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SB 88 – Authorizing Statewide KCC Commissioner Elections
Oral In-Person
Opponent

From:
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To Senate Utilities Committee:

Chairman Olson, Vice Chair Petersen, Ranking Member Francisco, and members of the Senate Utilities Committee, thank you for the opportunity to submit comments in opposition to SB 88. I am Reagan McCloud, Manager of Government Relations for Kansas Electric Cooperatives, Inc. (KEC), the statewide service association for 29 member, not-for-profit cooperatives providing electric service in 103 of 105 Kansas counties. KEC and our members oppose SB 88.

The Kansas Corporation Commission (KCC/Commission) retains regulatory jurisdiction over KEC member cooperatives for various purposes apart from direct rate regulation. Therefore, KEC members have a vested interest in the manner in which KCC commissioners are selected.

SB 88 contains several key components including changes regarding selection of KCC commissioners, changes to KCC staffing, creation of a new utilities regulation division in the Attorney General's (AG) office and removing the commission from requirements of the Kansas Open Meetings Act. It is our understanding that proponents of the bill believe these changes will help lower Kansas electric rates. As not-for-profit electric utilities that provide services to consumer-members at cost, delivering reliable electric service at an affordable rate is a top priority. However, we do not believe the changes embodied in this bill guarantee rates in Kansas will be lowered. As we read the bill, it may even result in duplication of staffing between the AG's office, the KCC and possibly the Citizens Utility Ratepayer Board (CURB), resulting in increased rates for Kansas consumers.

Rather than an elected commission, KEC supports the current appointed commission process that includes the opportunity for a robust, all-important Senate confirmation process. The Senate confirmation process is an important "check and balance" in the time-honored appointment process and one that is used at both the state and federal level. The executive appointment - Senate confirmation process allows for the proper

vetting of candidates to help ensure they possess the requisite skills and knowledge to serve as a commissioner and we believe it is appropriate for Kansas to retain this process. The legislature, through the Senate and its appropriate committee of jurisdiction, has the ability to delve as deeply into a nominee's qualifications as needed and desired. As we have seen in recent years with certain nominees not receiving a favorable recommendation for confirmation from the committee, the process is not just a "rubber stamp" on an executive nominee.

Kansas is in good company relying on the appointment-confirmation process, with a majority of states, 38 in fact, gubernatorially appointing their commissioners. New Mexico, a state that once elected commissioners, rejected the election model in 2020 in favor of a three-member, gubernatorially appointed commission. Like New Mexico and Kansas, a majority of states that do appoint commissioners utilize a 3-member panel.

The bill also creates the "utilities regulation division" within the office of the Attorney General, transferring much of the current KCC's staff to serve under the AG. The bill also looks to uphold provisions in the current law allowing the commission to maintain its own staff. Thus, we question whether this will be a duplication of staffing and effort. If so, could that translate to higher costs for utilities, and in the case of cooperatives, for our member-owners, as most commission costs are billed back to the utilities involved in specific proceedings?

Although electric cooperatives electing to deregulate their rates from KCC oversight are not directly rate regulated by the commission, any change in rates, tariffs and certain other charges (collectively "rate") is subject to petition for commission review within one year of a change. Under the petition process, the commission will conduct an investigation to determine whether the rate is "unjust, unreasonable, unjustly discriminatory, or unduly preferential." If such a finding is made, the commission may fix rates for the co-op. Therefore, electric cooperatives are concerned about the impact this bill will have on co-op rates should their rates be subject to the petition process.

Additionally, the regulatory compact has been built around the concept that utilities are obligated to ensure efficient and sufficient service for all within their service territory. In exchange for serving and preparing to serve any load regardless of the business case, utilities have been assured the opportunity for reasonable cost recovery. Historically, cooperatives serve in some of the lowest density areas, which has an impact on our overall cost structures, regardless of the situation in other states. We are concerned with the potential consequences for cooperatives under review by petition should commission jurisprudence morph such that actual, reasonable costs of service could be denied if they do not meet some undefined "regional competitiveness" standard that fails to account for the financial realities of serving in areas with low meter density per line mile.

KEC and its members also have concerns with provisions in the bill exempting the KCC from the open meetings act. Kansans and KCC-regulated industries are well-served with a process that ensures public meetings and public records are open to the public. Moreover, as a public agency, the KCC should not be exempt from the requirement to engage in open, transparent decision-making.

For these reasons and more, we respectfully request the committee oppose SB 88. We do, however, understand that many are concerned with their utility bills. We stand ready to participate in discussions related to commissioner selection and would ask to be a part of those moving forward. Thank you again for the opportunity to share our concerns with SB 88. I would stand for questions at the appropriate time.

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