THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Southern Pioneer Electric Company Against the Kansas Power Pool Regarding Bypass and Duplication of Service for 34.5 kV Delivery to the City of Kingman.	)))))	Docket No.: 17-KPPE-092-COM

ANSWER OF THE KANSAS POWER POOL ("KPP") TO THE COMPLAINT OF SOUTHERN PIONEER ELECTRIC COMPANY AGAINST THE KANSAS POWER POOL

COMES NOW the Kansas Power Pool ("KPP"), a municipal energy agency hereinafter referred to as "KPP," and files its Answer to the Complaint of Southern Pioneer Electric Company (referred to as Southern Pioneer) made pursuant to K.A.R. § 82-1-220.[1]

1. Southern Pioneer's Complaint, while couched in the language of "bypass," "duplication of facilities," and "stranded costs," in reality seeks to force KPP into an uneconomic arrangement for service to its member, the City of Kingman, Kansas. The Complaint clearly demonstrates that the real issue is Southern Pioneer's disappointment that KPP has chosen to pursue a far more practical means of relieving the long-term restrictions on service to Kingman than Southern Pioneer's preferred "solution" – *i.e.*, the potential "SemCrude Project" that the parties discussed but never reached agreement upon, and which would force KPP and Kingman to pay excessive costs for inferior service.

2. KPP will demonstrate that the new, more reliable delivery point configuration it seeks for service to Kingman will not duplicate facilities or result in any

[1] Given that the Commission's order accepting the Complaint was issued on December 15, making Christmas Day the due date for this Answer, KPP reserves the right to supplement or amend this Answer.

"stranded costs" being borne by Southern Pioneer's other customers. At the same time, it will relieve the limitations on Kingman's service in a manner that will not only allow KPP to provide sufficient energy to serve Kingman's entire load from resources external to the city, it will also enable KPP and Kingman to realize the full value of Kingman's local generation. Although the new arrangement would result in Kingman no longer obtaining (or paying for) service over Southern Pioneer facilities, this result is consistent with arrangements previously permitted on behalf of large retail customers of Southern Pioneer.

In support, KPP alleges and states as follows:

I. FACTUAL BACKGROUND

A. Answers To Southern Pioneer's "Factual Background" Allegations

KPP hereby responds to the Sections and the paragraphs of the Complaint, any allegations not admitted or otherwise answered directly are denied.

3. KPP does not dispute the allegations contained in Paragraph 1 of the Southern Pioneer Complaint.

4. KPP does not dispute the allegations contained in Paragraph 2 of the Southern Pioneer Complaint, but KPP believes the allegations need to be clarified as follows. Southern Pioneer is a member of Mid-Kansas Electric Company. It is one of six member cooperatives. Mid-Kansas Electric Company was formed to purchase the assets of the old Aquila system in western Kansas. That acquisition was the subject of hearings before this Commission. The result of the hearings was that Mid-Kansas acquired the Aquila system on behalf of its members and additionally was the regulated entity that supervised and managed the transmission system. The important fact is that the transmission system and the retail electric service territory were a part of Mid-Kansas

Electric Company first and not owned directly by Southern Pioneer. While Southern Pioneer was granted public utility status on November 21, 2013, the actual acquisition of the transmission assets of Aquila that are relevant to this proceeding took place several years earlier.

5. KPP does not dispute the allegations contained in Paragraph 3 of the Southern Pioneer Complaint.

6. KPP does not dispute the allegations in Paragraph 4 of the Complaint. Southern Pioneer's 34.5 kV sub-transmission facilities that provide service to one or more wholesale customers are deemed to provide a local "transmission service" regulated by the KCC pursuant to K.S.A. § 66-104d(f) and Mid-Kansas acts as an agent responsible for administering the system's transmission tariff (also referred to as "local delivery" and "local access delivery service" or "LADS") over lines in Southern Pioneer's 34.5 kV sub-transmission facility on behalf of Southern Pioneer.

7. KPP does not dispute Paragraph 5 of the Southern Pioneer Complaint. Wholesale LADS is administered by Mid-Kansas pursuant to the terms and conditions of the Mid-Kansas Open Access Tariff ("Mid-Kansas OAT"). Southern Pioneer's LADS is separate and apart from the transmission service administered by the Southwest Power Pool ("SPP") over the SPP transmission system under the SPP open access tariff ("SPP OATT"); Southern Pioneer's wholesale LADS is administered by Mid-Kansas in conjunction with SPP's network integrated transmission service ("NITS"). The last mile of service is further explained in Paragraph 5 which KPP does not dispute.

8. KPP does not dispute Paragraph 6 of the Southern Pioneer Complaint.

9. In response to Paragraph 7 of the Complaint, KPP admits that it is a municipal energy agency governed by provisions of Kansas laws found in K.S.A. 12-885

through K.S.A. 12-8,111. K.S.A. 12-8,111 provides that the provisions of K.S.A. 12-885 to 12-8-190 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. Pursuant to K.S.A. 12-8,111 KPP is "subject to the jurisdiction of the State Corporation Commission in the same manner as a public utility". Particularly, KPP is possessed of all the powers which are granted to it by the Kansas Legislature under K.S.A. 12-895. KPP's member cities are not subject to regulation by the Kansas Corporation Commission for services provided within the city limits and three miles outside of the corporate limits of the city. Additionally, the Commission has jurisdiction as provided in K.S.A. 66-104f.

10. In response to Paragraph 8 of the Complaint, KPP admits that it is currently a wholesale LADS customer of Southern Pioneer. KPP does take the service alleged and currently has two local delivery points from the Southern Pioneer sub-transmission system, to the City of Kingman and the City of Greensburg. KPP admits that it takes "first mile" services from the Greensburg Wind Farm generation to KPP's network load that is located in service areas other than those of Mid-Kansas or Southern Pioneer.

11. In response to Paragraph 9 of the Complaint, KPP does not dispute the allegations regarding the 11-597 settlement. However, KPP notes that all parties to that proceeding recognized in that settlement that the existing sub-transmission facilities owned by Southern Pioneer could not deliver sufficient energy from the SPP transmission system to supply the full amount of the City of Kingman's load, and that unless and until

upgraded or new facilities were installed, the City of Kingman would need to self-supply a significant amount of its energy needs through operation of local generation.

12. In response to Paragraphs 10 and 11 of the Complaint, KPP admits the descriptions of the current configuration of the sub-transmission facilities connecting the City of Kingman to the SPP transmission system, the LADS KPP currently receives to serve the City of Kingman, and that such service is currently limited to only 6 MW of the city's total load, which currently is approximately 12 MW. However, KPP denies the Complaint's allegation that KPP's decision not to rebuild the Pratt-Cunningham 34.5 kV line as a means of being able to serve the city's entire load was based solely on a desire "not … to pay for the direct assigned costs that would result from the rebuild." The cost of the rebuild – which was estimated at $6.4 million – was one factor in KPP's decision. But just as important was KPP's concern that such a rebuild was an inferior solution from the perspective of reliability. Even if the Pratt-Cunningham line were reconductored to increase its capacity, Kingman would still be at the end of more than 45 miles of 34.5 kV line (including some 26 miles of line owned by Kingman between its substation and the Cunningham substation). From an engineering perspective (taking into account factors including but not limited to reliability and transmission losses), connecting a load the size of the City of Kingman to the transmission system through a distance of more than 45 miles of 34.5 kV line is not a sound configuration in the long run, and therefore increasing the capacity of the Pratt-Cunningham 34.5 kV line would not have been the best use of capital investment in the transmission/sub-transmission system.

13. KPP denies Paragraph 12 of the Complaint. The terms of the referenced settlement speak for themselves.

14. In response to Paragraph 13 of the Complaint, KPP admits that the 11-597 Settlement resolved an outstanding Complaint by KPP, filed in Docket No. 11-MKEE-011-COM regarding billing methodology for delivery of the output of the Greensburg Wind Farm ("GBWF") to serve the KPP load in the Westar Energy, Inc. transmission zone. KPP denies the Complaint's characterizations of the Settlement, which speaks for itself, and in any event the provisions of the Settlement relating to the GBWF are not relevant to the current dispute, which relates to service to the City of Kingman.

15. KPP does not dispute the allegations contained in Paragraph 14 of the Southern Pioneer Complaint.

16. KPP does not dispute the allegations contained in Paragraph 15 of the Southern Pioneer Complaint.

17. In response to Paragraph 16 of the Complaint, KPP admits that the document attached as Exhibit "D" by Southern Pioneer to the Complaint is a true and correct copy of the referenced Global Settlement Agreement, which speaks for itself. KPP denies the Complaint's characterizations of the "intent and principal terms" of the Global Settlement Agreement. In particular, although the Global Settlement Agreement refers to the possibility of "provid[ing] an improved transmission pathway" to supply the City of Kingman by allowing a connection to what the settlement refers to as the "Ninnescah Line," nothing in the Global Settlement Agreement bound any party to any particular change in the Kingman delivery configuration, much less the specific change described in Paragraph 16(a) of the Complaint.

18. KPP also specifically denies the allegation in footnote 24 of the Complaint that "the only reason for Mid-Kansas' purchase of the Ninnescah line was for the benefit of KPP." A data response submitted by Mid-Kansas to Commission Staff in Docket No.

14-MKEE-170-TAR and attached to the Report and Recommendation referenced in Paragraph 19 of the Complaint states that the Ninnescah line "has the capacity to serve the existing load, the additional load service requested by KPP for the City of Kingman, load growth on the Southern Pioneer Electric Company (SPECo) system and support growth in the eastern Pratt and northern Kingman county area. The line will also provide for increased capability to back-up the SPECo Cunningham Substation load area for the loss of the 34.5 kV feed from the Pratt Substation." This data response also reflects Mid-Kansas' expectation that the Ninnescah line would serve "Additional SPECo (SemCrude) load" of approximately 3 MW.

19. KPP admits the allegations in Paragraph 17 of the Southern Pioneer Complaint.

20. KPP denies the allegations in Paragraph 18 of the Southern Pioneer Complaint. Although KPP admits that Exhibit E is a true and correct copy of a letter sent by Larry Holloway to certain representatives of Southern Pioneer and Mid-Kansas, KPP denies the characterization of this letter as a "notice to proceed." The letter requests a meeting of the parties to "start planning and discussing the next steps," including "allocation of costs," in anticipation of the possible implementation of "[o]ne of the short-term solutions" the parties had identified to address the limitations on Kingman's service. KPP denies the Complaint's implication that the letter indicates any actual agreement of the parties upon a particular course of action.

21. KPP admits the allegations contained in Paragraph 19 of the Southern Pioneer Complaint. The Staff Report and Recommendation, while acknowledging that the City of Kingman's service limits "could be remedied by the purchase" by Mid-Kansas of the Ninnescah line, makes no reference to any specific configuration by which

Kingman's distribution facilities would be connected to the Ninnescah line (*i.e.*, whether it would be through what the Complaint refers to as the SemCrude Project).

22. KPP admits that a meeting occurred as alleged in Paragraph 20 of the Southern Pioneer Complaint, and that at the meeting the parties discussed a "conceptual proposal" of and possible cost allocation for what the Complaint refers to as the "SemCrude Project." KPP denies the other allegations in this paragraph, including the characterization of the letter included as Exhibit E to the Complaint as a "Notice to Proceed Letter."

