

Approved March 31, 1988  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at  
Chairperson

3:30 ~~am~~/p.m. on March 23, 1988 in room 526-S of the Capitol.

All members were present except:

Representative Sifers (excused)

Committee staff present:

Raney Gilliland, Legislative Research  
Laura Howard, Legislative Research  
Arden Ensley, Revisor  
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Conni McGinness, Director, Legislative Relations  
Kansas Electric Cooperatives, Inc.  
Wilbur Leonard, Committee of Kansas Farm Organizations  
Louis Stroup, Jr., Executive Director  
Kansas Municipal Utilities, Inc.

Senate Bill 503--Electric cooperatives, organization.

Conni McGinness, representing Kansas Electric Cooperatives, testified as a proponent of this bill. She explained that the amendments proposed in the bill would (1) allow proxy and mail ballots with regard to cooperative mergers and consolidations, and (2) they would allow the cooperative to pay capital credits to former members. (Attachment 1) Discussion followed.

Wilbur Leonard represented the Committee of Kansas Farm Organizations, speaking in support of the bill. He said that his organization agreed with the amendments now contained in the bill and urged that it be recommended favorably for passage. (Attachment 2)

Senate Bill 504--Municipal energy agencies, organizational structures.

Louis Stroup, Jr., representing Kansas Municipal Utilities, urged approval of this measure which had been requested by the 32 member cities of the Kansas Municipal Energy Agency (KMEA). He provided copies of his testimony, along with a copy of KMEA's Resolution dealing with the amendment. Also included was a copy of the Attorney General's opinion concerning the Tort Claims Act, and a balloon showing the changes being sought. (Attachment 3) Mr. Stroup introduced Gil Hanson, general manager of KMEA; George Marstell of Ottawa, president of KMEA; and Joe Norton, KMEA general counsel from the firm of Gilmore and Bell of Wichita. Discussion followed.

House Bill 3077--Public wholesale water supply district authorized to issue refunding general obligation bonds.

Staff briefed the committee on a proposed amendment to be added to the bill. (Attachment 4) This was a clarification that these are bonds of the district as opposed to the cities and counties. It would specifically state that the general obligation bond is payable by property tax levy. Representative Lacey made a motion to add the amendment to House Bill 3077. Representative Grotewiel seconded. The motion passed. Representative Sughrue, seconded by Representative Lacey, moved that House Bill 3077 as amended be recommended favorably for passage. The motion carried.

There being no further business, the meeting was adjourned at 3:50 p.m. The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on March 28, 1988 in Room 526-S.



KANSAS ELECTRIC COOPERATIVES, INC.

Testimony Before the House  
Energy and Natural Resources Committee

Senate Bill No. 503  
Amendments to the Electric Cooperative Act

Wednesday, March 23, 1988

May it please the Committee, my name is Conni McGinness and I am Director of Legislative Relations for Kansas Electric Cooperatives, Inc. KEC is the statewide service organization representing 35 rural electric distribution cooperatives and two generation and transmission cooperatives in the State. I am speaking here today on behalf of KEC and its member systems in support of Senate Bill No. 503, amending the Rural Electric Cooperative Act (K.S.A. 17-4601 et seq.).

The Rural Electric Cooperative Act was originally passed in 1941, and since then has been amended only twice. The amendments proposed in S.B. 503 are twofold: first, the changes would allow proxy and mail ballots with regards to cooperative mergers and consolidations; and second, they would allow the cooperative to pay capital credits to former members.

The cooperatives are governed by a board of trustees. However, numerous important issues directly affecting the members of the cooperative, such as a decision to merge or consolidate the system, must be decided on by a vote of the membership. Presently, our act is unclear on whether a consolidating or merging cooperative could allow their membership to vote on these important issues by proxy or mail ballot.

Unfortunately, many of the members who would like to vote are, for whatever reason, unable to attend the meeting at which these issues are addressed. Allowing the membership to vote by proxy or mail ballot will insure greater participation in directing the cooperative system. These changes are reflected in lines 103-108 for consolidations and lines 148-153 for mergers.

The amendments to K.S.A. 17-4623(e) (p. 5, line 0189-90) is to correct a technical problem encountered by a number of cooperatives when paying capital credit refunds to former members. The act presently allows the cooperative to refund capital credits only to members, and other persons when they become members. However, a member which ceases to use electric energy furnished by the cooperative ceases to be a member after six months of nonuse. Presently, the cooperative technically can not pay capital credits to former members when they become due until the person becomes a member again. The proposed amendments to this provision will correct this catch-22 and allow the cooperative to pay capital credits due to former members who no longer receive electric energy from the cooperative.

I thank the Committee for the opportunity to testify in support of S.B. 503 as amended and would welcome your questions.

Committee of . . .

# Kansas Farm Organizations

Wilbur G. Leonard  
Legislative Agent  
109 West 9th Street  
Suite 304  
Topeka, Kansas 66612  
(913) 234-9016

TESTIMONY IN SUPPORT OF SENATE BILL NO. 503

BEFORE THE HOUSE COMMITTEE ON ENERGY

AND NATURAL RESOURCES

March 23, 1988

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing for the Committee of Kansas Farm Organizations. I appreciate this opportunity to express the views of our members with respect to Senate Bill No. 503.

