

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

In the Matter of the Application of)
Mid-Kansas Electric Company, LLC for)
Approval to Make Certain Changes in its) Docket No. 12-MKEE-491-RTS
Charges for Electric Service in the)
Geographic Service Territory Served by)
Western Cooperative Electric Association, Inc.)

Received
on

FEB 01 2012

DIRECT TESTIMONY OF

by
State Corporation Commission
of Kansas

STUART S. LOWRY

ON BEHALF OF MID-KANSAS ELECTRIC COMPANY, LLC

JANUARY 27, 2012

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-**
4 **Kansas)?**

5 A. Yes, I am the president and CEO of Mid-Kansas and have been since
6 August 2011.

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

8 A. I am employed by Sunflower Electric Power Corporation (Sunflower). My
9 business address is 301 W. 13th Street, Hays, Kansas. I am not an
10 employee of Mid-Kansas as it has no employees. By contract approved by
11 the Kansas Corporation Commission (Commission), Sunflower, through its
12 employees, operates Mid-Kansas.¹

13 **Q. What is your present position at Mid-Kansas and how long have you**
14 **held this position?**

15 A. I am the president and CEO. I began in such position in 2011 when I was
16 selected by the Mid-Kansas Board of Directors to serve as its president
17 and CEO.

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

¹ The original Service and Operation Agreement (available on the Commission's website at <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=61fc7358-59e9-49b3-a57f-9e9de6b0148d>) was approved by the Commission in the Order Adopting Stipulation and Agreement, KCC Docket No. 06-MKEE-524-ACQ, ¶ 14.B. (Feb. 23, 2007), available on the Commission's website at <http://www.kcc.state.ks.us/scan/200702/20070223114828.pdf> (2007 Acquisition Order). The Agreement is also available on the Commission's website at: <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=3fa03184-9702-45cc-8957-0e44759aa03e>. This is the currently effective version, which was approved in the Order Approving Spin-Down of Distribution Assets, Docket No. 08-MKEE-099-MIS (Dec. 21, 2007) (Distribution Transfer Order), available on the Commission's website at <http://estar.kcc.ks.gov/estar/ViewFile.aspx?Id=95db96d0-03e6-4c96-8a16-b04d2d239104>

1 I am a graduate of the University of Kansas and Washburn University
2 School of Law. Just prior to joining Mid-Kansas, I served as executive
3 vice-president/general counsel at Kansas Electric Cooperatives, Inc., the
4 Kansas statewide organization.

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

6 A. The purpose of my testimony is to provide (1) background information on
7 Mid-Kansas; (2) background and summary information of the Application,
8 including the general rate impacts of establishing a divisional rate of Mid-
9 Kansas for the geographical area of the Mid-Kansas certificated territory
10 serviced by Western Cooperative Electric Association, Inc. (Western), a
11 Member of Mid-Kansas and (3) briefly address the Cross-State Air
12 Pollution Rule (CSAPR).

13 **I. BACKGROUND INFORMATION ON MID-KANSAS**

14 **Q. Please provide an overview of the business of Mid-Kansas.**

15 A. Mid-Kansas is a Kansas limited liability company with its principal place of
16 business located in Hays, Kansas. Mid-Kansas is owned by five Kansas
17 consumer-owned cooperatives and one subsidiary of a consumer-owned
18 cooperative which organized Mid-Kansas for the purpose of acquiring and
19 operating the former Aquila-WPK electric utility business and operations.
20 The five Kansas cooperatives and subsidiary company, collectively
21 referred to as Mid-Kansas Members, and their headquarters are as
22 follows: Lane-Scott Electric Cooperative, Inc., Dighton; Prairie Land
23 Electric Cooperative Association, Inc., Norton; Victory Electric Cooperative

1 Association, Inc., Dodge City; Western Cooperative Electric Association,
2 Inc., WaKeeney; Wheatland Electric Cooperative, Inc., Scott City; and
3 Southern Pioneer Electric Company, a subsidiary of Pioneer Electric
4 Cooperative, Inc., Ulysses. Mid-Kansas was organized in 2005. The five
5 cooperative Members of Mid-Kansas plus Pioneer Electric also own
6 Sunflower Electric Power Corporation.

