

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

MAR 22 2013

by  
State Corporation Commission  
of Kansas

In the Matter of the Joint Application of Mid- )  
Kansas Electric Company, LLC, Lane-Scott ) Docket No. 13-MKEE-447-MIS  
Electric Cooperative, Inc., Prairie Land Electric )  
Cooperative, Inc., Southern Pioneer Electric )  
Company, Victory Electric Cooperative )  
Association, Inc., Western Cooperative Electric )  
Association, Inc., and Wheatland Electric )  
Cooperative, Inc., Joint Applicants, for an Order )  
Approving the Transfer of Certificates of )  
Convenience With Respect to All of Mid- )  
Kansas' Retail Electric Services and for Other )  
Related Relief. )

**CURB REPLY BRIEF ON JURISDICTION AND STANDING**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and files this reply brief pursuant to the Commission's February 14, 2013, Order Setting Procedural Schedule. CURB's decision to respond to some but not all issues raised by other parties should not be construed as agreement with or acquiescence to the positions taken by other parties in their briefs. In support of its reply brief, CURB states as follows.

**I. JURISDICTION.**

**Issue #1:** Approving the transfer of Mid-Kansas' Certificate(s) of Convenience and Necessity to its Members with respect to all of its local distribution system and retail electric utility services and operations in the State of Kansas, with Mid-Kansas retaining its certificate as to its generation and transmission assets and services, and its certificated right to provide transmission services in its currently designated retail certificated territory, and a finding the transfers of the Certificate(s) are in the public interest and approving the same.

1. The parties are in agreement that the Commission has jurisdiction to address the first and primary issue raised in the Application.

**Issue # 2:** If required, approving a Wholesale Requirements Agreement.

2. The parties are in agreement that the Commission has jurisdiction to address the second issue raised in the Application.

**Issue # 3:** Approving adoption by the Members of all applicable retail rates, rules, and tariffs with respect to the local distribution and retail electric utility services necessary to operations.

3. The parties are in agreement that the Commission has jurisdiction to address the third issue raised in the Application.

**Issue # 4:** Approving the Shared Service Agreement, as supplemented, and, to the extent required, approving the Settlement Agreement, as supplemented.

4. All parties except Staff appear to be in agreement that the Commission has jurisdiction to address the fourth issue raised in the Application. Staff argues that the Commission does not have jurisdiction to address this issue because even though the Commission has jurisdiction over the Wholesale Power Agreement between Sunflower and KEPCo and the Wholesale Power Agreement between MKEC and KEPCo, the Commission does not have jurisdiction over the Wholesale Requirements Agreement because it incorporates non-jurisdictional Wholesale Power Contracts between KEPCo and Sunflower and their members.<sup>1</sup>

5. Staff's concern about the Commission's jurisdiction to address agreements that reflect an agreed-upon resolution of a matter over which the Commission no longer has jurisdiction appears to ignore the provisions of K.S.A. 66-136, which provides that contracts or agreements "with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder" are agreements that must be approved by the Commission under K.S.A. 66-136.

---

<sup>1</sup> Staff's Brief on Jurisdiction and Standing ("Staff Brief"), ¶¶ 21-32.

**Issue # 5:** Approving and finding that the terms of the wholesale services and rates provided by Kansas Electric Power Cooperative, Inc. ("KEPCo") for the Victory and Prairie Land load in the to be acquired territory be the same as the terms of the currently approved wholesale services and rates provided by Mid-Kansas, as may be modified by Mid-Kansas from time to time, and that the Commission make such finding and order prior to the transfer of the Certificates of Convenience to Victory and Prairie Land; provided further, should KEPCo elect in the future to set terms of wholesale service and rates for Victory and Prairie Land that differ from the approved Mid-Kansas wholesale terms of service and rates, ordering that the wholesale terms of service and rates can be modified only after approval by the Commission.

6. The parties are not in agreement that the Commission has jurisdiction to address the fifth issue raised in the Application. Staff and KEPCo argue that the Commission does not have jurisdiction to address this issue, and the Joint Applicants, WKIEC, and CURB take the position the Commission does have the jurisdiction to address this issue.

