

Before the Senate Committee on Utilities

January 25, 2017

Neutral Testimony
On Senate Bill 293

Submitted by Jeff McClanahan, Director, Utilities Division
On Behalf of
The Staff of the Kansas Corporation Commission

Chair Olson, Vice Chair Petersen, Ranking Minority Member Hawk, and members of the Committee, thank you for the opportunity to provide testimony to your Committee today on behalf of the Staff of the Kansas Corporation Commission (Commission).

The Commission has historically taken a light-handed approach to the regulation of municipal energy agencies. However, a recent complaint filed with the Commission between a cooperative and a municipal energy agency regarding the proposed by-pass of existing transmission facilities by the municipal energy agency led to a jurisdictional dispute. The jurisdictional dispute involved the assertion by the municipal energy agency that the Commission did not have subject matter jurisdiction over its wholesale transmission service decisions.

The Commission opened a general investigation on November 28, 2017 to determine its jurisdiction over municipal energy agencies in Docket No. 18-GIME-217-GIE. There were several claims as to the meaning of K.S.A. 12-885 to 12-8,109, inclusive ranging from:

- An assertion that municipal energy agencies were outside the scope of Commission jurisdiction [Kansas Power Pool];
- An assertion that municipal energy agencies should be regulated in the same manner as deregulated generation and transmission cooperatives [Kansas Municipal Energy Agency]; and
- An assertion that municipal energy associations are fully jurisdictional to the Commission, except for obtaining certificates of public convenience and necessity under K.S.A. 66-131 [Staff, CURB, City of Pratt, KCP&L, Empire, Midwest Energy, Sunflower, Prairie Land, Western, Wheatland, Victory, and Lane Scott].

The assertion that municipal energy agencies are jurisdictional to the Commission was based on the plain language in K.S.A. 12-8,111(b) which states that “any municipal energy agency created under the provisions of K.S.A. 12-885 to 12-8,109, inclusive, and any provisions amendatory or supplemental thereto, shall be subject to the jurisdiction of the state corporation commission in

the same manner as a public utility”. In the Commission’s Order issued on January 9, 2018, the Commission ruled that, while K.S.A. 12-8,111(a) contains explicit language exempting municipal energy agencies from the requirement to obtain a certificate of convenience and necessity under K.S.A. 66-131, municipal energy agencies are subject to Commission jurisdiction in all other matters. This ruling effectively means that contracts, rates, fees, and other charges relating to operations of a municipal energy agency are subject to Commission approval.

As noted previously, one jurisdictional assertion that was made argued for the regulation of municipal energy agencies in the same manner as deregulated generation and transmission cooperatives. Staff agrees that this approach makes sense because municipal energy agencies are governed by a board of directors consisting of a majority of members from the member cities served by the agency. Moreover, the municipal energy agency only charges administrative fees and the actual costs for services provided. Therefore, municipal energy agencies are structured much the same way as generation and transmission cooperatives. The proposed statutory revisions in SB 293 accomplish the transition from full Commission jurisdiction to a rate deregulated jurisdictional structure similar to generation and transmission cooperatives for the contracts, rates, and fees *between* a municipal energy agency and its members.

However, it is unclear to Staff whether SB 293 will impact the ability of the Commission to address the complex issues raised in disputes between other electric service providers –such as cooperatives – and municipal energy agencies related to transmission of electric energy within the Southwest Power Pool (SPP). Staff must exercise caution in addressing this issue due to an active complaint and ongoing/pending investigation between Southern Pioneer and Kansas Power Pool regarding the bypass and duplication of service for a 34.5kV line to provide service to the City of Kingman.¹ But Staff would note that K.S.A. 66-1,171 states:

66-1,171. Declaration of public policy. It is hereby declared to be the public policy of this state to: (a) Encourage the orderly development of retail electric service; (b) avoid wasteful duplication of facilities for the distribution of electricity; (c) avoid unnecessary encumbrance of the landscape of the state; (d) prevent waste of materials and natural resources; (e) facilitate the public convenience and necessity; and (f) minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer.

In pursuing such public policy, it is the purpose of this act to provide for the division of the state into territories within which retail electric suppliers are to provide the retail electric service as provided in this act.

History: L. 1976, ch. 284, § 2; July 1.

This statute was enacted 42 years ago, well before the concept of regional transmission of electricity was envisioned by FERC. The regional transmission organization process approved by FERC has created complex issues related to preempting jurisdiction previously held by the states and creating an open market for the purchase of electric power and transmission. The

¹ Docket No. 16-KPPE-092-COM.

interaction of these issues can at times conflict with the stated legislative public policy of 66-1,171. It is Staff's position that it is unclear as to what impact the proposed revisions in SB 293 may have on the Commission's ability to address complaints and other transmission issues. Therefore, Staff recommends that the municipal energy agencies continue to work with the other electric service providers in the state as well as the Commission to clarify both the intent and language of SB 293.