

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

|   |   |                            |
|---|---|----------------------------|
| In the Matter of the Joint Application of Mid-Kansas  | ) |                            |
| Electric Company, LLC, Sunflower Electric Power       | ) |                            |
| Corporation, Prairie Land Electric Cooperative, Inc., | ) |                            |
| Pioneer Electric Cooperative, Inc., The Victory       | ) |                            |
| Electric Cooperative Association, Inc., Western       | ) | Docket No. 18-MKEE-160-TFR |
| Cooperative Electric Association, Inc., Wheatland     | ) |                            |
| Electric Cooperative, Inc. and Southern Pioneer       | ) |                            |
| Electric Company for Approval of a Local Access       | ) |                            |
| Tariff and Mid-Kansas and Sunflower Open Access       | ) |                            |
| Transmission Tariff.                                  | ) |                            |

**PETITION TO INTERVENE, PRELIMINARY COMMENTS, AND REQUEST FOR  
HEARING OF KANSAS ELECTRIC POWER COOPERATIVE, INC.**

COMES NOW Kansas Electric Power Cooperative, Inc. (“KEPCo”) and moves the Corporation Commission of the State of Kansas (“Commission”) for an order permitting it to intervene in the above captioned proceeding pursuant to K.S.A. 77-521 and K.A.R. 82-1-225. KEPCo further requests that the Commission institute a full evidentiary hearing pursuant to K.S.A. 77-542 in order to fully assess the reasonableness of the proposed Local Access Tariffs (“LAT”) and Open Access Transmission Tariffs (“OATT”) submitted with the Joint Application. As discussed in greater detail below, based on KEPCo’s preliminary review to date, it appears that the Joint Applicants’ proposed LAT and OATT are unjust and unreasonable and would subject third-party users such as KEPCo to unduly discriminatory and potentially anticompetitive treatment when securing the essential transmission service they require.

**I. PETITION TO INTERVENE**

In support of its petition for intervention, KEPCo alleges and states as follows:

1. KEPCo is a corporation duly organized under the laws of the State of Kansas, with its principal place of business at 600 SW Corporate View, Topeka, Kansas 66615. It is authorized to do business and is conducting business in the State of Kansas.

2. KEPCo is engaged in the business of a generation and transmission cooperative electric supplier providing power and energy to 19 member distribution cooperatives in the State of Kansas serving approximately 300,000 consumer Members.<sup>1</sup>
3. On October 11, 2017, Mid-Kansas Electric Company, LLC (“Mid-Kansas” or “MKEC”), Sunflower Electric Power Corporation (“Sunflower”), Prairie Land Electric Cooperative, Inc. (“Prairie Land”), Pioneer Electric Cooperative, Inc. (“Pioneer”), The Victory Electric Cooperative Association, Inc. (“Victory”), Western Cooperative Electric Association, Inc. (“Western”), Wheatland Electric Cooperative, Inc. (“Wheatland”) and Southern Pioneer Electric Company (“Southern Pioneer”) (collectively “Joint Applicants”) filed a Joint Application for the Approval of:
  - A LAT for the Mid-Kansas division Local System;
  - A LAT for the Sunflower Division Local System;
  - A revised Mid-Kansas OATT; and
  - A revised Sunflower OATT.
4. If approved, the proposed tariffs would govern transmission access and service over the 34.5 kV facilities owned by Southern Pioneer, Pioneer, Western, Wheatland, Victory, and Prairie Land (each individually referred to as a “System Owner” and collectively the “System Owners”).