7. This is a difficult and complex issue. To the extent the Commission is being asked to approve the current terms of the wholesale services and rates provided by KEPCo, CURB submits this constitutes a "contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder" that must be approved by the Commission under K.S.A. 66-136. However, to the extent the Joint Applicants are asking the Commission to approve future changes in the terms of the wholesale services and rates provided by KEPCo, the Joint Applicants may be asking the Commission to exceed its authority.

**Issue # 6:** If required, approving the assignment of the Wholesale Requirements Agreement by and among Mid-Kansas, the Members, KEPCo and Sunflower Electric Power Corporation ("Sunflower"), as applicable.

8. The parties are not in agreement that the Commission has jurisdiction to address the sixth issue raised in the Application. Staff and KEPCo argue that the Commission does not have

jurisdiction to address this issue, and the Joint Applicants, WKIEC, and CURB take the position the Commission does have the jurisdiction to address this issue.

9. The assignment of the Wholesale Requirements Agreement by and among MKEC, its six owners, KEPCo, and Sunflower would appear to constitute a “contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder” that must be approved by the Commission under K.S.A. 66-136. However, the concerns discussed by Staff and KEPCo regarding these issues may need to be resolved before the Commission can determine whether the transfer of MKEC’s certificate of convenience and necessity is in the public interest.

**Issue # 7:** Determining the process necessary for the Member cooperatives to become or remain exempt from Commission regulation pursuant to K.S.A. 66-104d after the transfer of the Certificate of Convenience, and modifying the Commission’s Order in Docket No. 06-MKEE-524-ACQ as necessary to reflect such determination.

10. The parties are in agreement that the Commission has jurisdiction to address the seventh issue raised in the Application. However, Joint Applicants statements to the contrary,<sup>2</sup> the 524 S&A and the 524 Order was entered into under circumstances no different than the circumstances under which the spin down is now contemplated. The record that will be developed will demonstrate that the agreement was entered into between the parties and approved by the Commission after finding it to be just and reasonable, in the public interest, and *the result of arms length negotiations* between the signatories to the S&A.<sup>3</sup> Because the deregulated cooperatives currently operate their native deregulated systems separate from the regulated MKEC division

---

<sup>2</sup> Joint Applicant’s Brief in Compliance with Order Setting Procedural Schedule (“Joint Applicants Brief”), pp. 19-20.

<sup>3</sup> Order Adopting Stipulation and Agreement (“524 Order”), February 23, 2007, ¶11. *See also*, Testimony L. Earl Watkins, Jr., January 10, 2007, p. 9; Supplemental Testimony of L. Earl Watkins, Jr., pp. 1-3.

systems, continuing to operate them separately unless/until a separate vote to deregulate is made by the former WPK customers will not affect their operations or the deregulated status of the native systems in any manner. The Joint Applicants' request to abrogate the agreement is not supported by substantial competent evidence.

## **II. EACH OF THE SEVEN ISSUES IDENTIFIED IN THE JOINT APPLICATION AFFECT RESIDENTIAL AND SMALL BUSINESS CUSTOMERS.**

11. Only Joint Applicants appear to contest the conclusion that each of the seven issues identified in the Joint Application will affect residential and small Commercial customers.<sup>4</sup> Joint Applicant's contention that the impact on residential and small commercial customers from the transfer of the certificates will be "non-existent"<sup>5</sup> is without merit or credibility. Joint Applicants modify that statement in subsequent statements:

- Joint Applicants contend approval of the Settlement Agreement, Shared Service Agreement, WRA and assignment "will have minimal impact,"<sup>6</sup> yet readily admit that should the KEPCo rate differ, the "impact has the potential to be significant"<sup>7</sup>
- "As to revising the process under the 524 Docket to determine the deregulated status of the individual cooperative members, next to the KEPCo rate issue, the issue may have the *most significant impact on the residential and small business customers.*"<sup>8</sup>

12. Staff, on the other hand, admits that "there is no question" issues 1, 2, 3, and 7 will affect all customer classes, including rates, services, and the legal requirements for each member-owner to deregulate.<sup>9</sup> Staff further admits issues 4-6 will indirectly affect residential and small

---

<sup>4</sup> Staff Brief, ¶¶ 51-56; WKIEC Brief, p. 2, ¶¶ 9-12, 17-18; CURB Brief on Jurisdiction and Standing ("CURB Brief"), ¶¶ 42-53.

