

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

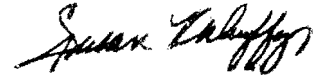
Before Commissioners: Thomas E. Wright, Chairman
Joseph F. Harkins

STATE CORPORATION COMMISSION

APR 16 2010

In the Matter of the Application of Sunflower)
Electric Power Corporation and Kansas Electric)
Power Cooperative, Inc. for an Order Approving)
a New Wholesale Power Agreement.)

Docket No. 06-SEPE -1203-CON



**JOINT MOTION FOR APPROVAL
OF STIPULATION AND AGREEMENT**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), Sunflower Electric Power Corporation (Sunflower), and Kansas Electric Power Cooperative (KEPCo) (collectively, the "Joint Movants"), and jointly move that the Commission issue an Order approving the Stipulation and Agreement (S&A) filed contemporaneously with this Motion. In support of this Motion, the Joint Movants state as follows:

1. On May 12, 2006, Sunflower Electric Power Corporation (Sunflower) and Kansas Electric Power Cooperative (KEPCo) filed a joint application under this docket seeking to approve the Wholesale Power Agreement (WPA), dated May 11, 2006, between Sunflower and KEPCo.

2. On July 17, 2006, the Commission issued an Order (2006 Order) approving the WPA and the rate structure as set forth in the WPA.

3. The rate structure under the terms of the WPA provided Sunflower would sell and KEPCo would purchase power and energy from Sunflower at Sunflower's Member rate (WHM Rate) under Tariff Schedule WHM-04 plus an adder (collectively the WPA Rate).

4. At the time the WPA was entered into and approved, Sunflower and KEPCo had not exempted themselves from regulation as later authorized by K.S.A. 66-104d.

5. Subsequent to the approval of the WPA by the Commission, both Sunflower and KEPCo elected as provided by K.S.A. 66-104d to be exempt from regulation which the Commission approved.

6. On December 18, 2009, Sunflower's Board of Directors modified its WHM Rate to its members effective January 1, 2010, effectively replacing Tariff Schedule WHM-04 with Tariff Schedule WHM-10.

7. Sunflower notified KEPCo by letter dated December 30, 2009, of the modification to the WHM Rate and the modification to the WPA Rate accordingly.

8. In response, KEPCo notified Sunflower by letter dated January 8, 2010, that it did not concur with Sunflower's contention that the WPA Rate increased without Commission approval as a result of the modification of the WHM Rate.

9. On February 16, 2010, Sunflower filed an application in this docket seeking the Commission's approval of the change in billing to KEPCo under the WPA (Application), effective as of the date of filing, that would incorporate the WHM Rate under Tariff Schedule WHM-10 into the rates paid by KEPCo under the WPA Schedule A – Rate Schedule; and further stating that Sunflower believed the WPA rate schedule approved by the Commission in its 2006 Order was a valid automatic adjustment clause allowing Sunflower to adjust the WPA invoices to reflect any lawful change in the WHM Rate. KEPCo disputed that conclusion resulting in Sunflower submitting the request to the Commission without prejudice to the question of whether or not the WPA Rate is a valid automatic adjustment clause.

10. In response to the Sunflower Application, KEPCo filed a Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. The KEPCo petition sought (i) the transfer of the proceeding to a new rate proceeding docket, (ii) granting intervention without limitation, (iii) that Sunflower's service to KEPCo is subject to the full jurisdiction of the Commission, (iv) that the Sunflower charges to KEPCo, based upon Tariff Schedule WHM-10, are unlawful until those rates have been approved by the Commission and (v) that Sunflower must cease and desist from charging KEPCo under any rate other than the WHM-04 rate in Schedule A under the WPA until such time as a new rate is approved and made effective by order of the Commission for service to KEPCo.

11. On March 8, 2010, Sunflower filed a response to the Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. Sunflower stated that the Commission has exclusive jurisdiction to determine whether additional Commission review and approval of the WPA Rate to KEPCo under the WPA is required when the WHM Rate changes, as it did effective January 1, 2010. Furthermore, if the Commission by its 2006 Order established an automatic adjustment to the WPA Rate, then no further filing or approval is required. If it did not, then Sunflower acknowledges that the change in the charges to KEPCo requires application to and approval of the Commission and further clarification is sought from the Commission as to the form and content of the review and, ultimately, approval of those changes effective the date Sunflower's Application was filed.

12. Sunflower further submitted in its response that KEPCo's intervention was, by contract, limited to the question of whether the revised charges are discriminatory as provided in Section 4. E. of the WPA. Sunflower further objected to opening a new docket, contending the WPA is a special contract and the proper docket is the current docket. Also, Sunflower stated in

its response that many of KEPCo's arguments are related to interpretation of the contract which may not fall within the purview of the Commission, and reserved the right to address the jurisdictional questions when and where appropriate. Finally, Sunflower responded that the Commission has the authority to approve an automatically adjusting rate without the need for full rate hearings, and contended that the 2006 Order contemplated such treatment.

