

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

Before Commissioners: Pat Apple, Chair
Jay Scott Emler, Commissioner
Shari Feist Albrecht, Commissioner

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

**KANSAS POWER POOL BRIEF IN OPPOSITION TO WHEATLAND ELECTRIC
COOPERATIVE, INC.'S PETITION TO INTERVENE**

COMES NOW the Kansas Power Pool (KPP) to oppose Wheatland Electric Cooperative, Inc.'s (Wheatland) Petition to Intervene. KPP offers the following in support of its brief.

1. Southern Pioneer initiated this Docket on September 8, 2016, when it filed a Complaint against KPP, asking the Commission to enjoin KPP from installing a new transmission interconnection (known as the Kingman Direct Connection) or, in the alternative, to require KPP to pay Southern Pioneer monetary damages (which Southern Pioneer calls an exit or "facility switching fee") in the amount of \$2,505,077.29.¹

2. On March 10, 2017, Mid-Kansas filed a Petition to Intervene, which was granted by the Commission on March 30, 2017.

3. On September 12, 2017, a Settlement Conference was held at the KCC Office, at which time the parties agreed to modify the procedural schedule to allow KPP, Southern Pioneer, and Mid-Kansas additional time to file briefs on jurisdiction issues.² Accordingly, Staff requested approval of a proposed amended procedural schedule, which was reviewed and agreed to by

¹ Complaint of Southern Pioneer against the KPP, p. 38 (specified relief requested).

² Motion to Modify Procedural Schedule, ¶ 12.

Southern Pioneer, KPP, and Mid-Kansas. This procedural schedule provided for KPP to file its jurisdictional brief by October 3, 2017, Southern Pioneer and Mid-Kansas to file briefs by October 24, 2017, and Staff to file its brief by November 3, 2017.³ KPP filed its brief on October 3, 2017, and Southern Pioneer and Mid-Kansas filed a joint brief on October 24, 2017.

4. On October 19, 2017, KMEA filed a Petition to Intervene in this Docket, for the purpose of submitting a brief on jurisdictional issues (essentially, an *amicus curiae* brief). KMEA agreed to accept the procedural schedule as it currently exists and file its brief regarding jurisdictional questions on October 24, 2017 (which it did).⁴

5. On November 13, 2017, Wheatland filed a Petition to Intervene in this Docket. The only stated basis for Wheatland's Petition to Intervene is a request by KMEA (presumably to interconnect the City of Garden City, although Wheatland does not specify in its Petition) pursuant to the Southwest Power Pool (SPP) Open Access Transmission Tariff attachment AQ.⁵ However, the disposition of KMEA's request will not impact the matters involved in this Docket, nor will the disposition of the matters involved in this Docket impact the disposition of KMEA's SPP request.⁶ Just as Southern Pioneer and Mid-Kansas argued in their response to KMEA's Petition to Intervene, this Docket involves a dispute between Southern Pioneer and KPP that does not involve Wheatland.⁷

6. While Wheatland agrees to accept the current procedural schedule if it is allowed to intervene, it has not identified how it could meaningfully (and usefully) participate at this late date. Wheatland has not articulated any way in which it intends to actually participate if its Petition

³ *Id.* at ¶ 13.

⁴ Petition to Intervene of Kansas Municipal Energy Agency, ¶¶ 7, 9 & 10.

⁵ Wheatland Petition to Intervene, ¶ 7.

⁶ To the extent this Commission wishes to address Wheatland's position on KMEA's request to SPP, it can presumably do so in Docket 17-GDCE-370-COM.

⁷ Response of Southern Pioneer Electric Company and Mid-Kansas Electric Company, LLC to Petition to Intervene of Kansas Municipal Energy Agency, ¶ 4.

to Intervene is granted (such as filing an *amicus curiae* brief, like what KMEA filed), and the deadlines for filing testimony and jurisdictional briefing have both passed.

7. To the extent Wheatland actually has any direct interest in these proceedings (which it does not), those interests are adequately represented by Mid-Kansas and Southern Pioneer. Like Southern Pioneer, Wheatland is a member of Mid-Kansas.⁸ And, Wheatland is represented in this matter by the very same law firm who is representing Mid-Kansas. Since, presumably, the Kansas Rules of Professional Conduct (including K.R.P.C. 1.7 and 1.10) prevent the attorneys at the Watkins Calcara Chtd. law firm from taking conflicting positions in this matter, Wheatland's position would necessarily be redundant to any position taken by Mid-Kansas.

8. Certainly, Wheatland has been aware of this matter for some time and, if it felt it was not adequately represented, it could have sought intervention well before now. Wheatland's belated Petition to Intervene is obviously prompted, not by a new factual development but, rather, is made at the behest of Southern Pioneer and in furtherance of Southern Pioneer's efforts to delay the disposition of this matter.⁹

9. Wheatland's Petition to Intervene does not satisfy the conditions of intervention set forth in K.S.A. 77-521. Wheatland has not identified a cognizable legal interest that will be affected by the outcome of this proceeding, and Wheatland's absence will not impair Wheatland's ability to protect its interest in the separate KMEA matter. Further, the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing Wheatland's intervention at this late date.