<sup>5</sup> Joint Applicants Brief, p. 21.

<sup>6</sup> *Id.*, p. 22.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Staff Brief, ¶¶ 51-52.

business customers.<sup>10</sup> While CURB disagrees on the characterization of the affect being “indirect,” the fact remains these issues will affect residential and small business ratepayers.

**III. K.S.A. 66-1224 DOES NOT APPLY TO ANY OF THE SEVEN ISSUES IDENTIFIED IN THE JOINT APPLICATION.**

13. Joint Applicants’ argument that K.S.A. 66-1224 limits CURB’s statutory right to participate is without merit. The number of customers that will be served by each of the six cooperatives if the Application is approved is completely irrelevant. It is the transfer of the MKEC certificate of convenience and necessity serving 68,000 former WPK customers that is relevant and makes K.S.A. 66-1224 inapplicable.

14. Further, as demonstrated in the initial CURB Brief On Jurisdiction and Standing (“CURB Brief”), Joint Applicants fail to acknowledge that MKEC is not a cooperative as defined by K.S.A. 66-104d(a) because the cooperative definition applicable to MKEC under K.S.A. 66-104d(a) relates to MKEC’s *wholesale* services. Here, Joint Applicants seek to transfer or spin down MKEC’s certificate of convenience and necessity with respect to MKEC’s local distribution facilities and retail electric utility business and operations.<sup>11</sup>

15. Joint Applicants also fail to acknowledge that MKEC is not a cooperative as defined by K.S.A. 66-104d(a) with respect to its wholesale service because MKEC is not owned by four or more cooperatives. To the contrary, MKEC is owned by five cooperatives and one corporation (Southern Pioneer).<sup>12</sup>

---

<sup>10</sup> *Id.*, ¶¶ 53-56.

<sup>11</sup> CURB Brief, ¶¶ 54-55, 59-60.

<sup>12</sup> *Id.*, ¶¶ 61-65.

16. Joint Applicants also fail to acknowledge that CURB has the continued right to participate fully in this docket to ensure the conditions negotiated and approved in the 524 docket are followed and not abrogated, as CURB was a party to the 524 acquisition docket and a signatory party to the 524 S&A that was approved in the 524 Order.<sup>13</sup>

17. Joint Applicants fail to acknowledge that CURB's statutory right to participate in this proceeding even as it relates to the cooperatives with less than 15,000 members (Lane-Scott, Western, Prairie Land, and Victory)<sup>14</sup> stems from the fact that Joint Applicants are seeking to transfer the certificate of convenience and necessity and related contracts of *MKEC* to those cooperatives, with respect to service and rates charged to over 68,000 former WPK customers. CURB has a statutory right to represent the interests of those 68,000 ratepayers of a regulated utility (MKEC) whose service and rates will be transferred to six other utilities if the Application is approved, the same right it exercised in the 524 Docket when the certificate to serve those same customers was transferred from WPK to MKEC.<sup>15</sup> The number of customers that will be served by each of the six cooperatives is completely irrelevant. It is the transfer of the certificates from MKEC that makes K.S.A. 66-1224 inapplicable.

18. Staff likewise fails to acknowledge that this docket involves the spin down of MKEC's certificate to serve 68,000 former WPK customers to the six utilities, but instead erroneously focuses on the number of the MKEC customers whose service is being transferred to each of those six utilities.<sup>16</sup> The applicability of K.S.A. 66-1224 is determined by the request to transfer MKEC's certificate to serve 68,000 customers currently served by MKEC, a fully regulated

---

<sup>13</sup> *Id.*, ¶¶ 56-58.

<sup>14</sup> Joint Applicants Brief, pp. 24-25.

<sup>15</sup> CURB Brief, ¶¶ 66-69.

<sup>16</sup> Staff Brief, ¶¶ 57-59.


utility under Kansas law. How those 68,000 customers are divided up between the six owner utilities is irrelevant.