13. The Joint Movants met and discussed settlement of this docket. As a result of the negotiations, the Joint Movants agreed to a means of approving the new rate for KEPCo and how to address similar changes that may occur in the future.

14. On April 7, 2010, the parties entered into a unanimous Stipulation and Agreement (S&A) to resolve all issues in this docket. The parties to the agreement are KEPCo, Sunflower, and Staff.

15. The S&A meets the five factors set forth by this Commission in prior settlements because:

- A. The parties to the S&A have agreed that the terms are fair and reasonable and have been fully negotiated between the parties;
- B. All parties were given the opportunity to participate and had a full and fair opportunity to be heard;
- C. The S&A is supported by substantial and competent evidence that has been exchanged between the parties;
- D. No provision of the S&A is in violation of applicable state or federal law; and
- E. The results of the S&A are in the public interest and the S&A will result in fair and equitable rates for Sunflower and KEPCo ratepayers.

15. KEPCo and Sunflower have conferred authority on Staff to file this Motion as a joint motion.

WHEREFORE, Staff respectfully requests that the Commission approve the Stipulation and Agreement, approve the WHM-10 rate and make it effective May 1, 2010, and for any further relief the Commission shall deem just and appropriate.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick T. Smith", is written over a horizontal line.


Patrick T. Smith, #18275
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PTS:kkd

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

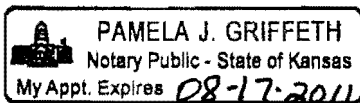
VERIFICATION

Patrick T. Smith, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing, *Joint Motion For Approval of Stipulation and Agreement*, and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Patrick T. Smith, #18275
Litigation Counsel
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 16th day of April, 2010.


Notary Public

My Appointment Expires: *August 17, 2011*

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

In the Matter of the Application of)	
Sunflower Electric Power Corporation and)	
Kansas Electric Power Cooperative, Inc.)	Docket No. 06-SEPE-1203-CON
for an Order Approving A New Wholesale)	
Power Agreement)	

STIPULATION AND AGREEMENT

In an effort to resolve the disputed issues in the above captioned matter, the Staff of the State Corporation Commission of the State of Kansas (Staff), Sunflower Electric Power Corporation (Sunflower) and Kansas Electric Power Cooperative, Inc. (KEPCo) engaged in discussions aimed at resolving such disputed issues and reaching a settlement which would result in fair and equitable rates for Sunflower and KEPCo ratepayers, and provide Sunflower with sufficient revenue to continue to provide safe and reliable electric utility service. As a result of those negotiations, the signatories have reached a unanimous settlement and hereby submit to the State Corporation Commission of the State of Kansas (Commission) for consideration and approval the following Stipulation and Agreement (Agreement):

I. Sunflower's Application

1. On May 12, 2006, Sunflower and KEPCo filed a joint application under this docket seeking to approve the Wholesale Power Agreement (WPA), dated May 11, 2006, between Sunflower and KEPCo.
2. The Commission issued an order dated July 17, 2006, approving the WPA and the rate structure as set forth in the WPA (2006 Order).
3. The rate structure under the terms of the WPA provided Sunflower would sell and KEPCo would purchase power and energy from Sunflower at Sunflower's Member rate (WHM Rate) under Tariff Schedule WHM-04 plus an adder (collectively the WPA Rate).
4. At the time the WPA was entered into and approved, Sunflower and KEPCo had not exempted themselves from regulation as later authorized by K.S.A 66-104d.

5. Subsequent to the approval of the WPA by the Commission, both Sunflower and KEPCo elected as provided by K.S.A 66-104d to be exempt from regulation which the Commission approved.
6. On December 18, 2009, Sunflower's Board of Directors modified its WHM Rate to its members effective January 1, 2010, effectively replacing Tariff Schedule WHM-04 with Tariff Schedule WHM-10.
7. Sunflower notified KEPCo by letter dated December 30, 2009, of the modification to the WHM Rate and the modification to the WPA Rate accordingly.
8. In response, KEPCo notified Sunflower by letter dated January 8, 2010, that it did not concur with Sunflower's contention that the WPA Rate increased without Commission approval as a result of the modification of the WHM Rate.
9. On February 16, 2010, Sunflower filed an application in this docket seeking the Commission's approval of the change in billing to KEPCo under the WPA (Application), effective as of the date of filing, that would incorporate the WHM Rate under Tariff Schedule WHM-10 into the rates paid by KEPCo under the WPA Schedule A – Rate Schedule; and further stating that Sunflower believes the WPA Rate schedule approved by the Commission in its 2006 Order is a valid automatic adjustment clause allowing Sunflower to adjust the WPA invoices to reflect any lawful change in the WHM Rate. KEPCo disputed that conclusion resulting in Sunflower submitting the request to the Commission without prejudice to the question of whether or not the WPA Rate is a valid automatic adjustment clause.
10. In response to the Sunflower Application, KEPCo filed a Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. The KEPCo petition sought (i) the transfer of the proceeding to a new rate proceeding docket, (ii) granting intervention without limitation, (iii) that Sunflower's service to KEPCo is subject to the full jurisdiction of the Commission, (iv) that the Sunflower charges to KEPCo, based upon Tariff Schedule WHM-10, are unlawful until those rates have been approved by the Commission and (v) that Sunflower must cease and desist from charging KEPCo under any rate other than the WHM-04 rate in Schedule A under the WPA until such time as a new rate is approved and made effective by order of the Commission for service to KEPCo.
11. On March 8, 2010, Sunflower filed a response to the Petition to Intervene of Kansas Electric Power Cooperative, Inc. and Motion to Open Separate Docket. Sunflower stated