7 **Q. When did Mid-Kansas acquire the Aquila-WPK electric assets?**

8 A. Mid-Kansas was notified that it was the successful bidder for the Aquila-
9 WPK electric assets in September 2005. On November, 16, 2005, Aquila
10 and Mid-Kansas made a joint filing before the Commission to transfer the
11 Kansas electric assets to Mid-Kansas. On February 23, 2007, the
12 Commission issued an order approving the sale and transfer of the Aquila-
13 WPK electric assets to Mid-Kansas. Mid-Kansas subsequently began
14 operation of those assets on April 1, 2007.

15 **Q. Please describe the current rate structure of Mid-Kansas.**

16 A. Prior to Mid-Kansas' rate case in Docket No. 09-MKEE-969-RTS (969
17 Docket), Mid-Kansas had adopted the rate structure of Aquila that existed
18 at the time of the acquisition. In the 969 Docket, Mid-Kansas established a
19 rate structure to facilitate its transition to a typical cooperative model
20 structure. The cooperative model consists of a generation and
21 transmission (G&T) cooperative serving its distribution cooperative
22 members who also own the G&T. To facilitate this model, wholesale rates
23 were established for the G&T segment of Mid-Kansas and Mid-Kansas

1 divisional rates were established for five of the six geographical areas
2 served by the Mid-Kansas Members pursuant to the Electric Customer
3 Service Agreements (Service Agreements). In the prior case, Mid-Kansas
4 retained the Aquila rates as its divisional rates for the geographic area
5 served by Wheatland. Wheatland subsequently filed and reached
6 settlement for an update to its divisional rates in Docket 11-MKEE-439-
7 RTS.

8 **Q. Mr. Lowry, please describe the generation and transmission assets**
9 **acquired by Mid-Kansas that are used to provide wholesale electric**
10 **service to the Mid-Kansas Members.**

11 A. Mid-Kansas owns approximately 1,083 miles of transmission line facilities
12 and associated substation facilities which consists of 932 miles of 115 kV,
13 76 miles of 138 kV, 171 miles of 230 kV transmission line, and 40
14 substations. Mid-Kansas owns 389 MW of gas-fired generation which
15 consists of 145 MW at Fort Dodge Station, 99 MW at Great Bend Station,
16 68 MW at Clifton Station; and 77 MW at Cimarron River Station.
17 Additionally, Mid-Kansas has a purchase power agreement for 175 MW of
18 coal-fired capacity from Jeffrey Energy Center and 75 MW of wind
19 generation which consists of 50 MW from the Gray County Wind facility
20 and 25 MW from the Smoky Hills Wind Farm facility.

21 **Q. You previously said that five of the six Members of Mid-Kansas are**
22 **consumer-owned cooperatives. What does that mean?**

1 A. Five of the Members of Mid-Kansas, including Western, are non-profit
2 cooperative corporations owned by their customers. All of the electric
3 customers of these Members become owners of the cooperative when
4 they purchase utility service from the cooperative. That is, all year-end
5 revenues in excess of the cooperatives' actual cost of service are
6 allocated to capital accounts for the benefit of the customers, and may be
7 periodically refunded to the customer. In addition, members participate in
8 management oversight of the cooperative by electing its directors. In a
9 cooperative utility, the ratepayers and the owners of the utility are one and
10 the same. There are no competing interests between stockholders who
11 want higher returns and customers who want lower rates and better
12 service.

13 **Q. Does operating like a consumer-owned cooperative mean that rates**
14 **are not an issue?**

15 A. No, rates are an issue because cooperative members want low rates like
16 anyone else. However, in a cooperative business model, there are not
17 competing interests between the ratepayer and the owner of the utility as
18 there are with an investor-owned utility. In a cooperative, only the
19 customer is benefited if rates exceed the cost of service, so there is no
20 incentive for the cooperative to charge rates in excess of the true cost of
21 service. There is no external motive by Mid-Kansas for the Western
22 Division to charge more than necessary to provide efficient and sufficient
23 service and meet the loan covenants of its lender.

