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THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

MAR 27 2013

by  
State Corporation Commission  
of Kansas

In the Matter of the Application of Mid-Kansas )  
Electric Company, LLC for Approval of a Debt ) Docket No. 13-MKEE-452-MIS  
Service Coverage Formula Based Ratemaking )  
Pilot Plan for the Geographic Territory Served by )  
Its Member-Owner Southern Pioneer Electric )  
Company. )

**CURB'S RESPONSE OPPOSING MKEC'S MOTION TO LIMIT DISCOVERY**

The Citizens' Utility Ratepayer Board (CURB) herein submits its response in opposition to *Mid-Kansas Electric Company's Motion to Limit Discovery* (Motion), filed in the above-captioned docket on March 19, 2013.

**I. Preliminary matters.**

1. CURB adopts the recitation of the preliminary facts and timeline as presented by Mid-Kansas Electric Company (MKEC) in its Motion in paragraphs 1- 4, with the exception that CURB disagrees with MKEC's characterization of CURB's discovery requests to which MKEC objected as "clearly irrelevant to the instant proceeding and the questions sought responses on matters already decided by the Commission in previous dockets." (*Motion*, at para. 4).

**II. Argument**

2. Contrary to MKEC's assertions in its Motion, CURB made a good faith effort to restate questions objected to by MKEC, to further pinpoint and clarify their relevance to prefiled testimony of the company where the relevance may have not been immediately clear to the company, and regarding at least one objection, determined that the company had valid grounds for objection and did not revise the request or file a motion to compel. Out of the 49 data requests submitted to MKEC thus far, CURB initially received objections to nine of them (See Exhibit A, attached to

Motion). After CURB submitted revisions (or opted not to pursue motions to compel), the company's answers to only four data requests of the 49 submitted (the ones included in Exhibit B attached to the Motion) remain unanswered by the company on the grounds that they are "clearly irrelevant" to this proceeding. CURB had the option to move forward with motions to compel but has not done so, not because CURB concurs with MKEC's reasons for refusing to answer these questions, but because CURB made an economic decision not to expend any more time attempting to convince MKEC of the relevance of CURB's questions. Had MKEC's outside counsel taken note of the fact that CURB has not filed any motions to compel, counsel could have saved the company the expense of filing this unnecessary motion.

3. The Commission is no doubt aware that the relevancy of questions is often disputed by companies and other parties in discovery and in litigation. MKEC has the right to question the relevancy of CURB's questions, or to object to questions on the grounds that they are more appropriate for cross-examination at a hearing. However, in some instances, a brief answer would have been much more economical than litigating this Motion or having a hearing so that cross-examination can be conducted by the parties. MKEC's outside counsel no doubt has increased the company's legal fees by hundreds (or perhaps thousands) of dollars with this pointless motion against CURB, a filing that was entirely unjustified and unnecessary, given that CURB has not filed any motions to compel the answers to which the company objects.

4. Further, CURB strongly objects to MKEC's characterization of CURB's conduct in discovery as "blasé" and "harassing". Asking questions where relevancy may be in dispute hardly amounts to a campaign of harassment. The MKEC counsel's condescending tone in its communications to CURB and its accusations of "harassment" and abuse of discovery in this Motion

are insulting and are not conducive to congenial resolution of our disagreements in discovery. However unpleasant the tone of MKEC's counsel's objections, CURB nevertheless reviewed the data requests and submitted new data requests in light of the company's initial objections. As a result, CURB re-worded, revised and provided more precise citations to testimony referred to and did not ask for responses to any question to which we believed the company had made a legitimate objection. The fact that we disagree with MKEC on the relevancy of four remaining data responses in Exhibit B is no reason to accuse CURB of abusing discovery in such an inflammatory manner, especially considering that CURB has filed no motions to compel MKEC to answer them.

5. Discovery is allowed by the courts in an effort to streamline litigation, and perhaps shed light on information that will enable the parties to settle the case or at least narrow the issues to be addressed at the hearing. The questions asked by CURB refer directly to statements made in the company's Application and statements made in pre-filed testimony supporting its ratemaking proposal. As noted in the disputed data requests, in its Application and prefiled testimony, MKEC refers to its "unique" history as a small non-profit corporation with high debt and maintenance expenses to support its unique DSC Ratemaking Plan proposal.