⁸ See <http://www.midkansaselectric.net/profile.htm>

⁹ Response of Southern Pioneer Electric Company and Mid-Kansas Electric Company, LLC to Petition to Intervene of Kansas Municipal Energy Agency.

10. In the alternative, should the Commission determine that Wheatland does qualify for intervention, the Commission should limit Wheatland's participation to its identified area of concern, which, at this point, would be to file a petition for reconsideration of the Commission's Order on KPP's Motion to Dismiss, if Wheatland disagrees with that Order.¹⁰ The Commission should exclude Wheatland from participating in the evidentiary hearing in order to promote the orderly and prompt conduct of the proceedings, or, in the alternative, Wheatland's intervention should be conditioned on requiring it to combine its activities with Southern Pioneer (since their interests are essential aligned) in this Docket, including their presentations of evidence, argument, cross-examination, discovery, and other participation in these proceedings.

WHEREFORE, for the reasons set forth above, KPP respectfully requests the Commission deny Wheatland's Petition to Intervene or, in the alternative, limit Wheatland's participation pursuant to K.S.A. 77-521(c) to filing a petition for reconsideration of the order on KPP's motion to dismiss and deny Wheatland's participation in any evidentiary hearing or condition its intervention on combining activities with Southern Pioneer, and for all other relief which the Commission deems just and proper.


By: /s/ Amy Fellows Cline
Timothy E. McKee, #7135
Amy Fellows Cline, #19995
Triplett Woolf Garretson, LLC
2959 N Rock Rd, Suite 300
Wichita, KS 67226
Ph 316/630-8100
Fax 316/630-8101
amycline@twgfirm.com
Attorneys for the Kansas Power Pool

¹⁰See K.A.R. 82-1-225(c).

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Amy Fellows Cline, of lawful age, being first duly sworn upon my oath, state that I am one of the attorneys for the Kansas Power Pool; that I have read the above Response in Opposition to Wheatland Electric Cooperative, Inc.'s Petition to Intervene, that I know the contents thereof and declare that the statements made therein are true and correct to the best of my knowledge and belief.

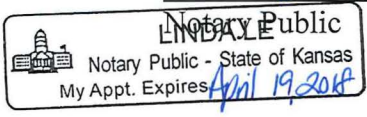


Amy Fellows Cline

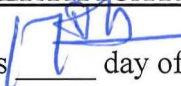
SUBSCRIBED AND SWORN to before me this _____ day of November, 2017.



My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this  day of November, 2017, the foregoing brief was served via electronic mail to:

Glenda Cafer, Attorney
Cafer Pemberton LLC
3321 SW 6th St
Topeka, KS 66606
glenda@caferlaw.com

Terri Pemberton, Attorney
Cafer Pemberton LLC
3321 SW 6th St
Topeka, KS 66606
terri@caferlaw.com

Lindsay Shepard, Executive VP - General Counsel
Southern Pioneer Electric Company
1850 W Oklahoma
PO Box 430
Ulysses, KS 67880-0430
lshepard@pioneerelectric.coop

Samuel Feather, Deputy General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
s.feather@kcc.ks.gov

Stephan Skepnek, Litigation Counsel
Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
s.skepnek@kcc.ks.gov

Al Tamimi, VP, Transmission Planning and Policy
Mid-Kansas Electric Company, LLC
301 W 13th St.
P.O. Box 980
Hays, Kansas 67601
atamimi@sunflower.net

James Brungardt, Regulatory Affairs Administrator
Sunflower Electric Power Corporation
301 W. 13th St.
P.O. Box 1020 (67601-1020)
Hays, Kansas 67601
jbrungardt@sunflower.net

Taylor P. Calcara, Attorney
WATKINS CALCARA CHTD.
1321 Main St. Ste. 300
P.O. Drawer 1110
Great Bend, Kansas 67530
tcalcara@wcrf.com

Corey Linville, VP, Power Supply and Delivery
Mid-Kansas Electric Company, LLC
301 W 13th St.
P.O. Box 980
Hays, Kansas 67601
clinville@sunflower.net

Renee Braun, Corporate Paralegal, Supervisor
Sunflower Electric Power Corporation
301 W. 13th St.
P.O. Box 1020 (67601-1020)
Hays, Kansas 67601
rbraun@sunflower.net

Mark D. Calcara, Attorney
WATKINS CALCARA CHTD.
1321 Main St. Ste. 300
P.O. Drawer 1110
Great Bend, Kansas 67530
mcalcara@wcrf.com

Randall D. Magnison
Executive Vice President – Assistant CEO
Southern Pioneer Electric Company
PO Box 430
Ulysses, Kansas 67880
rmagnison@pioneerelectric.coop

Frank A. Caro, Jr., Attorney
Anne E. Callenbach, Attorney
Polsinelli PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112
(816) 572-4760
fcaro@polsinelli.com
acallenbach@polsinelli.com
Attorneys for KMEA

James M. McVay
WATKINS CALCARA CHTD.
1321 Main St. Ste. 300
P.O. Drawer 1110
Great Bend, Kansas 67530
jmcvay@wcrf.com
Attorneys for Wheatland Electric Cooperative, Inc.

/s/ Amy Fellows Cline
Amy Fellows Cline, #19995
Attorneys for Kansas Power Pool