

Retail Electric Suppliers, Municipal Energy Agencies, and Electric Cooperatives; Sub. for SB 323

Sub. for SB 323 amends law related to Kansas municipal energy agencies (MEAs), the oversight of electric cooperatives by the Kansas Corporation Commission (KCC), and retail electric suppliers.

Kansas Municipal Energy Agencies

Under continuing law, any MEA is authorized to operate as a public utility without obtaining a certificate of public convenience (certificate requirements described in KSA 2017 Supp. 66-131). The bill requires a MEA to file for a certificate for transmission rights for any electric facilities used to transmit electricity constructed in the certificated territory of a retail electric supplier. In determining convenience and necessity, the KCC applies provisions and requirements set forth in KSA 66-1,170 *et seq.* to a MEA to the same extent it does to a retail electric supplier.

A MEA is allowed to elect to be exempt from the jurisdiction, regulation, supervision, and control of the KCC by having an election of its voting members, not more often than once every two years, by complying with the following:

- An election may be called by the governing body of the MEA or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10.0 percent of the MEA members;
- The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 days nor more than 45 days before the date of the meeting;
- If the MEA mails information to its members regarding the proposition for deregulation, other than the notice of the election, the MEA shall include any information in opposition to the proposition that is submitted by petition signed by not less than 1.0 percent of MEA members. All expenses incidental to mailing the additional information shall be paid by the signatories to the petition; and
- If the proposition is approved by the affirmative vote of not less than a majority of the members voting, the MEA shall notify the KCC in writing of the results within ten days after the date of the election.

Voting on the proposition shall be in accordance with the governing documents of the MEA. MEAs exempt from KCC jurisdiction may elect to terminate their exemptions by following the same process.

Even if a MEA elects to be exempt from the KCC's jurisdiction, the KCC shall still investigate all rates, joint rates, tolls, charges and exactions, classifications, and schedules of charges or rates (rates) of such MEA if there is filed with the KCC, not more than one year after

a change in such MEA's rates, a petition signed by not less than 20.0 percent of the MEA's voting members. The bill requires that if, after investigation, the KCC finds such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, the KCC has the power to fix and order substituted rates as are just and reasonable. The complained of rates remain in effect subject to change or refund pending the KCC's investigation and final order. If a MEA is exempt, not less than ten days' notice of time and place of any meeting of the voting members at which rate changes or charges are to be discussed and voted on shall be given to all members of the MEA and the meeting shall be open to all members. Violations of this process are subject to civil penalties and enforcement in the same manner as set forth in the Kansas Open Meetings Act.

Any exempt MEA is required to maintain a schedule of rates and charges at the MEA headquarters and make copies available for the general public during regular business hours, and failure to comply with these requirements shall subject the MEA to a civil penalty of not more than \$500.

Additionally, a MEA that has elected to be exempt is required to include a provision in its notice to members, either before or after a rate change, of the member's right to request the KCC to review the rate change.

These provisions shall not be construed to affect the single certificated retail service territory of any retail electric supplier or the authority of the KCC, as otherwise provided by law over a MEA with regard to service territory; certain charges, fees, or tariffs for transmission services; sales of power for resale, other than sales to its own members; and wire stringing, transmission line siting, and the extension of electric facilities used to transmit electricity.

KCC Oversight of Electric Cooperatives

The bill allows the KCC's oversight role of electric cooperatives to be limited as it relates to charges or fees for transmission services that are recovered through an open access transmission tariff of a regional transmission organization and that has its rates approved by the Federal Energy Regulatory Commission.

Nothing in the bill shall be construed to affect the authority of the KCC pursuant to KSA 66-144 (application for relief from interstate rates or regulations).

Retail Electric Suppliers

When a city proposes to annex land located within the certified territory of a retail electric supplier, the city is required to provide notice to the retail electric supplier no less than 30 days prior to the city making a selection for a franchise agreement.

When a city is making a franchise agreement selection, it is required by continuing law to consider certain factors. The bill adds the following two factors for a city to consider:

- Proposals from any retail electric supplier holding a certificate in the annexed area; and

- Whether the selection is in the public interest as it relates to all the factors considered by the city.

The city is required to produce a record of its deliberations and findings upon each factor and the basis for its selection. The record shall be available as a public record within ten days after the city makes a selection.

Under continuing law, within 30 days after a city makes its selection, any supplier aggrieved may file an appeal in the district court of the county in which the annexed area is located. The bill requires the appeal determine whether the city met the requirements set forth in previously enacted law and the new requirements set forth in the bill, and whether the city's selection is based upon substantial, competent evidence. The appeal shall be docketed as a new civil action and the docket fee collected. The district is allowed to take additional evidence on the factors set forth in continuing law and in the bill. The review of the city's selection shall be limited to the record produced and supplemented by any additional evidence received by the court.

Under continuing law, if an appeal is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service. The bill inserts language to state the service shall be provided at the retail electric supplier's ordinary rates until such time as the appeal has been concluded and service rights terminated. Also under continuing law, if the service rights of a supplier are terminated, the KCC is required to certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation. If the new retail electric supplier does not affect the assumption of electric service to the annexed area at the termination of a retail electric service provider's service rights, then the originally certified supplier has the right to continue service to the annexed area until such supplier does assume service to the annexed area, subject to time lines set forth in continuing law.

Under continuing law, whenever the service rights of a retail electric supplier are terminated, fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. The bill adds to such compensation an amount equal to 8.5 percent of the gross revenues of total retail sales attributable to new customers in the territory in which service rights have been terminated for a period of ten years following the date of termination of service rights of the retail electric supplier. The payments shall be made in annual installments to the retail electric supplier whose service rights are terminated. Gross revenues shall be determined based on the rates charged and billed at the time each annual payment is made. Such retail electric supplier is required to have the right to review, audit, or cause to be audited the subsequent supplier's financial records with respect to retail electric service in the territory in which service rights have been terminated to determine the amount payable. A retail electric supplier shall be entitled to compensation if a franchise agreement between a city and a retail electric supplier was agreed to but was terminated within ten years after such agreement was effectuated by the parties.