23. KPP admits the allegations contained in Paragraph 21 of the Southern Pioneer Complaint.

24. In response to Paragraph 22 of the Plaintiff's Complaint, KPP admits that Exhibit F (to the extent it is legible) appears to be a true and correct copy of an email and cost estimate transmitted to KPP on June 13, 2014. The document speaks for itself. KPP denies the remainder of the allegations in this paragraph, including that KPP had "request[ed] to proceed with the SemCrude Project" or that it had stated a "need" to have such a project completed by summer 2015.

25. In response to Paragraph 23 of the Plaintiff's Complaint, KPP admits that Exhibit G is a true and correct copy of a letter sent to KPP dated August 8, 2014, reflecting that the parties had not at that time reached agreement on any definitive terms for what the Complaint refers to as the SemCrude Project. The document speaks for itself.

26. In response to Paragraph 24 of the Plaintiff's Complaint, KPP admits that Exhibit H is a true and correct copy of a letter KPP sent to Mid-Kansas and Southern Pioneer dated August 25, 2014, reflecting that the parties had not at that time reached

agreement on any definitive terms for what the Complaint refers to as the SemCrude Project. The document speaks for itself.

27. KPP denies the allegations in Paragraph 25 of the Complaint and notes that matters regarding charges for the GBWF are not relevant to the issues presented in the Complaint, which relate to whether KPP's current plans for configuration of the facilities serving Kingman would result in duplicative facilities or stranded costs of Southern Pioneer facilities built to serve Kingman.

28. In response to the allegations contained in Paragraph 26 of the Complaint, KPP admits that its contractor, Olsson Associates, requested information from Mid-Kansas to support a potential new connection to the Ninnescah line. That request followed a June 2, 2015 meeting between with Larry Holloway, KPP's Assistant General Manager – Operations, and representatives of Southern Pioneer in Ulysses, Kansas. At that meeting, Mr. Holloway explained the basis for KPP's conclusion that the SemCrude Project referred to in the Complaint was not the best option for serving Kingman's full load. Mr. Holloway also informed Southern Pioneer's representatives that KPP had engaged Olsson Associates to study alternative approaches to resolving the Kingman service limitation.

29. In further response to Paragraph 26, KPP admits that Exhibit I is a true and correct copy of a letter KPP received from Mid-Kansas and Southern Pioneer dated July 31, 2015. The document speaks for itself. It advised KPP that "the requested 115kV system capability will require a study by SPP and Mid-Kansas under the SPP AQ Attachment 'OATT Attachment AQ Delivery Point Addition Processes'" and that "the AQ process requires KPP to initiate the contact with SPP and submit a copy of their AQ application to SPP and Mid-Kansas for a new delivery point on the Ninnescah

Transmission Line." As referenced in Paragraph 28 of the Complaint, on September 28, 2015, KPP submitted to SPP the requisite Attachment AQ form to request a change in the Kingman delivery point in order to provide a direct interconnection between proposed new 34.5 kV facilities to be owned by KPP and the Ninnescah line.

30. In response to Paragraph 27 of the Plaintiff's Complaint, KPP admits that Exhibit J contains true and correct copies of email communications between counsel for KPP and counsel for Mid-Kansas and Southern Pioneer dated August 20, 2015 and September 10, 2015. The documents speak for themselves.

31. In response to Paragraph 28 of the Plaintiff's Complaint, KPP admits that all except the last page of Exhibit K is a true and correct copy of KPP's Attachment AQ submission to SPP requesting a change in the Kingman delivery point. The document speaks for itself.

32. In response to Paragraph 29 of the Plaintiff's Complaint, KPP admits that Exhibits L and M are true and correct copies of correspondence between KPP and Mid-Kansas and Southern Pioneer dated December 3, 2015 and November 18, 2015. The documents speak for themselves. In further response to Paragraph 29, KPP notes that its communication to Southern Pioneer (as shown in Exhibit "M" to the Complaint) on November 18, 2015 informed Southern Pioneer of KPP's intention to directly connect to the Ninnescah line just one day after KPP received notice from SPP that KPP's Attachment AQ request was approved and no further study was required.

33. In response to Paragraph 30 of the Complaint, KPP admits that Exhibit N is a true and correct copy of a communication KPP received from Mid-Kansas dated February 24, 2016. The document speaks for itself.

34. In response to Paragraph 31 of the Plaintiff's Complaint, KPP admits that Exhibits O and P are true and correct copies of correspondence between KPP and Southern Pioneer dated March 29, 2016 and April 30, 2016. The documents speak for themselves. KPP denies the characterizations set forth in this paragraph, including without limitation that KPP had in any way committed to the SemCrude Project, and that KPP's proposal for a direct connection between Kingman and the Ninnescah line owned by Mid-Kansas is in any way inconsistent with the Global Settlement Agreement or constitutes a wasteful duplication of facilities.

35. To the extent necessary, KPP denies the remaining paragraphs of the Complaint, which consist of argument to which KPP responds in Parts II and III of this Answer.

B. Additional Factual Background

36. The City of Kingman first connected to what is now the Southern Pioneer sub-transmission system in 2005. The city, at its own cost, installed approximately 26 miles of 34.5 kV line connecting the city's Kingman substation to Southern Pioneer's Cunningham substation. The 34.5 kV line owned by the city is capable of carrying more than 25 MW. However, the city's line and the Cunningham substation are fed exclusively from approximately 20 miles of 34.5 kV line connecting Southern Pioneer's Pratt substation to its Cunningham substation. The maximum capability of the Pratt-Cunningham line segment and Southern Pioneer's associated facilities is 10 MW, 4 MW of which is reserved for Southern Pioneer's retail customer delivery point at Cunningham. The result is that the City of Kingman is limited to 6 MW.

37. On information and belief, at no time has Southern Pioneer installed or upgraded any sub-transmission facilities to serve Kingman. Kingman itself has paid for the facilities needed to connect to existing Southern Pioneer facilities.

38. There is no dispute that the Southern Pioneer sub-transmission system as currently built does not have the capacity to deliver sufficient energy to serve the entire load of the City of Kingman. The city's current peak load is approximately 12 MW.

39. As a result, during higher-load periods, it is necessary for the City of Kingman to operate its local generation to maintain reliable electric service to all of its retail customers. The operating costs of the Kingman local generation exceed the price of energy available from the SPP market in most hours of the year. Accordingly, KPP and the city have for many years sought a solution that would permit Kingman to receive sufficient external energy to serve its load.

40. On information and belief, in 2010, Southern Pioneer upgraded its sub-transmission to provide new service to a retail customer, SemCrude, to power a new crude oil pumping station. Southern Pioneer built a new 115 kV/34.5 kV substation and connected it to the 115 kV transmission system at a location just a few miles north of the Cunningham substation, which is where Kingman's 34.5 kV line terminates. Despite the fact that this project could have easily and efficiently been sized and configured in a manner that would relieve the 6 MW restriction on service to Kingman, Southern Pioneer did not make any effort to include KPP or Kingman in the planning of this project or offer to configure and build the project in a manner that would accommodate the known needs of Kingman.

41. As reflected in the Complaint, for a period of time in 2013 and 2014, KPP, Southern Pioneer and Mid-Kansas discussed the possibility of modifying the SemCrude

substation and related facilities to relieve the restrictions on service to Kingman. However, no definitive agreement was ever reached among the parties.

42. The SemCrude Project that the parties discussed during that period, and that Southern Pioneer now wishes to force on KPP, would require significant new facilities and modifications to existing facilities at the Southern Pioneer SemCrude substation. The project would require acquisition and installation of an additional 115/34.5 kV transformer to serve Kingman, moving the existing transformer that serves only the SemCrude retail load, and other related work described in Exhibit J to the Complaint, all at a cost that Southern Pioneer has estimated at more than $1.8 million, the great majority of which Southern Pioneer has proposed would be "directly assigned" to KPP. The remainder of the costs would be borne by Southern Pioneer, and presumably factored into its rates, including the rates for LADS service that KPP pays for in order to serve Kingman (and Greensburg).

43. In 2013-2014, when the parties were discussing the possibility of expanding the SemCrude substation, the LADS rate was $2.78/kW-month.

44. In May 2015, Southern Pioneer's LADS rate changed from a stated rate to a formula rate, and the LADS charges under the formula rate ballooned to $4.51/kW-month. This increase of more than 60% drastically changed the economics of the potential SemCrude Project, making it a completely impractical solution for KPP and Kingman. This is primarily because the much higher LADS rate would apply not just to the 6 MW of service that Southern Pioneer is currently capable of providing to Kingman, but to a much larger billing determinant based on Kingman's full load once the 6 MW limit was relieved. The additional costs to KPP and Kingman of the LADS charges, together with the upgrade costs that Southern Pioneer proposed to directly assign to KPP,

would overwhelm any savings to be gained by being able to avoid operation of Kingman's expensive local generation.

45. Furthermore, the high LADS charges make it impossible for KPP to market excess capacity available from Kingman's generation, in practical terms stranding an otherwise valuable asset. Southern Pioneer would seek to charge KPP (or the capacity purchaser) the LADS point-to-point rate in connection with capacity sales to any load not connected to the Mid-Kansas system. The current LADS rate of more than $4.00/kW-month, by itself, exceeds the current market value of capacity in SPP, which KPP estimates is in the range of $1.50 to $3.00 per kW-month.

46. As a result, KPP began exploring alternatives to the SemCrude Project as a means of relieving the limitations on Kingman's service. With the assistance of Olsson Associates, KPP developed a proposed reconfiguration that would directly connect Kingman's distribution system to the 115 kV Ninnescah line owned by Mid-Kansas. This reconfiguration, which we will refer to here as the "Direct Connection," would (like the SemCrude Project) require construction of new facilities and/or modifications to existing facilities. In both cases, a new transformer, metering, relaying and associated engineering would be required. The Direct Connection would also entail construction of a new substation, which would be owned by KPP. While this would require some site preparation and new structures, it would also avoid certain other costs that would be part of the SemCrude Project, such as the charges for moving the existing transformer.

47. As reflected in Exhibit K to the Complaint, KPP submitted its request for a change in the Kingman delivery point to SPP in accordance with Attachment AQ to the SPP tariff. This request was based on the Direct Connection configuration. As noted previously, SPP's review process under Attachment AQ did not identify any issues with

the proposed delivery point change. In the months following completion of that process, KPP and Mid-Kansas worked to develop further details of the project as well as cost allocation, and managed to resolve the few differences that arose in those discussions. KPP and Mid-Kansas were proceeding with their plans to implement the Direct Connection until Southern Pioneer filed its Complaint.

48. Based on information currently available to KPP, the estimated cost of its proposed Direct Connection is in the range of $2.5 to $3.0 million.

49. Following the issuance of the Commission's December 15, 2016 order accepting the Complaint, Mid-Kansas has informed KPP that Mid-Kansas intends to suspend all activity on the project until the issues presented by the Complaint have been resolved. This obviously will delay completion of the project.

