

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

JAN 07 2013

In the Matter of the Joint Application of )  
Mid-Kansas Electric Company, LLC, ) by  
Lane-Scott Electric Cooperative, Inc., ) State Corporation Commission  
Prairie Land Electric Cooperative, Inc., ) of Kansas  
Southern Pioneer Electric Company, ) Docket No. 13-MKEE- 447-MIS  
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. )

DIRECT TESTIMONY

OF

STUART S. LOWRY

MID-KANSAS ELECTRIC COMPANY, LLC

JANUARY 7, 2013

1 **Q. Please state your name.**

2 A. My name is Stuart S. Lowry.

3 **Q. Are you an officer of Mid-Kansas Electric Company, LLC (“Mid-Kansas”)?**

4 A. Yes, I am the President and Chief Executive Officer of Mid-Kansas and have been  
5 since August 2011.

6 **Q. By whom are you employed and what is your business address?**

7 A. I am employed by Sunflower Electric Power Corporation (“Sunflower”). My  
8 business address is 301 W. 13th Street, Hays, Kansas. I am not an employee of  
9 Mid-Kansas as it has no employees. By contract approved by the Kansas  
10 Corporation Commission (“Commission”), Sunflower, through its employees,  
11 operates Mid-Kansas.

12 **Q. What is your educational and professional background?**

13 A. I am a graduate of the University of Kansas and Washburn University School of  
14 Law. Just prior to joining Mid-Kansas, I served as Executive  
15 Vice-President/General Counsel at Kansas Electric Cooperatives, Inc. (“KEC”),  
16 the statewide trade organization for electric cooperatives. Prior to that, I was in the  
17 private practice of law, focusing primarily on electric cooperative matters.

18 **Q. What is the purpose of your testimony?**

19 A. The purpose of my testimony is to provide background information on Mid-Kansas  
20 and support for relief sought in the Joint Application filed by Mid-Kansas and its  
21 Members<sup>1</sup>.

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<sup>1</sup>The six Kansas entities, collectively referred to as Members of Mid-Kansas, and their headquarters are as follows: Lane-Scott Electric Cooperative, Inc., Dighton, Kansas; Southern Pioneer Electric Company, a subsidiary of Pioneer Electric Cooperative, Inc., Ulysses, Kansas; Prairie Land Electric

1                   **1.     HISTORICAL INFORMATION ON MID-KANSAS**

2   **Q.     Please provide an overview of the history of Mid-Kansas.**

3   A.     Mid-Kansas is a Kansas limited liability company with its principal place of  
4           business located in Hays, Kansas. Mid-Kansas is owned by five Kansas  
5           consumer-owned cooperatives and one subsidiary of a consumer-owned  
6           cooperative who organized Mid-Kansas for the purpose of acquiring and operating  
7           what was known as the former Aquila-WPK electric utility business and operations  
8           in Kansas. The Members of Mid-Kansas are the Member owners of Sunflower with  
9           the exception of Southern Pioneer Electric Company, which is a wholly owned  
10          subsidiary of Pioneer Electric Cooperative, Inc., a Member owner of Sunflower.

11 **Q.     Why was Mid-Kansas formed by the Members of Sunflower?**

12 A.     There were two primary reasons why Mid-Kansas was formed in 2005. First,  
13          Aquila-WPK was a vertically integrated utility providing both retail and generation  
14          transmission services. As a condition to bidding for the purchase of the assets,  
15          Aquila required a single purchaser for the fully integrated services and assets.  
16          Sunflower and its Members had separated the retail or distribution services from  
17          the generation and transmission services. The Members operated the retail or  
18          distribution services and assets and Sunflower operated the generation and  
19          transmission services and assets. Therefore, the business structure of Sunflower  
20          could not serve as a single purpose bidder.

21          Additionally, Sunflower is a borrower of the Rural Utilities Services ("RUS"), and to

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Cooperative, Inc., Norton, Kansas; Victory Electric Cooperative Association, Inc., Dodge City, Kansas;  
Western Cooperative Electric Association, Inc., WaKeeney, Kansas; Wheatland Electric Cooperative, Inc.,  
Scott City, Kansas.

1 purchase the Aquila-WPK assets it would have required RUS approval prior to its  
2 ability to submit a bid. The RUS agency indicated such an approval could not be  
3 granted in a timely fashion and suggested the Members create a separate legal  
4 entity to bid and, if successful, acquire the vertically integrated electric assets of  
5 Aquila-WPK. Those two factors were the primary drivers compelling the Sunflower  
6 Members to form Mid-Kansas. If Mid-Kansas became the successful bidder, the  
7 Members' business plan was to acquire the assets and then eventually decouple  
8 the retail or distribution assets and services from the generation and transmission  
9 assets and services to form the same business model the Members currently  
10 operate from with Sunflower. This approach worked, and Mid-Kansas was the  
11 successful bidder. The acquisition was approved by the Commission on March 31,  
12 2007, and Mid-Kansas began operating the assets on April 1, 2007.