1 **Q. Is Mid-Kansas and the operations provided by the Members of Mid-**
2 **Kansas regulated by Commission?**

3 A. Yes. Mid-Kansas and the operations of the service territory by the Mid-
4 Kansas Members are currently fully regulated by the Commission and will
5 continue to be regulated unless Mid-Kansas or any eligible Mid-Kansas
6 Member seeks to remove Commission regulation over their rates pursuant
7 to the provisions found in K.S.A. 66-104d. It is important to note that the
8 certified service territory of Mid-Kansas must be transferred to its
9 Members prior to them seeking to de-regulate.

10 **II. OVERVIEW OF THE APPLICATION**

11 **Q. Please provide a brief summary of the Application.**

12 A. Basically, Mid-Kansas is requesting an increase in the divisional rate for
13 the designated geographical service territory served by Western as set
14 forth in the Direct Testimony of Richard J. Macke.

15 **Q. What do you mean by divisional rates?**

16 A. Currently, the Mid-Kansas customers are served through Commission-
17 approved divisional rates that are based on specific cost of service of the
18 customers served by the individual Mid-Kansas Member. In this
19 Application, Mid-Kansas is requesting that the Commission approve
20 divisional rates for the geographical area of the Mid-Kansas certificated
21 territory which rates are based in large part upon the specific cost of
22 service rendered to Mid-Kansas by Western for service of the Mid-Kansas
23 customers in that geographic service area.

1 **Q. Will this rate change affect other Mid-Kansas customers served**
2 **through the Mid-Kansas Members?**

3 A. No. The application does not seek the implementation of any changes in
4 the rates established in the other dockets for any other divisional retail or
5 wholesale rates of Mid-Kansas other than for the Western Division.

6 **Q. Why is there a need for divisional rates?**

7 A. The customers served by the Mid-Kansas Members are Mid-Kansas
8 customers, although their primary contact and relationship is with the
9 servicing Mid-Kansas Member. The services provided to Mid-Kansas
10 pursuant to the Service Agreements with each Member results in differing
11 cost of service for the customers served by each Mid-Kansas Member,
12 thereby resulting in the need for a Mid-Kansas rate specifically applicable
13 to the customers within the specific geographical area served by the
14 individual Mid-Kansas Member. Therefore, until the certified service
15 territory and associated customers are transferred to the Mid-Kansas
16 Members, divisional rates are necessary to ensure rates to the customers
17 are just and reasonable.

18 **Q. What is Mid-Kansas requesting in this divisional rate filing for the**
19 **geographical area served by Western?**

20 A. An integral element of Mid-Kansas' rate application is a request that the
21 Commission approve a divisional rate for the customers within the
22 geographic territory served by Western.

23 **Q. What is the rate impact to the customers served by Western?**

1 A. Mid-Kansas proposes in its Application a total revenue increase of
2 \$729,416 or 4.2%. As such, the new rates will benefit our customers while
3 also assisting Mid-Kansas in strengthening the finances of its Western
4 Division and improving its capital structure.

5 **III. CSAPR**

6 **Q. Are you familiar with the status of CSAPR and its potential impact on**
7 **electric utilities in the State of Kansas?**

8 A. Yes, I am very familiar with this issue.

9 **Q. How do you see CSAPR impacting Mid-Kansas and/or Western?**

10 A. Although the potential impact of this rule on Mid-Kansas and its Members
11 is great, I do not believe it is an issue at this point for purposes of the rate-
12 setting request contained in this application. However, because of the
13 overall importance of the issue, I will address it generally in my testimony.