50. According to testimony filed in Docket Number 11-GIME-597-GIE by Donald L. Gulley,[2] a witness for Mid-Kansas' affiliate Sunflower Electric Power Corporation ("Sunflower"), in 2010 a large retail customer of Southern Pioneer (National Beef) built facilities to directly connect to 115 kV transmission facilities owned by Mid-Kansas, thereby avoiding further responsibility to pay Southern Pioneer's rates for use of its sub-transmission system. Mr. Gulley's testimony further indicated that the National Beef situation was not unique, but simply what was (in 2011) the latest example of a large retail customer bypassing Southern Pioneer's facilities and connecting directly to the Mid-Kansas transmission system in order to avoid paying for the costs of the Southern Pioneer sub-transmission system. Such a strategy appears to be encouraged by Southern Pioneer's rate schedule 15-STR, which eliminates the sub-transmission charges for any retail customer with an average summer demand of one megawatt (1 MW) or

[2] July 5, 2011 Direct Testimony (l.11, p.17 through l.8, p.18)

more that is connected directly to the 115 kV transmission system. The Direct Connection project KPP proposes to undertake would achieve the same end as was accomplished by Southern Pioneer's large retail customers. There is no suggestion in Mr. Gulley's testimony that Southern Pioneer contested the actions of these large retail customers or attempted to impose any exit fee on them, as it seeks to do by bringing this Complaint against KPP.

II. THE COMMISSION SHOULD REJECT SOUTHERN PIONEER'S REQUEST TO ENJOIN KPP'S PROPOSED DIRECT CONNECTION TO MID-KANSAS

A. Southern Pioneer's Claim of "Unnecessary and Wasteful Duplication of Facilities" Is Completely Baseless

51. Southern Pioneer argues (Complaint Paragraphs 32 – 43) that the Commission should enjoin KPP's proposed Direct Connection on the grounds that the project would result in "wasteful duplication" of facilities. Southern Pioneer is incorrect and its arguments should be rejected.[3]

52. It is evident from the Complaint itself that Southern Pioneer does not now have the facilities necessary to provide service to Kingman's full load. Because there are no such existing facilities, the Direct Connection project simply cannot be seen as duplicating anything. The Direct Connection project is one of a variety of alternatives that would enable full service to Kingman, as is the SemCrude Project. If KPP were proposing to build the Direct Connection *in addition to* the SemCrude Project, that would

[3] In addition, pursuing the "wasteful duplication" argument, Southern Pioneer makes a brief pass at a territorial argument in Paragraph 40 of the Complaint. Southern Pioneer's allegation of KPP extending new services into Southern Pioneer's certified service territory fails for several reasons. First, there is no certified territory with respect to transmission service. Southern Pioneer appears to confuse this issue with provision of service to retail customers, and neither KPP nor Kingman are proposing to serve any of Southern Pioneer's retail customers. Second, the proposed 34.5 kV line connecting Kingman's distribution facilities with either the SemCrude substation or the new substation proposed by KPP will mainly be in the retail territory of Ninnescah Rural Electric Cooperative, not Southern Pioneer.

be a legitimate basis for an argument of wasteful duplication of facilities. But that is not the situation at hand.

53. Southern Pioneer's real aim is to impose on KPP the expansion project that Southern Pioneer prefers and that would make the most economic sense for Southern Pioneer. But this Commission has a responsibility to look more broadly. As an agency with jurisdiction over KPP, the Commission must protect the interests of KPP's ratepayers, which ultimately are the retail customers of KPP's member cities, including Kingman. Those interests would not be served by the SemCrude Project.

54. If Southern Pioneer's Complaint were granted, KPP's choices would be limited to two unreasonable options. One option would be for KPP to continue to receive inadequate sub-transmission service over the Southern Pioneer system, incurring additional costs of operating Kingman's local generation when its load exceeds the 6 MW service limitation, and remaining subject to the reliability risks that are inherent when being served by what is essentially a 45+ mile 34.5 kV radial line. The other option would be an upgrade of Southern Pioneer's SemCrude substation that would enable full service to Kingman, but at a cost that well exceeds any expected financial benefits to KPP and Kingman from such service.

55. Apparently recognizing that its claim of "wasteful duplication" of facilities can't be supported by a showing that Southern Pioneer currently has facilities capable of providing full service to Kingman, the Complaint (Paragraph 42) implies that the Direct Connection would be wasteful because its construction costs are estimated to be higher than those of the SemCrude Project. While the currently estimated costs of the Direct Connection project (approximately $2.5 to $3.0 million) are moderately higher than the costs of the SemCrude Project (approximately $1.8 million), the construction

cost is only part of the picture of the economic impact to KPP of the SemCrude Project. The total costs to KPP of that proposal include continued payments for the foreseeable future of the Southern Pioneer LADS charges, not just for the current 6 MW of service than can currently be provided, but for Kingman's entire load. Even at its current level of more than $4.00/kW-month, the LADS rate would make the cost to KPP of the SemCrude Project greater than the benefits KPP could obtain from increasing the service available to Kingman. And whatever costs Southern Pioneer would not directly assign to KPP would be included in the LADS rate, pushing it even higher.

56. Southern Pioneer essentially proposes that the Commission ignore the projected impacts on KPP and its customers, and instead focus exclusively on Southern Pioneer's "captive retail customers" whose rates would likely increase if the Kingman load were no longer served over the Southern Pioneer sub-transmission system. The Commission should roundly reject Southern Pioneer's argument (Complaint Paragraphs 37, 42) that the Commission, in weighing the "public interest" of the competing Direct Connection and SemCrude Project proposals, should consider only the impacts on Southern Pioneer's own customers, or should give their interests higher priority over the interests of KPP and the retail customers served by KPP's member cities.

57. Furthermore, Southern Pioneer was not so solicitous of its "captive retail customers" – not to mention KPP and other wholesale users of Southern Pioneer's sub-transmission system – when National Beef and apparently other large retail customers bypassed Southern Pioneer's facilities and directly connected to Mid-Kansas just as KPP proposes to do. This Commission's authorizing statutes (K.S.A. 66-101e) charge it with protecting customers from actions by regulated utilities that are "in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly

discriminatory or unduly preferential." KPP is entitled to protection, both under that provision and federal law,[4] against unduly discriminatory treatment such as Southern Pioneer's selective opposition to KPP's efforts to exit from the sub-transmission system.

58. Southern Pioneer also attempts to paint the Direct Connection as "wasteful duplication" based on its assertions (Complaint Paragraph 43) that the new substation would serve only Kingman and that the SemCrude Project "would be available to serve other prospective wholesale or retail load in the area in addition to the full Kingman Network Load." This suggests that Southern Pioneer has planned to construct a facility larger than is needed just to serve Kingman, yet directly assign the majority of the costs of the upgrade to KPP. To the extent this reflects to any degree an intentional plan to size the SemCrude Project to accommodate future load growth of parties other than Kingman (rather than just the happenstance that transmission upgrades are "lumpy" and thus seldom exactly meet the immediate needs for which they are constructed), it appears to be in stark contrast to the approach Southern Pioneer took to the original construction of the SemCrude substation. In 2010, it was known that KPP wished to resolve the limits on Kingman's service, yet Southern Pioneer made no effort then to plan for and construct a substation that could serve both Kingman and the SemCrude pumping station in an efficient and cost-effective manner.

59. Further, Southern Pioneer's unsubstantiated assertion that KPP's Direct Connection project would be capable of serving only the Kingman load is false. KPP's plans include installation of a transformer adequate to provide additional service, if later needed or requested by others or by increased load at Kingman. While KPP knows of no other local needs at this time, KPP notes that KPP's plans would allow for expansion of

[4] *See* Section 211A of the Federal Power Act.

service. In addition, the Direct Connection would allow Southern Pioneer's retail load at the Cunningham substation to be served from the 115 kV Ninnescah line, through the new KPP substation, while utilizing the new 34.5 kV line and the existing Kingman 34.5 kV line to backfeed Southern Pioneer's substation at Cunningham. This type of interconnection would improve the reliability of service to Southern Pioneer's own retail customers in Cunningham, which currently is entirely dependent upon the 34.5 kV line from Pratt.[5]

60. In Paragraph 36 of the Complaint, Southern Pioneer argues that the Commission's merger standards should guide its decision in this case. Without conceding that these are appropriate standards to be applied here,[6] KPP observes that two of the factors Southern Pioneer cites would weigh dispositively against the SemCrude Project and in favor of the Direct Connection proposed by KPP. The second and fourth criteria are (according to the Complaint) "Whether the transaction will reduce the possibility of economic waste" and "Whether the transaction maximizes the use of Kansas energy resources." As explained above, Southern Pioneer's Complaint, if granted, would limit KPP's choices to the economically infeasible SemCrude Project or the continued restriction of Kingman's service to 6 MW. Either of these alternatives would constitute "economic waste." Continuing to limit Kingman's service to 6 MW would result in economic waste by necessitating continued uneconomic utilization of

[5] As a recent example of an outage that could have been prevented with a configuration such as KPP proposes, on December 9, 2015, when a house move in Pratt required Southern Pioneer to de-energize its 34.5 kV line from Pratt to Cunningham, Southern Pioneer's Cunningham retail customers were without power for four hours.

[6] Southern Pioneer apparently latches onto these criteria simply because the first one (as stated in the Complaint) is "Whether the transaction would result in unnecessary duplication of utility service." As noted previously in this Answer, the Direct Connection will not result in duplication of facilities, much less duplication of utility service. KPP is not seeking to duplicate the service provided by Southern Pioneer, instead KPP is seeking to improve the service to the City of Kingman.

Kingman's local generation. The SemCrude Project would result in KPP paying far more to relieve the limit on Kingman's service than it would realize in the form of reduced energy costs of or revenues from potential capacity sales of Kingman's excess capacity. On the other hand, the Direct Connection would "maximize[] the use of Kansas energy resources" by allowing more efficient and cost-effective use of Kingman's local generation and making it economically feasible to sell excess capacity from the Kingman generation. Replacement of energy from Kingman's local generation with energy supplied by the SPP market is also likely to advance the third merger factor, which considers the effect on the environment. As the Commission is likely well aware, a very significant amount of the energy produced in the SPP market is from renewable sources, especially wind generation.[7]

61. Southern Pioneer also argues (Complaint Paragraph 38) that the Commission's decision in an earlier case involving Sunflower, the City of Hill City, and others (Docket Number 96-SEPE-680-CON) supports Southern Pioneer's request for an order preventing KPP from proceeding with the Direct Connection project. The factual situation in that case bears no resemblance to the issues raised in the Complaint. It is apparent from the orders that KPP has been able to obtain from that docket[8] that facilities were already in place sufficient to serve the load of Hill City. Evidently, the problem was that those facilities were owned by Midwest Energy, Inc., which apparently was the incumbent wholesale supplier to Hill City. In order for Hill City to be served by its

[7] The only remaining factor listed in Paragraph 36 of the Complaint relates to reliability of service. KPP is not aware of any respect in which service to Kingman would be more reliable under the SemCrude Project than under the Direct Connection.

