

Approved 2-10-88
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Merrill Werts at
Chairperson

8:00 a.m./p.m. on February 9, 1988 in room 123-S of the Capitol.

All members were present except:
Senator Vidricksen

Committee staff present:

Ramon Powers - Research	Laura Howard - Research
Don Hayward - Revisor	Raney Gilliland - Research
Nancy Jones - Secretary	

Conferees appearing before the committee:

Louis Stroup - Executive Director, Kansas Municipal Utilities

A motion was made by Senator Langworthy to approve minutes of the February 2, 3, and 4 meetings, seconded by Senator Gordon. Motion carried.

SB 504 - Relating to municipal energy agencies.

Mr. Stroup stated the changes to the municipal energy statutes in SB 504 are reflective of a need for greater flexibility and would be beneficial in correcting organizational problems. An amendment was proposed by Mr. Stroup which would revert to the original language in lines 233 through 238. (Attachment I)

A motion was made by Senator Feleciano to strike Section 6 of SB 504, seconded by Senator Hayden. Motion carried.

A motion was made by Senator Feleciano to recommend favorably SB 504 as amended, seconded by Senator Kerr. Motion carried.

Meeting adjourned. The next meeting will be February 10, 1988.

2-9-88

Guest List

Gilbert Hanson	Kans, Municipal Energy Agency
DAN R. MCGEE	CENTEL ELECTRIC GREAT BEND
Louie Stroup	Kansas Municipal Utilities McPherson
George L. MARSTALL	w " " Energy Agency Well
JACK RANSON	FIN. ADVISOR " " " "
Randy Burdson	Empire District Electric
Jerry Conrad	KG & E
Tom Taylor	KPH Gas Service
Woody Woodman	KCP&L

Comments of Kansas Municipal Utilities, Inc.
on Senate Bill 504
Before Senate Energy & Natural Resources Committee
February 9, 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 for 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. The bill also strengthens the agency's take ^{or} and pay contract language.

I have attached a balloon showing the changes being sought and also an amendment we are requesting in Section 6 -- lines 0233 through 0238.

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

ATTACH I
2-9-88

SENATE BILL No. 504

By Committee on Energy and Natural Resources

1-21

0016 AN ACT relating to municipal energy agencies; concerning the
0017 organizational structure thereof; amending K.S.A. 12-885, 12-
0018 886, 12-891, 12-894, 12-895, 12-897, 12-8,108 and 12-8,109 and
0019 K.S.A. 1987 Supp. 75-6102 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 12-885 is hereby amended to read as fol-
0022 lows: 12-885. Subject to the provisions of ~~this act~~ K.S.A. 12-885 to
0023 12-8,111, inclusive, and amendments thereto, any two ~~(2)~~ or
0024 more cities may create a municipal energy agency for the pur-
0025 pose of *planning, studying and developing supply, transmission*
0026 *and distribution facilities and programs and for the purpose of*
0027 *securing an adequate, economical and reliable supply of elec-*
0028 *tricity and other energy and transmitting the same for distribu-*
0029 *tion through the distribution systems of such cities. Any municipi-*
0030 *pal energy agency created under the provisions of this act shall*
0031 *be a quasi-municipal corporation; except that nothing herein*
0032 *shall be construed as relieving any municipal energy agency*
0033 *created under the provisions of this act from liability for tortious*
0034 *acts.*

Clarifies services already being offered by KMEA

See later reference to Tort Claims Act

0035 Sec. 2. K.S.A. 12-886 is hereby amended to read as follows:
0036 12-886. As used in this act, unless the context otherwise requires:

0037 (a) "Agency agreement" means the written agreement be-
0038 tween or among two ~~(2)~~ or more cities establishing a municipal
0039 energy agency.

0040 (b) "City" means a city organized and existing under the laws
0041 of Kansas and authorized by such laws to engage in the local
0042 distribution and sale of electrical energy and operating an elec-
0043 tric generating system during the calendar year 1976.

0044 (c) "Governing body," with respect to a city, means the

0045 governing body of the city or, if another board, commission or
 0046 body is empowered by law or by resolution of the governing
 0047 body of the city to establish and regulate rates and charges for the
 0048 distribution of electrical energy within the city, such board,
 0049 commission or body shall be deemed to be the governing body.