19. Staff does acknowledge that CURB's involvement in the 524 docket and as a signatory party to the 524 S&A gives CURB the right to participate in this docket, not only as to issue 7 (WPK customer right to vote to deregulate), but also as to many of the other issues that "are intertwined."<sup>17</sup>

**IV. CONCLUSION.**

20. WHEREFORE, CURB respectfully requests that the Commission determine that the Commission has jurisdiction to determine each of the seven issues, each of the seven issues affect residential and small commercial customers, and K.S.A. 66-1224 does not apply to any of the seven issues.

Respectfully submitted,

  
C. Steven Rarrick #13127  
David Springe #15619  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
(785) 271-3200  
(785) 271-3116 Fax

---

<sup>17</sup> *Id.*, ¶ 60.





**CERTIFICATE OF SERVICE**

13-MKEE-447-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 22<sup>nd</sup> day of March, 2013, to the following parties who have waived receipt of follow-up hard copies:

GLEND A CAFER, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
[glenda@caferlaw.com](mailto:glenda@caferlaw.com)

BRIAN G. FEDOTIN, ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
[b.fedotin@kcc.ks.gov](mailto:b.fedotin@kcc.ks.gov)

TERRI PEMBERTON, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
[terri@caferlaw.com](mailto:terri@caferlaw.com)

DOW MORRIS, ASST GENERAL MANAGER  
LANE-SCOTT ELECTRIC COOPERATIVE,  
INC.  
410 S HIGH (67839)  
PO BOX 758  
DIGHTON, KS 67839-0758  
[dow.morris@lanescott.coop](mailto:dow.morris@lanescott.coop)

DAVID H. SNAPP, ATTORNEY  
DAVID H. SNAPP, LC  
100 MILITARY PLZ STE 211  
DODGE CITY, KS 67801-4945  
[dsnapp3@starrtech.net](mailto:dsnapp3@starrtech.net)

DON GULLEY, VP REGULATORY &  
MARKET AFFAIRS  
MID-KANSAS ELECTRIC COMPANY, LLC  
301 WEST 13TH STREET  
PO BOX 980  
HAYS, KS 67601  
[dgulley@sunflower.net](mailto:dgulley@sunflower.net)

E. JAY DEINES, ATTORNEY  
DEINES & DEINES  
110 N MAIN  
PO BOX 398  
WAKEENEY, KS 67672  
[ejdeines@ruraltel.net](mailto:ejdeines@ruraltel.net)

STEPHEN J. EPPERSON, CEO  
PIONEER ELECTRIC COOP. ASSN., INC.  
1850 W OKLAHOMA (67880)  
PO BOX 368  
ULYSSES, KS 67880-0368  
[sepperson@pioneerelectric.coop](mailto:sepperson@pioneerelectric.coop)

JOSEPH D. GASPER  
GASPER LAW OFFICE  
419 MAIN ST  
PO BOX 251  
STOCKTON, KS 67669  
[gasper.hmbcr@sbcglobal.net](mailto:gasper.hmbcr@sbcglobal.net)

ALLAN MILLER, CEO  
PRAIRIE LAND ELECTRIC COOPERATIVE,  
INC.  
14935 U.S. HIGHWAY 36 (67654)  
PO BOX 360  
NORTON, KS 67654-0360  
[amiller@prairielandelectric.com](mailto:amiller@prairielandelectric.com)

RAY BERGMIEIER, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
[r.bergmeier@kcc.ks.gov](mailto:r.bergmeier@kcc.ks.gov)

JOHN F. MCCLYMONT, ATTORNEY  
RYAN, WALTER & MCCLYMONT, CHTD.  
120 S STATE STREET  
PO BOX 364  
NORTON, KS 67654  
[jfmc@att.net](mailto:jfmc@att.net)

SAMUEL FEATHER, LITIGATION  
COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
[s.feather@kcc.ks.gov](mailto:s.feather@kcc.ks.gov)

RANDY MAGNISON, EXEC VP & ASST  
CEO  
SOUTHERN PIONEER ELECTRIC  
COMPANY  
1850 W OKLAHOMA  
PO BOX 368  
ULYSSES, KS 67880  
[rmagnison@pioneerelectric.coop](mailto:rmagnison@pioneerelectric.coop)