This bill permits the members of rural electric cooperatives to vote by proxy or mail ballot in regard to propositions which involve the consolidation or merger of those entities. The bylaws must authorize such action and no person may vote more than 3 proxies. Consolidations or mergers must be approved by a two-thirds vote of those members participating

Another change permits former members to share in the distribution of patronage dividends. A person who has been a member and who has earned his pro-rata share of those funds through the purchase of electric service should not be deprived of that payment merely because he moves from the area served by the cooperative, or for any other reason ceases to be a member.

These proposals appear to us to be practical changes; we support them and urge the Committee to recommend the bill favorably for passage.

We thank each of you for your consideration.

MEMBERS OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

ASSOCIATED MILK PRODUCERS

KANSAS AGRI-WOMEN

KANSAS ASSOCIATION OF SOIL CONSERVATION DISTRICTS

KANSAS ASSOCIATION OF WHEAT GROWERS

KANSAS COOPERATIVE COUNCIL

KANSAS CORN GROWERS ASSOCIATION

KANSAS ELECTRIC COOPERATIVES

KANSAS ETHANOL ASSOCIATION

KANSAS FARM BUREAU

KANSAS FERTILIZER & CHEMICAL INSTITUTE, INC.

KANSAS GRAIN & FEED DEALERS ASSOCIATION

KANSAS LIVESTOCK ASSOCIATION

KANSAS MEAT PROCESSORS ASSOCIATION

KANSAS PORK PRODUCERS COUNCIL

KANSAS RURAL WATER DISTRICT ASSOCIATION

KANSAS SEED DEALERS ASSOCIATION

KANSAS SOYBEAN ASSOCIATION

KANSAS STATE GRANGE

MID-AMERICA DAIRYMEN

KANSAS VETERINARY MEDICAL ASSOCIATION

KANSAS WATER WELL ASSOCIATION

Comments of Kansas Municipal Utilities, Inc.  
on Senate Bill 504  
Before House Energy & Natural Resources Committee  
March 23, 1988

Mr. Chairman, members of the committee, I am Louis Stroup, Jr., executive director of KMU, a statewide association of community-owned electric, gas and water systems.

KMU urges your approval of SB 504 -- a measure requested by the 32 member cities of the Kansas Municipal Energy Agency. Attached is a copy of KMEA's Resolution No. 74 which was adopted by the Board of Directors and sets out the intent and purpose of amending the KMEA statute.

SB 504 does not expand KMEA's scope of authority nor will it conflict with the interest of the other utilities in the state in any manner, nor does it broaden KMEA's present authority for sales of electricity. Most of the changes are reflective of the need for greater flexibility -- internal changes which have become apparent since the legislation was drafted in 1972 and passed in 1977.

The bill also would place KMEA under the Kansas Tort Claims Act which did not exist when the KMEA bill was passed. Although the Attorney General has issued an opinion [copy attached] which states that a quasi-municipal corporation such as KMEA comes within the purview of the Tort Claims Act, it is preferred that such a provision be included in the statutes.

I have attached a balloon showing the changes being sought.

With today is Gil Hanson, general manager of KMEA, and we would be glad to answer any questions you might have.

SENATE BILL No. 504

By Committee on Energy and Natural Resources

1-21

0017 AN ACT relating to municipal energy agencies; concerning the  
0018 organizational structure thereof; amending K.S.A. 12-885, 12-  
0019 886, 12-891, 12-894, 12-895, ~~12-897~~, 12-8,108 and 12-8,109 and  
0020 K.S.A. 1987 Supp. 75-6102 and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 12-885 is hereby amended to read as fol-  
0023 lows: 12-885. Subject to the provisions of ~~this act~~ K.S.A. 12-885 to  
0024 *12-8,111, inclusive, and amendments thereto, any two (2) or*  
0025 *more cities may create a municipal energy agency for the pur-*  
0026 *pose of planning, studying and developing supply, transmission*  
0027 *and distribution facilities and programs and for the purpose of*  
0028 *securing an adequate, economical and reliable supply of elec-*  
0029 *tricity and other energy and transmitting the same for distribu-*  
0030 *tion through the distribution systems of such cities. Any municipi-*  
0031 *pal energy agency created under the provisions of this act shall*  
0032 *be a quasi-municipal corporation; except that nothing herein*  
0033 *shall be construed as relieving any municipal energy agency*  
0034 *created under the provisions of this act from liability for tortious*  
0035 *acts.*

Clarifies services already being offered by KMEA

See later reference to Tort Claims Act

0036 Sec. 2. K.S.A. 12-886 is hereby amended to read as follows:  
0037 12-886. As used in this act, unless the context otherwise requires:

0038 (a) "Agency agreement" means the written agreement be-  
0039 tween or among two (2) or more cities establishing a municipal  
0040 energy agency.

0041 (b) "City" means a city organized and existing under the laws  
0042 of Kansas and authorized by such laws to engage in the local  
0043 distribution and sale of electrical energy and operating an elec-  
0044 tric generating system during the calendar year 1976.