0050 (d) "Municipal energy agency" means a quasi-municipal
 0051 corporation created by agreement between or among two ~~(2)~~ or
 0052 more cities pursuant to this act to exercise any of the powers ~~of~~
 0053 *granted by K.S.A. 12-885 to 12-8,111, inclusive, and amend-*
 0054 *ments thereto, and including the acquisition, construction, re-*
 0055 *construction, operation, repair, extension or improvement of*
 0056 *electric generation or transmission facilities or the acquisition of*
 0057 *any interest therein or any right to part or all of the capacity*
 0058 *thereof.*

0059 (e) "Person" means a natural person, a public agency, ~~or a~~
 0060 private corporation, firm, partnership, cooperative association or
 0061 business trust of any nature whatsoever, organized and existing
 0062 under the laws of any state or of the United States.

0063 (f) "Project" means any plant, works, system, facilities and
 0064 real and personal property of any nature whatsoever, together
 0065 with all parts thereof and appurtenances thereto, used or useful
 0066 in the generation, production, transmission, purchase, sale, ex-
 0067 change or interchange of electric energy or any interest therein
 0068 or capacity thereof *and including all studies and planning with*
 0069 *respect thereto.*

0070 (g) "Public agency" means any city or other municipal cor-
 0071 poration, political subdivision, governmental unit or public cor-
 0072 poration created by or pursuant to the laws of this state, another
 0073 state or the United States; any state or the United States; or any
 0074 person, board or other body declared by the laws of any state or
 0075 the United States to be a department, agency or instrumentality
 0076 thereof.

0077 Sec. 3. K.S.A. 12-891 is hereby amended to read as follows:
 0078 12-891. A municipal energy agency shall be governed by a board
 0079 of directors consisting of not less than seven ~~(7)~~ persons, each of
 0080 whom ~~must~~ *shall* reside within the corporate limits of one of the
 0081 member cities of the agency. ~~Each member city shall have at~~

Clarifies services already being
 offered by KMEA

0082 least one member on the board of directors who shall be the
 0083 mayor of the member city or some other member of the govern-
 0084 ing body of such city appointed by the mayor. The remaining
 0085 directors shall be selected as specified in the agreement creating
 0086 the agency, except that the method of selection shall require that
 0087 a majority of the board of directors be members of the governing
 0088 bodies of the member cities or be directly selected by and
 0089 subject to removal at will by the members of such governing
 0090 bodies. ~~Directors who serve on the board of directors by virtue of~~
 0091 ~~holding an elective office on the governing body of a member~~
 0092 ~~city shall serve on the board of directors for a term corresponding~~
 0093 ~~with the term of such elective office. The remaining directors~~
 0094 shall serve for terms of three (3) years, except that the terms for
 0095 members of the first board of directors may be shortened, if so as
 0096 provided by the agreement creating the agency or by the bylaws
 0097 of the agency. A director may succeed himself or herself in be
 0098 appointed to successive terms of office. Unless otherwise pro-
 0099 vided by the agreement creating the agency or by the bylaws of
 0100 the agency, any vacancy occurring on the board for any reason
 0101 other than the expiration of a member's term of office shall be
 0102 filled for the unexpired term by appointment by the remaining
 0103 members of the board, except that:

0104 (a) In case of any vacancy occurring in a directorship held by
 0105 the mayor of a member city, such vacancy shall be filled by the
 0106 person succeeding to the office of mayor or some other member
 0107 of the governing body of such city appointed by such successor;
 0108 and

0109 (b) in the case of any vacancy occurring in a directorship held
 0110 by a person appointed by the mayor of a member city or some
 0111 other member of the governing body of such city appointed by
 0112 the mayor, such vacancy shall be filled by appointment of the
 0113 mayor. A quorum of the board of directors shall be determined
 0114 as set out in the agreement creating the agency or in the bylaws
 0115 of the agency.

0116 Sec. 4. K.S.A. 12-894 is hereby amended to read as follows:
 0117 12-894. Members of the board of directors shall may receive
 0118 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

0119 amendments thereto and ~~shall~~ *may* be reimbursed for their
0120 reasonable and necessary expenses actually incurred in the dis-
0121 charge of their duties.

