SESSION OF 2018

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE BILL NO. 323

As Recommended by Senate Committee on Utilities

Brief*

Sub. for SB 323 would amend 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 would require 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 whether the public convenience and necessity would be promoted by the issuance of such certificate, the KCC would consider provisions set forth in KSA 66-1,170 *et seq*.

A MEA would be 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 could be called by the governing body of the MEA or would be called not less than 180

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

days after receipt of a valid petition signed by not less than 10.0 percent of the MEA members;

- The proposition for deregulation would be presented to a meeting of the members, the notice of which would set forth the proposition for deregulation and the time and place of the meeting. Notice to the members would 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 would 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 would 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 would notify the KCC in writing of the results within 10 days after the date of the election.

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

Even if a MEA elects to be exempt from the KCC's jurisdiction, the KCC would 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 would require that if, after investigation, the KCC finds such rates are

unjust, unreasonable, unjustly discriminatory, or unduly preferential, the KCC would have the power to fix and order substituted rates as are just and reasonable. The complained of rates would 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 would be given to all member of the MEA and the meeting would be open to all members. Violations of this process would be subject to civil penalties and enforcement in the same manner as set forth in the Kansas Open Meetings Act.

Any MEA exempt would be 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 would subject the MEA to a civil penalty of not more than $500.

Additionally, a MEA that has elected to be exempt would be 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.

Finally, these provisions would 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 would allow 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 (RTO) and that has its rates approved by the Federal Energy Regulatory Commission (FERC).

Nothing in the bill would 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 would be 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 would add 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 would be required to produce a record of its deliberations and findings upon each factor and the basis for its selection. The record would 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 would require that the appeal determine whether the city met the requirements set forth in current law and the new requirements set forth in the bill, and whether the city's selection is based upon substantial, competent

evidence. The appeal would be docketed as a new civil action and the docket fee collected. The district would be allowed to take additional evidence on the factors set forth incontinuing law and in the bill. The review of the city's selection would be limited to the record produced and supplemented by any additional evidence received by the court.

Under continuing law, in the event 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 would insert language to state the service would 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. In the event 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 would have 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.

In 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 would add 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 would be made in annual installments to the retail electric supplier whose service rights are terminated. Gross revenues would be determined based on the rates charged and billed at the time each annual payment is made. Such retail electric supplier would be

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 would 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.

Effective Date

The bill would be in effect upon publication in the *Kansas Register.*

Background

The substitute bill was created by inserting the contents of SB 323, as amended; SB 355, as introduced; and SB 293, as amended.

The Senate Committee on Utilities created a substitute bill by inserting the amended contents of SB 293 to require 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; create a process for a MEA to be exempt from the jurisdiction, regulation, supervision, and control of the KCC in specific instances; insert the contents of SB 355, changing the KCC's role in the oversight of electric cooperatives relating to charges, fees, or tariffs for transmission services; change the process a city must follow when determining which retail electric supplier will provide services for a territory annexed by the city; and insert language to provide compensation to a retail electric supplier that had its service rights terminated, in an amount equal to 8.5 percent of 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.

A fiscal note on the substitute bill was not available when the Senate Committee recommended it favorably for passage.

SB 323

SB 323 was introduced by the Senate Committee on Utilities at the request of Senator Petersen on behalf of Kansas Electric Cooperatives. In the Senate Committee hearing, proponent testimony was provided by Senator Billinger and representatives from the Kansas Electric Cooperatives, Mid Kansas Electric Power Company, Inc., Nemaha-Marshall Electric Cooperative, and Sunflower Electric Power Corporation. The proponents generally stated the bill would ensure retail electric suppliers receive timely notice they may lose service territory, require a record be made available to the public setting forth the city's discussion on selection factors, require a review by the KCC, and provide a default methodology for calculating compensation for loss of territory.

Proponent written-only testimony was provided by representatives of the Kansas Cooperative Council, Kansas Farm Bureau, and Wheatland Electric Cooperative.

Opponent testimony was provided by representatives of the Board of Public Utilities, City of Ellinwood, City of Lindsborg, City of Winfield, Kansas Municipal Utilities, and League of Kansas Municipalities (LKM). The opponents generally stated it is reasonable to request a record be made of decision-making proceedings; however, it is not reasonable to have the KCC be the arbiter of service territory disputes.

Written-only opponent testimony was provided by representatives of the Cowley County Economic Development Partnership, Kansas Municipal Energy Agency,

Kansas Power Pool, and the cities of Augusta, Burlington, Chanute, Coffeyville, Colby, Garden City, Greensburg, Hillsboro, Hoisington, Marion, Moundridge, Mulvane, Russell, Sabetha, Sterling, Wamego, and Wellington.

Written-only neutral testimony was provided by a representative of the KCC.

According to the corrected fiscal note prepared by the Division of the Budget on SB 323, as introduced, the KCC indicates enactment of the bill would have no fiscal effect on the agency. The LKM indicates provisions in the bill could jeopardize economic development projects, limiting growth in jobs and wages, which would in turn limit the growth of city revenues. In addition, LKM states if decisions of the governing body of municipalities are appealed to the KCC, staff or legal costs might be incurred.

SB 355

SB 355 was introduced by the Senate Committee on Utilities at the request of Kansas Electric Cooperatives. The Senate Committee held an informational hearing on the bill and a representative from Midwest Energy, Inc. (Midwest) provided testimony. The representative stated Midwest is caught in an unintentional dual regulatory scheme between the KCC and FERC that is costing the company and its member-owners hundreds of thousands of dollars. The representative further stated the KCC is in agreement to remove the rate review requirement for transmission-owning electric cooperatives from the KCC when the cooperative recovers its charges and fees for transmission services through an open access transmission tariff of an RTO, which has its rates approved by FERC. No other testimony was provided.

A fiscal note for SB 355 was not available when the Committee recommended the substitute bill be passed.

SB 293

SB 293 was introduced by the Senate Committee on Utilities at the request of Kansas Municipal Energy Agency, Kansas Municipal Utilities, Kansas Power Pool, and several municipal electric utilities. In the Senate Committee hearing, proponent testimony was provided by representatives of the Kansas Municipal Energy Agency, Kansas Municipal Utilities, Kansas Power Pool, and the City of Lindsborg. The proponents generally stated enactment of the bill would ensure MEAs were not under the full jurisdiction of the KCC, which adds cost and time to municipal projects.

Opponent testimony was provided by representatives of Kansas Electric Cooperatives, Lane-Scott Electric Cooperative, Mid-Kansas Electric Company, Mid-West Energy, Pioneer Electric Cooperative, Prairie Land Electric Cooperative, Inc., Southern Pioneer Electric Company, Sunflower Electric Power Corporation, Victory Electric Cooperative Association, Inc., Western Cooperative Electric Association, Inc., and Wheatland Electric Cooperative, Inc. The opponents generally stated the bill would result in Kansas ratepayers potentially paying for unnecessary or duplicative electric facilities and they could not support any legislation that would allow MEAs to build transmission without following the KCC process to secure a certificate of convenience for rights to construct transmission. KCP&L and Westar Energy provided written-only opponent testimony.

Written-only neutral testimony was provided by a representative of KCC.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KCC indicates enactment of the bill would have no fiscal effect. The LKM indicates enactment of the bill would significantly decrease regulatory costs for cities that are members of MEAs and the estimated initial fiscal effect on these cities would be an overall reduction of at least $700,000, with reduced costs of approximately $400,000 each year following.