13 **Q. You stated it was the Members' expectation to separate the distribution**  
14 **services from the generation and transmission services after acquisition.**  
15 **Please explain what was contemplated by the Members and Mid-Kansas.**

16 **A.** The Members expected to transfer the distribution assets and certificated territory  
17 for retail services from Mid-Kansas to the six individual Members, forming a  
18 business structure mirroring the Sunflower business structure. Under the  
19 Sunflower business structure, the six Members provide retail or distribution  
20 services to the retail customer while Sunflower provides the generation and  
21 transmission services to all the Members. This business model is very common  
22 among cooperatives, allowing distribution cooperatives to combine their power  
23 supply needs into a single power supplier. It will also facilitate the merging of

1 Sunflower and Mid-Kansas at some time in the future. I have attached SSL- Exh. 1  
2 which is a map showing the Sunflower Members' current certificated retail service  
3 territories and the territories served by the Mid-Kansas Members under the current  
4 Electric Customer Service Agreement. This will give you a visual perspective of  
5 how each Member's service territory relates to the Members' current certificated  
6 territory and the territory served under the certificates to be transferred in these  
7 proceedings.

8 **Q. Was it the business plan of the Members and Mid-Kansas to separate out**  
9 **the distribution services from the generation and transmission services?**

10 A. Yes. In fact, in the acquisition docket, 06-MKEE-524-ACQ ("524 Docket"),  
11 Mid-Kansas and its Members stipulated and agreed to file a request to transfer the  
12 distribution assets and the certificated territory as soon after the effective date of  
13 the acquisition as reasonably possible. This proceeding is the final step in  
14 accomplishing the de-coupling of the distribution functions from the generation and  
15 transmission functions.

16 **Q. What were the various steps taken by Mid-Kansas and the Members to**  
17 **transfer the distribution assets and certificated territory as agreed to in the**  
18 **524 Docket?**

19 A First, the Members and Mid-Kansas felt it was important to build a relationship  
20 between the Member cooperatives and the retail customers as soon as possible.  
21 Also, it was important for Mid-Kansas to operate the generation and transmission  
22 facilities as it would once the final transfer was completed. Therefore, Mid-Kansas  
23 initially entered into a lease and service agreement with the Members so that the

1 Members could lease the distribution assets from Mid-Kansas and provide the  
2 retail services to the retail customers on behalf of Mid-Kansas. This allowed each  
3 of the Members to immediately develop a relationship with the retail customers and  
4 help the customer associate the Member as the retail electric provider.

5 Later, in December of 2007, Mid-Kansas sought and obtained approval from the  
6 Commission to transfer the distribution assets to the Members and enter into an  
7 Electric Customer Service Agreement with each Member to continue to provide the  
8 retail services to the retail electric customers on behalf of Mid-Kansas. At the time,  
9 it was not feasible to transfer the certificated territory as it would have required  
10 various lender approvals, which would have been difficult to obtain. Furthermore,  
11 divisional retail rates had not been established, nor a wholesale rate, which would  
12 have facilitated the transfer of the retail Certificates of Convenience.

13 **Q. Following the transfer of the distribution assets, what were the next steps**  
14 **taken to facilitate the final transfer?**

15 A. Next, through various dockets before the Commission, retail rates for the Member  
16 divisions were established with the approval of the Commission. Also, a wholesale  
17 rate was established for Mid-Kansas. Other matters were also brought before the  
18 Commission to resolve prior to the final transfer. For example, questions were  
19 raised by third-party users as to the classification of the 34.5 lines that were owned  
20 by the Members but provided wholesale service. This question was eventually  
21 resolved by the Commission on January 11, 2012, in Docket 11-GIME-597-GIE  
22 ("597 Docket"). At the conclusion of the 597 Docket, preparations to file this docket  
23 were commenced.

1 **Q. Having reached this point, what specifically is necessary for the transfer of**  
2 **the Certificates of Convenience to the Members?**

3 A. Specifically, as to the transfer of the Certificate of Convenience, Mid-Kansas and  
4 the Members are asking the Commission to approve the transfer of the certificated  
5 territory and issuance of a Certificate of Convenience to the Mid-Kansas Member  
6 currently serving a specific geographical territories set forth in the Electric  
7 Customer Service Agreement. Five of the current Members have certificates for  
8 other service territories and will require the expansion of their existing certificates  
9 to include the new territory, or a new certificate, however the Commission deems it  
10 most appropriate. Southern Pioneer Electric Company ("Southern") will require the  
11 issuance of a Certificate of Convenience as it has not previously been granted  
12 one. Mid-Kansas also seeks the retention of its Certificate of Convenience for the  
13 purpose of operating as a utility that provides generation and transmission  
14 services and related wholesale services, including retaining its certificated right to  
15 provide transmission services in its currently specified retail certificated territory.

16 **Q. Do you feel the Members have the ability and expertise to provide reliable**  
17 **electric power and services to the retail customers?**

18 A. Yes. The Members, or the parent company in the case of Southern, have each  
19 been providing retail distribution electric service for decades. Additionally, since  
20 the acquisition, the Members have essentially been providing the retail services  
21 within the certificated service territory under the Electric Customer Service  
22 Agreement. Each is financially sound, has experienced management and  
23 employees in place to provide the services, has adequate access to capital to

1 maintain and operate the system, and, as provided under the Wholesale  
2 Requirements Agreement, will have, through their ownership of Mid-Kansas, and  
3 power supply contracts with Sunflower and Westar Energy, Inc., a diversified  
4 power supply portfolio to serve the electric customers.