0122 Sec. 5. K.S.A. 12-895 is hereby amended to read as follows:
0123 12-895. (a) Municipal energy agencies created under the provi-
0124 sions of this act may exercise the following powers:

0125 (1) To sue and be sued *subject to the provisions of the*
0126 *Kansas tort claims act*;

0127 (2) to have a seal and alter the same at will;

0128 (3) to make, amend and repeal bylaws consistent with the
0129 provisions of this act and the agreement creating the agency;

0130 (4) to enter into franchises, contracts and agreements with
0131 this state or the United States or instrumentality thereof, or any
0132 public or private person, partnership, association or corporation
0133 of this state or of the United States, for the planning, develop-
0134 ment, construction or operation of any facility for the production
0135 or transmission of electricity or other energy or for any common
0136 or other service rendered to, for or by such agency;

0137 (5) to make and enter into any other contract or agreement
0138 necessary or incidental to the performance of its duties and the
0139 execution of its powers under this act, including contracts for the
0140 purchase, sale, transmission or exchange of power and other
0141 energy with the United States or with other energy systems,
0142 either privately, cooperatively or publicly owned, within and
0143 without the state, subject to the limitations and restrictions
0144 provided in this act;

0145 (6) to plan, finance, construct, purchase, operate, maintain,
0146 use, share costs of, own, lease, sell, dispose of or otherwise
0147 participate in any project or any portion thereof within or without
0148 the state, including solar and wind facilities, or the product or
0149 service therefrom, or to purchase, own, sell, dispose of or other-
0150 wise participate in securities issued in connection with the
0151 financing of such project or any portion thereof or acquire any
0152 interest in or any right to capacity of such project and may act as
0153 agent, or designate one or more of the other persons participating
0154 in a project to act as its agent, in connection with the planning,
0155 acquisition, construction, reconstruction, operation, mainte-

—————References Tort Claims Act

0156 nance, repair, extension of improvement of any project;
0157 (7) to borrow money by the issuance of revenue bonds and to
0158 issue interim financing receipts or temporary notes in the man-
0159 ner prescribed by this act;

0160 (8) to establish, revise and collect rates or charges for electric
0161 power and other energy and all other services, facilities and
0162 commodities sold, furnished or supplied by the agency;

0163 (9) to acquire, hold, lease to and from and dispose of real or
0164 personal property which is necessary for the performance of its
0165 duties and the execution of its powers under this act and to
0166 exercise the power of eminent domain in accordance with the
0167 provisions of K.S.A. 26-501 to 26-516, inclusive, and ~~any~~ amend-
0168 ments thereto, in order to construct, operate, maintain and man-
0169 age electric generating and other energy facilities, power lines
0170 and other energy transmission facilities and ways of access
0171 between any member city and any electric power or other energy
0172 plant or any part thereof within this state, except in no event
0173 shall the agency acquire by condemnation any generation,
0174 transmission or distribution facilities of other electric utilities
0175 nor shall the generation, transmission or distribution facilities of
0176 the agency be subject to the exercise of the power of eminent
0177 domain by any utility, public or private, or by any municipality;

0178 (10) to investigate the desirability of and necessity for addi-
0179 tional sources and supplies of electric energy, and make studies,
0180 surveys and estimates as may be necessary to determine the
0181 feasibility and cost thereof;

0182 (11) to cooperate with other persons in the development of
0183 sources and supplies of electric energy;

0184 (12) to invest money of the municipal energy agency not
0185 required for immediate use, including proceeds from the sale of
0186 any bonds or notes, in such obligations, securities, and other
0187 investments as the municipal ~~power energy~~ agency ~~shall deem~~
0188 *deems* prudent, notwithstanding the provisions of any other law
0189 relating to the investment of public funds, subject to any agree-
0190 ment with bondholders or note holders;

0191 (13) subject to the provisions of K.S.A. 12-897 *and amend-*
0192 *ments thereto*, to purchase, sell, exchange or transmit electric

