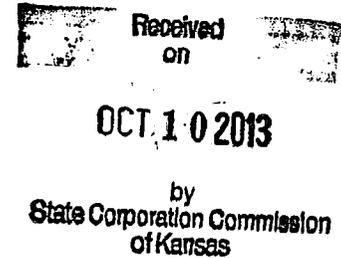


THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of)
Aquila, Inc., d/b/a Aquila Networks – WPK) Docket No. 06-MKEE-524-ACQ
("WPK") and Mid-Kansas Electric)
Company, LLC ("MKEC"), Joint)
Applicants, for an Order Approving the)
Transfer to MKEC of WPK's Certificates of)
Convenience and Franchises with Respect to)
All of WPK's Kansas Electric Business,)
Including its Generation, Transmission and)
Local Distribution Facilities Located in the)
State of Kansas, and for Other Related)
Relief.)



**RESPONSE OF CURB TO STAFF
REPORT AND RECOMMENDATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and submits its Response to the Report and Recommendation ("R&R") filed by Commission Staff ("Staff"). In support of its response, CURB states as follows:

1. Staff's recommendation that MKEC/Victory ("Victory") be granted a waiver of its refund obligation appears to be based on Staff's perception that the Company's financial condition is deteriorating. Staff's R&R is based upon its analysis of Victory's financial data for a twelve month period ending August 31, 2013 - evidence that is not in the record of this proceeding. Staff's R&R provides assorted statistics to support its claim that Victory's financial condition has worsened and that issuing a refund would be "risky and unnecessary."

2. Staff's concerns are misplaced, and contrary to its own findings. Staff's R&R unequivocally concludes that even if Victory would exceed both of its loan covenant minimum TIER

ratio requirements even if ordered to refund \$599,615.¹ Since the refund calculated by Staff (\$599,615) and CURB (\$583,227) will allow Victory to exceed the minimum TIER ratio requirements of its lenders, Victory is not in dire financial condition.

3. The 524 Stipulation and Agreement (“524 S&A”) specifically addressed when waiver of the refund obligation would be allowed:

d. In no event shall any such revenue refund prohibit MKEC and/or Distribution Cooperative(s) from meeting minimum loan covenants, as required by lender(s); the timely completion of scheduled capital projects as identified by MKEC and/or Distribution Cooperatives in a construction work plan or similar document; developing adequate working capital; maintaining sufficient operating reserves for catastrophic events or other extraordinary expenses; providing reliable customer service; and will not result in borrowing funds or increasing rates to provide such refund.²

4. The only provision of the waiver paragraph contained in the 524 S&A applicable here is whether the revenue refund will prohibit Victory from meeting the minimum loan covenants required by Victory’s lenders. Based upon Staff’s own analysis, if Victory is ordered to refund \$599,615 (or CURB’s recommended \$583,227), Victory will *not be prevented* from meeting its loan covenants, but will in fact *exceed* the minimum loan covenants of its lenders.

5. Staff attempts to minimize the fact that Victory will still exceed its minimum loan covenants by reference to Victory’s financial data for a three and one-half year period ending with the twelve month period ending August 31, 2013. Staff’s R&R provides assorted statistics to support its claim that Victory’s financial condition has worsened and that issuing a refund would be “risky and unnecessary.”³

¹ Staff R&R, p. 3.

² 524 S&A, p. 9, § 17 d.

³ Staff R&R, p. 3.

6. Contrary to Staff's assumptions, Victory's current financial condition and projected financial condition in 2014 are irrelevant in this proceeding. Victory exceeded its TIER ratio during 2010. A TIER ratio report was *required* to be filed with the Commission by March 31, 2011. Compliance with this 524 S&A and Order requirement would have resulted in a refund in 2011, based upon Victory's TIER ratio report *required to be filed* in March, 2011 and its financial condition at that time - not a *projected* estimate of what Victory's financial condition may or may not be in 2014.

7. Staff appears completely unconcerned that Victory failed to comply with the 524 S&A TIER ratio report filing requirement in March, 2011. Instead, Staff uses the Company's non-compliance with the 524 S&A and Order as a reason to waive the requirements of the 524 Order by considering Victory's financial condition beyond what would have been examined in 2011. It was the responsibility of Victory to file Victory's 2010 TIER ratio report and any desired request for a waiver of refund obligations in March of 2011. Had the TIER ratio report and any request for waiver been timely filed in March of 2011, the decision whether to issue a refund would have been made in 2011 based upon the most up-to-date financial data for Victory available in 2011, not projections for 2014.