5 **Q. Do you feel it is in the public's interest to transfer the Certificate of**  
6 **Convenience to the Members for the retail services and territories?**

7 A. Yes. I believe that fact was established as part of the Aquila acquisition  
8 investigation in Docket No. 06-MKEE-524-ACQ ("524 Docket"). Transfer of the  
9 Certificate to the Mid-Kansas members was clearly expected at the time of the  
10 Aquila acquisition, as evidenced by the following provision of the Settlement  
11 Agreement:

12 "The transfer of the distribution assets is an important aspect in  
13 providing benefits to the WPK customers and should be  
14 accomplished as quickly as possible. Therefore, MKEC will file a  
15 request to transfer the distribution assets and certificated territory as  
16 soon after the Effective Date as reasonably possible.<sup>2</sup>

17  
18 **2. APPROVAL OF WHOLESALE REQUIREMENTS AGREEMENT**

19 **Q. You have indicated the Members will have adequate power supply through**  
20 **the execution of the Wholesale Requirements Agreement. Would you please**  
21 **explain what the Wholesale Requirements Agreement is and why it provides**  
22 **the benefit you mention?**

23 A. As stated earlier, it was the Members' intention to structure Mid-Kansas similar to  
24 the structure the Members have with Sunflower. Under the Sunflower structure,

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<sup>2</sup> Settlement Agreement in the 524 Docket, filed on January 10, 2007, ¶23 approved by the Commission on February 23, 2007.) (Emphasis added.)



1 each Sunflower Member has entered into Wholesale Power Contracts with  
2 Sunflower which are commonly referred to as all requirements contracts in which  
3 the Member commits to buy all of its power supply needs from Sunflower and  
4 Sunflower commits to provide all of the Member's power supply. This serves, in  
5 large part, as the security to a lender of Mid-Kansas to obtain financing for  
6 operations. Knowing that the Member is required to buy all of its power supply from  
7 the power supplier, the lender feels secure in loaning money for the capital and  
8 operational needs of Mid-Kansas. The Wholesale Requirements Agreement  
9 ("WRA") is an all requirements contract committing the Mid-Kansas Members to  
10 purchase all of their power supply requirements from Mid-Kansas to serve the  
11 retail loads to be transferred herein. Just as with the Sunflower's Wholesale Power  
12 Contract, this serves as security for Mid-Kansas' lenders and facilitates the ability  
13 of Mid-Kansas to borrow funds for operation and capital expenditures. Therefore,  
14 to proceed with the transfer of the Certificate of Convenience, and, in essence, the  
15 transfer of the retail customers, Mid-Kansas and its lender will require each  
16 Mid-Kansas Member to enter into a formal contractual commitment to purchase all  
17 of their power supply needs for the retail customers in the certificated territory  
18 transferred herein. That contractual commitment is the Wholesale Requirements  
19 Agreement.

20 **Q. Have you recently experienced financing transactions that confirm how**  
21 **important all requirement contracts are to the financial markets?**

22 **A.** Yes. We just recently finished a 30 year private placement for \$175 million. During  
23 the process, we met with nearly 25 potential investors in mortgage bonds

1 (essentially lenders) we proposed to issue to obtain financing for various projects.  
2 During the process, one of the paramount investor concerns was insuring that the  
3 power supply for the service territory was unconditionally provided by and  
4 procured from, and paid for directly to Mid-Kansas. These concerns were met  
5 through the Wholesale Requirements Agreement. However, in order to meet the  
6 terms of the Shared Service Agreement and to respect the pre-existing contracts  
7 of KEPCo and Sunflower, a partial assignment of the WRA to those entities was  
8 proposed. Those proposed assignments to Sunflower and KEPCo added a  
9 significant complexity, and thus a substantial risk to the transaction. However,  
10 counsel for the investors requested revisions to the initial drafts of the assignments  
11 to insure the unconditional purchase of the power from Mid-Kansas, direct  
12 payment of the power supply bill from the Member to Mid-Kansas and a term in the  
13 Wholesale Requirements Agreement that exceeded the term of the loan, and then  
14 the lenders began to get more comfortable with the structure of the transaction.

15 **Q. Are the terms and conditions contained within the Wholesale Requirements**  
16 **Agreement fairly standard within the industry?**

17 **A.** Yes. The Wholesale Requirements Agreement attached to the joint application  
18 contains the most current terms within the industry for such agreements. Although  
19 Mid-Kansas is not an RUS borrower, the Wholesale Requirements Agreement is  
20 modeled very closely to the current terms required by RUS for its borrowers. The  
21 Wholesale Requirements Agreement that we are asking the Commission to  
22 approve, if required, has been reviewed and approved by Mid-Kansas' lenders,  
23 and contains terms and conditions customary within the industry. In fact the private

1 placement lenders were very receptive to the terms of the Wholesale  
2 Requirements Agreement. It was the assignments of the Wholesale Requirements  
3 Agreement to Sunflower and KEPCo with which they were most concerned and  
4 had the greatest difficulty understanding and accepting.

5 **Q. Are you requesting the Commission to approve the Wholesale**  
6 **Requirements Agreement?**

7 A. Yes. To the extent required, we are asking the Commission to approve the  
8 Wholesale Requirements Agreement, substantially in the form attached to the  
9 Application. We realize, for example, the described service territory will be  
10 reviewed by Commission staff and there may be minor tweaks to the described  
11 territory upon completion of staff review. But the terms of the Wholesale  
12 Requirements Agreement will essentially be as proposed. In fact, the lenders have  
13 been very forceful in their comments that the WRA not be modified at all from the  
14 terms proposed.