—————Technical clean-up

0193 energy within and outside the state in such amounts as it ~~shall~~
0194 ~~determine~~ *determines* to be necessary and appropriate to make
0195 the most effective use of its powers and to meet its responsibili-
0196 ties, and may enter into agreements with any person with respect
0197 to that purchase, sale, exchange or transmission, on such terms
0198 and for such period of time as its board of directors determines;

0199 (14) to procure insurance against any losses in connection
0200 with its property, operations or assets in such amounts and from
0201 such insurers as it deems desirable;

0202 (15) to mortgage, pledge and grant a security interest in any
0203 or all of its real and personal property to secure the payment of its
0204 bonds, notes or other obligations or contracts;

0205 (16) to pay to each taxing authority within whose taxing
0206 jurisdiction its property is situated, in lieu of taxes on its prop-
0207 erty, the amounts of the taxes which would be payable if its
0208 property were owned by a private person, and for this purpose
0209 the property of a municipal energy agency shall be valued and
0210 assessed in the same manner and by the same procedure as the
0211 property of public utilities; and

0212 (17) to exercise all other powers not inconsistent with the
0213 constitution of the state of Kansas or the United States constitu-
0214 tion, which powers may be reasonably necessary or appropriate
0215 for or incidental to the effectuation of its authorized purposes or
0216 to the exercise of any of the powers enumerated in this section,
0217 and generally may exercise in connection with its property and
0218 affairs, and in connection with property within its control, any
0219 and all powers which might be exercised by a natural person or a
0220 private corporation in connection with similar property and
0221 affairs.

0222 (b) Nothing in this act shall be construed as authorizing any
0223 municipal energy agency created and operating under the pro-
0224 visions of this act to construct, acquire or operate any coal
0225 gasification facility or any pipeline for the transportation of coal
0226 slurry, and no such agency shall be authorized to construct,
0227 acquire or operate any coal gasification facility or any pipeline
0228 for the transportation of coal slurry unless specifically authorized
0229 by law.

PROPOSED AMENDMENT

SB 504

0230 Sec. 6. K.S.A. 12-897 is hereby amended to read as follows:
0231 12-897. No municipal energy agency created under this act shall
0232 be authorized to enter into any agreement or contract for the
0233 direct sale of electricity to any person other than to a member
0234 city of the agency or a utility operating:

0235 (a) A city which operated an electric generating system dur-
0236 ing the calendar year 1976; or

0237 (b) a utility, which operated an electric generating system
0238 during the calendar year 1976.

0239 Sec. 7. K.S.A. 12-8.108 is hereby amended to read as follows:

0240 12-8.108. (a) Any city may become a member of a municipal
0241 energy agency or withdraw as a member if membership or
0242 withdrawal is authorized by ordinance of the governing body of
0243 the city and consented to by resolution of the governing bodies
0244 of not less than $\frac{2}{3}$ of the existing member cities board of
0245 directors of the agency. The governing body of the proposed
0246 member city and the governing bodies of not less than $\frac{2}{3}$ of the
0247 existing member cities then shall also board of directors of the
0248 agency also shall approve by adoption of a resolution, and
0249 execute, an amendment to the agreement creating the agency,
0250 adding the member city to the agreement or withdrawing the
0251 member city. Any other amendment to the agreement creating
0252 the agency shall be governed by the provisions of K.S.A. 12-889,
0253 and amendments thereto. Any ordinance or resolution adopted
0254 and effective prior to the effective date of this act which relates to
0255 membership or withdrawal, as provided herein, shall remain in
0256 full force and effect and shall constitute an ordinance or resolu-
0257 tion required by this act unless specifically repealed prior to the
0258 execution by the city of the amendment to the agreement. The
0259 amendment shall be submitted to and approved by the attorney
0260 general in the manner provided in subsection (b) of K.S.A.
0261 12-888, and amendments thereto.

0262 (b) When a municipal electric generating system in any city
0263 is owned or operated by a board of public utilities, the board of
0264 public utilities may participate in the creation and become a
0265 member of a municipal energy agency under the provisions of
0266 this act. In any such case, the board of public utilities shall act for

Starting with line 0233:

"direct sale of electricity to any person other than to a member city of the agency or a utility operating an electric generating sytem during the calendar year 1976."

This returns to the original language. Strike language in YELLOW.

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

0267 and on behalf of the governing body of the city for which it
0268 operates and all appointments, participation and other acts
0269 which would otherwise be made by the mayor of the city shall be
0270 made by the chairperson or president of the board of public
0271 utilities.

0272 Sec. 8. K.S.A. 12-8,109 is hereby amended to read as follows:
0273 12-8,109. Any member city of a municipal energy agency may
0274 enter into a contract with such agency for a period not exceeding
0275 ~~forty (40)~~ 40 years providing for:

0276 (a) *The planning or study of any project;*

0277 (b) *the provision of services relating to the energy system of*
0278 *the city; or*

0279 (c) *the purchase of electricity or other energy from such*
0280 *agency on either a continuing firm or standby basis, or both,*
0281 *upon such terms and conditions as the parties shall deem rea-*
0282 *sonable including provisions requiring payment whether actu-*
0283 *ally received or not and provisions requiring the contracting*
0284 *city to pay a proportionate amount of deficits with respect to a*
0285 *particular project.*

0286 New Sec. 9. Every municipal energy agency created pursu-
0287 ant to K.S.A. 12-885 *et seq.*, and amendments thereto, shall be
0288 subject to the provisions of the Kansas tort claims act.

0289 Sec. 10. K.S.A. 1987 Supp. 75-6102 is hereby amended to
0290 read as follows: 75-6102. As used in K.S.A. 75-6101 through
0291 75-6118, and amendments thereto, unless the context clearly
0292 requires otherwise:

0293 (a) "State" means the state of Kansas and any department or
0294 branch of state government, or any agency, authority, institution
0295 or other instrumentality thereof.

0296 (b) "Municipality" means any county, township, city, school
0297 district or other political or taxing subdivision of the state, or any
0298 agency, authority, institution or other instrumentality thereof
0299 *including a municipal energy agency created pursuant to K.S.A.*
0300 *12-885 et seq., and amendments thereto.*

0301 (c) "Governmental entity" means state or municipality.

0302 (d) "Employee" means any officer, employee, servant or
0303 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 and pay contracts

— Puts Agency under Kansas Tort Claims Act

0304 ment, branch or council of a governmental entity, including
0305 elected or appointed officials and persons acting on behalf or in
0306 service of a governmental entity in any official capacity, whether
0307 with or without compensation. "Employee" does not include an
0308 independent contractor under contract with a governmental en-
0309 tity. "Employee" does include former employees for acts and
0310 omissions within the scope of their employment during their
0311 former employment with the governmental entity.

0312 (e) "Community service work" means public or community
0313 service performed by a person (1) as a result of a contract of
0314 diversion entered into by such person as authorized by law, (2)
0315 pursuant to the assignment of such person by a court to a
0316 community corrections program, (3) as a result of suspension of
0317 sentence or as a condition of probation pursuant to court order,
0318 (4) in lieu of a fine imposed by court order or (5) as a condition of
0319 placement ordered by a court pursuant to K.S.A. 38-1663 and
0320 amendments thereto.

0321 Sec. 11. K.S.A. 12-885, 12-886, 12-891, 12-894, 12-895, 12-
0322 897, 12-8,108 and 12-8,109 and K.S.A. 1987 Supp. 75-6102 are
0323 hereby repealed.

0324 Sec. 12. This act shall take effect and be in force from and
0325 after its publication in the statute book.

GAAR & BELL

NORMAN E. GAAR¹
DONALD A. BELL
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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.

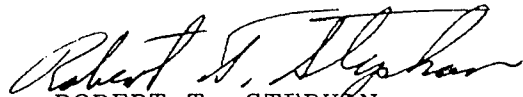
The Kansas Tort Claims Act, K.S.A. 75-6101 et seq., was enacted in 1979, two years subsequent to the enactment of K.S.A. 12-885 et seq. It makes a "governmental entity" liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their 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.

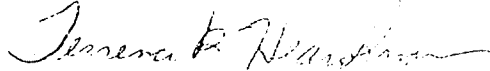
Additionally, it is our opinion that employees and directors of a municipal energy agency are covered by other provisions

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.

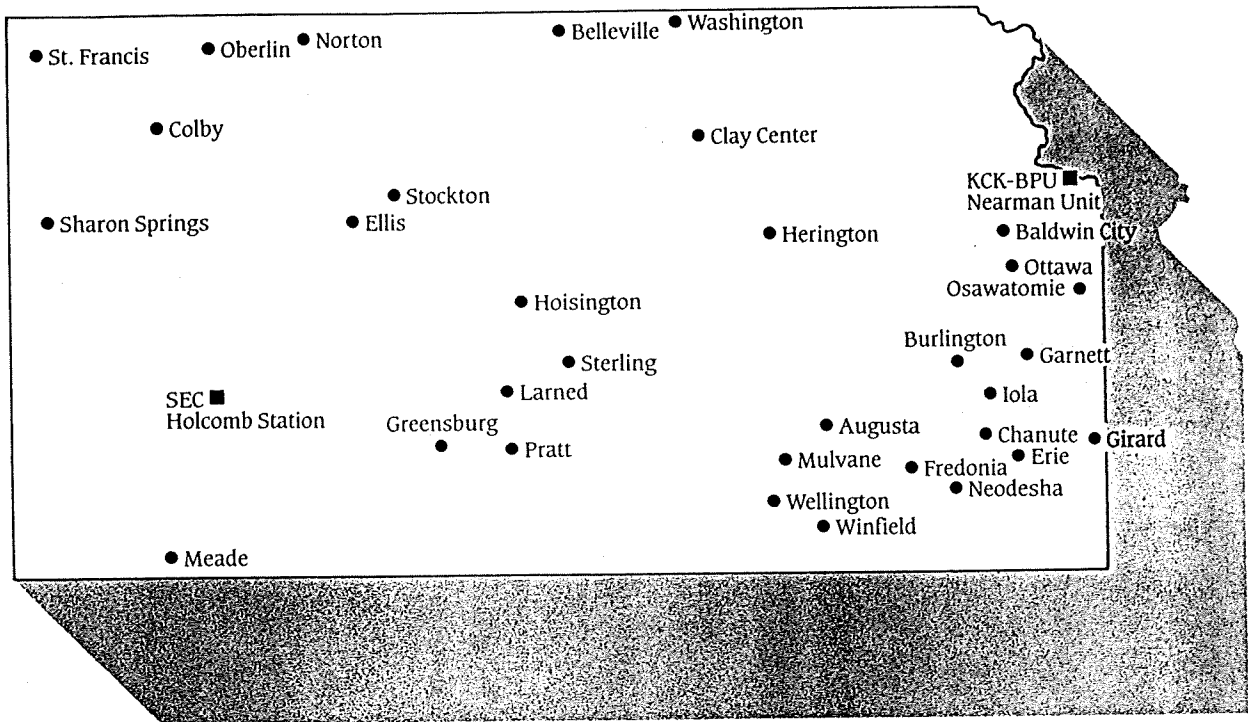
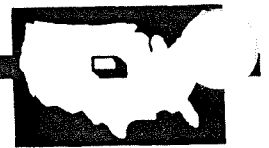
BOARD OF DIRECTORS OF KANSAS
MUNICIPAL ENERGY AGENCY

BY:

George S. Marshall
President

ATTEST:

May H Embree
Secretary



Member Cities and Board of Directors

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Margaret Hays
Harold H. Bair

BALDWIN CITY

Charles Barkley
John Hill

BELLEVILLE

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Tince Little
Les Olm

LARNED

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Ronald D. Arnold

MEADE

James Evans
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MULVANE

Gary Abel
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Richard C. Olson

NORTON

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Robert E. Finkbner

OSAWATOMIE

Robert Baffrey
Arthur Shufflebarger

OTTAWA

Frank D. Fogle, Jr.
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PRATT

Quenten Hannawald
Arlyn Bradford

ST. FRANCIS

Kelly Frewen
Bernard Roelfs

SHARON SPRINGS

Charles McNerny
N. L. "Pete" Sharp

STERLING

Larry L. Smith
John Deardoff

STOCKTON

Kenneth L. Forsberg
Richard Nienstedt

WASHINGTON

Paul K. Wilkinson
John C. Walker

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