[8] Only a few documents from that proceeding are available on the KCC website. KPP had to undertake an open records request and a personal trip to the Commission's offsite file storage location to obtain microfilm copies of the April 23, 1997 and August 26, 1997 orders cited in Southern Pioneer's Complaint. Copies of these orders are attached.

chosen alternative suppliers (Sunflower and one of its member distribution coops, Norton-Decatur), the parties would either need to obtain transmission service over the existing Midwest Energy facilities or construct new facilities connecting Hill City to the Sunflower transmission system (which was the path Sunflower proposed). The Commission's April 27, 1997 order, on which Southern Pioneer relies, noted that the Federal Energy Regulatory Commission ("FERC") had recently required all transmission owners subject to its jurisdiction to provide open access over their transmission facilities in order to facilitate the very type of competition in the provision of wholesale power service at issue in the Hill City situation. The Commission found (at ¶ 19 of the order) that "Midwest, being subject to FERC jurisdiction, complied with this obligation and offers an open access transmission tariff that can be used to effectuate the proposed sale of power from Sunflower to Hill City. Thus, the cost incurred by Norton-Decatur to build new facilities to serve Hill City can be avoided unless the facilities also serve other legitimate public purposes." Because Hill City could be served by Midwest Energy's existing facilities, the new facilities Norton-Decatur sought to construct were genuinely duplicative; in contrast, here full service to Kingman cannot be provided from Southern Pioneer's existing facilities and the Direct Connection facilities are not duplicative.[9]

B. The Commission Should Reject Southern Pioneer's Claim that "Existing Agreements and the Regulatory Compact" Preclude KPP From Proceeding With the Direct Connection

62. The argument presented in Paragraphs 44 through 49 essentially boil down to the contention that Southern Pioneer is entitled to force KPP to remain a captive

[9] Furthermore, even though the Commission clearly had grounds for finding the new Norton-Decatur facilities to be duplicative that are absent here, the order did not summarily conclude on this basis alone that the facilities should not be built. Rather, the Commission went on to evaluate whether other factors could justify construction of the new facilities as being in the public interest.

customer paying for use of the Southern Pioneer sub-transmission facilities because those facilities were developed and constructed for the benefit of KPP and Kingman, and because Southern Pioneer was under the impression that KPP had made a commitment to the SemCrude Project. Neither of these claims has any merit.

63. The Complaint states in Paragraph 44 that "Southern Pioneer's system has been, and continues to be, planned and developed *based on the fact that the load for the City of Kingman is served off of Southern Pioneer's system*" (emphasis added). This statement is very subtly and carefully worded to suggest that it was planned and developed with the aim and purpose of providing sufficient and efficient service to Kingman. But it actually says no more than that the planning and development *take for granted Kingman's existence on the system.* Further, for even this carefully limited statement to be truthful, it must be based on the premise that only 6 MW of Kingman's load was taken for granted.

64. As explained previously in this Answer, the sub-transmission system now owned by Southern Pioneer has never been designed and constructed for the purpose of serving Kingman, and has never been capable of serving Kingman's full load. Kingman is connected to Southern Pioneer's 34.5 kV system at the Cunningham substation, which is fed solely by the 20-mile Pratt-to-Cunningham 34.5 kV line. This line and the Cunningham substation were never built to serve Kingman; they were built to serve the retail customers in and around Cunningham. They only began to serve part of Kingman's load when, in 2005, Kingman built at its own expense about 26 miles of 34.5 kV line to connect to Southern Pioneer at Cunningham. The old and undersized Pratt to

Cunningham 34.5 kV line was constructed at least 40 years before that.[10] From the outset, service to Kingman's load over these facilities was limited to 6 MW. Clearly these old and undersized facilities were never intended or designed to serve Kingman. Even when Southern Pioneer expanded its system to accommodate the new SemCrude load in 2010, it clearly did not configure the new facilities to provide service to Kingman's full load. Southern Pioneer's suggestion that its other customers will be left to bear the costs of facilities that were built for the purpose of serving Kingman is utterly baseless.

65. Indeed, the accurate way to describe the situation is that the revenues KPP and/or Kingman have paid since 2005 for the city's inadequate service on Southern Pioneer's system constituted "found money" that subsidized the customers whose use Southern Pioneer's system was actually planned and built for. The discussion of the potential impact on the rates to those customers in Paragraph 45 demonstrates nothing more than the degree to which KPP is currently subsidizing those customers. There is nothing unjust or unreasonable about ending such a subsidy.

66. The remainder of this section of the Complaint consists of an effort to persuade the Commission that KPP has reneged on a commitment to the SemCrude Project. Nothing could be further from the truth. The lack of any actual agreement to the project is amply demonstrated by the documents Southern Pioneer itself has included as exhibits to the Complaint. Nor can Southern Pioneer make any showing that KPP or Kingman committed to continue taking service on the Southern Pioneer system indefinitely.

[10] The sole exception is that certain segments of the line were recently moved and reconstructed to facilitate expansion of the US 400 highway project between Pratt and Cunningham.

67. As explained above, although KPP for a time did engage with Mid-Kansas and Southern Pioneer in an effort to develop the SemCrude Project as a means to resolve the Kingman service limits, that project became economically infeasible in 2015 as a result of Southern Pioneer dramatically increasing its LADS rate. Of course, Southern Pioneer has every right to structure its rates to cover its costs. It is equally true that KPP has the right and obligation to pursue arrangements that will allow it to serve its member cities reliably and at the lowest reasonable cost, and to abandon any potential arrangements that become clearly unfavorable to KPP before any binding agreement is reached. Southern Pioneer has not cited any authority, and KPP believes there is none, that would empower the Commission to force KPP to choose between continuing to pursue an uneconomic solution to the Kingman service restriction and continuing to live with insufficient and inefficient service to Kingman.

C. Southern Pioneer's Claim of Impairment of the Commission's Jurisdiction Is Pure Speculation

68. At Paragraphs 50 to 52 of the Complaint, Southern Pioneer spins various theories as to events that might occur if the Direct Connection is implemented and KPP subsequently were to enter into some sort of transaction with GridLiance relating to the new facilities. The Commission should disregard this argument, as it is based entirely on speculation, assumption and innuendo. It provides no valid basis for a ruling and remedy as extraordinary as an injunction foreclosing KPP from engaging in perfectly legal transactions that will provide long-awaited benefit to Kingman and the other KPP member cities.

III. THE COMMISSION SHOULD SUMMARILY DENY SOUTHERN PIONEER'S ALTERNATIVE REQUEST TO ASSESS AN EXIT FEE

69. Southern Pioneer devotes the final section of its Complaint, Paragraphs 53 through 65, to an argument that it should be permitted to charge KPP an exit fee (which it calls a "facility switching fee") of more than $2.5 million. The Commission should waste no time in rejecting this request.

70. In Paragraph 53, Southern Pioneer makes the vague allegation that it "has had to make substantial investments in its 34.5 kV system over the past 8 years" that "included upgrades to its 34.5 kV system providing enhanced reliability to Kingman." It is telling that Southern Pioneer does not identify any specific upgrades that would meet this description. Indeed, the only changes to the Pratt to Cunningham 34.5 kV facilities (which are the only Southern Pioneer facilities that provide service to Kingman) have been minimal and inconsequential. Most of these improvements were done as a result of relocation due to US 400 highway construction, and KPP understands that these modifications were paid for by the highway project.

71. Furthermore, once the Direct Connection is implemented (or, for that matter, if the SemCrude Project were implemented as proposed by Southern Pioneer), the existing Southern Pioneer Pratt to Cunningham 34.5 kV facilities will not be "stranded." They will still be used to serve Southern Pioneer's own load at Cunningham, as they were originally planned for, and as they were used prior to the time Kingman built its own line to connect to those facilities in 2005.

72. 72. Nor would it be expected that Southern Pioneer's or Mid-Kansas' costs of planning *per se* (as discussed in Paragraphs 55 and 56) would be materially affected by whether the Kingman load is included in the planning process (and certainly not to the tune of $2.5 million). If anything, one would think that it would cost less, not

more, for Southern Pioneer and Mid-Kansas to conduct their planning processes with one less participant in the process and less load to take account of and plan for.

73. To the extent that Southern Pioneer's arguments relate to current or future investments in facilities that Southern Pioneer might make to implement a plan developed through the planning process, again the Complaint points to no specific facilities or investments that Southern Pioneer could even claim to be specifically for Kingman. As Southern Pioneer itself states in Paragraph 61, the Commission Staff opposed a similar proposed exit fee in a gas case on the grounds that the utility had "failed to show there was any actual incurred expense or additional risk justifying the charge."[11]

74. KPP also notes that Southern Pioneer does not now have a tariff on file that includes provisions for an exit fee, nor has it proposed any such tariff. Even if it were procedurally appropriate to consider this portion of its Complaint to be a request for approval of such a tariff provision, the Commission would have to reject the proposal on the merits, as unjust, unreasonable and unduly discriminatory. It is plain that Southern Pioneer would propose to assess an exit fee only on *wholesale* customers who seek to leave the sub-transmission system, not on any retail customers who do so.[12] As noted previously, Southern Pioneer apparently does permit large retail customers such as National Beef to directly connect to the 115 kV Mid-Kansas system and avoid LADS charges without having to pay any exit fee.

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[11] Similarly, under the FERC Order 888 rules, a utility seeking recovery of stranded generation costs as a result of the initiation of transmission open access was required to demonstrate that it had a genuine and reasonable expectation of continued wholesale power service to a customer, and had actually incurred long-term costs of generation that would be unused by its other customers. It bears noting that while Southern Pioneer references the FERC stranded cost rules as supporting its claim, those rules related solely to generation costs, and KPP is unaware of any FERC case in which a utility has been allowed to charge for stranded transmission costs.

[12] *See* Paragraphs 57 and 58, in which the focus is clearly and exclusively on "wholesale LADS customers."

The Kansas Power Pool ("KPP") requests that based upon this response and the exhibits the Commission should issue a finding that this Complaint should be dismissed. In the event the Commission determined that this matter should proceed, KPP requests an expedited hearing, for an Order related to the Motion that it is filing concurrently with this Answer regarding Procedural Schedule, filing of Testimony, and such other and further relief as is requested therein.

Respectfully submitted,

Larry W. Holloway
Kansas Power Pool Assistant Manager – Operations
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Telephone: (316) 425-0431
Facsimile: (888) 431-4943

VERIFICATION

COUNTY OF SEDGWICK)
) ss:
STATE OF KANSAS)

Larry W. Holloway being of lawful age and first duly sworn on his oath deposes and states that he is the Assistant General Manager – Operations for the above named party, The Kanas Power Pool ("KPP"), that he has read the above Answer of the Kansas Power Pool, ("KPP") to the Complaint of Southern Pioneer Electric Company Against the Kansas Power Pool, and that upon information and belief, states that the matters therein appearing are true and correct.

Larry W. Holloway

COUNTY OF SEDGWICK)
) ss:
STATE OF KANSAS)

The foregoing instrument was signed before me, a Notary Public in and for the County and State aforesaid, on this 22nd day of December, 2016, by Larry W. Holloway.

Susan L. Baughn
Notary Public

My Commission Expires:
June 13, 2020

SUSAN L. BAUGHN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6/13/20

APPROVED:

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CERTIFICATE OF SERVICE

I, Curtis M. Irby, hereby certify that on the 22nd day of December, 2016, a true and correct copy of the above and foregoing Answer of the Kansas Power Pool ("KPP") to the Complaint of Southern Pioneer Electric Company Against the Kansas Power Pool have been served electronically upon all the parties on the Commission's electronic service list, a copy of which is attached hereto.