0045 (c) "Governing body," with respect to a city, means the



0046 governing body of the city or, if another board, commission or  
 0047 body is empowered by law or by resolution of the governing  
 0048 body of the city to establish and regulate rates and charges for the  
 0049 distribution of electrical energy within the city, such board,  
 0050 commission or body shall be deemed to be the governing body.

0051 (d) "Municipal energy agency" means a quasi-municipal  
 0052 corporation created by agreement between or among two ~~(2)~~ or  
 0053 more cities pursuant to this act to exercise any of the powers ~~of~~  
 0054 *granted by K.S.A. 12-885 to 12-8,111, inclusive, and amend-*  
 0055 *ments thereto, and including the acquisition, construction, re-*  
 0056 *construction, operation, repair, extension or improvement of*  
 0057 *electric generation or transmission facilities or the acquisition of*  
 0058 *any interest therein or any right to part or all of the capacity*  
 0059 *thereof.*

0060 (e) "Person" means a natural person, a public agency, ~~or a~~  
 0061 private corporation, firm, partnership, cooperative association or  
 0062 business trust of any nature whatsoever, organized and existing  
 0063 under the laws of any state or of the United States.

0064 (f) "Project" means any plant, works, system, facilities and  
 0065 real and personal property of any nature whatsoever, together  
 0066 with all parts thereof and appurtenances thereto, used or useful  
 0067 in the generation, production, transmission, purchase, sale, ex-  
 0068 change or interchange of electric energy or any interest therein  
 0069 or capacity thereof *and including all studies and planning with*  
 0070 *respect thereto.*

0071 (g) "Public agency" means any city or other municipal cor-  
 0072 poration, political subdivision, governmental unit or public cor-  
 0073 poration created by or pursuant to the laws of this state, another  
 0074 state or the United States; any state or the United States; or any  
 0075 person, board or other body declared by the laws of any state or  
 0076 the United States to be a department, agency or instrumentality  
 0077 thereof.

0078 Sec. 3. K.S.A. 12-891 is hereby amended to read as follows:  
 0079 12-891. A municipal energy agency shall be governed by a board  
 0080 of directors consisting of not less than seven ~~(7)~~ persons, each of  
 0081 whom ~~must~~ *shall* reside within the corporate limits of one of the  
 0082 member cities of the agency. ~~Each member city shall have at~~

Clarifies services already being offered  
by KMEA

0083 ~~least one member on the board of directors who shall be the~~  
 0084 ~~mayor of the member city or some other member of the govern-~~  
 0085 ~~ing body of such city appointed by the mayor. The remaining~~  
 0086 directors shall be selected as specified in the agreement creating  
 0087 the agency, except that the method of selection shall require that  
 0088 a majority of the board of directors be members of the governing  
 0089 bodies of the member cities or be directly selected by and  
 0090 subject to removal at will by the members of such governing  
 0091 bodies. ~~Directors who serve on the board of directors by virtue of~~  
 0092 ~~holding an elective office on the governing body of a member~~  
 0093 ~~city shall serve on the board of directors for a term corresponding~~  
 0094 ~~with the term of such elective office. The remaining directors~~  
 0095 shall serve for terms of ~~three (3) years, except that the terms for~~  
 0096 ~~members of the first board of directors may be shortened, if so as~~  
 0097 provided by the agreement creating the agency or by the bylaws  
 0098 of the agency. A director may ~~sueceed himself or herself in be~~  
 0099 ~~appointed to successive terms of office. Unless otherwise pro-~~  
 0100 ~~vided by the agreement creating the agency or by the bylaws of~~  
 0101 ~~the agency, any vacancy occurring on the board for any reason~~  
 0102 ~~other than the expiration of a member's term of office shall be~~  
 0103 ~~filled for the unexpired term by appointment by the remaining~~  
 0104 ~~members of the board; except that:~~

0105 (a) ~~In case of any vacancy occurring in a directorship held by~~  
 0106 ~~the mayor of a member city, such vacancy shall be filled by the~~  
 0107 ~~person succeeding to the office of mayor or some other member~~  
 0108 ~~of the governing body of such city appointed by such successor;~~  
 0109 ~~and~~

0110 (b) ~~in the case of any vacancy occurring in a directorship held~~  
 0111 ~~by a person appointed by the mayor of a member city or some~~  
 0112 ~~other member of the governing body of such city appointed by~~  
 0113 ~~the mayor, such vacancy shall be filled by appointment of the~~  
 0114 ~~mayor. A quorum of the board of directors shall be determined~~  
 0115 ~~as set out in the agreement creating the agency or in the bylaws~~  
 0116 ~~of the agency.~~

0117 Sec. 4. K.S.A. 12-894 is hereby amended to read as follows:  
 0118 12-894. Members of the board of directors ~~shall may~~ receive  
 0119 compensation as provided in subsection (a) of K.S.A. 75-3223 and

Says all directors will be selected as specified by the Agency agreement rather than having statute spell out how selected -- eliminates mandatory requirement that one Board member must be mayor or elected official, leaves this up to members to determine by Agency agreement

Lets quorum be established by Agency agreement or by-laws

Directors do not currently receive pay nor do they want to

0120 amendments thereto and ~~shall~~ *may* be reimbursed for their  
0121 reasonable and necessary expenses actually incurred in the dis-  
0122 charge of their duties.