6. For example, as noted in CURB 30, MKEC witness Epperson agreed that "the system served by Southern Pioneer already suffer(s) from a lack of proper maintenance" and says the "practice of not adequately investing in plant . . . was evident in the condition of the acquired system when it was owned by Aquila." (Epperson, D. Test., p. 10, lines 16 – 18). This is stated in a section of his testimony devoted to describing the challenges that Southern Pioneer is facing that justify granting the DSC ratemaking proposal. (See generally, *id.*, Sec. IV). Thus, MKEC has opened the door to inquiry as to whether this assertion is a fact that supports the reduced regulatory scrutiny

proposed by the company or is a fact that supports increased regulatory scrutiny instead. Regardless of whether the KCC in previous dockets approved the company's current corporate structure and the purchase price for those poorly-maintained assets, the company is now using these decisions' long-term impacts on the company's financial health as reasons now for granting the Application. CURB is not asking to revisit past decisions, nor challenge them, but where the company cites circumstances that are a direct result of those decisions as reasons to grant the company a ratemaking plan that is unlike no other plan that the Commission has ever granted, the company has made those circumstances relevant to the question of whether the application should be granted. It is reasonable to ask, given the company's claims of financial distress and need for relief through less regulatory scrutiny, whether the company now views those decisions as favorably as it did when they were made. If errors have been made, or the outcome has not been as favorable as anticipated, how do we avoid making similar errors in the future if we do not consider the outcome of past decisions "relevant" to current conditions? Examining the consequences of corporate and regulatory decisions is an integral part of responsible regulatory oversight. Since the company argues that its "unique" circumstances merit extraordinary ratemaking treatment, how those circumstances came about is clearly relevant to this proceeding, especially to customers who will be paying the increased rates.

7. However, as noted above, the dispute between MKEC and CURB concerning the relevancy of the four data requests in Exhibit B is moot because CURB has not opted to file motions to compel answers from MKEC.

8. Besides being moot, the company's request to limit discovery is also overly broad and out of proportion to the nature of the dispute. If the company wishes to limit questions concerning its corporate structure or financial condition or its maintenance expenses, it shouldn't have mentioned

them in testimony as support for its proposal. To the extent that the Commission finds that questions asked at the hearing are irrelevant, it may rule accordingly. But the company is asking the Commission to forbid the parties from inquiring into matters that the company itself mentioned as support for its proposal. If the company would withdraw its testimony referring to these matters, then the scope of the company's motion to limit discovery could be sustained. Otherwise, MKEC is simply overreaching in the scope of its request.

### **III. Conclusion and request for relief.**

9. Since CURB made a good faith effort to revise or withdraw questions (the Exhibit A data requests) in response to MKEC's initial objections, MKEC's over-the-top motion to limit discovery on the grounds that CURB is harassing MKEC or abusing discovery is insulting, unjustified and unsupported by the evidence before the Commission. Of the requests revised and reissued by CURB, the four data responses in Exhibit B that MKEC objects to do not support MKEC's claim that CURB is abusing discovery, harassing the company or that it is unreasonably concerned with irrelevant matters. MKEC's motion should be dismissed as moot because CURB has not filed any motions to compel. Finally, any ruling on the matter of relevancy or so-called abuse of discovery should be based on the content of the company's filings and the content of CURB's discovery requests, and not based on MKEC's inflammatory rhetoric and unfounded allegations.

10. For all these reasons, CURB respectfully requests that the Commission DISMISS or DENY the Motion of MKEC to limit discovery.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Niki Christopher', written in a cursive style.

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VERIFICATION

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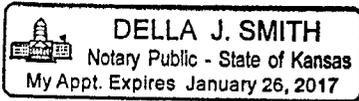
I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

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



Niki Christopher

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of March, 2013.

  
Notary Public

My Commission expires: 01-26-2017.

**CERTIFICATE OF SERVICE**

13-MKEE-452-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 27<sup>th</sup> day of March, 2013, to the following parties who have waived receipt of follow-up hard copies:

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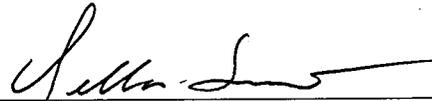
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