

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

DEC 21 2007

*Susan Talbot* Docket Room

In the Matter of the Application of )  
Kansas Electric Power Cooperative, Inc. )  
For Approval to Make Changes in its )  
Charges for Electric Service. )

Docket No. 08-KEPE-597-RTS

**MOTION FOR INTERIM RATE RELIEF SUBJECT TO REFUND**

COMES NOW Kansas Electric Power Cooperative, Inc. (KEPCo) and pursuant to K.S.A. 66-117, files this Motion for Interim Rate Relief Subject to Refund (Motion). KEPCo is requesting authority to place into effect interim rates in the form of a small increase of two mills per kWh (\$2.00 per MWh) of energy delivered to its members. KEPCo is further requesting that these interim rates be authorized during the period from June 2008 through August 31, 2008, or whenever the Kansas Corporation Commission (KCC or Commission) issues a final Order approving KEPCo's rate increase, and such rates become effective. Any interim rates authorized by the Commission pursuant to this Motion would be subject to refund. In support of its Motion, KEPCo states as follows:

1. KEPCo is a corporation organized and existing under the laws of the State of Kansas with its principal place of business located at 600 S.W. Corporate View, Topeka, Kansas 66615. KEPCo is a generation and transmission cooperative with 19 rural electric cooperative member systems that distribute electric power to approximately 300,000 rural Kansans, and was granted the appropriate authority to transact the business of an electric utility in the State of Kansas.

2. On December 21, 2007, KEPCo filed an application with the Commission for an increase in its electric rates, requesting an increase in revenues of \$5,410,938 to correct a

revenue deficiency which is causing KEPCo irreparable harm, as it is unable to maintain the commitments of its mortgage indentures without improved revenues.

3. The Commission has the authority to issue interim rate relief subject to refund for utilities which are subject to its jurisdiction. *See Kansas Nebraska Natural Gas Co. v. State Corporation Commission*, 21 Kan. 604, 612, 538 P.2d 702 (1975). In *Kansas Nebraska*, the Kansas Supreme Court held that the KCC possesses this authority under Kansas statutes and case law, citing to several Kansas statutes, as well as to *Southwestern Bell Tel. Co. v. State Corporation Commission*, 192 Kan. 39, 386 P.2d 515 (1963), which held that:

The regulation of public utilities, including the fixing of rates, is a legislative function. The legislature has seen fit to delegate its authority, with broad powers, to the State Corporation Commission. The only statutory standard controlling the Commission in fixing rates for public utilities is that the rates must be just and reasonable.... (citations omitted).

4. In *Kansas Nebraska*, the Court cited to a decision by the Michigan Public Service Commission in *Re Michigan Consolidated Gas Co.*, 88 PUR 3d 168, which set forth a test for determining whether a temporary rate increase is just and reasonable, stating that: “in order to warrant a temporary rate increase in the course of fixing final rates, there should be one of the following conditions in existence, besides the obvious requirement of a revenue deficiency.

- 1) Inability to arrange debt financing at reasonable rates without improved revenues;
- 2) Distinctive and sudden decline in revenues;
- 3) Evidence of unreasonable and harmful loss of revenues if partial rate relief is deferred;
- 4) Reasonable grounds to believe that denial of such interim relief would cause irreparable harm to the utility.

*Kansas Nebraska*, Id. at 614.

5. After referencing the above test, the Court specifically held that the inability of a utility to arrange necessary debt financing at reasonable rates without improved revenues would warrant the grant of interim rate relief, stating that:

We think that whether an interim rate should be granted pending final decision should ordinarily depend on whether irreparable harm would result to the utility by reason of a distinctive and sudden deficiency in revenue which is not subject to recovery. The fact that a utility is unable to arrange necessary debt financing at reasonable rates without improved revenues manifestly could be a condition warranting the grant of interim rate relief.

Id. While the Court did not limit its holding to only instances in which debt financing is not obtainable at reasonable rates, this holding demonstrates that such a demonstration is sufficient to meet the above test.