0123 Sec. 5. K.S.A. 12-895 is hereby amended to read as follows:  
0124 12-895. (a) Municipal energy agencies created under the provi-  
0125 sions of this act may exercise the following powers:

0126 (1) To sue and be sued *subject to the provisions of the* ——— References Tort Claims Act  
0127 *Kansas tort claims act*;

0128 (2) to have a seal and alter the same at will;

0129 (3) to make, amend and repeal bylaws consistent with the  
0130 provisions of this act and the agreement creating the agency;

0131 (4) to enter into franchises, contracts and agreements with  
0132 this state or the United States or instrumentality thereof, or any  
0133 public or private person, partnership, association or corporation  
0134 of this state or of the United States, for the planning, develop-  
0135 ment, construction or operation of any facility for the production  
0136 or transmission of electricity or other energy or for any common  
0137 or other service rendered to, for or by such agency;

0138 (5) to make and enter into any other contract or agreement  
0139 necessary or incidental to the performance of its duties and the  
0140 execution of its powers under this act, including contracts for the  
0141 purchase, sale, transmission or exchange of power and other  
0142 energy with the United States or with other energy systems,  
0143 either privately, cooperatively or publicly owned, within and  
0144 without the state, subject to the limitations and restrictions  
0145 provided in this act;

0146 (6) to plan, finance, construct, purchase, operate, maintain,  
0147 use, share costs of, own, lease, sell, dispose of or otherwise  
0148 participate in any project or any portion thereof within or without  
0149 the state, including solar and wind facilities, or the product or  
0150 service therefrom, or to purchase, own, sell, dispose of or other-  
0151 wise participate in securities issued in connection with the  
0152 financing of such project or any portion thereof or acquire any  
0153 interest in or any right to capacity of such project and may act as  
0154 agent, or designate one or more of the other persons participating  
0155 in a project to act as its agent, in connection with the planning,  
0156 acquisition, construction, reconstruction, operation, mainte-

0157 nance, repair, extension of improvement of any project;  
0158 (7) to borrow money by the issuance of revenue bonds and to  
0159 issue interim financing receipts or temporary notes in the man-  
0160 ner prescribed by this act;  
0161 (8) to establish, revise and collect rates or charges for electric  
0162 power and other energy and all other services, facilities and  
0163 commodities sold, furnished or supplied by the agency;  
0164 (9) to acquire, hold, lease to and from and dispose of real or  
0165 personal property which is necessary for the performance of its  
0166 duties and the execution of its powers under this act and to  
0167 exercise the power of eminent domain in accordance with the  
0168 provisions of K.S.A. 26-501 to 26-516, inclusive, and ~~any~~ amend-  
0169 ments thereto, in order to construct, operate, maintain and man-  
0170 age electric generating and other energy facilities, power lines  
0171 and other energy transmission facilities and ways of access  
0172 between any member city and any electric power or other energy  
0173 plant or any part thereof within this state, except in no event  
0174 shall the agency acquire by condemnation any generation,  
0175 transmission or distribution facilities of other electric utilities  
0176 nor shall the generation, transmission or distribution facilities of  
0177 the agency be subject to the exercise of the power of eminent  
0178 domain by any utility, public or private, or by any municipality;  
0179 (10) to investigate the desirability of and necessity for addi-  
0180 tional sources and supplies of electric energy, and make studies,  
0181 surveys and estimates as may be necessary to determine the  
0182 feasibility and cost thereof;  
0183 (11) to cooperate with other persons in the development of  
0184 sources and supplies of electric energy;  
0185 (12) to invest money of the municipal energy agency not  
0186 required for immediate use, including proceeds from the sale of  
0187 any bonds or notes, in such obligations, securities, and other  
0188 investments as the municipal ~~power energy~~ agency ~~shall deem~~  
0189 *deems* prudent, notwithstanding the provisions of any other law  
0190 relating to the investment of public funds, subject to any agree-  
0191 ment with bondholders or note holders;  
0192 (13) subject to the provisions of K.S.A. 12-897 *and amend-*  
0193 *ments thereto*, to purchase, sell, exchange or transmit electric

