."¹

¹ Order Granting CURB's Petition to Intervene, Discovery Order, and Protective Order, ¶ 4 ("May 29th Order").

CURB further met this burden in responding to MKEC's First Petition for Reconsideration, as noted by the Commission in its July 3rd Order, paragraphs 9-12, 14-18.

3. Second, MKEC was not denied an opportunity to respond to CURB's Petition to Intervene. Rather than file a pleading in opposition to CURB's Petition to Intervene and ask the Commission to set aside the May 29, 2013, Order Granting CURB's Petition to Intervene ("May 29th Order") to consider MKEC's opposition to CURB's intervention, MKEC *voluntarily*² chose to file its June 3, 2013, Petition for Reconsideration ("First Petition for Reconsideration"). Accordingly, the Commission's correctly determined that "Mid-Kansas bears the burden of proving the Commission's action in approving CURB's Petition to Intervene is invalid."

4. Further, MKEC raised this issue in its First Petition for Reconsideration³ and is now attempting to argue it again in its Second Petition for Reconsideration.

5. MKEC also argues that the Commission erroneously applied the Kansas Judicial Review Act appellate standards under K.S.A. 77-621 to MKEC's petition for reconsideration. As noted by the Commission in its July 3rd Order,⁴ K.S.A. 77-721(b) states, "the validity of agency action shall be determined in accordance with the standards of judicial review provided in this section, as applied to the agency action at the time it was taken."⁵

6. It is difficult to understand how MKEC concludes that applying the standards used by the appellate courts to determine the validity of the Commission's actions is erroneous, especially considering the fact that counsel for MKEC was counsel of record in prior dockets where the

² CURB Response to Petition for Reconsideration, ¶ 3; Petition for Reconsideration of Order Granting CURB's Petition, ¶¶ 2-3 ("First Petition for Reconsideration").

³ First Petition for Reconsideration, ¶ 2.

⁴ July 3rd Order, ¶ 13.

⁵ K.S.A. 77-621(b) ("the validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.").

Commission Orders denying reconsideration specifically criticized petitions for reconsideration that did “not implicate any of the eight grounds for relief under K.S.A. 77-621(c).”⁶

7. MKEC erroneously argues that K.S.A. 77-529 and K.A.R. 82-1-235 contain a standard of review applicable to Commission orders that trumps the statutory grounds under K.S.A. 77-621. To the contrary, K.S.A. 77-529 does not contain a standard of review at all, but simply requires that a party seeking reconsideration state “the specific grounds upon which relief is requested.” The “specific grounds” referenced in K.S.A. 77-529 are the eight statutory grounds to determine when agency action is valid set forth in K.S.A. 77-721.

8. K.A.R. 82-1-235 likewise does not contain a standard of review for Commission orders. Instead, K.A.R. 82-1-235 specifically states that all petitions for reconsideration “shall be filed pursuant to the appropriate statutory provisions related to them.”⁷ K.S.A. 77-721 is one of the appropriate statutory provisions related to petitions for reconsideration of Commission orders, as it specifies the statutory grounds to determine the validity of Commission orders. K.A.R. 82-1-235 does not specify the grounds to determine the validity of Commission orders, but instead merely addresses the following issues:

- what must be cited if the petition for reconsideration relies on the ground that the Commission did not consider any of the evidence presented in the proceeding;⁸
- who must receive copies of the petition for reconsideration;⁹

⁶ See, Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-MDWE-466-CPL; Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 7, KCC Docket No. 13-KCPE-463-CPL; Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-WSEE-464-CPL; Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-KCKE-468-CPL; Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-KEPE-462-CPL; Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-EPDE-465-CPL; Order Denying CURB’s Petition for Reconsideration of the Commission’s February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-SEPE-467-CPL.

⁷ K.A.R. 82-1-235(a).

⁸ K.A.R. 82-1-235(b).

- who carries the burden of proof;¹⁰
- what becomes part of the record in the reconsideration;¹¹ and
- other procedural rules applicable to reconsideration by the Commission.¹²

9. MKEC's assertion that K.S.A. 77-529 and K.A.R. 82-1-235 contain standards of review that trump the statutory grounds to determine the validity of Commission orders under K.S.A. 77-621 is therefore without merit. The Commission appropriately referenced the standards under K.S.A. 77-621 in denying MKEC's First Petition for Reconsideration.