6. The Commission has previously applied the above test in determining whether interim rate relief should be granted to other utilities. For example, in the Commission's October 8, 2004 Order in *In the Matter of the Application of Aquila, Inc. d/b/a Aquila Networks – WPK For Approval of the Commission to Make Certain Changes in its Rates for Electric Service*, Docket No. 04-AQLE-1065-RTS (the "1065-RTS Docket"), the Commission applied the above test in determining whether interim rate relief was appropriate for Aquila, Inc. d/b/a Aquila Networks – WPK (Aquila). In the 1065-RTS Docket, the Commission recognized that the *Kansas Nebraska* case enumerates three primary principles that must be considered when determining whether interim rate relief is warranted, stating on page 5, ¶14, that:

Initially, an applicant for interim rate relief has the burden of making a *prima facie* showing that its current rates are no longer just and reasonable, using acceptable methods of accounting procedures in determining and allocating the costs and rate bases, *Id.*, Syl. ¶ 5. Once a *prima facie* case has been made, the determination whether interim rate relief is warranted is within the sound discretion of the Commission within the perimeter of reasonableness and justice to the utility and to those served by it. *Id.*, Syl. ¶3. Whether an interim rate increase should be granted pending the final decision on a rate application should ordinarily depend on whether irreparable harm would result to the utility by

reason of a distinctive and sudden deficiency in revenue that is not subject to recovery. *Id.*, Syl. ¶ 4.

7. Although KEPCo believes that the standard for interim rate relief articulated by the court in the *Kansas Nebraska* case is appropriately applied to KEPCo, KEPCo submits that there are certain differences between an investor-owned utility and an electric cooperative that should be considered when applying this standard. When analyzing its rates and revenue requirement, an investor-owned utility is required to appropriately balance the needs of its creditors, shareholders, and its customers. As a non-profit generation and transmission electric cooperative, KEPCo does not have the same balance to maintain, as it does not earn profits for shareholders. KEPCo provides wholesale power to its 19 rural electric cooperative member systems that distribute electric power to approximately 300,000 rural Kansans. KEPCo's member distribution cooperatives are its only significant customers, and these customers' rates are ideally set to recover operating costs and maintain appropriate reserves. Any revenues, or margins, received over KEPCo's costs are allocated to the members as capital credits and are used in the operation of KEPCo until the Board returns such contributed capital to the members. As such, KEPCo asserts that the inability to meet mortgage indenture commitments, as discussed below, is an appropriate demonstration of irreparable harm to justify interim rate relief. Because the affected customers are also represented on the Board of Trustees which has acted to direct KEPCo to file the instant application for an increase in rates as well as this motion for interim relief, the action of the Board of Trustees should be given great weight in judging the reasonableness of the request.

8. Through its application and accompanying testimony and exhibits, KEPCo submits that it has made a *prima facie* showing that its current rates are no longer just and reasonable and that interim rate relief is appropriate and warranted. KEPCo witness J. Bertram

Solomon discusses in his testimony the ways in which KEPCo's financial condition has deteriorated in recent years and notes that it is expected to worsen considerably if current rates are not modified. Mr. Solomon states that in order to maintain the principal payments on its mortgage indenture with the Federal government and its other financial commitments, KEPCo will require more cash than is generated through the depreciation and amortization components built into current rates. (Solomon Testimony at p. 5) Mr. Solomon further notes that as KEPCo enters into new and replacement power agreements in the next several years, KEPCo will increasingly be required to demonstrate its creditworthiness to wholesale power suppliers and to lenders, as well as to its transmission services provider. As discussed by Mr. Solomon, since the majority of KEPCo's costs arise from its acquisition of generation resources, it requires the flexibility to make the most economic choices with respect to power supply. A key component of this flexibility is the ability to demonstrate its long-term financial soundness, including accumulating equity capital and substantially improving its equity ratio. As a member-owned cooperative, KEPCo's equity capital must be collected from its members through its rates. (Solomon Testimony at pp. 7-8.)

9. In addition, as discussed in Stephen Parr's testimony, KEPCo anticipates that if the statutory timeframe for a rate case application is followed, its new rates would go into effect on or around September 1, 2008. However, KEPCo is required by its mortgage indenture to meet certain debt service coverage (DSC) levels on a calendar year basis. If new KCC-approved rates become effective on or around September 1, 2008, the remaining four months of 2008 in which KEPCo would presumably be allowed to charge the new KCC-approved rates may not be sufficient to bring the DSC to the required level. (Parr Testimony at p. 12.)

