

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

JUL 13 2009



In the Matter of the Application of )  
Midwest Energy, Inc. for Approval ) Docket No. 09-MDWE-792-RTS  
to Make Certain Changes in Its Charges for )  
Electric Service Pursuant to K.A.R. 82-1-231(b)(3). )

**UNANIMOUS STIPULATED SETTLEMENT AGREEMENT**

As a result of discussions between the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission” respectively), along with the Citizens’ Utility Ratepayer Board (“CURB”), and Midwest Energy, Inc. (“Midwest Energy” or “Company”) (collectively, “Joint Movants” or the “parties”), the signatories hereby submit to the Commission for its consideration and approval the following Unanimous Stipulated Settlement Agreement (“Stipulation”):

**I. MIDWEST ENERGY’S LAST ELECTRIC RATE APPLICATION- DOCKET NO. 08-MDWE-594-RTS**

1. On December 21, 2007, Midwest Energy filed an electric rate application, along with supporting testimony and schedules, seeking approval to make certain changes in its charges for electric service in accordance with K.S.A. 66-117 and K.A.R. 82-1-231. That application was docketed as 08-MDWE-594-RTS (“the 594 Docket”). The schedules filed with Midwest Energy’s application in the 594 Docket indicated a gross revenue deficiency of \$10,028,870, based upon normalized operating results for the 12 months ending June 30, 2007, adjusted for known and measurable changes.

2. On June 16, 2008, Staff, Midwest Energy and CURB filed a Joint Motion to Approve Stipulation and Agreement (the “594 Agreement”). The 594 Agreement provided for the resolution of all outstanding issues pertaining to the 594 Docket, including an overall annual

revenue increase of \$9,250,000. In addition, because total capital expenditures for Midwest Energy's Goodman Energy Center ("GMEC") would not be known until calendar year-end 2008<sup>1</sup> and substantial rebuild work continued related to FEMA-designated storms, the parties to the 594 Agreement also agreed to support Midwest Energy's request for prior Commission approval to file an abbreviated rate case pursuant to K.A.R. 82-1-231(b)(3).

3. The parties to the 594 Agreement agreed upon certain stipulated provisions that would apply to Midwest Energy's abbreviated rate case. These stipulated provisions agreed to in the 594 Agreement are reiterated in Section IV below. The signatory parties to this Stipulation and Agreement agree that Midwest Energy's abbreviated rate filing was prepared in accordance with the stipulations contained in the 594 Agreement. Pursuant to the 594 Agreement, the abbreviated rate case was to be filed no sooner than February 1, 2009. On August 5, 2008, the Commission issued an Order approving the 594 Stipulation and Agreement, including Midwest Energy's request to file an abbreviated rate case.

## **II. MIDWEST ENERGY'S ABBREVIATED RATE CASE PURSUANT TO K.A.R. 82-1-231(b)(3)**

4. On April 9, 2009, Midwest Energy filed its abbreviated rate case Application, supporting testimony, and supporting exhibits in the above-captioned docket. As agreed to in the 594 Agreement, the primary purposes of this abbreviated case were to: (i) update Midwest Energy's plant for FEMA projects and GMEC, including associated retirements; (ii) update GMEC O&M with the most recent information available; (iii) determine the incremental revenue requirement associated with the FEMA projects and GMEC, and (iv) make certain agreed-upon corrections, as specified below.

---

<sup>1</sup> At the time the 594 Agreement was entered into, in June 2008, only six of the nine gas-fired generation units at GMEC were in service. The remaining three generating units were not scheduled to come on-line until September 2008.

5. Midwest Energy's Application and supporting testimony in this docket requested an incremental revenue requirement increase of \$1,862,608, based upon a test year ended December 31, 2008. The parties to the 594 Agreement agreed that the abbreviated rate case updates shall be incremental to the costs included in the Application filed by Midwest Energy in the 594 Docket.<sup>2</sup> Further, the parties to the 594 Agreement agreed any required incremental increase would be added to, or subtracted from, the overall annual revenue increase of \$9,250,000 agreed to in the 594 Agreement, and approved by the Commission.