TERRY JANSON, GENERAL MANAGER  
VICTORY ELECTRIC COOPERATIVE  
ASSN., INC.  
3230 NORTH 14TH ST  
PO BOX 1335  
DODGE CITY, KS 67801-1335  
[terry@victoryelectric.net](mailto:terry@victoryelectric.net)

KEEN K. BRANTLEY, ATTORNEY  
WALLACE, BRANTLEY & SHIRLEY  
325 MAIN STREET  
PO BOX 605  
SCOTT CITY, KS 67871  
[kbrantley@wbsnet.org](mailto:kbrantley@wbsnet.org)

MARK D. CALCARA, ATTORNEY  
WATKINS CALCARA CHTD.  
1321 MAIN STREET SUITE 300  
PO DRAWER 1110  
GREAT BEND, KS 67530  
[mcalcara@wcrf.com](mailto:mcalcara@wcrf.com)

JAMES M. MCVAY, ATTORNEY  
WATKINS CALCARA CHTD.  
1321 MAIN STREET SUITE 300  
PO DRAWER 1110  
GREAT BEND, KS 67530  
[jmcvay@wcrf.com](mailto:jmcvay@wcrf.com)

RENEE K. BRAUN, CORPORATE  
PARALEGAL, SUPERVISOR  
MID-KANSAS ELECTRIC COMPANY, LLC  
301 W 13TH ST  
PO BOX 1020  
HAYS, KS 67601  
[rbraun@sunflower.net](mailto:rbraun@sunflower.net)

DAVID L. SCHNEIDER, MANAGER  
WESTERN COOPERATIVE ELECTRIC  
ASSN., INC.  
635 S 13TH STREET  
PO BOX 278  
WAKEENEY, KS 67672-0278  
[davesch@westerncoop.com](mailto:davesch@westerncoop.com)

BRUCE W. MUELLER, GENERAL  
MANAGER  
WHEATLAND ELECTRIC COOPERATIVE,  
INC.  
101 MAIN STREET  
PO BOX 230  
SCOTT CITY, KS 67871  
[bmueller@weci.net](mailto:bmueller@weci.net)

CURTIS M. IRBY, ATTORNEY  
GLAVES, IRBY AND RHOADS  
155 N. MARKET, SUITE 1050  
WICHITA, KS 67202  
[cmirby@sbcglobal.net](mailto:cmirby@sbcglobal.net)

MARK DOLJAC, DIR RATES AND  
REGULATION  
KANSAS ELECTRIC POWER CO-OP, INC.  
600 SW CORPORATE VIEW (66615)  
PO BOX 4877  
TOPEKA, KS 66604-0877  
[mdoljac@kepco.org](mailto:mdoljac@kepco.org)

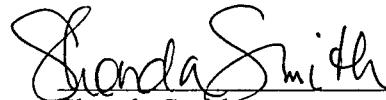
WILLIAM G. RIGGINS, SR VICE PRES AND  
GENERAL COUNSEL  
KANSAS ELECTRIC POWER CO-OP, INC.  
600 SW CORPORATE VIEW (66615)  
PO BOX 4877  
TOPEKA, KS 66604-0877  
[briggins@kepco.org](mailto:briggins@kepco.org)

FRANK A. CARO, JR., ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
[fcaro@polsinelli.com](mailto:fcaro@polsinelli.com)

LINDSAY SHEPARD, EXECUTIVE  
MANAGER  
CORPORATION COMPLIANCE  
MID-KANSAS ELECTRIC COMPANY, LLC  
301 W 13TH ST  
PO BOX 1020  
HAYS, KS 67601  
[lshepard@sunflower.net](mailto:lshepard@sunflower.net)

MARK RONDEAU  
WATKINS CALCARA CHTD.  
1321 MAIN ST STE 300  
PO DRAWER 1110  
GREAT BEND, KS 67530  
[mrondeau@wcrf.com](mailto:mrondeau@wcrf.com)

JAMES BRUNGARDT,  
REGULATORY AFFAIRS ADMINISTRATOR  
MID-KANSAS ELECTRIC COMPANY, LLC  
301 W 13TH ST  
PO BOX 1020  
HAYS, KS 67601  
[jbrungardt@sunflower.net](mailto:jbrungardt@sunflower.net)



---

Shonda Smith  
Office Manager