15 **3. ADOPTION OF THE APPLICABLE RETAIL RATES, TARIFFS, AND RULES**

16 **Q. Upon assignment of the certificated territory, will it be necessary for the**  
17 **retail rates, tariffs, and rules applicable to the retail service territory to be**  
18 **adopted by the six Members?**

19 A. Yes. In conjunction with the transfer of the Certificate of Convenience, the  
20 Members will need to assume and adopt all existing retail rates, local access  
21 charges, rules, and tariffs approved by this Commission in prior dockets and  
22 applicable to their particular service territory. Each Member division currently has a  
23 divisional retail rate for its particular Member service territory. Therefore, each

1 Member will adopt those divisional tariffs, rules, and rates as may be applicable to  
2 their particular service territory, and necessary for the Commission to approve, as  
3 required, the adoption of those divisional retail and local transmission rates and  
4 services.

5 **4. CONFIRMATION OF TRANSMISSION SERVICE AND APPLICABLE LOCAL**  
6 **OPERATING AGREEMENTS**

7 **Q. Mid-Kansas and the Members have a pro forma Network Integration**  
8 **Transmission Service Agreement and Network Operating Agreement**  
9 **approved by the Commission in the 597 Docket. What approvals, if any, are**  
10 **you requesting as to the service agreements?**

11 **A.** Pursuant to the Stipulation and Agreement in the 597 Docket (597 S&A) at  
12 Paragraph 1 d., *pro forma* service and operating agreements were approved by  
13 the Commission and were to be submitted when Mid-Kansas filed for a tariff for  
14 open access transmission service and incorporated in Mid-Kansas' Open Access  
15 Transmission Tariff (OATT) as Attachments F and G. Mid-Kansas did that in  
16 Docket 12-MKEE-650-TAR ("650 Docket").  
17 The 597 S&A further provided each Member was to make its Member Facilities  
18 available to Mid-Kansas to provide such transmission service, to make such  
19 extensions and improvements as Mid-Kansas is required to provide, and to permit  
20 Mid-Kansas to perform such actions as are required of the Transmission Provider,  
21 pursuant to the Mid-Kansas OATT, and to remain a party to the applicable  
22 operating agreements approved by the Commission. As set forth in the Testimony  
23 in Support of Stipulation and Agreement of Donald L. Gulley in the 597 Docket,

1 Mid-Kansas has use of the facilities pursuant to the Electric Customer Service  
2 Agreement and upon transfer of the Certificate will enter into a similar agreement  
3 that will allow Mid-Kansas continued access to the facilities to provide the service  
4 once the retail certificates are assigned to the Members. The Facility Access  
5 Agreement for such purposes is attached to the Application as Exhibit C and  
6 referenced for informational purposes. The Members will execute the Facility  
7 Access Agreement upon termination of the Electric Customer Service Agreement,  
8 which will occur upon the final approval of the transfer of the Certificate of  
9 Convenience for their respective service territories.

10 **5. APPROVAL OF SHARED SERVICE AGREEMENT**

11 **Q. The Application seeks the approval of a Shared Service Agreement, as**  
12 **supplemented, and, to the extent required, the Settlement Agreement, as**  
13 **supplemented. Would you provide the background for the purpose of the**  
14 **Shared Service Agreement and Settlement Agreement?**

15 **A.** Mr. Miller and Mr. Janson address this in greater detail in their testimony, so I will  
16 cover the matter in less detail. During the acquisition proceedings, KEPCo claimed  
17 that it should provide the wholesale services to two Mid-Kansas Members—Victory  
18 and Prairie Land—in the geographical territories each is to be assigned herein.  
19 This claim was based upon the fact that Victory and Prairie Land each have  
20 Wholesale Power Contracts with KEPCo. Upon the transfer of the certificated  
21 territory and customers, KEPCo claimed it was entitled to serve all of Victory and  
22 Prairie Land's load in their transferred certificated service territory. However,  
23 Victory and Prairie Land each also have Wholesale Power Contracts with

1 Sunflower that predated the agreements with KEPCo. Although Sunflower could  
2 have asserted the same claim, it was willing, if KEPCo was, to waive the  
3 application of its Wholesale Power Contract as applicable to the shared Members'  
4 acquired service territory. KEPCo would not make such a waiver, which resulted in  
5 a dispute. At the time of the dispute, the Members and Mid-Kansas were under  
6 significant pressure to complete the approval of the acquisition or potentially lose  
7 the opportunity and be subject to very significant liquidated damages. Thus,  
8 Sunflower, Mid-Kansas and KEPCo entered into a Settlement Agreement,  
9 Supplemental Agreement to the Settlement Agreement (collectively, the  
10 "Settlement Agreement"). In addition, Sunflower, Victory, Prairie Land and KEPCo  
11 entered into a Shared Service Agreement and a Supplemental Agreement to the  
12 Shared Service Agreement (collectively, the Shared Service Agreement"). The  
13 Shared Service Agreement provides, in part, that upon transfer of the Certificate of  
14 Convenience to Victory and Prairie Land, the Mid-Kansas load of Victory and  
15 Prairie Land would be served, in equal shares, by Sunflower and KEPCo under  
16 their respective all requirements contracts, and that KEPCo and Sunflower would  
17 be required to purchase all wholesale services from Mid-Kansas to serve the  
18 Victory and Prairie Land load in their assigned certificated territory. The Shared  
19 Service Agreement provides specifically that the agreement is subject to the  
20 approval of the Commission and is not to be effective until such approval is  
21 received.

