

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

JUN 13 2013

In the Matter of the Application of Mid-Kansas)
Electric Company, LLC for Approval to Make) Docket No. 13-MKEE-699-RTS
Certain Changes in its Charges for Electric)
Services in the Geographic Service Territory)
Served by Southern Pioneer Electric Company.)

by
State Corporation Commission
of Kansas

CURB RESPONSE TO PETITION FOR RECONSIDERATION

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and submits its Response to Petition for Reconsideration of Mid-Kansas Electric Company, LLC ("MKEC") of the Order Granting CURB's Petition to Intervene, Discovery Order, and Protective Order issued on May 20, 2013. In support of its response, CURB states as follows.

I. INTRODUCTION

1. This abbreviated rate case was filed by MKEC pursuant to the settlement agreement reached in KCC Docket No. 12-MKEE-380-RTS ("380 docket"). CURB was a party to the 380 docket settlement agreement.

2. On May 23, 2013, CURB filed its petition to intervene. On May 29, 2013, CURB's intervention was granted, with the Order finding and concluding that CURB "met the requirements of K.A.R. 82-1-225 and should be granted intervention."¹

3. Rather than filing a Response to CURB's Petition to Intervene, MKEC filed its petition for reconsideration on June 3, 2013. MKEC seeks reconsideration of the Commission's

¹ Order Granting CURB's Petition to Intervene, Discovery Order, and Protective Order, ¶ 4.

finding that CURB meets the requirements of K.A.R. 82-1-225 and requests that CURB's petition to intervene be denied.²

4. MKEC was created to purchase the assets, certificate of convenience and necessity, franchises, and service territory of WPK in 2005.³ MKEC is owned by one corporation (Southern Pioneer) and five cooperatives.⁴

5. MKEC, through a contract with Southern Pioneer, provides *retail electric service* to customers in the Southern Pioneer service territory.

6. In claiming that "Mid-Kansas is the applicant in this docket",⁵ MKEC appears to have changed its position on who causes retail electric rate cases to be filed by MKEC:

"Despite the fact that this Application was filed by Mid-Kansas, we do believe it is a Lane-Scott matter."⁶

...

CHAIRMAN SIEVERS: Okay. So where I'm going with that is is there a separate decision that's made by Mid-Kansas independent of the decision by Lane-Scott that they needed a rate increase? I mean do they come to you and say well, we would like a rate increase? And Mid-Kansas would say well, we'll think about it in a vacuum? Or is it one of the owners of making the rate increase at your direction?

MR. LOWRY: It's the latter rather than the former. Mid-Kansas, the entity, did not undertake any detailed review of the proposed application. We were briefed by management at Lane-Scott of the need to make a modification to their rates. We took action at the Mid-Kansas Board to submit the Application, and it was, it was at their request.⁷

² Petition for Reconsideration of Order Granting CURB's Petition to Intervene ("Petition to Intervene"), p. 3.

³ Joint Application, November 16, 2005, ¶ I, KCC Docket No. 06-MKEE-524-ACQ.

⁴ Joint Application, ¶¶ 1-2.

⁵ Petition for Reconsideration, ¶ 4.

⁶ MKEC Opening Statement by Terri Pemberton, January 31, 2013, Transcript of Proceedings, p. 36, KCC Docket No. 12-MKEE-410-RTS.

⁷ Lowry, Transcript of Proceedings, January 31, 2013, pp. 92-93, KCC Docket No. 12-MKEE-410-RTS.

7. Consistent with the statement of MKEC counsel and testimony of MKEC witness Stuart Lowry referenced above, this application is a Southern Pioneer matter, filed by MKEC at the request of Southern Pioneer.

8. The Commission has determined that Southern Pioneer is to be treated as any other C-corporation and will analyze Southern Pioneer's applications *in the same manner it does all other C-corporations it regulates.*⁸

II. RESPONSE TO MKEC PETITION FOR RECONSIDERATION

9. MKEC's petition for reconsideration "does not implicate any of the eight grounds for relief under K.S.A. 77-621(c)," a deficiency cited recently in Commission orders denying reconsideration.⁹ MKEC's petition does not reference K.S.A. 77-621(c) or argue any of the statutory grounds contained in K.S.A. 77-621(c) in support of its petition.

10. MKEC's petition also fails to comply with K.A.R. 82-1-235. MKEC fails to cite any testimony with respect to any alleged failure to consider evidence presented in the proceeding.¹⁰ The burden of going forward with the evidence in support of its petition for reconsideration rests with MKEC.¹¹

⁸ Order Approving Settlement Agreement with Modifications, June 25, 2012, p. 21, KCC Docket No. 12-MKEE-380-RTS (emphasis added).