that the Commission has exclusive jurisdiction to determine whether additional Commission review and approval of the WPA Rate to KEPCo under the WPA is required when the WHM Rate changes, as it did effective January 1, 2010. Furthermore, if the Commission by its 2006 Order established an automatic adjustment to the WPA Rate, then no further filing or approval is required. If it did not, then Sunflower acknowledges that the change in the charges to KEPCo requires application to and approval of the Commission and further clarification is sought from the Commission as to the form and content of the review and, ultimately, approval of those changes effective the date Sunflower's Application was filed.

12. Sunflower further submitted in its response that KEPCo's intervention is, by contract, limited to the question of whether the revised charges are discriminatory as provided in Section 4. E. of the WPA. Sunflower further objected to opening a new docket, contending the WPA is a special contract and the proper docket is the current docket. Also, Sunflower stated in its response that many of KEPCo's arguments are related to interpretation of the contract which may not fall within the purview of the Commission, and reserved the right to address the jurisdictional questions when and where appropriate. Finally, Sunflower responded that the Commission has the authority to approve an automatically adjusting rate without the need for full rate hearings, and contended that the 2006 Order contemplated such treatment.

II. Agreement

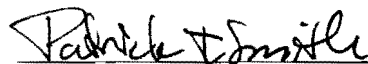
13. Sunflower, KEPCo and Staff, for purposes of this Agreement and to resolve the matter upon the terms and conditions herein, concur that the WPA Rate based upon the WHM-10 rate is just and reasonable and seek the Commission's approval of the new WPA Rate based upon the WHM-10 rate effective as to services rendered as of the first day of the month following Commission approval of this Agreement and Tariff Schedule WHM-10. For purposes of this Agreement and limited to the rate increase as provided under the proposed WPA Rate, KEPCo has no substantive objection to the contents of the WPA Rate as filed. As a result, the signatories hereto request the Commission to act as soon as possible to approve the WPA Rate based upon the Tariff Schedule WHM-10 for prospective application to KEPCo.
14. Sunflower, KEPCo and Staff stipulate and agree that for future changes to the WHM rate, Sunflower will, after engaging in the discussions with KEPCo called for in the WPA, file its proposed new WHM rate for Commission approval for application to KEPCo, to be reviewed under such scope of review as may be determined by the Commission. Each

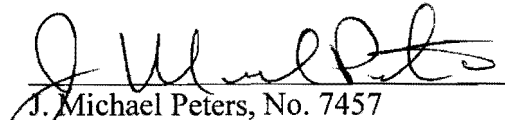
party may argue for such scope of review as it deems appropriate at the time of such filing but Commission approval of the WPA Rate shall be required.

III. Miscellaneous Provisions

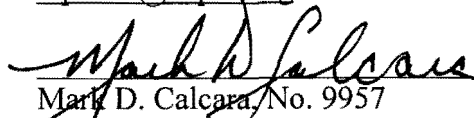
15. Except as provided above, this Agreement fully resolves all issues among the signatories. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.
16. The terms and provisions of this Agreement have resulted from negotiations among the signatories.
17. Unless (and only to the extent) otherwise specified in this Agreement, the signatories shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in its entirety or in any way conditions its approval of the same. The Commission's approval of this Agreement shall have no precedential effect in any other proceeding.
18. If the Commission accepts this Agreement in its entirety and incorporates the same into its final order in this docket, the signatories intend to be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's Order on those issues.

IN WITNESS WHEREOF, the signatories have executed and approved this Agreement effective as of the 7th day of April, 2010, by subscribing their signatures below.


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CERTIFICATE OF SERVICE

06-SEPE-1203-CON

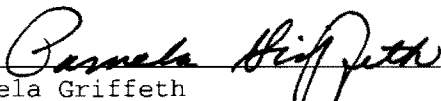
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Motion For Approval of Stipulation and Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 16th day of April, 2010, to the following:

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Administrative Specialist