Respectfully submitted,

Curtis M. Irby, #07274
Counsel for the Kansas Power Pool

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Timothy E. McKee, Chair
Susan M. Seltsam
John Wine

In the Matter of an Application by the Sunflower Electric Power Corporation for Commission Approval of an Interconnection and Power Supply Agreement with the Norton-Decatur Cooperative Electric Company, Inc. and the City of Hill City, Kansas	)	Docket No. 96-SEPE-680-CON

ORDER

The above-captioned matter comes on before the State Corporation Commission of the State of Kansas ("Commission") for consideration and decision. After having reviewed the arguments and authorities submitted by the parties and being otherwise fully advised in the premises, the Commission finds and concludes:

I. FINDINGS OF FACT

1. On April 18, 1996, Sunflower Electric Power Corporation ("Sunflower") and Norton-Decatur Cooperative Electric Company, Inc. ("Norton-Decatur") reached an Electric Interconnection and Power Supply Agreement with Hill City, Kansas ("Hill City"). On June 17, 1996, Sunflower filed the agreement with the Commission. This agreement was amended on November 18, 1996, and again later on December 31, 1996. The current agreement reflecting the latest amendments was entitled Second Amended Agreement.

2. On December 11, 1996, the Commission issued a Prehearing Conference Order. In that Order, the Commission directed the parties to brief several jurisdictional issues presented by the proposed interconnection and power supply

agreement, and amendments thereto. Sunflower, Norton-Decatur and Hill City, (referred to collectively as "Joint Applicants") filed initial briefs and reply briefs. Staff of the Kansas Corporation Commission ("Staff"), Midwest Energy, Inc. ("Midwest") and Kansas Electric Cooperatives, Inc. ("KEC") also filed initial briefs and reply briefs.

3. Sunflower is an electric public utility subject to the jurisdiction of the Commission under K.S.A. 66-104 and K.S.A. 66-131. Sunflower engages in the generation and transmission of electricity including providing energy to electric cooperative public utilities that serve retail customers. Sunflower is financed by the Rural Utility Service ("RUS").

4. Norton-Decatur elected to have its retail electric operation deregulated, as allowed by K.S.A. 66-104d(b) and (c). Norton-Decatur does not own or operate any transmission or generation facilities. Joint Applicants' Brief at 4.

5. The Second Amended Agreement is vague in several respects. However, it appears that under the terms of the Second Amended Agreement, Sunflower is the energy supplier and transmission provider and that Norton-Decatur is merely providing power for resale to Hill City. Contrary to their initial factual contentions, the Joint Applicants suggested that under the Second Amended Agreement, Norton-Decatur owned the transmission facilities in question and served in a transmission provider capacity. However, the Joint Applicants did not indicate the rate charged by Norton-Decatur for transmission service nor did the

Joint Applicants indicate the filed tariff upon which Norton-Decatur relied upon to provide and charge for wholesale transmission service.

6. The Second Amended Agreement specifies a rate to be charged Hill City, but it does not provide the specific rate to be paid to Sunflower and Norton-Decatur severally.

7. The Second Amended Agreement contemplates the construction of new interconnect facilities. The Second Amended Agreement is vague on the ownership and construction of the facilities, but it appears that Hill City will neither own nor operate the facilities.

8. Midwest is an electric cooperative that engages in the generation and transmission of electricity. Midwest's transmission facilities and rates are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

II. CONCLUSIONS OF LAW

9. Generally, wholesale transmission service and rates are regulated by FERC pursuant to the Federal Power Act. 16 U.S.C. § 824. However, FERC was not granted the statutory authority to regulate wholesale operations of rural electric cooperatives funded by RUS. *See Arkansas Electric Cooperative Corp. v. Public Service Comm'n*, 461 U.S. 375 (1983). The regulation of such rural power cooperatives rests with state public utility commissions. *Id.*

10. Under the Kansas statutory scheme, the Commission is granted "full power, authority, and jurisdiction to supervise and control electric public utilities, as defined in K.S.A. 66-101a, doing business in Kansas, and is empowered to do all

things necessary and convenient for the exercise of such power, authority and jurisdiction." K.S.A. 66-101 (1992). A public utility is "any public utility, as defined by K.S.A. 66-104, and amendments thereto, which generates or sells electricity." K.S.A. 66-101a (1992). A "public utility" which generates or sells electricity includes "all companies for the production, transmission, delivery or furnishing of heat, light, water or power." K.S.A. 66-104 (1992). Furthermore, the Commission is expressly granted jurisdiction, regulatory authority, supervision and control over charges for transmission services and sales of power for resale. K.S.A. 66-104d(f) and K.S.A. 66-104b(b) (1992). As a generation supplier and transmission provider of electricity that is funded by RUS, Sunflower is subject to the Commission's jurisdiction and authority.

11. Also, under the Kansas statutory scheme, an electric power cooperative providing retail service is by definition a public utility subject to the jurisdiction, regulation, supervision and control of the Commission. However, such an electric power cooperative may elect to have its retail operation deregulated as provided in K.S.A. 66-104d. Notwithstanding an election, the Commission retains jurisdiction over the deregulated electric cooperative "with regard to service territory, charges for transmission services, sales of power for resale, wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 *et seq.* or 66-1,177 *et seq.*, and amendments thereto." K.S.A. 66-104d(f) (1992). *See also* K.S.A. 66-104b(b) (1992). K.S.A. 66-104d(f) and K.S.A. 66-104b(b) expressly grant the Commission jurisdiction, regulatory authority, supervision and control over service territory, charges for

transmission services, sales of power for resale, wire stringing and transmission line siting. Clearly, Norton-Decatur's sales of power for resale and charges for transmission services, if any, are subject to the Commission's jurisdiction and authority.

12. With respect to their wholesale contracts, Sunflower and Norton-Decatur have a duty to file the proposed interconnection agreement and power supply agreement with the Commission. K.S.A. 66-101c provides:

> Every electric public utility doing business in Kansas over which the commission has control shall . . . furnish the commission copies of all rules and regulations and contracts between electric public utilities pertaining to any and all jurisdictional services to be rendered by such electric public utilities. The commission shall have power to prescribe reasonable rules and regulations regarding the form and filing of all schedules of rates and all rules and regulations of such electric public utilities, including such protection of confidentiality as requested by the electric public utility, and the utility's suppliers and customers, for contracts entered into by them, and as the commission determines reasonable and appropriate.

K.S.A. 1996 Supp. 66-101c (emphasis added). Given this statutory duty and given the explicit grant of jurisdictional authority over charges for transmission services and sales of power for resale, the Commission's review of the proposed interconnection and power supply agreement is not limited or restricted in any manner.

13. As an integral part of the proposed interconnection and power supply agreement, certain substation facilities are to be constructed. Under K.S.A. 1996 Supp. 66-101b, electric public utilities subject to the Public Utilities Act, must provide

reasonably efficient and sufficient electric service. K.S.A. 66-101b specifically provides that:

> Every electric public utility governed by this act shall be required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void. The commission shall have the power, after notice and hearing in accordance with the provisions of the Kansas administrative procedures act, to require all electric public utilities governed by this act to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.

K.S.A. 1996 Supp. 66-101b (emphasis added). Moreover, as applied to the regulation of electric public utilities, all grants of power, authority, and jurisdiction shall be liberally construed and all incidental powers necessary to carry into effect the provisions of the Public Utilities Act are expressly granted to the Commission. K.S.A. 66-101g (1992).

14. The Commission has jurisdiction to supervise and exert control over the construction facilities which impact upon efficient electric service and reasonable rates. The Commission has the duty to promote adequate and efficient service and to limit waste attendant on unnecessary duplication of facilities designed for the same purpose in the same area. *Central Kansas Power Co. v. State Corporation Comm'n*, 206 Kan. 670, 677, 482 P.2d 1 (1971). The proposed

interconnection and power supply agreement including the proposed construction, should be reviewed to determine whether it is in the public interest, i.e., whether the agreement, and amendments thereto, reasonably promote efficient and sufficient service and facilities in providing service and whether the existence and the effect of proposed interconnection and power supply agreement is just and reasonable. The filing to be made with the Commission is not simply an "informational" filing.

15. The Commission recognizes that the Commission lacks jurisdiction over a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. 66-131a, and amendments thereto. However, under the Second Amended Agreement, the proposed facilities do not appear to be owned or operated by Hill City. Under such facts and circumstances, the Commission is not exceeding its statutory jurisdiction by exerting is jurisdiction and authority over the proposed construction of the interconnect facilities.

16. Recently, in Kansas *Pipeline Partnership v. Kansas Corp. Comm.*, 22 Kan. App. 2d 410 (1996), the court held that contract approval which has rate implications falls within the parameters of K.S.A. 66-117. Under K.S.A. 66-117(b), the Commission must issue a decision within 240 days after an application is filed. *See* K.S.A. 1996 Supp. 66-117. Further, under K.S.A. 66-117(b), the hearing procedure is controlled by the Kansas Administrative Procedures Act ("KAPA"). *See* K.S.A.

1996 Supp. 66-117. The Commission previously restarted the clock from January 2, 1997. Order, dated January 7, 1997. The Commission received a filed stamped copy reflecting a January 2, 1997 filing date. This was in error. The Commission's docket room received the Second Amended Agreement on December 31, 1996. The prior order should be corrected to reflect that the 240-day period, as provided in K.S.A. 66-117(b), commences to run from December 31, 1996 and ends August 28, 1997.

17. On July 25, 1996, the Commission issued an Order on Norton-Decatur Cooperative Electric Company, Inc. and Sunflower Electric Power Cooperative's Motion for Reconsideration. In that Order, the Commission approved the agreement between Sunflower, Norton-Decatur and Hill City to the extent that Sunflower and Norton-Decatur are permitted to provide energy to Hill City. However, the Commission did not approve the construction of any facilities but ordered the delivery of energy to Hill City be through the facilities owned and operated by Midwest. Further, the Commission stated that the June 27, 1996 Suspension Order remained in full force and effect on the remaining provisions of the proposed interconnect and power supply agreement. Sunflower and Hill City requested the Commission to clarify its Order on whether Hill City must physically disconnect from Norton-Decatur and Sunflower and reconnect with Midwest and whether the transmission rate charged Norton-Decatur and Sunflower by Midwest be the contract rate between Midwest and Sunflower or the FERC transmission tariff rate. The Commission's July 25, 1996 Order on Motion for Reconsideration is clear and unambiguous with respect to the construction of facilities in question.

However, with respect to transmission rate, Midwest is a FERC jurisdictional utility. FERC rules and regulations control the applicable transmission charges. The Commission finds and concludes that the July 25, 1996 Order on Motion for Reconsideration should be clarified to the extent described above.

18. Pursuant to the December 11, 1996 Prehearing Conference Order, the parties briefed additional jurisdictional issues such as: (i) whether the Commission has the authority to require that a municipality, a rural electric cooperative or a generation and transmission cooperative use the existing facilities of another cooperative or other electric public utility and set the terms of the use without an approved agreement, (ii) whether the Commission has the authority, as a condition of approval of a power supply contract or otherwise, to require a generation and transmission cooperative in the State to file "open access" tariffs for transmission facilities, (iii) whether the Commission has the authority to abrogate or otherwise modify wholesale power contracts between transmission cooperatives in the State and (iv) whether the Commission has the authority, as a condition of the approval of a power supply contract or otherwise, to require Sunflower and the other cooperatives in Kansas, including Midwest, to re-file their rates to provide unbundled service to their All Requirements Contract customers. The determination of these remaining jurisdictional issues do not affect the Commission's immediate jurisdictional authority over the proposed interconnection and power supply agreement. The Commission makes no ruling on these remaining jurisdictional issues at this time. However, the parties may

provide testimony concerning efficacy of such issues on the final resolution of this matter.