14 **Q. Can you give the Commission some background on CSAPR?**

15 A. I have attached to my testimony as **Exhibit SSL-1** the sworn Declaration
16 of Mr. Wayne E. Penrod, Manager of Environmental Policy for Sunflower
17 Electric, which provides an explanation of the background and status of
18 CSAPR, its potential impact on cooperatives in Kansas, and changes to
19 the implementation of the rule needed in order to protect customers while
20 complying with the Environmental Protection Agency's (EPA) mandates.
21 Mr. Penrod is the subject matter expert on environmental regulations and
22 is most familiar with CSAPR issues. Mr. Penrod's Declaration was
23 submitted as part of an action filed by a coalition of Kansas utility

1 companies in the United States Court of Appeals for the District of
2 Columbia Circuit petitioning the Court for a Stay of the CSAPR.²

3 **Q. Why do you believe that CSAPR is not an issue for purposes of this**
4 **rate case?**

5 A. I do not want to downplay the impact CSAPR could have on all utility
6 companies in Kansas, including Mid-Kansas; however, this rate case is
7 being filed for purposes of establishing retail and local access charge
8 (LAC) rates based upon historical test year data. As such, the potential
9 costs of CSAPR are not part of the cost of service information submitted in
10 this case.

11 Although the United States Court of Appeals for the District of Columbia
12 has issued a stay of CSPAR pending the court's resolution of the petitions
13 for review³, as the Commission can see from the Declaration of Mr.
14 Penrod, if the effective date of CSAPR is not permanently delayed or
15 some other action is not taken by EPA or the Court of Appeals does not
16 overturn CSAPR, compliance with CSAPR by Mid-Kansas is expected to
17 have negative effects on the reliability of service provided to Mid-Kansas
18 customers and Members, and therefore, it will impact service reliability for
19 the retail customers they serve, including Western. Sunflower and Mid-
20 Kansas participated in the Commission's public hearing on the impacts of

² State of Kansas v. United States Environmental Protection Agency, Case No. 11-1329 (consolidated with Nos. 11-1302, *et al.*).

³ On December 30, 2011, the United States Court of Appeals for the District of Columbia Circuit, in Case No. 1302, in which Case No. 11-1329 was consolidated, issued an order staying the Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule," 76 Fed.Reg. 48,208 (August 8, 2011), pending the court's resolution of the petitions for review.

1 CSAPR on November 30, 2011, and will fully address all issues related to
2 CSAPR in the general investigation docket the Commission indicated it
3 would open. Again, this is a significantly critical issue confronting Kansas
4 electric utilities, but it does not change the issues being addressed in this
5 standard rate case application.

6 **IV. CONCLUSION**

7 **Q. In summary, what are the actions Mid-Kansas is requesting of the**
8 **Commission?**

9 A. As stated in the Application, Mid-Kansas is requesting approval of the
10 following:

- 11 1. Divisional retail rate for Mid-Kansas retail customers in the
12 geographical service territory served under contract with Western.
- 13 2. LAC and line loss that reflects the appropriate allocation of the cost
14 of service of providing electric service to the third-party users of the
15 34.5 kV system owned by Western.
- 16 3. The deferral and reservation by the Commission of the
17 classification of the 34.5 kV and appropriate lower voltage facilities
18 as provided for at paragraphs 10 and 11 of the Stipulation and
19 Agreement approved by the Commission in the 969 Docket and
20 that is currently being addressed in Docket 11-GIME-597-GIE.

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

22 A. Yes.

VERIFICATION OF STUART S. LOWRY

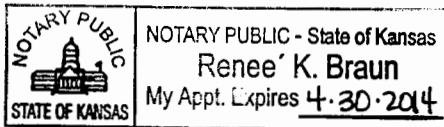
STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

Stuart S. Lowry, being first duly sworn, deposes and says that he is 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 27th day of January,
2012.