6. On June 30, 2009, Staff witness George Rohrer filed testimony and exhibits in this proceeding, recommending an incremental revenue increase of \$1,605,852, including the adjustments shown on Exhibit GDR-1. Staff proposed three adjustments to Midwest Energy's filed case. Staff's first adjustment increased plant in service by \$875,201. Staff's second adjustment increased accumulated depreciation by \$4,823,287. The combined result of these two adjustments is a decrease to net plant in service of \$3,948,086. Both of these adjustments are related to the inadvertent inclusion of transmission plant in the FEMA projects contained in Midwest Energy's Application.

7. Staff's third adjustment decreased the working capital component of rate base by \$105,938. This adjusted the GMEC gas inventory balance to reflect the current actual 13-month average balance. In its Application, Midwest Energy used the average monthly balance through the end of calendar year 2008, which comprised nine months of gas in storage. Since GMEC has not been in operation for a full year, Staff made this adjustment to be more reflective of ongoing operations.

---

<sup>2</sup> Pursuant to the 594 Agreement, the costs included in the Application shall be from Section 3, Schedule 1, Column 6 and Section, Schedule 3, Column 13.

8. The net result of Staff's adjustments is a reduction of \$256,756 to Midwest Energy's requested revenue requirement increase. Midwest Energy originally requested an increase of \$1,862,608, while Staff recommended a rate increase of \$1,605,852, based on its adjustments as described above.

9. On July 13, 2009, CURB witness Andrea Crane filed testimony in this matter. Ms. Crane's testimony adjusted both Midwest Energy's and Staff's proposed GMEC Non-Fuel O&M expense. Ms. Crane provided two different methodologies that yielded \$225,573 and \$460,551 decreases (respectively) to Midwest Energy's filed GMEC Non-Fuel O&M expense. Ms. Crane expressed concerns about using budgeted amounts to calculate O&M expense, but also recognized that this case is complicated due to an incomplete year of operating experience and the fact that the first year of GMEC Non-Fuel O&M expense is likely to be different than a normal year. Because of those uncertainties, Ms. Crane concludes that a revenue requirement adjustment (reduction) of \$200,000 would be reasonable, which reflects a reduction in GMEC Non-Fuel O&M expense as well as a very small impact on cash working capital resulting from the reduction in O&M expense. Midwest Energy agrees with Ms. Crane that calculating the appropriate level of GMEC Non-Fuel O&M expense is difficult. Midwest Energy and Staff both agree that CURB's proposed compromise which results in a \$200,000 revenue requirement reduction is reasonable and should be adopted by the Commission.

### **III. SETTLEMENT OF CURRENT RATE CASE**

10. Midwest Energy, Staff, and CURB agree that the Commission should accept both Staff's and CURB's proposed adjustments as described above. Specifically, all parties agree that Midwest Energy should be granted a rate increase of \$1,405,852 (Staff's recommended rate increase of \$1,605,852 less \$200,000 as an agreed-upon reduction related to GMEC Non-Fuel

O&M expense and associated cash working capital.) In addition, the parties reiterate that the stipulated provisions all parties agreed upon in the 594 Docket to be utilized in this abbreviated case will apply. These stipulated provisions appear below.

**IV. STIPULATED PROVISIONS TO BE UTILIZED IN ABBREVIATED RATE CASE**

11. The parties to the 594 Agreement agreed upon the following stipulated provisions that would apply to this abbreviated rate case. The signatory parties to this Stipulation and Agreement agree that Midwest Energy's abbreviated rate filing was prepared in accordance with the stipulations as contained in the 594 Agreement.

**A. Incremental Update**

12. The parties agreed that the primary purpose of the abbreviated case is to update Midwest Energy's plant for FEMA projects and GMEC, and to update GMEC O&M with the most recent information available (including Midwest Energy's 2009 budget). As such, the Parties stipulated that the updates shall be incremental based upon the Application filed by Midwest Energy in the 594 docket.

**B. Rate of Return**

13. The Parties agreed that the rate of return to be utilized shall be 7.24%.

**C. Depreciation Rates**

14. In light of the fact that the Commission intends to open a generic docket<sup>3</sup> regarding depreciation, the parties agreed to utilize Midwest Energy's filed depreciation rates from the 594 Docket.

**D. Corrections to Application**

---

<sup>3</sup> The generic proceeding to evaluate depreciation issues was opened on June 30, 2008, and is docketed as 08-GIMX-1142-GIV.