————— Technical clean-up

0194 energy within and outside the state in such amounts as it ~~shall~~  
0195 ~~determine~~ *determines* to be necessary and appropriate to make  
0196 the most effective use of its powers and to meet its responsibili-  
0197 ties, and may enter into agreements with any person with respect  
0198 to that purchase, sale, exchange or transmission, on such terms  
0199 and for such period of time as its board of directors determines;  
0200 (14) to procure insurance against any losses in connection  
0201 with its property, operations or assets in such amounts and from  
0202 such insurers as it deems desirable;  
0203 (15) to mortgage, pledge and grant a security interest in any  
0204 or all of its real and personal property to secure the payment of its  
0205 bonds, notes or other obligations or contracts;  
0206 (16) to pay to each taxing authority within whose taxing  
0207 jurisdiction its property is situated, in lieu of taxes on its prop-  
0208 erty, the amounts of the taxes which would be payable if its  
0209 property were owned by a private person, and for this purpose  
0210 the property of a municipal energy agency shall be valued and  
0211 assessed in the same manner and by the same procedure as the  
0212 property of public utilities; and  
0213 (17) to exercise all other powers not inconsistent with the  
0214 constitution of the state of Kansas or the United States constitu-  
0215 tion, which powers may be reasonably necessary or appropriate  
0216 for or incidental to the effectuation of its authorized purposes or  
0217 to the exercise of any of the powers enumerated in this section,  
0218 and generally may exercise in connection with its property and  
0219 affairs, and in connection with property within its control, any  
0220 and all powers which might be exercised by a natural person or a  
0221 private corporation in connection with similar property and  
0222 affairs.  
0223 (b) Nothing in this act shall be construed as authorizing any  
0224 municipal energy agency created and operating under the pro-  
0225 visions of this act to construct, acquire or operate any coal  
0226 gasification facility or any pipeline for the transportation of coal  
0227 slurry, and no such agency shall be authorized to construct,  
0228 acquire or operate any coal gasification facility or any pipeline  
0229 for the transportation of coal slurry unless specifically authorized  
0230 by law.

0231 Sec. 6. K.S.A. 12-807 is hereby amended to read as follows:  
0232 12-807. No municipal energy agency created under this act shall  
0233 be authorized to enter into any agreement or contract for the  
0234 direct sale of electricity to any person other than to a member  
0235 city of the agency or a utility operating:

0236 (a) *A city which operated an electric generating system dur-*  
0237 *ing the calendar year 1976; or*

0238 (b) *a utility, which operated an electric generating system*  
0239 *during the calendar year 1976.*

0240 Sec. 7 6. K.S.A. 12-8,108 is hereby amended to read as fol-  
0241 lows: 12-8,108. (a) Any city may become a member of a munici-  
0242 pal energy agency or withdraw as a member if membership or  
0243 withdrawal is authorized by ordinance of the governing body of  
0244 the city and consented to by resolution of the governing bodies  
0245 of not less than  $\frac{2}{3}$  of the existing member cities board of  
0246 directors of the agency. The governing body of the proposed  
0247 member city and the governing bodies of not less than  $\frac{2}{3}$  of the  
0248 existing member cities then shall also board of directors of the  
0249 agency also shall approve by adoption of a resolution, and  
0250 execute, an amendment to the agreement creating the agency,  
0251 adding the member city to the agreement or withdrawing the  
0252 member city. Any other amendment to the agreement creating  
0253 the agency shall be governed by the provisions of K.S.A. 12-889,  
0254 and amendments thereto. Any ordinance or resolution adopted  
0255 and effective prior to the effective date of this act which relates to  
0256 membership or withdrawal, as provided herein, shall remain in  
0257 full force and effect and shall constitute an ordinance or resolu-  
0258 tion required by this act unless specifically repealed prior to the  
0259 execution by the city of the amendment to the agreement. The  
0260 amendment shall be submitted to and approved by the attorney  
0261 general in the manner provided in subsection (b) of K.S.A.  
0262 12-888, and amendments thereto.

0263 (b) When a municipal electric generating system in any city  
0264 is owned or operated by a board of public utilities, the board of  
0265 public utilities may participate in the creation and become a  
0266 member of a municipal energy agency under the provisions of  
0267 this act. In any such case, the board of public utilities shall act for

— Makes it easier to get in or out of  
the Agency, will save a great deal  
of time and expenses

0268 and on behalf of the governing body of the city for which it  
0269 operates and all appointments, participation and other acts  
0270 which would otherwise be made by the mayor of the city shall be  
0271 made by the chairperson or president of the board of public  
0272 utilities.

0273 Sec. 8 7. K.S.A. 12-8,109 is hereby amended to read as fol-  
0274 lows: 12-8,109. Any member city of a municipal energy agency  
0275 may enter into a contract with such agency for a period not  
0276 exceeding ~~forty (40)~~ 40 years providing for:

0277 (a) *The planning or study of any project;*  
0278 (b) *the provision of services relating to the energy system of*  
0279 *the city; or*

0280 (c) *the purchase of electricity or other energy from such*  
0281 *agency on either a continuing firm or standby basis, or both,*  
0282 *upon such terms and conditions as the parties shall deem rea-*  
0283 *sonable including provisions requiring payment whether actu-*  
0284 *ally received or not and provisions requiring the contracting*  
0285 *city to pay a proportionate amount of deficits with respect to a*  
0286 *particular project.*

0287 New Sec. 9 8. Every municipal energy agency created pur-  
0288 suant to K.S.A. 12-885 *et seq.*, and amendments thereto, shall be  
0289 subject to the provisions of the Kansas tort claims act.

0290 Sec. ~~10~~ 9. K.S.A. 1987 Supp. 75-6102 is hereby amended to  
0291 read as follows: 75-6102. As used in K.S.A. 75-6101 through  
0292 75-6118, and amendments thereto, unless the context clearly  
0293 requires otherwise:

0294 (a) "State" means the state of Kansas and any department or  
0295 branch of state government, or any agency, authority, institution  
0296 or other instrumentality thereof.