III. PROCEDURAL SCHEDULE

19. The Commission finds and concludes that an evidentiary hearing is necessary and should be held in this matter. The following procedural schedule is adopted:

A. Sunflower, Norton-Decatur, and Hill City, as Joint Applicants, shall prefile direct testimony supporting the Second Amended Application on May 8, 1997.

B. Staff and Intervenors shall prefile direct testimony on June 5, 1997.

C. Sunflower, Norton-Decatur, and Hill City, as Joint Applicants, shall prefile rebuttal testimony on June 13, 1997.

D. The Commission will conduct a technical hearing in this matter on June 19, 1997 commencing at 1:30 p.m. and continuing thereafter until completed. The Commission notes that entire following day has been set aside for hearing, if additional time is needed.

E. The Parties may file post hearing briefs by July 3, 1997. Reply briefs may be filed by July 10, 1997. All briefs shall be filed simultaneously on the appropriate due date.

20. The Commission directs Sunflower, Norton-Decatur, and Hill City, as Joint Applicants, to provide a court reporter for the technical hearing held in this matter. At the Joint Applicants' option, they may avail themselves on the services of the Commission's court reporter. However, the Commission's court reporter is

unable to produce next day transcripts. If an immediate transcript is required, it is the Joint Applicants' responsibility to obtain alternative court reporting services.

21. In their prefiled direct testimony, Sunflower, Norton-Decatur and Hill City, as Joint Applicants, must include testimony clearly setting forth in detail the respective rights, duties, obligations and responsibilities of each party under the proposed agreement and amendments thereto. Further, Sunflower, Norton-Decatur and Hill City, as Joint Applicants, must include testimony clearly setting forth the ownership rights of each respective applicant over the proposed interconnect facilities.

IT IS, THEREFORE, BY THE COMMISSION, CONSIDERED AND ORDERED that these findings and conclusions shall be, and are hereby, made orders of the Commission.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

The parties have fifteen days, plus three days if service of this Order is by mail, from the date of this Order in which to petition the Commission for reconsideration of any matter decided herein.

BY THE COMMISSION IT IS SO ORDERED.

McKee, Chr.; Seltsam, Com.; Wine, Com.

Dated: APR 2 3 1997

ORDER MAILED
APR 23 1997
Executive Director

JUDITH McCONNELL
EXECUTIVE DIRECTOR

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Timothy E. McKee, Chair
Susan M. Seltsam
John Wine

In the Matter of an Application by the Sunflower Electric Power Corporation for Commission Approval of an Interconnection and Power Supply Agreement with the Norton-Decatur Cooperative Electric Company, Inc. and the City of Hill City, Kansas	))))))	Docket No. 96-SEPE-680-CON

ORDER

The above-captioned matter comes on before the State Corporation Commission of the State of Kansas ("Commission") for consideration and decision. After having reviewed the arguments and authorities submitted by the parties and being otherwise fully advised in the premises, the Commission finds and concludes:

I. Statement of Case

1. On April 18, 1996, Sunflower Electric Power Corporation ("Sunflower") entered into an Electric Interconnection and Power Supply Agreement ("Agreement") with the City of Hill City, Kansas ("Hill City"), and Norton-Decatur Cooperative Electric Company, Inc. ("Norton-Decatur"). The Agreement requires that Sunflower and Norton-Decatur provide energy to Hill City through the construction of new substation and interconnection facilities. Interconnection facilities were defined in Article I of the Agreement as Sunflower and Norton-Decatur's facilities which connect Sunflower's 115-kV transmission line to Hill City's 34.5-kV transmission line including the transformer, metering, switchgear and other associated substation facilities in a new substation to be

constructed west of Hill City in Graham County, Kansas. The proposed site was not located in Norton-Decatur's certificated territory. (Hauck, Tr. at 55). Rather, the proposed site was located next to Midwest's facilities (Ross Beach Substation) in Midwest's certificated territory. (Hauck, Tr. at 64).

2. On June 14, 1996, Sunflower and Norton-Decatur, as Joint Applicants, filed an Application with the Commission seeking approval of the Agreement. After receipt of the Application, the Commission issued a Suspension Order effective June 27, 1996. The Suspension Order deferred the implementation of the Agreement for a period not to exceed 240 days pursuant to K.S.A. 66-117(b).

3. On July 5, 1996, Sunflower and Norton-Decatur filed a joint Motion of Reconsideration of the June 27, 1996 Suspension Order. The Commission issued an Order on Reconsideration on July 25, 1996. This order modified the June 27 Suspension Order to the extent that Sunflower and Norton-Decatur were permitted to provide energy to Hill City, through the existing facilities owned by Midwest Energy, Inc. ("Midwest"). Sunflower and Norton-Decatur were neither permitted to implement the Agreement nor permitted to construct the new substation and interconnection facilities contemplated by the Agreement. This order also granted Midwest's Petition to intervene and participate in the proceeding with full rights as a party.

4. On September 23, 1996, the matter was called before the Commission's Hearing Examiner for the purpose of conducting a prehearing conference. Sunflower was directed to prepare a "Proposed Prehearing Conference Order" with the parties to submit

objections. Also, on this date, an order was entered allowing Hill City to intervene over the objection of Midwest.

5. On November 8, 1996, Norton-Decatur, Sunflower and Hill City filed an Amended Application seeking approval of an Amended Electric Interconnection and Power Supply Agreement ("First Amended Agreement") involving the original signatories. In the Amended Application, Sunflower stated that it "will sell non-firm, interruptible energy to Norton-Decatur for the benefit of Hill City which energy Norton-Decatur will deliver to Hill City over a substation that Norton-Decatur will construct and own in the Hill City area, which substation Norton-Decatur needs regardless of the Hill City contract; that Norton-Decatur will bill Hill City for the services provided, will pay Sunflower for the energy delivered and will retain the balance for its account."

6. On December 12, 1996, the Commission issued a prehearing conference order establishing a briefing schedule for the underlying jurisdictional issues. In this order, the Commission deemed the First Amended Agreement a new application for purposes of K.S.A. 66-117b and thus restarted the 240-day statutory period from November 8, 1996. The Commission also granted the request of Citizens' Utility Ratepayer Board ("CURB") and Kansas Electric Cooperative, Inc. ("KEC") to intervene and participate with full rights. No party sought reconsideration of this order.

7. On January 2, 1997, the Commission received a Second Amended Application filed by Sunflower seeking approval of an Amended and Restated Electric Interconnection and Power Supply Agreement ("Second Amended Agreement") involving the same

signatories. The Second Amended Agreement changed the proposed site of the substation from a point near Midwest's Ross Beach Substation to a point approximately three and one-half miles north of the Ross Beach Substation and approximately two miles north of Hill City. The proposed site under the Second Amended Agreement is located within the certificated territory of Norton-Decatur. The substation would tie to Sunflower's existing 115-kV transmission line. From the substation, approximately 5.75 miles of 34.5-kV transmission line would be constructed to a point of interconnection with Hill City. The Second Amended Agreement also extended the term of the agreement from three (3) years to four (4) years, and modified the rights of assignment, as requested by Sunflower and Norton-Decatur's lender, the Rural Utility Service ("RUS").

8. On January 7, 1997, the Commission issued an Order holding that the Second Amended Agreement should be deemed a new application for purposes of K.S.A. 66-117b and thus restarting the 240-day statutory period from January 2, 1997. No party sought reconsideration of this order.

9. On February 10, 1997, Sunflower and Norton-Decatur filed a brief arguing that the Commission was without jurisdiction to either approve or reject the proposed agreement and amendments thereto.[1] Midwest and Commission Staff ("Staff") argued that the Commission had broad supervisory powers and that the Commission had specific statutory authority over charges for transmission services and sales of power for resale

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[1] Sunflower and Norton-Decatur in their Reply Brief conceded that the Commission had jurisdiction over the proposed agreement but that the scope of review was limited.

and that by virtue of this regulatory authority, the Commission had jurisdiction over the construction of the facilities to provide service under the proposed agreement. KEC argued that the Commission had jurisdictional authority over the proposed agreement but that the Commission's jurisdiction did not extend to the construction of new interconnection facilities. CURB did not file a brief on the jurisdictional issues.

10. On April 23, 1997, after examining and reviewing the briefs and arguments of counsel, the Commission issued an Order asserting jurisdiction over the parties and the subject matter presented by the Agreement and amendments thereto. The Commission also reaffirmed that the June 27, 1996 Suspension Order was only modified to the extent that Sunflower and Norton-Decatur were allowed to provide energy to Hill City over Midwest's facilities. The Commission stated that "the proposed interconnection and power supply agreement including the proposed construction should be reviewed to determine whether it is in the public interest, i.e., whether the agreement, and amendments thereto reasonably promote efficient and sufficient service and facilities in providing service and whether the existence and effect of the proposed interconnection and power supply agreement is just and reasonable." (April 23, 1997 Order at¶ 14). Finally, this April 23, 1997 Order established a procedural schedule establishing deadlines for filing testimony and setting the matter for hearing on June 19-20, 1997. Sunflower, Norton-Decatur and Hill City, as Joint Applicants, were directed to include testimony setting forth clearly the respective rights, duties, obligations and responsibilities of each party under the proposed Second Amended Agreement and clearly setting forth the ownership rights of each

respective applicant over the proposed substation and interconnection facilities. No party sought reconsideration of the April 23, 1997 Order.

11. On June 19 and 20, 1997, the Commission conducted a hearing on the merits of the Second Amended Application. The Commission received initial and reply briefs on July 3, 1997 and July 10, 1997, respectively. Sunflower, Norton-Decatur, and Hill City argued the proposed agreement, and amendments thereto, were in the best interest of the parties and the public generally. Sunflower, Norton-Decatur and Hill City also argued that the proposed facilities enhanced reliability and were not a wasteful duplication of existing facilities. Staff opposed the agreement arguing that it was contrary to the public interest and results in the unnecessary duplication of existing facilities. Staff also argued that the rates charged in the proposed agreement result in unjust and discriminatory pricing. Finally, Staff argued that under the proposed agreement, Norton-Decatur would be providing a transmission service for which it has no tariff on file with the Commission. Midwest also opposed the agreement arguing that the proposed agreement shifted costs to the all requirements customers in order to acquire additional loads at the expense or detriment of Midwest and other all requirements customers of Sunflower. Midwest also urged the Commission to abrogate the existing all requirements contract between Sunflower and Midwest. KEC and CURB did not file any post-hearing briefs setting forth a position either supporting or opposing the proposed agreement.

12. On June 3, 1997, Sunflower filed a Motion for Stay. Sunflower requested the Commission to stay that portion of its July 25, 1996 Order requiring Sunflower and Norton-

Decatur to serve Hill City through Midwest's facilities until the matters involved in this Docket were completely resolved. Midwest responded on June 6, 1997 by filing a written objection to Sunflower's Motion for Stay and by filing a Motion for Contempt. Midwest opposed any stay in the July 25, 1996 Order and requested sanctions be imposed against the Joint Applicants. Staff also opposed Sunflower's Motion ror Stay.