10. KEPCo also submits that without interim rate relief, irreparable harm would result to KEPCo because it is unable to arrange necessary debt financing at reasonable rates without improved revenues. As referenced in the 1065-RTS Docket, irreparable harm may be demonstrated not only by “distinctive and sudden deficiency in revenue,” but also by “the fact that a utility is unable to arrange necessary debt financing at reasonable rates without improved revenues manifestly could be a condition warranting the grant of interim rate relief.” As stated in the testimony of Stephen Parr, due to the capital structure of an electric cooperative such as KEPCo, and the mortgage requirements of the Rural Utilities Service (RUS), DSC is of great significance, as it establishes the margin and working capital available for KEPCo. As such, KEPCo’s rates are determined using a DSC requirement, as opposed to a rate of return approach. In 2006, KEPCo had a DSC ratio of below 1.0. As stated in the testimony of Coleen M. Wells, “[i]f KEPCo does not receive an increase in rates that generates a DSC sufficient to average 1.0 with either KEPCo’s 2006 DSC of .96 or KEPCo’s 2007 DSC, KEPCo will not be in compliance with its coverage requirements in its mortgage with RUS and CFC for 2008.” (Wells Testimony at p. 9.) KEPCo expects its 2007 DSC to be below 1.0, but will not be able to quantify the actual result until sometime in January. If the 2007 DSC is below the 2006 level, 2006 will be the critical year, as KEPCo’s mortgage requires that the DSC average 1.0 in two out of the last three years.

11. As articulated above in the *Kansas Nebraska* case, in addition to the requirement of a revenue deficiency, if a utility has reasonable grounds to believe that denial of interim relief would cause irreparable harm to the utility, interim rate relief may be warranted. KEPCo submits that such reasonable grounds exist, that interim rate relief is appropriate, and that its

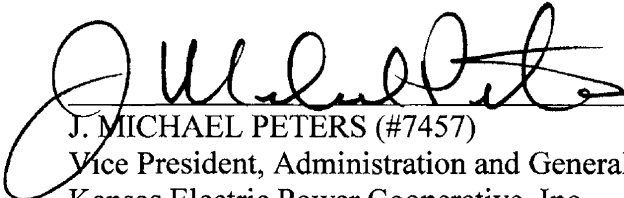
Members will not be harmed by this request. Interim relief is for a short time period only and is fully subject to refund upon the Commission's final determination in the present rate case filing.

12. In reviewing its alternatives regarding how to structure the interim rate relief sought, KEPCo considered and discussed three options with its Board and with the Commission Staff: (i) interim rates from June 2008 through August 31, 2008, subject to refund of revenues in excess of those required to achieve a 1.10 DSC as set forth in the budget, in the form of a small increase of two mills per kWh (\$2.00 per MWh) of energy delivered to its members, as currently sought in this application; or (ii) an adder of two mills per kWh (\$2.00 per MWh) from September 1, 2008 through December 31, 2008, subject to refund as with the interim rate relief, (iii) a request for expedited treatment such that the Commission issues a rate order sooner than 8 months after the filing of the rate case, for example by July 1, 2008, so that rates would take effect earlier and KEPCo would have the benefit of additional time with the new rates in calendar year 2008. The KCC Staff has expressed its preference that KEPCo structure its request for interim rate relief in the manner requested in this application, and the KEPCo Board concurs that this is the most reasonable and appropriate alternative. Consistent with the KCC Staff's preference, the KEPCo Board directed KEPCo to file this motion seeking interim rate relief, as set forth herein, and as reflected in the attached Resolution No. 07-28, which is attached hereto as Exhibit A.

13. In the alternative, if the Commission determines that the interim rate relief requested in this application is not warranted, KEPCo requests that the Commission consider one of the alternatives to interim rate relief, the surcharge of two mills per kWh (\$2.00 per MWh) from September 1, 2008, to December 31, 2008, or the expedited treatment, as detailed above.

WHEREFORE, for the reasons set forth herein, KEPCo requests that its Motion for Interim Rate Relief Subject to Refund be granted by the Commission so that the interim rates in the form of a small increase of two mills per kWh (\$2.00 per MWh) can go into effect no later than June 2008 and remain in effect until September 2008, or until the Commission issues a final Order approving KEPCo's rate increase, and such rates become effective. Alternatively, in the event the Commission elects not to grant the interim relief requested in this application, KEPCo requests that the Commission consider one of the alternative options for relief as detailed above.

Respectfully submitted,



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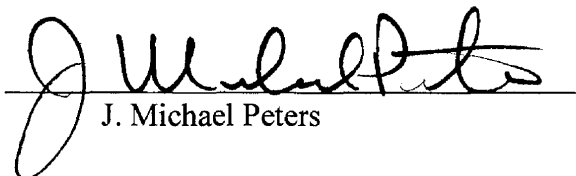
ATTORNEYS FOR KANSAS ELECTRIC POWER  
COOPERATIVE, INC.