⁹ See, Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-MDWE-466-CPL; Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 7, KCC Docket No. 13-KCPE-463-CPL; Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-WSEE-464-CPL; Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-KCKE-468-CPL; Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-KEPE-462-CPL; Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-EPDE-465-CPL; Order Denying CURB's Petition for Reconsideration of the Commission's February 13, 2013 Order, March 28, 2013, ¶ 6, KCC Docket No. 13-SEPE-467-CPL.

¹⁰ K.A.R. 82-1-235(b). See, Petition for Reconsideration, ¶¶ 1-7.

¹¹ K.A.R. 82-1-235(d).

11. In light of the above standards, MKEC's petition should be summarily denied. Without waiving the above grounds for denial of MKEC's petition, CURB will respond to MKEC's petition below.

A. CURB's intervention is authorized by statute.

12. CURB is the statutory "*official intervenor*" in proceedings before the Commission under Kansas statutes, a fact recognized by the Kansas Supreme Court.¹² Specifically, CURB has been given the specific statutory right to "represent residential and small commercial ratepayers before the state corporation commission" and to "function as an *official intervenor* in cases filed with the state corporation commission."¹³ CURB is further given the specific statutory right to seek judicial review of Commission orders and decisions.¹⁴

13. No other party to this proceeding is authorized to represent residential and small commercial ratepayers before the Commission or to function as an official intervenor in cases filed with the Commission.¹⁵ While Staff may have authority to investigate and testify on behalf of the *public generally* pursuant to Commission regulation, Staff does not represent residential and small commercial ratepayers and is expressly denied the right to appeal Commission orders on behalf of the general public.¹⁶

¹² K.S.A. 66-1223(b). See, *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 24 Kan. App.2d 63, 68, rev. den. 262 Kan. 959 (1997) ("*CURB v. KCC*"). See also, *Farmland Industries, Inc. v. Kansas Corp. Comm'n*, 29 Kan.App.2d 1031, 1047-48, 37 P.3d 640 (2001) ("The bulk of current customers otherwise entitled to receive refunds are *statutorily represented* by CURB. See K.S.A. 66-1223(a)")

¹³ K.S.A. 66-1223(a) and (b).

¹⁴ K.S.A. 66-1223(f).

¹⁵ Staff's authority to represent the general public is not specifically authorized by statute, but merely referenced in the definition section of Commission regulations. K.A.R. 82-1-204(q) ("Technical staff may conduct investigations and otherwise evaluate issues raised, and may testify and offer exhibits on behalf of the *general public*.").

¹⁶ K.A.R. 82-1-204(i)(3).

14. Based on the above, no party other than CURB represents the interests of residential and small commercial ratepayers, including the right to appeal, in this docket. CURB's intervention was properly granted on May 29, 2013, because CURB's petition to intervene stated facts demonstrating its legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by this proceeding.¹⁷

B. CURB's intervention was properly granted because CURB was a party to the 380 docket settlement agreement giving rise to this abbreviated rate case.

15. Noticeably absent in MKEC's petition for reconsideration is an acknowledgement that CURB was a party to the 380 docket settlement agreement giving rise to this abbreviated rate case. CURB has the continued contractual right to participate fully in this docket to ensure the conditions negotiated and approved in the 380 docket settlement agreement are followed and not abrogated.

16. MKEC did not object to CURB's intervention in the 380 docket, but rather affirmatively negotiated a settlement agreement with CURB that contained an agreement for this abbreviated rate case. MKEC has waived its argument that CURB should be denied intervention in this docket by failing to object in the 380 docket and by affirmatively negotiating a settlement agreement that included CURB as a signatory party.

17. CURB has contractual rights under the negotiated settlement agreement, which include the right to intervene in this docket to ensure those rights are protected and not abrogated.

¹⁷ K.S.A. 77-521(c); CURB Petition to Intervene, ¶¶ 2-9.

C. CURB's intervention was properly granted because K.S.A. 66-1224 does not apply to this docket.

18. K.S.A. 66-1224 provides that, "Neither the [CURB] board or the consumer counsel shall have the power or authority concerning any action taken by an *electric* or telephone *cooperative* with a membership of less than 15,000."¹⁸

19. K.S.A. 66-1224 does not apply to this docket because (1) MKEC is not a cooperative as defined by K.S.A. 66-104d(a) with respect to its *retail* electric service and operations, and (2) MKEC is likewise not a cooperative as defined by K.S.A. 66-104d(a) with respect to its wholesale services because MKEC is not owned by four or more electric cooperatives.