B. The Commission Made the Appropriate Findings and Conclusions.

10. MKEC argues that the Commission has erroneously interpreted the law in finding that Southern Pioneer is the affected party or real party in interest in this proceeding. MKEC admits in its Second Petition for Reconsideration that "this proceeding was initiated on behalf of Southern Pioneer," yet argues the Commission has "subverted the law"¹³ in finding that Southern Pioneer "will be the affected party and receive the financial benefit or detriment of any action in this docket."¹⁴ As noted by the Commission,

In reviewing this application, the Commission will be reviewing the financial records of Southern Pioneer - not Mid-Kansas. Mid-Kansas is merely bringing this action on Southern Pioneer's behalf as it currently holds the certificate of convenience for the territory served by Southern Pioneer.¹⁵

11. The Commission also relied upon the fact that MKEC has advocated that its rate cases are brought on behalf of and to modify the rates of its members, not MKEC.¹⁶ In a prior rate case

⁹ K.A.R. 82-1-235(c).

¹⁰ K.A.R. 82-1-235(d).

¹¹ K.A.R. 82-1-235(e).

¹² K.A.R. 82-1-235(f).

¹³ Second Petition for Reconsideration, ¶¶ 8, 14.

¹⁴ July 3rd Order, ¶ 14.

¹⁵ *Id.*

¹⁶ July 3rd Order, ¶ 15.

brought by another MKEC member (Lane Scott), MKEC witness Stuart Lowry specifically stated in response to a question by the Chairman:

Mid-Kansas, the entity, did not undertake any detailed review of the proposed application. We were briefed by management at Lane-Scott of the need to make a ***modification to their rates***. We took action at the Mid-Kansas Board to submit the Application, and it was, it was ***at their request***.¹⁷

12. Counsel for MKEC concurred with this, stating in her opening statement in the Lane Scott rate case, “Despite the fact that this Application was filed by Mid-Kansas, we do believe it is a Lane-Scott matter.”¹⁸

13. Here, as in the Lane Scott rate case, we are talking about a proposed modification of the rates charged by Southern Pioneer. Mr. Lowry clearly and succinctly articulated that these rate cases are to modify the rates (“their rates”) charged by its members.¹⁹ Here, the member is Southern Pioneer.

14. Moreover, as noted in CURB’s June 13, 2013, Response to Petition for Reconsideration,²⁰ the Commission has determined that Southern Pioneer is to be treated as any other C-corporation and will analyze Southern Pioneer’s applications in the same manner it does all other C-corporations it regulates: “...the Commission will, *going forward*, treat Southern Pioneer as any other C-corporation and will analyze *Southern Pioneer’s applications* in the same manner it does all other C-corporations it regulates.”²¹

¹⁷ Lowry, Transcript of Proceedings, January 31, 2013, pp. 92-93, KCC Docket No. 12-MKEE-410-RTS (emphasis added).

¹⁸ MKEC Opening Statement by Terri Pemberton, January 31, 2013, Transcript of Proceedings, p. 36, KCC Docket No. 12-MKEE-410-RTS.

¹⁹ Lowry, Transcript of Proceedings, January 31, 2013, pp. 92-93, KCC Docket No. 12-MKEE-410-RTS.

²⁰ CURB Response to Petition for Reconsideration, ¶¶ 8, 24.

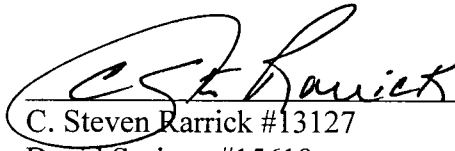
²¹ Order Approving Settlement Agreement with Modifications, June 25, 2012, p. 21, KCC Docket No. 12-MKEE-380-RTS (emphasis added).

15. The Commission therefore correctly determined that Southern Pioneer is the affected party and will receive the financial benefit or detriment of any action in this docket.

II. CONCLUSION

16. WHEREFORE, CURB respectfully requests that the Commission deny MKEC's Second Petition for Reconsideration in its entirety.

Respectfully submitted,

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

C. Steven Rarrick #13127

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VERIFICATION

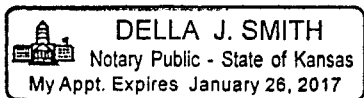
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)


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 29th day of July, 2013.




Notary Public

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

13-MKEE-699-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 29th day of July, 2013, to the following parties who have waived receipt of follow-up hard copies:

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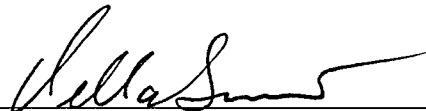
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