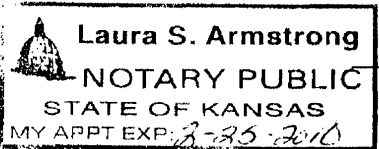
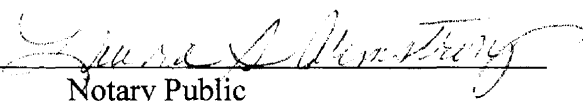
**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SHAWNEE    )

J. Michael Peters, being first duly sworn, deposes and states that he is Vice President, Administration and General Counsel for Kansas Electric Power Cooperative, Inc., applicant in the above-captioned matter; that he has read the foregoing Motion and verifies that the allegations therein contained are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
J. Michael Peters

Subscribed and sworn to before me on this 21st day of December, 2007.

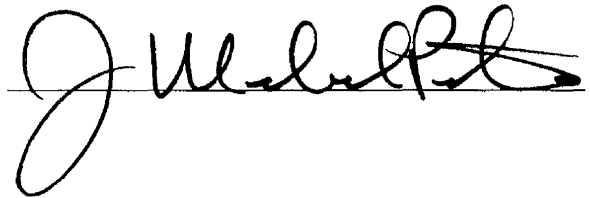
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\_\_\_\_\_  
Notary Public

My Appointment Expires: 3-25-2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of December, 2007, a true and correct copy of the above and foregoing Motion with all supporting schedules was placed in the United States mail, first class postage prepaid, properly addressed to:

TOM STRATTON CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027	DON LOW DIRECTOR UTILITY OPERATIONS KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027
DAVID SPRINGE CITIZENS' UTILITY RATEPAYERS BOARD 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027	



## CERTIFICATION

I, J. Michael Peters, do hereby certify that I am the duly appointed and qualified Assistant Secretary of Kansas Electric Power Cooperative, Inc. and that the following is a true and correct copy of the Resolution duly adopted by the Board of Trustees of Kansas Electric Power Cooperative, Inc. at its meeting held on December 19, 2007:

### **RESOLUTION NO. 07-28**

#### **AUTHORIZING REQUEST FOR INTERIM RATE RELIEF**

WHEREAS, the Kansas Electric Power Cooperative, Inc. (KEPCo) is an electric cooperative organized under the laws of the State of Kansas and is authorized to engage in the business of an electric utility under a Limited Certificate of Convenience and Authority issued by the Kansas Corporation Commission (KCC) on October 22, 1980; and,

WHEREAS, at the regular meeting of the Board of Trustees on November 15, 2007, the Board directed KEPCo Staff to file an Application with the KCC by December 31, 2007 requesting approval for KEPCo to adjust its rates to achieve a revenue requirement of \$106,957,234; and

WHEREAS, under normal procedures increased rates may not go into effect until September 1, 2008; and

WHEREAS, the increased rates applied for the period September 1 through December 31, 2008 may be inadequate to achieve an adequate Debt Service Coverage ratio (DSC) under KEPCo's mortgage covenants; and

WHEREAS, it is in the best interests of KEPCo to seek additional relief from the KCC to assure that KEPCo will not fail to achieve its DSC requirement; and,

WHEREAS, the KEPCo Staff has presented several alternative modes of additional relief that it could request of the KCC.

NOW, THEREFORE, BE IT RESOLVED that the KEPCo Staff is directed to file a motion with the KCC, in conjunction with the Application requesting approval for KEPCo to adjust its rates, previously authorized, seeking, in the alternative, interim rate relief consisting of a two mills per kWh addition to KEPCo's energy

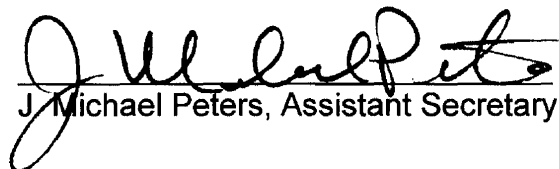
charge for the period June 1, 2008 through August 31, 2008; a two mills per kWh adder to the energy charge resulting from the rate application for the period September 1, 2008 through December 31, 2008; or expedited treatment of KEPCo's rate Application such that the rates could go into effect July 1, 2008. Be it further resolved that if either the interim rate or the rate adder is approved by the KCC, that a refund obligation be requested that would require refunds of any amounts collected thereunder that caused KEPCo to achieve a DSC for calendar year 2008 to exceed 1.10.

The above Resolution was adopted unanimously as above set out and has never been rescinded, altered, amended, modified, or repealed, and is on this date in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and attached the seal of this Corporation this 21<sup>st</sup> day of December, 2007.



(Corporate Seal)

  
J. Michael Peters, Assistant Secretary