Renee K. Braun

Notary Public

My Appointment Expires:

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|---|---|-----------------------------|
| The Kansas City Board of Public Utilities – Unified |) | |
| Government of Wyandotte County/Kansas City, Kansas, |) | |
| Kansas Gas and Electric Company, Sunflower Electric |) | |
| Power Corporation, and Westar Energy, Inc. |) | |
| Petitioners, |) | |
| v. |) | Case No. 11-1374 |
| U.S. Environmental Protection Agency, |) | (Consolidated with |
| Respondent. |) | Nos.11-1302 <i>et al.</i>) |

**KANSAS UTILITIES' REPLY IN SUPPORT OF
MOTION FOR STAY OF FINAL RULE AS APPLIED TO KANSAS**

Exhibit D

Declaration of Wayne E. Penrod

For Sunflower Electric Power Corporation

Declaration of Wayne E. Penrod
Manager, Environmental Policy,
SUNFLOWER ELECTRIC POWER CORPORATION
IN SUPPORT OF REPLY TO EPA'S CONSOLIDATED RESPONSE TO MOTIONS FOR STAY PENDING
JUDICIAL REVIEW OF THE
FEDERAL IMPLEMENTATION PLANS: INTERSTATE TRANSPORT OF
FINE PARTICULATE MATTER AND OZONE; AND CORRECTION OF SIP APPROVAL
(THE CROSS-STATE AIR POLLUTION RULE (CSAPR))

76 Fed. Reg. 48208 (August 8, 2011); Docket ID No. EPA-HQ-OAR-2009-0491

Wayne E. Penrod, being first duly sworn upon oath, deposes and says:

1. I am the Executive Manager, Environmental Policy for Sunflower Electric Power Corporation and serve in a similar capacity for Mid-Kansas Electric Company, LLC (Mid-Kansas), both of which are located in western Kansas. Sunflower and Mid-Kansas are not-for profit electric generation and transmission cooperative corporations owned and operated by the rural electric distribution cooperatives to which they supply electricity.
2. I submitted an earlier Declaration in support of a Motion to Stay the Rule and am responding to statements made by EPA in its consolidated response and in the Declaration of Sam Napolitano attached in support of the reply.
3. First, I think it worthy of note that Mr. Napolitano's position as the director of EPA's emission trading program does not in and of itself reflect any particular expertise in the realities of power production and dispatch.
4. The basic premise of EPA's argument lies in the assumption that there will be ample allocations available which can be traded and which allow Sunflower and other Kansas utilities to generate sufficient power to meet their demand. The brutal reality however is there are simply not enough allocations available anywhere within the states with which Kansas may lawfully trade under the rule to offset the emissions related to power production at levels necessary to serve

total load requirements. There are not enough allowances to go around and EPA's simple answer is: they are confident they will appear.

5. As to Mr. Napolitano's specific comments regarding Sunflower on page 37 of his 48 page declaration (Paragraph 100), he does not rebut the statement of Mr. Penrod relating to Holcomb 1 (H1), he simply seeks to confuse it: The 2012 EPA allocation of annual NO_x allowances for Sunflower's H1 operations is 2074 (it drops to 1724 in 2014 and thereafter); the historic NO_x emissions in 2010 from H1 to meet the 2010 load amounted to 4234 tons. The resulting shortage then is some 2160 allowances. Simple arithmetic, without the need for what he decries as "exaggerations", yields an EPA-expected utilization of 48.9% for H1 in 2012 if no further improvements are integrated into the unit. Mr. Napolitano is correct that, in the earlier declaration I submitted on behalf of Sunflower, I rounded the figure off to 50%. That, however, is an understatement of the impact not an "exaggeration".
6. Mr. Napolitano then makes much of Sunflower's planned modifications at its H1 unit (at a cost in excess of \$20 million) to reduce NO_x. Here again, he engages in Pollyannaic optimism that all will go according to hope and the drastic allocation shortfall will simply go away. His declaration points out that Sunflower has applied for a PSD permit to install the modifications and he concludes the work will be complete in January of 2012. However, the reality is that Sunflower does not yet have a final PSD permit and construction cannot commence unless and until it does. He does concede that even after completion of the project there will still be a projected annual NO_x allowance deficiency of 700 in 2012 and thereafter. In spite of the improvements planned, it remains clear that without additional allocations, and Mr. Napolitano seems to concur, the annual NO_x allowances for H1 operation yields only about 77.5% utilization for 2013 and 64.5% in 2014 and thereafter.
7. Mr. Napolitano's comments also incorrectly assume the full impact of the planned improvements will occur in 2012 by applying the anticipated post-completion emission rate to Sunflower's pre-completion operations. The project is hoped to be complete in the first two months of the year but the modifications

cannot be made without shutting the plant down. To replace the power during the outage, Sunflower will be forced to operate its gas and peaking units which are substantially less efficient than H1 and which will dissipate Sunflower's NO_x allowances for the gas units which ordinarily are reserved for the summer peak season.