II. Standard of Review

13. As a general rule, public utilities have the right to enter into contracts between themselves or with others. However, when private property is devoted to public use in the business of a public utility, certain reciprocal rights and duties are raised by implication of law or express statutory mandate between the utility and the public it undertakes to serve. A public utility cannot enter into a contract that is unjust, unreasonable or otherwise impairs the obligation of the utility to discharge its duties.

14. In this case, the proposed interconnection and power supply agreement, including the proposed construction, must be reviewed to determine whether it is in the public interest, i.e., whether the agreement, and amendments thereto, reasonably promote efficient and sufficient service and facilities in providing service and whether the existence and the effect of proposed interconnection and power supply agreement is just and reasonable.[2] More particularly, the Commission may within the scope of its broad regulatory power, prohibit duplicative facilities that are economically wasteful. *Central*

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[2]/ The Suspension Order allowed Sunflower to sell energy to Hill City to the extent that Midwest facilities were used. The Suspension Order did not approve the sale to Hill City through facilities owned by Sunflower and Norton-Decatur, as contemplated by the original agreement and amendments thereto.

Kansas Power Co. v. State Corporation Comm'n, 206 Kan. 670, 677, 482 P.2d 1 (1971). However, the fact that a new service may have some effect on existing service does not preclude creation of additional facilities. 73B C.J.S. Public Utilities § 73b (1983). The incidental disadvantages must be weighed in balance against the ultimate public advantages. *Id.* In making this determination, the public interest must be given paramount consideration by the Commission. *Kansas Gas & Electric Co. v. Public Service Com.*, 122 Kan. 462, 466, 251 P. 1097 (1927). The desires of the utility company are secondary. *Id.* at 466. To approve the Agreement, Sunflower and Norton-Decatur must first show that the proposed facilities are neither an unnecessary duplication or economically wasteful. Secondly, Sunflower and Norton-Decatur must show that the agreement does not result in discriminatory pricing.

15. In making the determination of whether to approve or reject the proposed agreement, the Commission is not being critical of Sunflower, Norton-Decatur or Hill City in any way. Sunflower has attempted to creatively market its generation capacity, as urged by the Commission in a prior order. Sunflower's efforts should remain reasonable. (*See* Docket No. 137,068-U, Order dated September 6, 1983 at ¶ 60). Hill City has, at all times, acted in the best interests of its constituency. Hill City is a responsible governmental body responding to federal and state initiatives that are intended to restructure the electric industry.

III. The proposed new substation and interconnection facilities are unnecessarily duplicative and economically wasteful.

16. The proposed facilities are not necessary to make the sale under the proposed agreement. Presently, Midwest owns and operates transmission facilities including the substation that serves Hill City. Midwest is an electric cooperative that engages in the supply of generation and transmission of electricity. Midwest's transmission facilities and rates are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). FERC has recognized that the transmission of electric power is a natural monopoly and has stated as its policy objective:

> To achieve the benefits of robust, competitive bulk power markets, all wholesale buyers and sellers must have equal access to the transmission grid. Otherwise, efficient trades cannot take place and ratepayers will bear unnecessary costs. Thus, market power through control of transmission is the single greatest impediment to competition.

FERC Statutes and Regulations ¶ 32,514 at 33,049 (1995). To implement this policy objective, FERC ordered the transmission providers subject to its jurisdiction to file open access transmission tariffs. Midwest, being subject to FERC jurisdiction, complied with this obligation and offers an open access transmission tariff that can be used to effectuate the proposed sale of power from Sunflower to Hill City. Thus, the cost incurred by Norton-Decatur to build new facilities to serve Hill City can be avoided unless the facilities also serve other legitimate public purposes.

17. Norton-Decatur suggests that in addition to being used to serve Hill City, the new facilities are necessary to serve its native load because the service it currently receives from Midwest is not reliable. To support this argument, Norton-Decatur offers RUS outage per customer acceptability guidelines of 2 to 4 hours per year, and a standard threshold of unacceptability of 5 hours per year to suggest that Midwest's service is unreliable. (Miller, Tr. at 93-11). However, Mr. Engle, Operations and Engineering Manager for Midwest, testified that in 6.5 years the total outage was 12.33 hours which translates into 99.98% availability or 1.9 outage hours per customer per year. (Engle, Tr. at 256). This evidence demonstrates that Midwest's service meets the RUS's standard. The Commission cannot find that Midwest's service is unreliable.

18. The original location of the proposed facilities indicates that the primary purpose of the facilities was not to significantly enhance reliability for Norton-Decatur's system. Mr. Hauck, President and Chief Executive Officer, believed that the original construction site located adjacent to Midwest's facilities was selected because it was logical. (Hauck, Tr. at 64). Subsequently, the site location was changed for the stated reason that the new location was closer to Norton-Decatur's load allowing Norton-Decatur to avoid anticipated upgrade costs of its facilities and enhance the reliability of Norton-Decatur's distribution system. (Hauck, Tr. at 42-10). Mr. Miller, General Manager of Norton-Decatur, testified that the new location enhanced the reliability of Norton-Decatur's system but Mr. Miller's testimony did not address the criteria for selecting the original site. (Miller, Tr. at 110-118). Moreover, Norton-Decatur's work plans filed with RUS do not

mention any concerns about Midwest's reliability and its impact on their system. (Dowling, Tr. at 284). In addition, under the proposed agreement, Hill City will likely use about 74% of the substation capacity. (Parke, Tr. at 267). Neither Mr. Hauck's testimony nor Mr. Miller's testimony demonstrate that the proposed agreement was not primarily intended to bypass Midwest's facilities.

19. The estimated cost to build the substation and the interconnection facilities is approximately $1.0 million. (Miller, Tr. at 109). The cost could be greater depending on whether a new or used transformer is used. (Miller, Tr. at 109). Norton-Decatur can upgrade existing facilities at lower cost instead of duplicating the existing Midwest facilities. (Holloway, Tr. at 318-15; *see also* Miller, Tr. at 93-6). Norton-Decatur's Graham and Morland substations are admittedly in need of upgrade. (Miller, Tr. at 93-6). Miller provided an estimate of the cost of upgrading the Graham station at $100,000 and upgrading Morland at $150,000. (Miller, Tr. 93-6). In addition, the cost of the proposed substation and interconnection facilities could be eliminated and reliability concerns addressed by creating a loop feed off of Midwest's 34.50-kV line north of Hill City. (Holloway, Tr. at 318-15 to 318-16; Miller, Tr. at 146-148). Furthermore, voltage concerns could be addressed through coordination rather than incurring costs of a new substation and interconnection facilities. (Norman, Tr. at 186). Thus, the reliability concerns of Norton-Decatur could be addressed at significantly less expense without duplicating facilities.

20. Sunflower presented the testimony of James C. Dedman to suggest that RUS previously determined the proposed facilities were necessary and in the public interest. Mr. Dedman has been employed by the National Rural Electric Cooperative Association since 1990. (Dedman, Tr. at 169-1). Mr. Dedman previously worked for the Rural Electric Administration, now RUS. (Dedman, Tr. at 169-3). Mr. Dedman did not perform any services for RUS regarding the proposed substation and interconnection facilities. (Dedman, Tr. at 172). Approximately one week before the hearing in this matter, Mr. Dedman reviewed the work plan filed at RUS to determine its status. (Dedman, Tr. at 172). Mr. Dedman believed that RUS evaluated the proposed construction using a public interest standard. However, the United States Supreme Court observed, "nothing in the Rural Electrification Act expressly pre-empts state rate regulation of power cooperatives financed by the REA" and "the REA is a lending agency rather than a classic public utility regulatory body in the mode of either FERC or Arkansas PSC." *Arkansas Elec. Coop. Corp. v. Arkansas Public Serv. Comm'n*, 461 U.S. 375, 385-386 (1983). *In accord In the Matter of Cajun Electric Power Cooperative, Incorporated*, 109 F.3d 248; 1997 U.S. App. LEXIS 660 (April 9, 1997). The Court further noted that "the legislative history . . . makes abundantly clear . . . that, although the REA was expected to play a role in assisting the fledgling rural power cooperatives in setting their rate structures, it would do so within the constraints of existing state regulatory schemes. *Id.* at 386. The Court pointed to REA Bulletin 111-4, at 1-2 (1972) which stated "borrowers must, of course, submit proposed rate changes to any regulatory commissions having jurisdiction and must seek approval in the manner

prescribed by those commissions." *Id.* at 387-388. There is no evidence that RUS evaluated the proposed agreement consistent with the Kansas standard of review as set forth above.

IV. The proposed agreement results in discriminatory pricing.

21. The stated contract price of the proposed agreement is 26 mills per kWh. (Hauck, Tr. at 42-5). Over the four (4) year term of the agreement, Sunflower will pay Norton-Decatur 6.75 mills per kWh for use of the substation. (Hauck, Tr. at 42-21; Waggoner, Tr. at 203-8). Sunflower will also pay Norton-Decatur a service charge of 3 mills per kWh. (Holloway, Tr. at 318-3). The resulting revenue (revenue net of transmission costs) for Sunflower is 16.25 mills per kWh.

22. Staff provided testimony that the cost of providing energy to Hill City could be in the range of 12.66 mills to 16.87 mills per kWh. (Holloway, Tr. at 318-20). Holloway concludes that it would be more likely to fall within the top range at around 16.8 mills per kWh based upon historic revenue comparison with West Plains. (Holloway, Tr. at 318-20 to 318-21). Thus, the variable cost is likely to exceed the average revenue under the proposed agreement. (Holloway, Tr. at 318-21 to 318-22).

23. Under Sunflower's current tariff, the cost of fuel and purchased power is passed through to Sunflower's wholesale power contract customers through the Energy Cost Adjustment ("ECA") calculation. (Waggoner, Tr. at 205). As the variable costs exceed average revenue, Sunflower's all requirements customers would be required to pay more through the ECA to cover the revenue shortfall. (Parke, Tr. at 265-3 to 265-4, 265-7 and 266; *see also* Holloway, Tr. at 318-22). Furthermore, under the terms of the proposed agreement,

Sunflower must guarantee economy power 96% of the time. However, the Holcomb generating plant was available only 91.7% of the time in 1996. (Holloway, Tr. at 318-18; Rearden, Tr. at 336-3, f.n. 3). When Holcomb is not available Sunflower must purchase power to serve Hill City. Staff estimated that Sunflower's purchase power costs at an average of 17.26 mills per kWh. (Holloway, Tr. at 318-19, Exhibit LWH-6). Thus, Sunflower must undercharge Hill City for at least 4.3% of its commitment resulting in less revenue and a greater shortfall to be passed through Sunflower's ECA. (Holloway, Tr. at 318-18).

24. Sunflower disputed Staff's estimate of the generation costs. Sunflower argued that Sunflower's incremental costs were 12.05 mills based upon the heat rate curve for the Holcomb generating plant. (Waggoner, Tr. at 203-9). However, this estimate reflects only fuel costs and not the variable operations and maintenance expense and purchase power costs. (Waggoner, Tr. at 210). The Commission finds that Staff's estimate of generating costs more persuasive than Sunflower's because Waggoner excluded variable operations and maintenance expense and purchase power costs. (Waggoner, Tr. at 203-9). In addition, Midwest's analysis supported Staff's cost estimate. (Parke, Tr. at 6).