0297 (b) "Municipality" means any county, township, city, school  
0298 district or other political or taxing subdivision of the state, or any  
0299 agency, authority, institution or other instrumentality thereof  
0300 *including a municipal energy agency created pursuant to K.S.A.*  
0301 *12-885 et seq., and amendments thereto.*

0302 (c) "Governmental entity" means state or municipality.

0303 (d) "Employee" means any officer, employee, servant or  
0304 member of a board, commission, committee, division, depart-

Clarifies types of contracts for services members may have with Agency

"Firm" is industry word rather than "continuing"

Strengthens take or pay contracts

Puts Agency under Kansas Tort Claims Act

0305 ment, branch or council of a governmental entity, including  
0306 elected or appointed officials and persons acting on behalf or in  
0307 service of a governmental entity in any official capacity, whether  
0308 with or without compensation. "Employee" does not include an  
0309 independent contractor under contract with a governmental en-  
0310 tity. "Employee" does include former employees for acts and  
0311 omissions within the scope of their employment during their  
0312 former employment with the governmental entity.

0313 (e) "Community service work" means public or community  
0314 service performed by a person (1) as a result of a contract of  
0315 diversion entered into by such person as authorized by law, (2)  
0316 pursuant to the assignment of such person by a court to a  
0317 community corrections program, (3) as a result of suspension of  
0318 sentence or as a condition of probation pursuant to court order,  
0319 (4) in lieu of a fine imposed by court order or (5) as a condition of  
0320 placement ordered by a court pursuant to K.S.A. 38-1663 and  
0321 amendments thereto.

0322 Sec. ~~11~~ 10. K.S.A. 12-885, 12-886, 12-891, 12-894, 12-895,  
0323 ~~12-897~~, 12-8,108 and 12-8,109 and K.S.A. 1987 Supp. 75-6102 are  
0324 hereby repealed.

0325 Sec. ~~12~~ 11. This act shall take effect and be in force from and  
0326 after its publication in the statute book.



# GAAR & BELL

NORMAN E. GAAR<sup>1</sup>  
DONALD A. BELL  
JOHN E. CATON  
JOE L. NORTON  
MARTHA E. SCHACH<sup>1</sup>  
LILLIAN G. APODACA  
DAVID G. TITTSWORTH  
KANSAS BAR

OF COUNSEL  
BYRON BRAINERD

<sup>1</sup>ALSO ADMITTED IN MISSOURI

JUDSON L. PALMER, JR. A PARTNERSHIP OF PROFESSIONAL CORPORATIONS  
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1100 MAIN STREET  
KANSAS CITY, MISSOURI 64105  
816-221-1000

January 6, 1987

Mr. Robert Mills  
Kansas Municipal Energy Agency  
P.O. Box 2179  
6950 Squibb Road - Suite 414  
Mission, Kansas 66202

Dear Bob:

Enclosed for your records please find a favorable opinion from the Attorney General's office concerning the Kansas Tort Claim Act. If you have any questions or comments, please feel free to contact the undersigned.

Very truly yours,

GAAR & BELL

  
Joe L. Norton

JLN/lr

Enclosure





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

December 30, 1986

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86- 177

Mr. Joe L. Norton  
Gaar & Bell  
Suite 800, One Main Place  
Wichita, Kansas 67202

Re: Cities and Municipalities--Public Utilities;  
Municipal Energy Agencies--Liability for Tortious  
Acts

State Departments, Public Officers and Employees--  
Kansas Tort Claims Act--Definitions

Synopsis: Members and employees of a municipal energy agency created under the provisions of K.S.A. 12-885 et seq. are covered by the provisions of the Kansas Tort Claims Act, including complete immunity for the functions set out at K.S.A. 75-6104, and are entitled to a legal defense in the event they are sued for acts or omissions in the scope of their employment. Cited herein: K.S.A. 12-885; 12-888; 12-895; 12-8,105; 75-6101; 75-6102; 75-6104; 75-6105; 75-6105; 75-6109.

\*

\*

\*

Dear Mr. Norton:

As general counsel to the Kansas Municipal Energy Agency, you have requested the opinion of this office on a question concerning the potential liability of employees and directors of the aforesaid agency. Created pursuant to the provisions of K.S.A. 12-885 et seq., a municipal energy agency is authorized to purchase, sell, exchange or transmit electric

energy within and outside the state of Kansas and is a quasi-municipal corporation. K.S.A. 12-885; K.S.A. 12-895. The participating cities creating a municipal energy agency are not liable for the obligations of the agency [K.S.A. 12-888(a)(7)], and K.S.A. 12-885 prescribes, in part, that:

"Nothing herein shall be construed as relieving any municipal energy agency created under the provisions of this act from liability for tortious acts."

K.S.A. 12-895(a)(14) authorizes the purchase of insurance against any losses in connection with the property, operations or assets of a municipal energy agency, and K.S.A. 12-8,105 empowers such an agency to indemnify and to purchase and maintain insurance on behalf of any director, officer, employee or agent of the energy agency.

