Testimony Provided to the

Senate Utilities Committee
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Testimony in Support of S.B. 293

Kansas Municipal Energy Agency (KMEA) was officially formed in 1980 under Kansas law as a quasi-municipal corporation and established as a not-for-profit joint action agency made up of cites operating municipal electric utilities. The Agency was authorized by state statute (the Municipal Energy Agency (MEA) Act) to plan, finance and construct projects for the purchase, sale, generation and transmission of electricity. The mission of KMEA is to secure an adequate, economical and reliable supply of electricity for its members.

As a quasi-municipal, not-for-profit agency established by its member utilities, KMEA is dedicated to serving the power supply and transmission needs of our 82 consumer-owned utilities and the citizens, businesses and industries that they serve (see attached). These cities have come together to strengthen their effectiveness in dealing with common challenges. Through the joint action approach, the cities employ KMEA to undertake projects that they would find impractical if attempted separately. Today, KMEA manages eight wholesale power supply projects for our members. In addition, KMEA is working on two additional projects including the Dogwood Project and the Buckeye Wind project that are slated to begin providing energy to 23 Kansas communities in the next several months.

KMEA runs its operations out of an office located in Overland Park with 17 employees. Together with the power supply projects, our total annual budget is just over $90 million.

It is important to note that KMEA's business affairs are governed by a Board of Directors consisting of representatives from all our member cities. This full representation Board, through an elected Executive Committee, manages the operation of KMEA. Just like our member cities, we are also subject to and operate under the Kansas Open Records Act and our meetings are public meetings under the Kansas Open Meetings Act.

KMEA strongly supports Senate Bill 293.

Background
In 1977, the Kansas Legislature created the existing statutes for municipal energy agencies in Kansas pursuant to the MEA Act. As mentioned above, KMEA was formed in 1980 and received all the necessary approvals from the Kansas Attorney General. We have been operating openly and with the full knowledge of the Kansas Corporation Commission (KCC) since that time. The KCC has never exercised any regulatory oversight since our formation over 37 years ago. That has all recently changed as of a couple weeks ago.

On January 9, 2018, the KCC issued an order claiming full regulation over municipal energy agencies (MEAs). The KCC determination stated that Kansas statutes allow the KCC to regulate MEAs in the same manner as other jurisdictional utilities. Their jurisdiction would mirror that exercised over investor-owned utilities that provide electricity services to retail customers.

This action is being taken even though MEAs have no captive retail customers, no defined exclusive service territory and are member-city owned, managed and controlled. The services we provide our members are not regulated by the KCC when provided by other entities such as the investor-owned utilities and the electric generating and transmission cooperatives. The primary purpose of regulation is to monitor and control monopoly public utility services to captive retail customers. KMEA provides no monopoly-based services and has no captive retail customers. In addition, KCC has no jurisdiction over the municipal electric utility members that govern our agency (except for service territory outside a city's corporate limits).

Proposed Bill
The proposed Senate Bill No. 293 amends Chapter 12 of the Kansas State statutes. The amendment exempts MEAs from KCC regulation except for certain specific items where KCC regulation is appropriate. These specific items are(i) charges and fees and tariffs for transmission services provided non-members of MEAs; (ii) sales of power for resale to third parties; and (iii) wire stringing and transmission line siting.

If this legislation is passed, it would put MEAs on the same KCC-regulated basis as electric generation and transmission cooperatives in the State.

General Impact on KMEA
The impact of the recent KCC order on KMEA and its members will be profound unless the statutes are amended. If the order stands, KMEA believes that it will actually be the most KCC-regulated electric utility entity in the State. Even more so than investor-owned utilities (since investor-owned utility's wholesale power sales and transmission services are regulated by FERC).

- KMEA will have to seek KCC approval of all wholesale power supply contracts with our member cities regardless of the size of the power supply contract or the term of such contracts. Per KCC rules, the commission can take up to 240 days for consideration. This lengthy process will severely impede our ability to provide competitive power supply options to our member cities. In fact, it would prohibit KMEA from providing economical options to our members during run up of wholesale power prices that can occur on high demand periods (i.e., summer period).
- KMEA will have to seek KCC approval for any rates or tariffs that we would charge to our members.
- KMEA will have to file annual reports with the KCC.
- KMEA will be subject to examination of all accounts and records.
- KMEA will need to seek the approval of the KCC for any assignment, transfer, or leases.
- KMEA will be subject to cost assessments by KCC staff or CURB.

The Cost of New Regulations
KMEA costs will increase drastically due to this new regulatory oversight by KCC. Costs in the first year could exceed $700,000, depending on the requirements of the KCC to approve all existing and pending contracts and any rates or charges we have with our members. On-going costs include additional legal fees and KMEA staff costs and are estimated at over $200,000 per year. Depending on the extent that KCC's regulations over our organization, it may require the addition of staff further increasing our costs. Due to the non-profit status of KMEA and our member cities, our member cities will have to pick up this additional cost and further pass it thru to their retail ratepayers.

Urgency of Bill Passage
As was mentioned previously, KMEA is currently working on an important power supply project, the Dogwood Project, for five member cities (Russell, Ottawa, Lindsborg, Garden City & Gardner). This project includes the purchase of an ownership interest in a large natural gas fired combined cycle plant and secures a long-term, reliable, cost-based power supply resource for these five cities. KMEA members and staff have worked diligently for over two years on the project. After considerable review by each participating member's governing body, contracts were signed in July 2017.

To finance the project, KMEA was in the final stages of issuing municipal bonds to pay the purchase price of the ownership interest and pass thru the benefits and costs to the five cities. Under the agreement with Dogwood, the purchase price will increase by over $300,000 after February 28, 2018 and hence we were scheduled to close on the transaction in February to secure the lower price. Due to the recent KCC order, our Bond Counsel now cannot provide the necessary attorney's opinion on the validity of the contracts since it now requires the approval of the KCC.

In addition, the five cities are relying on this project for the upcoming summer to meet their power supply requirements with the Southwest Power Pool (SPP). Our cities need to have certainty in the coming weeks that this project will be moving forward and will not be delayed or, worse yet, dismissed by the KCC. The cities will need to know the status in the coming weeks or will need to begin securing alternative power supply options.

KMEA appreciates the Senate Utilities Committee consideration of S.B. 293.

KMEA Member Cities - January 2018