15. The incremental updates should include incorporating two corrections identified by Staff regarding test year amounts for common plant accumulated depreciation and retirement Construction Work in Progress (“CWIP”). Specifically, the Company incorrectly allocated 100 percent of common plant accumulated depreciation to rate base in this docket and should have only allocated 85.81 percent to electric operations. Additionally, the Company omitted account 108.8 (Retirement Work in Process) from its initial application.

**E. Accounting Order**

16. On August 17, 2007, Midwest Energy filed an application seeking an accounting authority order to authorize it to defer and seek recovery of its actual costs of investment in and operation of Goodman Energy Center until such time as all units were operational. Midwest Energy’s request for an accounting authority order was made in order to avoid phasing in the costs associated with this new generation investment over two or more rate increases in a brief span of time. Specifically, Midwest requested that the Commission approve continued use of Allowance for Funds Used During Construction (“AFUDC”) and capitalization of non-fuel operations and maintenance expense for Phase I incurred between the completion of the first and second phases of GMEC. Midwest also requested approval to delay recording depreciation expense to its books until the GMEC plant is in full operation. On December 19, 2007, the Commission issued an order approving Midwest Energy’s request for an accounting authority order.

17. As such, in accordance with the accounting authority order, the parties agreed that the abbreviated and subsequent rate cases would include the cost of capitalized non-fuel O&M costs, deferred depreciation, and AFUDC continuation.

**F. EFFECTIVE DATE OF RATES AND RENEWAL OF REQUEST FOR EXPEDITED TREATMENT**

19. In the 594 docket the parties agreed that, although they cannot bind the Commission, they will make reasonable efforts to ensure that the abbreviated case revenue increase becomes effective sixty (60) days after the filing date.

20. In its August 5, 2008 Order, the Commission acknowledged that it was not bound by the request to have new rates become effective sixty days after the filing date, but noted that it knew of no good reason at the time why it could not accommodate such a request.

21. Midwest Energy filed its abbreviated rate case application on April 9, 2009, and the sixty-day period after which Midwest Energy had anticipated rates would become effective expired on June 9, 2009. When the original sixty-day period had passed, Midwest Energy then set a goal of having new rates from this case in effect with bills rendered in August 2009. Midwest Energy believes considerable customer confusion regarding bills will be averted if rates are effective with bills rendered with its first billing cycle in August. Later effective dates will result in proration on bills that could include September when summer blocks may no longer be effective. The double implementation of prorated new rates and prorated summer blocks simultaneously have resulted in longer, two-page bills and has caused considerable customer confusion in the past. Midwest Energy would like to avoid as much customer confusion as possible and, in some cases, the necessity of preparing two-page bills

22. Midwest Energy acknowledges that there are time constraints on all parties to this case and the Commission, due to the press of other business matters. Midwest Energy also expresses its appreciation to the Commission Staff and to CURB for their efforts and assistance in negotiating and preparing this Stipulated Settlement Agreement as expeditiously as possible in recent weeks in an attempt to accommodate Midwest Energy's request to have new rates take effect on its first August billing cycle around August 5, 2009.

23. Accordingly, in furtherance of Midwest Energy's goal to have new rates resulting from this case in effect by its first August billing cycle on August 5, 2009, the parties respectfully request that the Commission issue an Order approving this Unanimous Stipulated Settlement Agreement by August 3, 2009. Also in an effort to have this Agreement approved as expeditiously as possible, the parties have agreed to waive any right to cross examine any other signatory party. The parties concede that it cannot bind the Commission to meeting this requested deadline, but respectfully request that the Commission consider the length of time since the original filing of the request and the possible avoidance of customer bill confusion that could result if new rates are effective later.

**G. Rate Design**

24. The parties agreed in the 594 Docket that any increase in revenue in the abbreviated filing will be recovered proportionally across all rate classes through increases in energy charges. The fixed (customer and demand) charges will not change.

**V. MISCELLANEOUS PROVISIONS**

**A. The Commission's Rights**

Nothing in this Stipulation is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that Midwest Energy is providing efficient and sufficient service at just and reasonable rates.

**B. Signatory Parties' Rights**

If directed by the Commission, the signatory parties, including Staff, shall have the right to present pre-filed testimony in support of this Stipulation. Such testimony shall be filed formally in the docket and presented by witnesses at a hearing on this Stipulation.