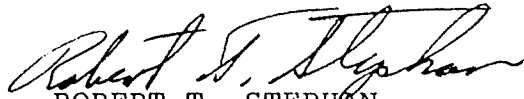
The Kansas Tort Claims Act, K.S.A. 75-6101 et seq., was enacted in 1979, two years subsequent to the enactment of K.S.A. 12-885 et seq. It makes a "governmental entity" liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment. The term governmental entity includes cities or other political subdivisions of the state, and agencies and instrumentalities thereof. K.S.A. 75-6102. The maximum liability for any number of claims arising out of a single accident is \$500,000 (K.S.A. 75-6105), and K.S.A. 75-6104 prescribes a list of seventeen different functions or activities for which governmental immunity exists.

K.S.A. 12-885 et seq. and the Kansas Tort Claims Act, K.S.A. 75-6101, each contain provisions relating to the liability of municipal energy agencies for tortious acts. Accordingly, although they were enacted at different times, they are in pari materia and should be construed together. Claflin v. Walsh, 212 Kan. 1, 9 (1973). In this regard, although the 1977 act provides that "nothing herein" shall be construed as relieving any municipal energy agency from liability for tortious acts (K.S.A. 12-885), it is our opinion that the Kansas Tort Claims Act, including the exceptions from liability prescribed by K.S.A. 75-6104 and the maximum monetary liability prescribed by K.S.A. 75-6105, applies to a municipal energy agency to the same extent as any other governmental entity in the state of Kansas.

Additionally, it is our opinion that employees and directors of a municipal energy agency are covered by other provisions

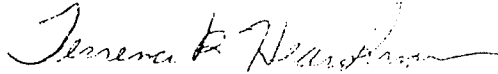
of the Kansas Tort Claims Act, including complete immunity for the functions set out at K.S.A. 75-6104, and are entitled to a legal defense in the event they are sued for acts or omissions in the scope of their employment (K.S.A. 75-6108). In the further event that a judgment is rendered against them for such acts or omissions, they may look to the municipal energy agency for indemnification. K.S.A. 75-6109.

Very truly yours,



ROBERT T. STEPHAN

Attorney General of Kansas



Terrence R. Hearshman

Assistant Attorney General

RTS:JLM:TRH:jm

RESOLUTION NO. 74

A RESOLUTION AUTHORIZING AND APPROVING CERTAIN PROPOSED AMENDMENTS TO THE KANSAS STATUTES RELATING TO MUNICIPAL ENERGY AGENCIES BE ADOPTED AND THAT KMEA GENERAL COUNSEL AND MANAGEMENT TAKE THE NECESSARY STEPS TO HAVE SAID AMENDMENTS INTRODUCED FOR CONSIDERATION AND ADOPTION BY THE KANSAS LEGISLATURE, 1988 SESSION

WHEREAS, K.S.A. 12-885 through 12-8,111, and amendments thereto, titled Municipal Energy Agencies (the "Act") was originally enacted by the Kansas State Legislature in the 1977 session; and

WHEREAS, the Northwest Kansas Municipal Energy Agency (the Agency) was established on the 22nd day of May 1978 and organized as authorized in accordance with the Act; and

WHEREAS, on May 1, 1980 the Agreement creating Northwest Kansas Municipal Energy Agency (the "Agency Agreement") was amended to include additional member municipalities and to change the name of the Agency to the Kansas Municipal Energy Agency ("KMEA"); and

WHEREAS, KMEA has experienced problems with the organizational structure as required by the Act (and as set forth in the Agency Agreement) and desires certain additional clarifying amendments to the Act; and

WHEREAS, the Executive Committee of the Board of Directors has studied KMEA's organizational problem areas and has concluded that if the Act was amended in substantially the form set forth in "Exhibit A" attached hereto, the terms of a new organizational structure could be provided by amendment of the Agency Agreement and By-Laws and that such restructuring and other clarifying amendments would be beneficial to KMEA and its member cities.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE KANSAS MUNICIPAL ENERGY AGENCY THAT:

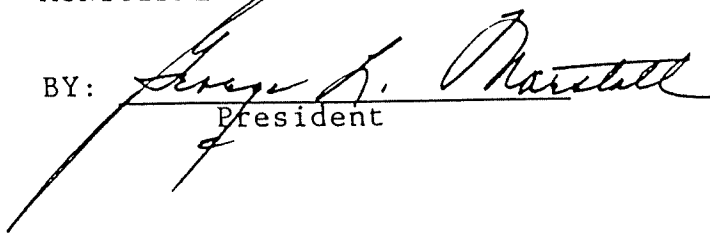
The proposed amendments to the Act in substantially the form set forth in "Exhibit A" attached hereto are hereby approved and management and general counsel are authorized to take the

necessary steps to have such proposed amendments introduced to the Kansas State Legislature for consideration in the 1988 session.

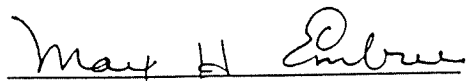
Adopted this 19th day of November 1987.