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<sup>1</sup> KEPCo’s 19 distribution cooperative member systems are: Ark Valley Electric Cooperative Association, Inc. (Hutchison, Kansas); Bluestem Electric Cooperative, Inc. (Wamego, Kansas); Brown-Atchison Electric Cooperative Association, Inc. (Horton, Kansas); Butler Rural Electric Cooperative Association, Inc. (El Dorado, Kansas); Caney Valley Electric Cooperative Association, Inc. (Cedar Vale, Kansas); CMS Electric Cooperative, Inc. (Meade, Kansas); DS&O Electric Cooperative, Inc. (Solomon, Kansas); Flint Hills Rural Electric Cooperative Association, Inc. (Council Grove, Kansas); Heartland Rural Electric Cooperative, Inc. (Girard, Kansas); LJEC, Inc. (McLouth, Kansas); Lyon-Coffey Electric Cooperative, Inc. (Burlington, Kansas); Ninnescah Rural Electric Cooperative Association, Inc. (Pratt, Kansas); Prairie Land Electric Cooperative, Inc. (Norton, Kansas); Radiant Electric Cooperative, Inc. (Fredonia, Kansas); Rolling Hills Electric Cooperative, Inc. (Mankato, Kansas); Sedgwick County Electric Cooperative Association, Inc. (Cheney, Kansas); Sumner-Cowley Electric Cooperative Association, Inc. (Wellington, Kansas); Twin Valley Electric Cooperative, Inc. (Altamont, Kansas); and Victory Electric Cooperative Association, Inc. (Dodge City, Kansas).

5. KEPCo has Member load embedded within and served from the transmission facilities of Mid-Kansas and utilizes both the Mid-Kansas transmission facilities as well as the 34.5 kV transmission facilities owned by the System Owners.
6. KEPCo and, ultimately, its Members interests will therefore be affected by any Commission order or activity in this proceeding, and KEPCo and its members may be adversely affected thereby.
7. KEPCo's interest herein is not adequately represented by any other party.
8. KEPCo should therefore be permitted to intervene in this proceeding with all rights appurtenant to that status.
9. All communications and correspondence to KEPCo, including service of all notices and orders of the Commission herein are requested to be sent to the following named individuals:

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## **II. PRELIMINARY COMMENTS AND REQUEST FOR HEARING<sup>2</sup>**

10. Access to the System Owner's 34.5 kV transmission facilities on reasonable terms and conditions is of vital importance to KEPCo and its members served from those facilities. In 2011, the Commission, with the mutual agreement of Mid-Kansas, KEPCo and other interested parties, opened an investigation into the classification of the 34.5 kV facilities,

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<sup>2</sup> These comments are provided based upon KEPCo's review of the Joint applicants' filing in the limited time available since its filing and are, therefore, of necessity, preliminary.

owned by the members of Mid-Kansas in KCC Docket No. 11-GIME-597-GIE. Those proceedings resulted in an settlement agreement<sup>3</sup> approved by the Commission<sup>4</sup> in which Mid-Kansas (and all parties to the 11-GIME-597-GIE proceeding) stipulated that:

the [MKEC] Member Facilities constitute "essential facilities" within the meaning of federal antitrust laws and are subject to all applicable statutory and regulatory requirements, including pursuant to the Federal Power Act, requiring non-public utility transmitting facilities, as defined by federal law, to provide open access or other transmission service and enable third party interconnections and delivery of wholesale power.<sup>5</sup>

11. The current MKEC tariff was the result of that settlement. In addition, the transmission service and operating agreements that were appended to the 2011 Settlement Agreement were “stipulated to be essential components that KEPCo and [Kansas Power Pool] require for network integration transmission service.”<sup>6</sup> Those agreements represented mutually agreed upon terms and conditions of service that all parties to the 2011 Settlement Agreement concluded were sufficient to provide non-discriminatory open access transmission service over the 34.5 kV facilities owned by the Mid-Kansas members. MKEC has discarded those consensus documents in favor of unilateral and wholesale changes that do not provide – and do not appear even to purport to provide – open access service over the 34.5 kV facilities comparable to that provided by the MKEC tariff and transmission service and operating agreements agreed to in 2011.
12. According to the Joint Application, the instant filing arose out of a 2016 settlement agreement jointly filed by Mid-Kansas and Southern Pioneer with Kansas Municipal

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<sup>3</sup> Stipulation And Agreement, Docket No. 11-GIME-597-GIE (filed Dec. 1, 2011) (“2011 Settlement Agreement”).