**C. Negotiated Settlement**

This Stipulation represents a negotiated settlement that fully resolves the issues addressed in this document. The signatory parties represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the signatory parties to this Stipulation shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation and Agreement in the instant proceeding. If the Commission accepts this Stipulation in its entirety and incorporates the same into a final order without material modification, the parties shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

**D. Interdependent Provisions**

The provisions of this Stipulation have resulted from negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation in total, it shall be voidable and no signatory party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Stipulation shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

**E. Submission Of Documents To The Commission Or Staff**

To the extent this Stipulation provides for information, documents or other data to be furnished to the Commission or Staff, such information, documents or data shall be filed with the Commission and a copy served upon the Commission's Director of Utilities. Such information, documents or data shall be marked and identified with the docket number of this proceeding.

IN WITNESS WHEREOF, the signatory parties have executed and approved this Stipulated Settlement Agreement, effective as of the 13<sup>th</sup> day of July, 2009, by subscribing their signatures below.



FRANK A. CARO, JR. (#11678)  
ANNE E. CALLENBACH (#18488)  
Polsinelli Shughart PC  
6201 College Boulevard, Suite 500  
Overland Park, Kansas 66211  
(913) 451-8788  
(913) 451-6205 Fax  
[fcaro@polsinelli.com](mailto:fcaro@polsinelli.com)  
[acallenbach@polsinelli.com](mailto:acallenbach@polsinelli.com)

ATTORNEYS FOR MIDWEST ENERGY, INC.



DANA BRADBURY (#11939)  
Litigation Counsel  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604  
(785) 271-3100  
[d.bradbury@kcc.ks.gov](mailto:d.bradbury@kcc.ks.gov)

ATTORNEYS FOR STAFF



DAVID SPRINGE (#15619)  
C. STEVEN RARRICK (#13127)  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
[d.springe@curb.kansas.gov](mailto:d.springe@curb.kansas.gov)  
[s.rarrick@curb.kansas.gov](mailto:s.rarrick@curb.kansas.gov)

ATTORNEYS FOR CURB

**VERIFICATION**

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON    )

I, Anne E. Callenbach, being duly sworn, on oath state that I am counsel for Midwest Energy, Inc., that I have read the foregoing Stipulation, and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

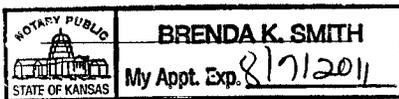
MIDWEST ENERGY, INC.

By: *A Callenbach*  
Anne E. Callenbach

The foregoing was subscribed and sworn to before me this *July 13*, 2009.

*Brenda K. Smith*  
Notary Public

My Commission Expires:



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been e-mailed, faxed, hand-delivered and/or mailed, First Class, postage prepaid, this 13<sup>th</sup> day of July, 2009, to:

NIKI CHRISTOPHER, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

C. STEVEN RARRICK, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

DAVID SPRINGE, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

DANA BRADBURY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PATRICK PARKE, VP CUSTOMER SERVICE  
MIDWEST ENERGY, INC.  
1330 CANTERBURY ROAD  
PO BOX 898  
HAYS, KS 67601-0898

MICHAEL J VOLKER, DIR REGULATORY & ENERGY SERVICES  
MIDWEST ENERGY, INC.  
1330 CANTERBURY ROAD  
PO BOX 898  
HAYS, KS 67601-0898





6201 College Boulevard, Suite 500  
Overland Park, KS 66211  
(913) 451-8788  
Facsimile: (913) 451-6205  
www.polsinelli.com

Anne E. Callenbach  
(913) 234-7449  
acallenbach@polsinelli.com

July 13, 2009

**BY FAX 785-271-3354**

Susan Duffy  
Executive Director  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

STATE CORPORATION COMMISSION

JUL 13 2009

**Re: Docket No. 09-MDWE-792-RTS**

Dear Susan:

On behalf of Midwest Energy, Inc., please accept for filing this facsimile copy of the **Unanimous Stipulated Settlement Agreement**. We are forwarding by regular mail the original and eight (8) copies of the **Unanimous Stipulated Settlement Agreement**.

Please file stamp the extra copy of the **Unanimous Stipulated Settlement Agreement** and transmittal letter and then return it to me in the self-addressed, stamped envelope. Thank you for your assistance and attention to this matter.

Sincerely,

Anne E. Callenbach

AEC:bks  
Enclosure  
cc: Pat Parke  
All Parties