8. Second, there is no evidence on the record to support Staff's claim that issuing a refund would be "risky and unnecessary." Staff did nothing more than provide selected statistics, which are not supported or verified by evidence or actual data in the record.

9. Staff also seems to believe Victory's equity ratio is a factor the Commission should consider in deciding whether a waiver of the required refund is appropriate under the 524 S&A. While it may be desirable for Victory to continue to increase its equity ratio, the need to increase

equity ratios was present and recognized at the time the 524 S&A was *negotiated and approved* in the 524 Order, yet increasing equity ratios was not listed as a reason for waiver of the refund requirement negotiated and approved.⁴ As a result, there is no valid reason under the 524 S&A to deny or waive the required refunds to increase Victory's equity ratios.

10. Moreover, Staff concluded that Victory's equity ratios have already been steadily increasing by about 4% a year.⁵ Further, Victory's equity ratios will in fact continue to increase even after the \$583,227 (CURB) or \$599,615 (Staff) calculated refunds are made, since Victory will exceed both of the minimum TIER ratio requirements contained in its loan covenants if ordered to make the refunds.⁶ Any amount in excess of a TIER ratio of 1.0 constitutes overearning,⁷ which necessarily increases Victory's equity ratio. As a result, since issuing the required refunds will still allow Victory to exceed its loan covenants (1.25 TIER minimum and a 1.10 Operating TIER minimum), the refunds will still result in overearning by Victory, which will in turn increase Victory's equity ratio.

11. Finally, the 524 Order required that a waiver of refund obligation can be issued by the Commission if "MKEC or a distribution cooperative can establish to the Commission through a separate filing that retaining the refund provides benefits to customers that exceed the benefits that otherwise would be provided to the customer by the refund ..."⁸ Victory (and Staff in advocating for the request for waiver) has failed to demonstrate that any alleged benefits of allowing Victory to retain the refund exceed the benefits of refunding the money to customers. The present value of

⁴ 524 S&A, p. 9, § 17 d.

⁵ From 2010 to 2011, Victory's equity ratio increased from 10.05% to 14.68%. From 2011 to 2012, Victory's equity ratio increased from 14.68% to 18.64%. Staff R&R, pp. 3-4.

⁶ Staff R&R, p. 3.

⁷ The use of the term "overearning" was made by Staff in its R&R. Staff R&R, p. 3.

⁸ 524 S&A, p. 8, § 17 b.

these refunds in the pockets of Victory's ratepayers outweighs any illusory benefit of Victory retaining the overearnings.

12. Victory will still exceed its minimum loan covenants if it is required to refund \$583,227 (CURB) or \$599,615 (Staff). Victory has failed to meet its burden to demonstrate the benefits of retaining the refund outweigh the benefits to customers who receive the refund. While Staff appears ready and willing to ignore the clear and unambiguous language in the 524 S&A approved by the Commission, CURB urges the Commission to honor and hold MKEC and Victory to the terms negotiated for revenue refunds when the Victory's TIER ratio exceeds 2.2. If the Commission declines to enforce the clear and unambiguous revenue refund requirement of the 524 S&A, one must question whether CURB or other parties should consider settlement in future cases.

13. WHEREFORE, CURB respectfully requests the Commission deny MKEC/Victory's Motion for Relief as it pertains to the requested waiver for Victory Electric Division for 2010, order refunds be paid to Victory ratepayers in the amount of \$583,227 (CURB) or \$599,615 (Staff) for 2010, and for such and further relief as the Commission deems just and proper.

Respectfully submitted,



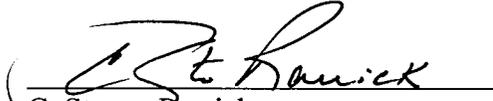
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VERIFICATION

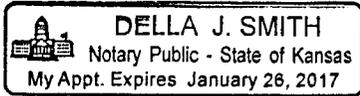
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

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 10th day of October, 2013.


DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2017


Notary Public

My Commission expires: 01-26-2017

CERTIFICATE OF SERVICE

06-MKEE-524-ACQ

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 10th day of October, 2013, to the following parties:

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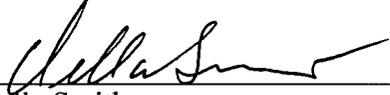
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