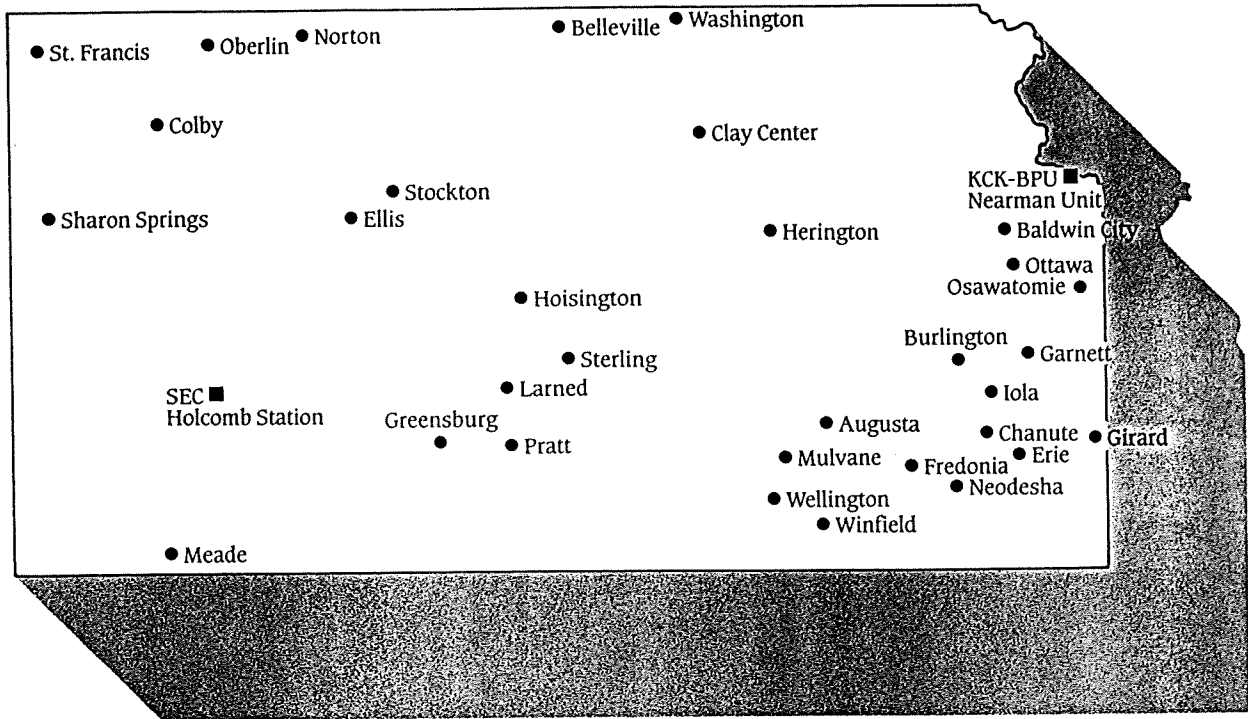
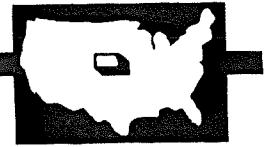
BOARD OF DIRECTORS OF KANSAS  
MUNICIPAL ENERGY AGENCY

BY:

  
President

ATTEST:

  
Secretary



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Harold H. Bair

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Charles Barkley  
John Hill

### BELLEVILLE

Roger Mock  
Richard Cotton

### BURLINGTON

L. Dean Kirchner  
Marion Logan

### CHANUTE

Jesse Jackson  
Robert H. Walker

### CLAY CENTER

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D. D. Dierking

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O. D. Calhoon  
Max H. Embree

### ELLIS

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Kenneth King

### ERIE

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Donald L. Naff

### FREDONIA

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James Sekavec

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### WASHINGTON

Paul K. Wilkinson  
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### WELLINGTON

John W. Crum  
Craig H. Hubler

### WINFIELD

Robert Duncan  
David Warren

# Project Participating Cities



## Nearman Project

Baldwin City  
Fredonia  
Mulvane  
Neodesha  
Ottawa  
Winfield

## Northwest Cities Project

Oberlin  
St. Francis  
Sharon Springs

## Interconnection Project No. 1

Ellis  
Norton  
Oberlin  
St. Francis  
Sharon Springs

## Interconnection Project No. 2

Fredonia

## SWPA Hydro Power Pool Project

Augusta  
Baldwin City  
Chanute  
Clay Center  
Colby  
Garnett  
Herington  
Holton

Horton  
Iola  
LaCrosse  
Lindsborg  
Mulvane  
Neodesha  
Norton  
Oakley

Oberlin  
Osawatomie  
Ottawa  
St. Francis  
Sharon Springs  
Wamego  
Wellington  
Winfield



REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Energy and Natural Resources

Recommends that House Bill No. 3077

"AN ACT relating to public wholesale water supply districts; authorizing a district to issue refunding general obligation bonds; amending K.S.A. 1987 Supp. 19-3557 and repealing the existing section."

Be amended:

On page 2, following line 70, by inserting the following:

"(c) The governing body of public wholesale water supply district No. 4 shall have the power to levy a tax against all taxable, tangible property in the district for the purpose of paying any bonds, and the interest thereon, issued pursuant to this section. Any bonds issued pursuant to this section shall not be included in computing the total bonded indebtedness of any city or county located within such water supply district.";

And the bill be passed as amended.

\_\_\_\_\_  
Chairperson