<sup>4</sup> Order Addressing Joint Motion to Approve Stipulation and Settlement Agreement, In re General Investigation, Docket No. 11-GIME-597-GIE (“Order On 2011 Settlement Agreement”) (issued Jan. 11, 2012).

<sup>5</sup> 2011 Settlement Agreement at ¶1.d .

<sup>6</sup> Order on 2011 Settlement Agreement at ¶ 8; Stipulation and Agreement at 1.a., b., and c

Energy Agency in Docket No. 15-MKEE-461-TAR.<sup>7</sup> According to the Joint Applicants, in approving that settlement, “[t]he Commission found that the requirement to revise the ambiguous and inconsistent tariff language a sensible remedy to reduce disputes in the future.”<sup>8</sup>

13. The Joint Application, however, goes well beyond the clarification of certain ambiguous tariff provisions. Rather, the instant application seeks approval of four entirely new tariffs with provisions that have never been reviewed or approved by this Commission nor have such provisions been agreed to by any party to the 2011 Settlement Agreement.

14. Acceptance of the proposed LATs and OATTs would therefore unilaterally and fundamentally alter the rights and obligations of the parties with respect to service over or connections to the 34.5 kV facilities that are essential for KEPCo to provide reliable and reasonably priced electric service to its Members and the Kansas business and retail customers those members serve. Such drastic changes to the terms and conditions of service over the System Owner’s facilities, on their face, compels searching Commission scrutiny and a full evidentiary hearing in this proceeding.

15. Furthermore, based on KEPCo’s preliminary analysis, it appears that the proposed tariffs fail to provide meaningful customer protections that would prohibit MKEC or Sunflower from providing preferential treatment to their member-owners and could result in unjust and unreasonable terms and conditions on the transmission service provided over the transmission facilities owned by the System Owners and governed by the proposed tariffs.

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<sup>7</sup> Joint Application at 5, ¶ 10.

<sup>8</sup> Joint Application at 5, ¶ 10, citing Order Granting Joint Application for Approval of Settlement Agreement, ¶ 12, Docket No. 15-MKEE-461-TAR (filed January 12, 2016).

16. For example, section 3.2.1. of the proposed LAT provides that all “Local Delivery Customers”, including existing long-term customers such as KEPCo must “submit an Application for Load Service within two (2) months [of the date the Local Access Tariff is Approved].” Section 3.2.1 provides further that such existing customers will not be required to comply with the transmission study processes detailed in Section 5 of the proposed LAT, “unless the Local Delivery Customer failed to do so at the time of initial service.”<sup>9</sup>
17. Initially, KEPCo questions how Mid-Kansas or Sunflower as tariff Administrator will determine compliance with a tariff provision that did not exist when KEPCo and other transmission customers began taking service over the System Owners’ 34.5 kV facilities. To the extent, however, that Mid-Kansas or Sunflower determines that an existing customer failed to comply with the proposed LAT Article 5 study processes, it would appear that such a finding would result in those entities that have used and paid for the 34.5 kV facilities for many years, in some cases for decades, being treated as the incremental load on the system and possibly exposed to the costs of network upgrades in order to continue to receive the service they are currently receiving.
18. Article 8 of the proposed LAT contains penalty provisions that appear, on their face, to be unreasonable and which could severely and disproportionately harm non-affiliated transmission customers for load served in excess of their load forecasts. Specifically, Section 8.2 provides for the imposition of significant penalties if, in any hour of any month, load measured at *a specific delivery point* exceeds the forecasted seasonal peak

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<sup>9</sup> Proposed LAT at § 3.2.1.

load by 2 MW or causes undefined “reliability criteria violations.”<sup>10</sup> KEPCo is not aware of any comparable penalty scheme in the Federal Energy Regulatory Commission’s (“FERC”) *pro forma* OATT.