8. While Mr. Napolitano does not address ozone season allowances in his Affidavit, the deficiency of some 420 allowance allocated by EPA can be similarly determined for H1.
9. The outcome of this project, at twice EPA's rulemaking cost assumptions, will still requires a reduction in H1 utilization which seems to defeat the regulatory purpose of dispatching energy production to the least emitting unit in the system, which for Sunflower after the improvements are completed will certainly be H1.
10. EPA postulates in the rule that improvements having a value of about \$500/ton of annual NO_x emission reduction is appropriate public policy for achieving cross-state air pollution reductions. The question then, is whether having made such expenditures, especially if they exceed \$1000/ton, the EPA-allocation should provide for full dispatch capability on the improved unit. We believe that it should.
11. Mr. Napolitano's comments did not address the NO_x allowance allocation for the natural gas units. None of these older units can achieve the substantial reductions planned for H1 at anywhere near the presumptive cost imputed by the rule. These are smaller and older but still viable intermediate and peaking units for which the cost to achieve reductions would easily exceed those for Holcomb by a factor of three, or up to \$3,000 ton. This cost well exceeds even the \$1,300/ton presumptive cost for ozone season improvements. Sunflower has estimated the additional annual NO_x allowances required for these units, and this deficiency easily exceeds 1000 annual NO_x allowances.
12. EPA, in its response, dismisses the concerns raised by the Kansas utilities and the SPP relating to reliability and related transmission concerns. It points to a NERC study which looks at the national picture from the "ten thousand foot"

perspective. The study itself concedes it applies only to "Bulk power system reliability, as defined in the *How NERC defines Bulk Power System Reliability* section of this report, [which] does not include the reliability of the lower voltage distribution systems, which account for 80 percent of all electricity supply interruptions to end-user customers." [http://www.nerc.com/files/2011_LTRA_Final.pdf; note 4, p.ii] EPA interestingly omits to include the conclusion stated in the NERC report at page 73 of the risk assessment portion of the report "Environmental Regulations are shown to be the number one risk to reliability over the next 1 to 5 years." [http://www.nerc.com/files/2011_LTRA_Final.pdf, p. 73]

13. EPA references capacity and simplistically argues there is plenty to go around. However the reserve capacity offers no relief if the energy cannot get to the place where it is needed and EPA just summarily dismisses the transmission related issues raised by Sunflower, the Kansas utilities, and SPP. EPA's argument is akin to telling the western Kansas farmers who suffered through severe drought this past summer (more than 50 days of 100+ degrees), that they were "exaggerating" because there was more than enough water to go around because of the record rainfall in the Missouri and Mississippi river basins which coincidentally also experienced record flooding. An excess of anything, whether food, water or energy provides no relief to those who don't have it and can't get it. The bottlenecks and related transmission issues identified in the Kansas utilities earlier submissions ably demonstrate the constraints that prevent getting power from elsewhere in order to meet the Kansas demand. Those issues are simply glossed over in the EPA response.

Further Declarant Sayeth Not,

Further Declarant Sayeth Not,

Wayne Penrod

Wayne E. Penrod,
Executive Manager, Environmental Policy
Sunflower Electric Power Corporation
P O Box 1020
Hays KS 67601

State of Kansas

County of Ellis

Subscribed and sworn to by Wayne E. Penrod, before the undersigned on December,
9, 2011.

Renee K. Braun

Notary Public

My Appointment Expires:

