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Testimony on Kansas Restraint of Trade Act Bill  
Support for SB 124

Melissa Doeblin  
Kansas Electric Cooperatives, Inc.

Chairman Lance Kinzer  
Kansas State Capitol  
300 SW 10th Street, Room 165-West  
Topeka, Kansas 66612

Chairman Kinzer, Vice Chairman Bruchman, Ranking Minority Member Pauls, and distinguished members of the House Committee on Judiciary, I want to thank you for this opportunity to testify on behalf of Kansas Electric Cooperatives, Inc. (KEC) concerning the bill before you on the Kansas Restraint of Trade Act (KRTA) (Senate Bill 124).

KEC joins and supports the testimony provided by Leslie Kaufman of the Kansas Cooperative Council, in support of SB 124. This testimony will not repeat testimony she has provided. The purpose of KEC's testimony is to specifically advocate for a clarification to an exemption to KRTA for your rural electric cooperatives (RECs) in Kansas.

KEC supports the exemption as set forth in SB 124, New Section 1(d)(3). KEC requests this Committee, in the final amended form of KRTA, include the following language to clarify an exemption for all RECs in Kansas:

"Any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in any manner therein provided; or any limited liability company or corporation, or wholly owned subsidiary thereof, providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any member-owned corporation formed prior to 2004."

This language would include all RECs in Kansas in the exemption. There are certain RECs that are governed by and organized under Kansas statutes other than the Electric Cooperative Act. Thus, as noted above, KEC requests this Committee include the language to clarify an exemption for all RECs in Kansas.

The language in SB 124, and set forth above, mirrors language in K.S.A. 2012 Supp. 66-104d(a), which is the definition of an electric cooperative public utility. It adds the phrase "or wholly owned subsidiary thereof" to include one of KEC's members that has become a subsidiary of another REC since that definition was crafted. Each element in the definition of K.S.A 2012 Supp. 66-104d(a) was

carefully worded to include all member-owned electric cooperatives at the time, including retail providers, and generation and transmission (G&T) providers.

I wish also to point your attention to K.S.A. 50-148(b), a statute in KRTA:

**50-148. Trade and person defined.** As used in this act: (a) "Trade" means the business of buying or selling any commodity of general use within the state; and

(b) "person" or "persons" includes individuals, corporations, limited liability companies, general partnerships, limited partnerships, firms, companies, voluntary associations and other associations or business entities, existing under or authorized by the state of Kansas, or the laws of any other state, territory, or foreign country. ***The provisions of this act shall not apply to persons whose business is under the supervision and control of the state corporation commission or the banking department.*** [Emphasis added.]

In this statute of KRTA, an exemption is set forth to make the provisions of KRTA not applicable to entities under the supervision and control of the Kansas Corporation Commission. KEC believes RECs are exempt from KRTA under this provision, even if the REC has deregulated from Commission jurisdiction for the purpose of setting rates. As set forth in K.S.A. 2012 Supp. 66-104d(f), deregulated RECs remain under the supervision and control of the Commission with regard to certified service territory; charges, fees or tariffs for transmission services; wire stringing rules; transmission line siting; and sales of power for resale, other than sales between a cooperative that does not provide retail electric service and an owner of such cooperative.

The Kansas Legislature has given legal sanction to state utilities to hold a monopoly in a "certified area," which results in no competition between utilities to serve customers. This was done in the public interest, to avoid duplication of facilities and minimize disputes between electric suppliers, which could result in inconvenience to customers. Since the sole aim of antitrust legislation is to protect competition, KRTA would not apply to RECs, who do not compete to serve customers.

However, KEC still requests this Committee include the full exemption for RECs set out in SB 124 and as set forth above, which would clarify and reduce any uncertainty as to the application of the exemption in K.S.A. 50-148(b), were it to be faced with a legal challenge. KEC believes including this full exemption for RECs would further clarify the intent of the Kansas Judicial Council committees examining this issue to exempt all cooperatives in Kansas from KRTA.

Thank you again for the opportunity to testify on behalf of KEC.

Best,



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*Kansas Electric Cooperatives, Inc. (KEC) is the Kansas statewide service organization for 29 electric distribution cooperatives and three generation and transmission cooperatives. Formed on August 18, 1941, and headquartered in Topeka, KEC represents the interests and provides needed services and programs to electric cooperatives that serve member/consumers within the state. KEC functions for the mutual benefit of its members to promote rural electrification and foster the principles on which electric cooperatives were founded.*