19. Section 8.2 also provides that in the event a customer violates the excess load provision, Mid-Kansas or Sunflower, as the tariff Administrator will “ask the Load Delivery Customer to provide an explanation for the deviation.”<sup>11</sup> The proposed LAT provides that it is then the Administrator’s job to determine whether the customer has provided a “reasonable explanation” or if penalties should be assessed against the customer.<sup>12</sup> This provision raises significant questions as to whether Mid-Kansas or Sunflower can be entrusted with the discretion to administer this provision fairly when applied to its member-owners versus unaffiliated, third-party transmission customers.
20. KEPCo’s concerns with these and other tariff provisions are magnified by the lack of any comparability requirement in the proposed LAT. There is no indication in the MKEC tariffs that MKEC’s members will be subjected to the same terms and conditions that they propose to impose on third parties including KEPCo and its Members. A hallmark of the FERC’s open access policies, and the foundation of the elimination of undue discrimination by transmission owners and providers, is that a transmission provider must offer transmission services to other under terms and conditions comparable to the transmission provider’s own use of its system.<sup>13</sup> The FERC requires that all open access tariffs meet this requirement and the *pro forma* open access tariff expressly includes such

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<sup>10</sup> Proposed LAT at § 8.2.

<sup>11</sup> Proposed LAT at § 8.2.

<sup>12</sup> *Id.*

<sup>13</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996) FERC Stats. & Regs. ¶ 31,036 (1997) (“Order No. 888”)

a commitment as an affirmative obligation of the transmission provider.<sup>14</sup> Such commitments are entirely lacking in the proposed LAT and OATT submitted by the Joint Applicants in this proceeding.

21. Finally, this Commission must recognize that, by its wholesale abandoning of consensus terms and conditions that closely parallel the FERC OATT provisions in favor of their own idiosyncratic tariffs and provisions that, MKEC and its members virtually ensure protracted litigation before this Commission over the meaning and reasonableness of those provisions. The transmission service over the 34.5 kV facilities at reasonable rates, terms and conditions are essential to KPECo, its Members, and other wholesale transmission customers who must rely on such service to meet their load obligations. Persistent litigation would appear to be an inevitable consequence of the Joint Applicants' decision to submit proposed tariff that bear no resemblance to the open access tariffs that are commonly used throughout the industry and with provisions that are, in many cases, patently one-sided. In addition to the litigation of the reasonableness of the proposed LAT and OATT in the first instance in this proceeding, many of the provisions included in the proposed LAT and OATT contain ambiguous language that has never been reviewed by this Commission, FERC, or any administrative body and which would invite further litigation if approved by the Commission.

WHEREFORE, KEPCo prays that the Commission enter an Order allowing it to intervene in this proceeding and convening a order a full evidentiary hearing to weigh the merits of the proposed tariffs, and for all other relief which the Commission deems just and proper.

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<sup>14</sup> See *Pro Forma FERC OATT* at Article III, Preamble, available at: <https://www.ferc.gov/industries/electric/indus-act/oatt-reform/order-890-B/pro-forma-open-access.pdf>.



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### VERIFICATION

STATE OF KANSAS )

) ss:

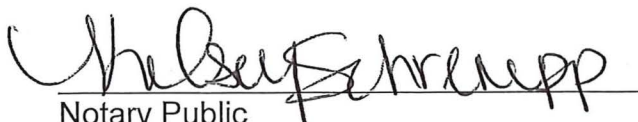
COUNTY OF SHAWNEE )

William G. Riggins, 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 Petition to Intervene, Preliminary Comments, and Request for Hearing of Kansas Electric Power Cooperative, Inc. and upon information and belief, states that the matters therein appearing are true and correct.

  
William Riggins

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of October, 2017.

  
Notary Public

My Commission expires 2/24/2021



## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing was electronically served or placed in the United States mail, postage prepaid, this 23<sup>rd</sup> day of October, 2017, addressed to the following:

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