20. MKEC is not a cooperative as defined by K.S.A. 66-104d(a) with respect to the MKEC/Southern Pioneer retail electric operations at issue in this docket. The definition of a cooperative, as used in K.S.A. 66-1224, must be read in conjunction with the definition of a cooperative under K.S.A. 66-104d(a), which does not include the retail electric service provided by MKEC as indicated by the language, "providing electric service *at wholesale*":

(a) As used in this section, "*cooperative*" means any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; or any limited liability company or corporation *providing electric service at wholesale* in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any member-owned corporation formed prior to 2004. (emphasis added)¹⁹

21. The Application requests a rate increase related to MKEC's *retail* electric service in the Southern Pioneer service territory, not MKEC's wholesale electric service. The rationale behind including a limited liability company or corporation providing electric service at *wholesale* that is

¹⁸ K.S.A. 66-1224 (emphasis added).

¹⁹ K.S.A. 66-104d(a).

owned by four or more electric cooperatives that provide *retail* service in the definition of a cooperative is that the members of the electric cooperatives will have a voice, or vote, in the *wholesale* services provided and rates charged by the wholesale electric service provider. This docket pertains to the *retail* service, not the wholesale service, provided by MKEC in the Southern Pioneer service territory, so MKEC is not a cooperative as defined by the express language contained in K.S.A. 66-104d(a).

22. MKEC is also not a cooperative as defined by K.S.A. 66-104d(a) with respect to its wholesale services because MKEC is not “*owned by four or more electric cooperatives that provide retail service in the state of Kansas.*”²⁰ To the contrary, MKEC is owned by one corporation (Southern Pioneer) and five cooperatives.

23. As discussed above, the rationale behind including a utility providing electric service at *wholesale* that is owned by four or more electric cooperatives that provide *retail* service in the definition of a cooperative is that the members of the electric cooperatives will have a voice, or vote, in the *wholesale* services provided and rates charged by the wholesale electric service provider. Here, the customers of Southern Pioneer have no voice or vote in the retail services and rates of MKEC in the Southern Pioneer service territory, nor by extension have they had any voice or vote in the wholesale services and rates charged by MKEC.

24. Furthermore, the Commission has determined that Southern Pioneer is to be treated as any other C-corporation and will analyze Southern Pioneer's applications *in the same manner it does all other C-corporations it regulates:*

(v) The Commission concludes that more than enough time has passed and considerable counsel has been provided to Southern Pioneer to allow it to make

²⁰ *Id.*

an informed decision regarding the appropriate business structure. Further reporting or monitoring the decision-making would serve no useful purpose. Therefore, the Commission directs Southern Pioneer that unless Southern Pioneer makes a filing with the Commission within sixty (60) days of this Order declaring that it will either become a cooperative or merge with PECEI (along with a plan and time line for doing so), *the Commission will, going forward, treat Southern Pioneer as any other C-corporation and will analyze Southern Pioneer's applications in the same manner it does all other C-corporations it regulates.*

...

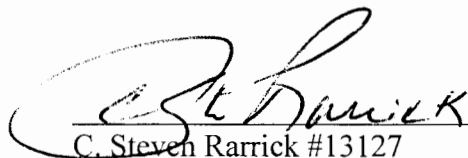
C. The Commission specifically orders Mid-Kansas and Southern Pioneer to affirmatively declare, within 60 days of this Order, the corporate structure to which Southern Pioneer will conform in future proceedings. If Southern Pioneer elects to become a cooperative or merge with PECEI, the Commission further orders Mid-Kansas to file a plan and timeline to accomplish the merger or change within 60 days of this Order.²¹

25. MKEC is therefore not a cooperative as defined by K.S.A. 66-104d(a) with respect to its retail electric services in the Southern Pioneer service territory. As a result, K.S.A. 66-1224 does not apply to this docket and CURB's intervention was properly granted.

III. CONCLUSION.

26. WHEREFORE, CURB respectfully requests that the Commission deny MKEC's petition for reconsideration in its entirety.

Respectfully submitted,



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²¹ Order Approving Settlement Agreement with Modifications, June 25, 2012, pp. 21, 26-27, KCC Docket No. 12-MKEE-380-RTS (emphasis added).

VERIFICATION

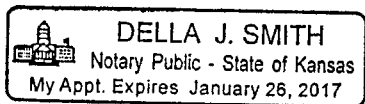
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 13th day of June, 2013.




Notary Public

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

13-MKEE-699-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic service, or hand-delivered this 13th day of June, 2013, to the following:

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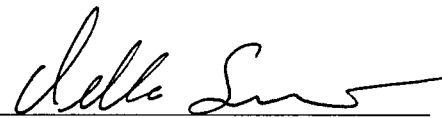
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