22 **Q. Has KEPCo financially or contractually committed to supply resources to**  
23 **provide service to the Mid-Kansas customers served by Victory and Prairie**

1           **Land?**

2    A.    No. The Victory and Prairie Land Wholesale Power Contracts with KEPCo  
3           terminate at the end of 2020. Both Victory and Prairie Land have notified KEPCo  
4           that they will not extend their membership or their Wholesale Power Contracts.  
5           The remaining 17 KEPCo members have extended their contacts and  
6           membership to 2045. To my knowledge, KEPCo has not made any financial or  
7           resource commitment to serve the load to be transferred to Victory or Prairie Land.  
8           Mid-Kansas will have the sole responsibility for power supply and the related  
9           financial obligations, and therefore, it would seem it would not be necessary or  
10          prudent for them to do so.

11   **Q.    Is KEPCo financially responsible to Mid-Kansas' lenders for repayment of**  
12           **the debt incurred by the Members or Mid-Kansas to acquire the WPK**  
13           **assets?**

14    A.    No. KEPCo has no obligations for the financial commitments made by the  
15          Members or Mid-Kansas to acquire Aquila-WPK or for any new power plant or  
16          transmission facilities that Mid-Kansas is constructing to meet the Mid-Kansas  
17          Member's power requirements.

18   **Q.    Is Mid-Kansas seeking the approval of the Shared Service Agreement in**  
19           **these proceedings?**

20    A.    Yes. In accordance with the terms of the Settlement Agreement and Shared  
21          Service Agreement, Mid-Kansas is requesting the Shared Service Agreement be  
22          approved, and, to the extent required, the Settlement Agreement.

23          **6.    DETERMINATION OF RATE UNDER SHARED SERVICE AGREEMENT**

1 **Q. There is a provision in the Shared Service Agreement that speaks to the**  
2 **possibility of KEPCo setting a rate subject to the approval of the**  
3 **Commission for one-half of the load of Victory and Prairie Land. Would you**  
4 **please explain the background behind that provision?**

5 A. Again, Mr. Miller and Mr. Janson were personally involved in the negotiation of the  
6 agreements and will testify to the specific terms and intent. Briefly, the Shared  
7 Service Agreement provides, in part, that KEPCo may seek to charge a rate adder  
8 of 1 mill per kW hour for the duration of the retail rate freeze that was likely to be  
9 imposed under what ultimately became the 524 Docket. After the rate freeze  
10 (which has already passed), the rate at which KEPCo sells to Victory and Prairie  
11 Land was to be set subject to the approval of the Commission and must be  
12 recoverable in the Members' retail rates. Plus the rate had to be economically  
13 viable.

14 **Q. Power supply for the Mid-Kansas load served by KEPCo was to be supplied**  
15 **by Mid-Kansas under the agreement. Was it Mid-Kansas' understanding**  
16 **KEPCo was entitled to some additional charge above and beyond the**  
17 **Mid-Kansas wholesale rate?**

18 A. Any wholesale rate to Victory and Prairie Land other than the Mid-Kansas  
19 wholesale rate was an open issue and to be determined by the Commission in  
20 accordance with the terms of the Settlement Agreement and Shared Service  
21 Agreement, if approved.

22 **Q. Is Sunflower seeking a wholesale rate different than the Mid-Kansas**  
23 **wholesale rate established by the Commission?**



1 A. No. For services Sunflower will provide, Sunflower will pass through the  
2 Mid-Kansas' wholesale rate and services without an additional or different rate  
3 than charged by Mid-Kansas.

4 **Q. If the Commission does not approve a rate different than Mid-Kansas'**  
5 **wholesale rate for the load of Victory and Prairie Land, is there still a reason**  
6 **for the Commission to approve the Shared Service Agreement?**

7 A. Yes. The approval of the Shared Service Agreement resolves the potential dispute  
8 as to which Wholesale Power Contract the load of Victory and Prairie Land will be  
9 served under – Sunflower or KEPCo. The Shared Service Agreement ends the  
10 contractual uncertainty surrounding the dispute.

11 **Q. Does the Shared Service Agreement have an impact on the other four**  
12 **non-KEPCo Members?**

13 A. The assignment of the Certificates to the non-KEPCo Members is not necessarily  
14 contingent upon the approval of the Shared Service Agreement or determination of  
15 the KEPCo wholesale rate. However, it is conceivable that circumstances  
16 surrounding the KEPCo matters could result in the application being unilaterally  
17 withdrawn by Victory and Prairie Land and the other Members as well.

18 **Q. Can KEPCo unilaterally determine the rate to be charged by KEPCo?**

19 A. The Shared Service Agreement and the Settlement Agreement provide that the  
20 Commission shall approve the rate charged by KEPCo. KEPCo has contractually  
21 agreed that the rate it charges to Victory and Prairie Land requires Commission  
22 approval. Without Commission approval, KEPCo can't impose an additional  
23 charge to the Mid-Kansas wholesale rate without being in breach of the Shared

1 Service Agreement. However, should KEPCo charge the Mid-Kansas wholesale  
2 rate, then technically the wholesale rate has been approved in the 969 Docket and  
3 no further approval would be required.

4 **Q. As one of the joint applicants, what are you asking the Commission to do?**

5 A. The applicants are seeking the approval of the Shared Service Agreement and  
6 Settlement agreement according to its terms. Also Mid-Kansas, Victory and Prairie  
7 Land are asking that the Commission find and order that the terms of the  
8 wholesale services and rates provided by KEPCo for the Victory and Prairie Land  
9 load be the same as the terms of the currently approved wholesale services and  
10 rates provided by Mid-Kansas, as may be modified by Mid-Kansas from time to  
11 time, and that the Commission make such finding and order prior to the transfer of  
12 the Certificates of Convenience to Victory and Prairie Land as the determination  
13 may impact their request for the transfer of the Certificates herein. Provided  
14 further, should KEPCo elect in the future to set terms of wholesale service and  
15 rates different than the approved Mid-Kansas wholesale terms of service and  
16 rates, Mid-Kansas, Victory and Prairie Land request that Commission find and  
17 order that the wholesale terms of service and rates can be modified only after  
18 approval by the Commission.

19 **Q. Why is it necessary the wholesale rate charged by KEPCo be determined**  
20 **now?**

21 A. The Shared Service Agreement provides that the rate shall be set subject to the  
22 approval of the Commission, that it be economical and recoverable from the retail  
23 customer. Without making the determination now, it can't be ascertained if the

1 assignment of the certificated territory is in the public's interest.

2 **7. APPROVAL OF THE ASSIGNMENT OF THE WHOLESALE REQUIREMENTS**  
3 **AGREEMENT**

4 **Q. The applicants have asked for the approval of an assignment of the**  
5 **Wholesale Requirements Agreements. Can you explain what you are asking**  
6 **the Commission to approve?**

7 **A.** The applicants are asking for not only the approval of the Wholesale Requirements  
8 Agreement but also the ability to assign the agreement, in accordance with its  
9 terms, to Sunflower and KEPCo, to meet the requirements of the Shared Service  
10 Agreement provided the Shared Service Agreement is approved.

11 **Q. Why is it necessary for the assignment of the Wholesale Requirements**  
12 **Agreement be structured as it is?**

13 **A.** To understand the structure more easily, I have attached SSL-Exh. 2 which is a  
14 visual representation of the structure. There are two primary drivers for the  
15 contractual structure for which the applicants are seeking approval. First, the  
16 transfer of a certificated territory as requested in this application must be  
17 conditioned on the load being served by Mid-Kansas. This condition is met by the  
18 Wholesale Requirements Agreement between Mid-Kansas and the Members.  
19 This is driven in large part by Mid-Kansas and Mid-Kansas' lenders, which look to  
20 the Wholesale Requirements Agreement between Mid-Kansas and its Members  
21 as the security for repayment of its loans. To the same extent, the Members'  
22 lenders will also look to see if the Member has an acceptable firm power supply  
23 commitment. Secondly, the contractual structure is driven by the Shared Service

1 Agreement, which, if approved, requires the acquired load of Victory and Prairie  
2 Land be shared equally between Sunflower and KEPCo. These conditions require  
3 very narrow sideboards, but the Wholesale Requirements Agreement and  
4 assignment address the two primary drivers compelling the contractual structure.  
5 Depending on the changes, deviations from this structure could result in lenders  
6 withdrawing their approvals, or even a Member or Mid-Kansas withdrawing its  
7 application for transfer of the Certificates.

8 **Q. Do the terms of the assignment act as an outright assignment to Sunflower**  
9 **and KEPCo of all obligations of the Members under the Wholesale**  
10 **Requirements Agreement?**

11 A. No, they do not. The obligations for payment of the Member's power bill remains  
12 solely the obligation of the Mid-Kansas Member; all billing and invoicing are from  
13 Mid-Kansas to the Mid-Kansas Members with copies to Sunflower and KEPCo.  
14 The assignment even goes further to state that in no event will Sunflower or  
15 KEPCo have financial responsibility for payment for power sold from Mid-Kansas  
16 to the Members. The power bill remains solely the obligation of the Member.  
17 Furthermore, neither Sunflower nor KEPCo are liable for the power supply to the  
18 Members. The power supply remains strictly an obligation of Mid-Kansas. KEPCo  
19 and Sunflower have no liability for the failure of Mid-Kansas to provide power to the  
20 Members.

21 **Q. Was there some specific reason the invoicing and payment obligations**  
22 **remain the sole obligation between Mid-Kansas and the Members?**

23 A. Yes. In large part this was driven by Mid-Kansas' lenders. Mid-Kansas' lenders

1 advised that for their security and protection they did not want to underwrite  
2 KEPCo and Sunflower's credit worthiness, nor have to assess or explain to other  
3 creditors in financial transactions the intricacies of the relationships of KEPCo and  
4 Sunflower. By simplifying the credit story, Mid-Kansas was able to access capital  
5 easier and less costly.

6 **Q. Was there some specific reason for the power supply obligations remaining**  
7 **the sole obligation between Mid-Kansas and the Members?**

8 A. Yes. The reasoning is similar. A lender of Sunflower and KEPCo would not need to  
9 account for or assess the Mid-Kansas power supply risk in their decision to finance  
10 Sunflower or KEPCo. Nor would Sunflower or KEPCo need to consider the  
11 Mid-Kansas load in their resource planning. Additionally, both Sunflower and  
12 KEPCo are RUS borrowers. RUS made it clear during the acquisition that RUS did  
13 not want Sunflower assuming liability for the obligations of Mid-Kansas. This  
14 structure addresses that concern. We can only assume that RUS would have the  
15 same concerns for KEPCo, as well.

16 **Q. Has this contractual structure been approved by Mid-Kansas's lender?**

17 A. In December 2011, Mid-Kansas entered into a very extensive and complex  
18 Indenture transaction ("Indenture"). In the first quarter of 2012, Mid-Kansas  
19 entered into a \$100,000,000.00 unsecured revolving credit facility ("Revolver")  
20 which provides the necessary access to funds to operate as well as meet future  
21 capital outlays. At the time, Mid-Kansas negotiated both the Indenture and the  
22 Revolver, the contractual structure was reviewed with National Cooperative Service  
23 Corporation ("NCSC"), the lead banker for Mid-Kansas. NCSC, as Mid-Kansas'

1 primary lender, advised as to the contractual structure that would need to be met in  
2 order to satisfy NCSC and obtain their approval for the purposes of transferring the  
3 certificated territory. The loan documents contemplated the assignment of the  
4 Certificates with the pre-approval of the Wholesale Requirements Agreement  
5 substantially in the form as attached to the Application. In the more recent private  
6 placement, the same pre-approval was secured from the lenders for both the  
7 Wholesale Requirements Agreement and the Partial Assignment.

8 **Q. Can the contractual structure be altered without consent from your lenders?**

9 A. Any substantial changes would require a new review by the lending institutions as  
10 this structure was been highly vetted by the lenders before they were willing to  
11 proceed with purchase of the bonds. Based upon the recent transaction and  
12 discussion with the accepted lenders, I believe it would be highly unlikely a lender  
13 would accept a change. In fact, they would prefer that no assignment be made at  
14 all of the Wholesale Requirements Agreement to Sunflower or KEPCo.

15 **8. DETERMINATION OF THE PROCESS FOR EXEMPTION FROM REGULATION**

16 **Q. The Application requests the determination of the process for the Members**  
17 **upon transfer of the Certificates to exempt them from regulation under**  
18 **K.S.A. 66-104d. Would you explain why the applicants are seeking a**  
19 **determination of the process?**

20 A. In the 524 Docket, paragraph 25 of the Stipulation and Agreement ("524  
21 Stipulation") approved by the Commission provided that any Member eligible to  
22 deregulate at law may do so following the steps set forth in the 524 Stipulation. The  
23 steps required the Aquila-WPK customers be given full cooperative membership

1 rights and the deregulation petition and voting process be as set forth in K.S.A.  
2 66-104d for the acquired Aquila-WPK customers. The vote was to be limited only  
3 to those customers in the former Aquila-WPK certificated territory transferred to  
4 the Member. The stipulation was entered into at a time when only two  
5 Members—Wheatland and Southern Pioneer—were not deregulated. At the time,  
6 Wheatland and Southern Pioneer were not eligible to deregulate. In 2009, the  
7 legislature amended the deregulation statute. Under current law, Wheatland is  
8 eligible to vote to exempt them from regulation. Southern Pioneer does not meet  
9 the statutory definition of a cooperative and thus is not eligible to deregulate. The  
10 applicants propose that the Commission modify the Stipulation related to  
11 deregulation approved in the 524 Docket (“524 Stipulation”).

12 **Q. You indicated the statute changed in 2009. Could you explain what changed**  
13 **in the legislative amendment to K.S.A. 66-104d?**

14 A. As legal counsel for KEC, I was involved in the drafting of the legislation in 1992, as  
15 well as in 2009. Prior to the change in the 2009 legislation, only cooperatives with  
16 15,000 or fewer customers were eligible to exempt themselves from regulation.  
17 The 2009 legislation removed that cap and made all cooperatives, as defined by  
18 the statute, eligible to exempt themselves. The 2009 legislation also expanded the  
19 definition of a cooperative to include Sunflower, Mid-Kansas, and KEPCo.

20 **Q. As an attorney and someone who was involved in drafting the current law, is**  
21 **the Stipulation in the 524 Docket that requires a vote only of the Aquila-WPK**  
22 **customers to determine deregulation consistent with the statute?**

23 A. The Applicants recognize they agreed to the 524 Stipulation but suggest that the

1 parties and the Commission did not fully appreciate at the time the possible legal  
2 dilemma enforcement the 524 Stipulation may cause. K.S.A. 66-104d does not  
3 contemplate a cooperative being exempt from regulation as to a certain class of  
4 customers within the cooperative. The statute contemplates the cooperative either  
5 being regulated or not. The 524 Stipulation, if enforced, could create an  
6 unacceptable result. For example, if the Aquila-WPK customers of a currently  
7 deregulated Member voted against deregulation, then what is the regulatory status  
8 of the Member? Is the cooperative still deregulated? Are there two classes of  
9 customers, one which is deregulated and the other which is not? Such a situation  
10 was not contemplated by the provisions of the deregulation statute. Does the vote  
11 of the Aquila-WPK customers abrogate the will of the currently deregulated  
12 customers and make them again subject to being regulated? This would not be fair  
13 or equitable to the currently deregulated customers.

14 **Q. If what you describe occurred and the Aquila-WPK customers voted against**  
15 **deregulation of a currently deregulated Mid-Kansas Member, why couldn't**  
16 **the Member simply have another election in which all of the Members'**  
17 **members would vote?**

18 A. According to K.S.A. 66-104d(e), an election under subsection (c) or (d) may be  
19 held not more often than once every two years. This provision could ostensibly  
20 preclude for two years a follow-up vote in which all members of the cooperative  
21 could once again vote to determine its regulatory status.

22 **Q. Do the applicants suggest a solution?**

23 A. Yes. Applicants suggest that Order in the 524 Docket be modified to provide that



1           upon transfer of the Certificate of Convenience any Member that is exempt from  
2           regulation at the time of the transfer shall remain exempt without further vote of its  
3           customers. This would result in Prairie Land, Victory, Lane-Scott, and Western  
4           retaining their status as exempt upon transfer of the Certificate. The Aquila-WPK  
5           customers would not be harmed by such a result as those customers, if they  
6           desired to do so, could submit a petition of not less than 10% of the members of the  
7           cooperative to re-vote on deregulation. This is in addition to the right of no less  
8           than 5% of all the cooperative's customers or 3% of the cooperative's customers  
9           from any one rate class being allowed to require the Commission to investigate the  
10          Member's rates. These statutory safeguards provide more than adequate  
11          protection to the customers, is fair to the current deregulated customers, is  
12          consistent with spirit of the 524 Stipulation, and necessary in order to avoid  
13          contravening the law as could be the case if the 524 Stipulation is not modified.

14   **Q.    Does this conclude your testimony?**

15   **A.    Yes.**

16

17

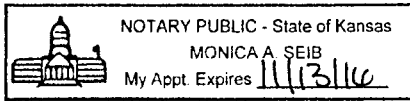
**VERIFICATION**

STATE OF KANSAS                    )  
COUNTY OF Ellis                    ) ss:

Stuart S. Lowry, of lawful age, being first duly sworn, deposes and says that he is the Stuart S. Lowry referred to in the foregoing document entitled "Direct Testimony of Stuart S. Lowry" before the State Corporation Commission of the State of Kansas and that the statements therein were prepared by him or under his direction and are true and correct to the best of his information, knowledge, and belief.

Stuart S. Lowry  
Stuart S. Lowry

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of December, 2012.

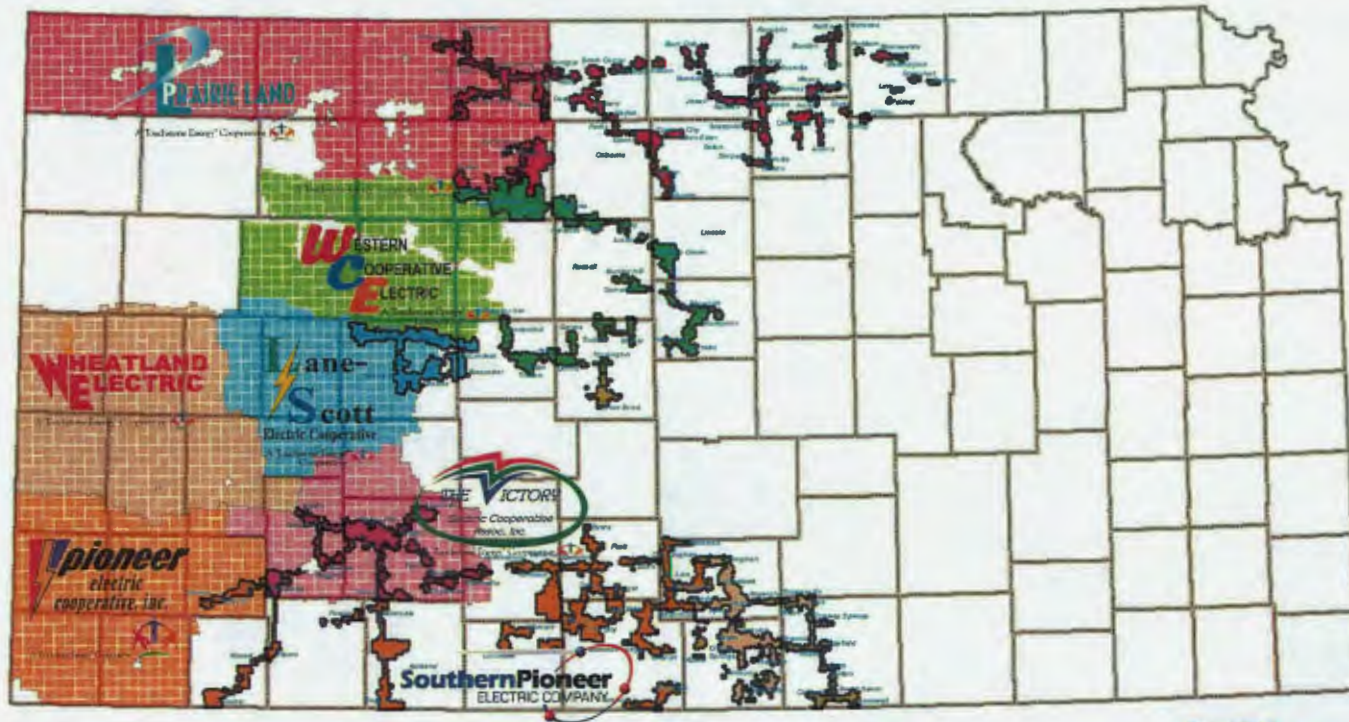


Monica A. Seib  
Notary Public

My appointment expires: 11/13/16

# Member Service Territory

- Sunflower covers rural areas of western Kansas
- Mid-Kansas territory is similar to a traditional IOU footprint, covering the more urban corridors of central Kansas



# WRA Assignment Structure