25. Sunflower claimed it would receive additional benefits by avoiding other transmission costs that would have been paid to Midwest and by avoiding costs associated with line losses. (Hauck, Tr. at 46). Mr. Hauck estimated the total additional benefits to be approximately 3.64 mills per kWh. (Hauck, Tr. at 46). However, the additional benefit to Sunflower must be balanced against the loss to Midwest and the cost incurred by

Norton-Decatur. While Hill City will pay a portion of the construction costs for the proposed substation, the corresponding loss of transmission revenue will most likely result in an increase in the rates for Midwest's captive customers. (Holloway, Tr. at 318-13 to 318-14; Rearden, Tr. at 336-2 to 336-3). Thus, no net gain for the public generally is associated with Sunflower's claimed avoided costs.

V. The proposed agreement including the construction of a new substation and interconnection facilities should be rejected.

26. Sunflower and Norton-Decatur are the Joint Applicants in this matter. As applicants, Sunflower and Norton-Decatur bear the burden of proving that the application, and amendments thereto, are in the public interest and should be approved. Sunflower and Norton-Decatur have failed to meet this burden. The Commission finds and concludes that the record does not contain sufficient evidence demonstrating the proposed agreement including the proposed construction of a new substation and interconnection facilities met the public interest standard.

27. The proposed substation and interconnection facilities do not significantly improve the reliability of Norton-Decatur's system and do not represent the least cost alternative. The Commission concludes that based upon the entire record, the proposed substation and interconnection facilities are unnecessarily duplicative and economically wasteful.

28. The record demonstrates that the contractual price of the proposed agreement is at or below the cost of service and that due to the operation of Sunflower's ECA, the all

requirements contract customers are harmed. As such, the Commission concludes that the proposed agreement will result in discriminatory pricing.

29. Therefore, the Commission finds and concludes that the proposed agreement is unreasonable and contrary to public interest. Absent a showing that the proposed agreement is in the public interest, the Commission cannot approve the agreement and cannot approve the construction of the new substation and interconnection facilities. *See Central Kansas Power Co. v. State Corporation Comm'n*, 181 Kan. 817 (1957).

VII. The issue of open access transmission tariffs should be deferred to the Commission's Electric Restructuring Docket, Docket No. 193,930-U.

30. Transmission is the cornerstone of competition in a restructured electric industry. As FERC has stated:

> The continuing competitive changes in the industry and the prospect of these benefits to customers make it imperative that this Commission take the necessary steps within its jurisdiction to ensure that all wholesale buyers and sellers of electric energy can obtain non-discriminatory transmission access, that a transition to competition is orderly and fair, and that the integrity and reliability of our electric infrastructure is maintained.

FERC Statutes and Regulations ¶ 31,036 at 31,635 (1996).

31. FERC has also attempted to distinguish transmission service from distribution by evaluating seven factors. These factors are:

(1) Local distribution facilities are normally in close proximity to retail customers.

(2) Local distribution facilities are primarily radial in character.

(3) Power flows into local distribution systems; it rarely, if ever, flows out.

(4) When power enters a local distribution, it is not reconsigned or transported on to some other market.

(5) Power entering a local distribution system is consumed in a comparatively restricted geographic area.

(6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

(7) Local distribution systems will be of reduced voltage.

FERC Statutes and Regulations ¶ 31,036 at 31,771 (1996).

32. Under FERC criteria, Norton-Decatur is providing transmission service. However, Norton-Decatur does not have a transmission tariff on file with the Commission. (Miller, Tr. at 101). Sunflower acknowledges that it is a transmission provider and has stated that it has prepared an open access transmission tariff. However, Sunflower's tariff has not been submitted to the Commission for approval.

33. Generally, wholesale transmission service and rates are regulated by FERC pursuant to the Federal Power Act. 16 U.S.C. § 824. However, FERC was not granted the statutory authority to regulate wholesale operations of rural electric cooperatives funded by RUS. *See Arkansas Electric Cooperative Corp. v. Public Service Comm'n*, 461 U.S. 375 (1983). The regulation of such rural power cooperatives rests with state public utility commissions according to their statutory authority. *Id.*

34. As stated in the April 23, 1997 Order, the Commission has jurisdiction over public utilities providing transmission service outside of FERC's jurisdiction. Whether a

regulated or deregulated cooperative, the Commission is expressly granted jurisdiction authority "with regard to service territory, charges for transmission services, sales of power for resale, wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 *et seq.* or 66-1,177 *et seq.*, and amendments thereto." K.S.A. 66-104d(f) (1992). *See also* K.S.A. 66-104b(b) (1992).

35. If the Commission determines that wholesale transmission tariffs should be open, non-discriminatory and unbundled, public utilities under the Commission's jurisdiction would be required to file such tariffs with the Commission for approval. Tariffs are those terms and conditions which govern the relationship between the utility and its customers. *Grinstead Products, Inc. v. Kansas Corporation Comm'n*, 262 Kan. 294 (1997). Public utilities are required to file their tariffs with the Kansas Corporation Commission. K.S.A. 66-101c. Rates or charges imposed by a public utility upon its customers are required to be just and reasonable, not unjustly or unreasonably discriminatory and not unduly preferential. *Id.* at 309. Tariffs must comport with any conditions, schedules, and provisions authorized by the Commission and amended tariffs and schedules of rates are not effective unless approved by the Commission. *Id.* at 309. Tariffs duly filed with the Commission generally bind both the public utility and the customers. *Id.* at 309. The only contract which a public utility is authorized to enter into with a customer for service must conform to the tariff or schedule filed by such utility in compliance with Kansas statutes and regulations. 73B C.J.S. Public Utilities § 5 (1983).

36. Midwest requested the Commission require all public utilities subject to the Commission's jurisdiction to file open access transmission tariffs for wholesale transactions. (Argo, Tr. at 237-4). However, with the advent of a restructured retail electric industry, Staff recommended that the implementation of open access transmission tariffs be studied by the Commission. (Rearden, Tr. at 336-9). The Commission agrees and defers this issue of open access transmission tariffs to the electric restructuring docket, KCC Docket No. 193,930-U.

VIII. The Commission will take no action on the all requirements contract between Sunflower and Midwest.

37. Midwest requested the Commission to declare that the all requirements contract with Sunflower are contrary to the public interest. (Argo, Tr. 237-4). Staff acknowledged that there may be benefits to abrogating the all requirements contract. (Rearden, Tr. at 336-10). Specifically, Staff stated the all requirements contract may be viewed as a barrier to competition and would negate the benefits of open access transmission tariffs. (Rearden, Tr. at 336-8). However, the all requirements contract represents a separate issue from the Application of Sunflower and Norton-Decatur upon which the record is not adequate for the Commission to make a reasoned decision. Furthermore, this issue is likely to affect more of Sunflower's member cooperatives than Midwest. At this time, the Commission will take no action on the all requirements contract between Sunflower and Midwest.

IX. Sunflower's Motion for Stay is denied.

38. On June 3, 1997, Sunflower requested the Commission to stay its order requiring Sunflower to use Midwest's transmission facilities during the pendency of this proceeding. In a July 25, 1996 Order, the Commission directed Sunflower to use Midwest's transmission facilities. The Commission reaffirmed the July 25, 1996 Order in its Prehearing Conference Order of December 12, 1996 and in its April 23, 1997 Order. Additionally, Midwest objected to Sunflower's failure to abide by the Commission's orders in its Objection to Joint Applicants' Second Amended Application, filed on January 8, 1997.

39. K.A.R. 82-1-235 provides that the Commission may grant a stay of its order during the pendency of a petition for reconsideration. The Commission reconsidered the July 25, 1996 order and issued an Order on Reconsideration on August 29, 1996. The Joint Applicants did not request a stay before the July 25, 1996 Order became a final appealable order. The Commission's July 25, 1996 order was also reaffirmed in subsequent orders. *See, for example*, April 23, 1997 Order. Furthermore, K.A.R. 82-1-235 (e) states that the "filing of a petition for reconsideration shall not excuse any corporation or person from complying with and obeying any order of the Commission thereto made or operate in any way to stay or postpone the enforcement thereof. . . ." K.A.R. 82-1-235(e) (1994).

40. As a final order, the Joint Applicants could have sought judicial review under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions. K.S.A. 77-601 *et seq.* "[I]f reconsideration has been requested . . . a petition for judicial review of a

final order shall be filed . . . (3) in proceedings before the Kansas corporation commission, within 30 days of the date the request for reconsideration is deemed to have been denied." K.S.A. 1996 Supp. 77-613(c). If an appeal had been filed, the Commission or the reviewing court could have considered a motion for stay pursuant to K.S.A. 77-616. No appeal was taken precluding consideration of a stay and the July 25, 1996 Order became conclusive. K.S.A. 66-118l (1982).

41. Sunflower should have been aware that the July 25, 1996 Order was in effect through the pendency of this proceeding. Under these facts and circumstances, the Commission finds that Sunflower's request is not timely and that there is not sufficient reason or lawful basis for staying the Commission's prior order. Sunflower's Motion for Stay should be denied.

42. Staff provided testimony that Midwest lost approximately $109,194 in revenue because Sunflower failed to use Midwest's facilities. (Maxwell, Tr. at 331-9). However, this amount was based upon the average price paid by several municipal customers using Midwest's open access transmission tariff. (Maxwell, Tr. at 331-9). Midwest provided an estimate of the appropriate amount of refund using Hill City's actual usage over the relevant time period and its open access transmission tariff. (Dowling, Tr. at 279-14, Exhibit MWE-9). Midwest lost revenues, as of April 1997 of $92,672.38. (Dowling, Tr. at 279-14, Exhibit MWE-9). Sunflower is directed to reimburse Midwest for this amount.

43. Staff suggested in their testimony that interest should be assessed. (Maxwell, Tr. at 331-11). However, the record does not contain evidence of an appropriate rate of interest. At this time, the Commission will decline to impose interest on the reimbursement owed Midwest.

44. Midwest has suggested that other sanctions be imposed in its Motion for Contempt. However, the Commission will accept the explanation of Sunflower's counsel for the failure to abide by the Commission's order and will not impose any sanctions.

IT IS, THEREFORE, BY THE COMMISSION, CONSIDERED AND ORDERED, for the reasons more fully set forth above, that:

(1) The Application of Sunflower and Norton-Decatur for approval of the proposed interconnection and power supply agreement with Hill City shall be and is hereby, denied.

(2) Sunflower's Motion for Stay shall be, and is hereby, denied.

(3) Midwest's Motion for Contempt shall be, and is hereby, denied except Sunflower shall reimburse Midwest $92,672.38 for lost revenue.

(4) Certain open access transmission issues shall be referred to the Electric Restructuring Docket, Docket No. 193,930-U.

(5) The parties have fifteen days, plus three days if service of this Order is by mail, from the date of this Order in which to petition the Commission for reconsideration of any matter decided herein.

Home

About the KCC

Consumer Information

Docket Filings

e-filing EXPRESS

Electric Issues

Energy

Induced Seismicity

Liquids Pipeline

Motor Carriers

Natural Gas

Oil & Gas

Pipeline Safety

Precedent & Guidance Documents

Statutes & Regulations

Telecom

Underground Utility Damage Prevention

Video

News Room | Calendar | Site Map | Maps | Employment | Contact Us | Other Links

Docket 17-KPPE-092-COM

Details | Documents | Service List | Staff Assignments | Testimony/Briefs | Hearing Dates

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