



Testimony Provided to the
Senate Utilities Committee
January 25, 2018

Mark Chesney, CEO/General Manager

Testimony in Support of S.B. 293

Kansas Power Pool (KPP) is a municipal energy agency formed under Kansas Statute comprised of 24 municipal electric utilities in Kansas. As a not-for-profit agency, it was created in 2005 by member utilities for the purpose of securing power supply and related tasks incident to providing low-cost and reliable wholesale energy to be resold to each municipal's citizens and businesses. As a quasi-municipal agency, KPP is subject to both the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Acts (KOMA). KPP strongly supports the passage of Senate Bill 293.

Background: KPP is headquartered in Wichita and employs a staff of 7 people including operations personnel, accounting and member services. Our 24 members are found across Kansas, with a majority located in the north central and south central part of the state. Together, their citizens' needs for electric power combine to require an operating budget of approximately \$75 million. Power and energy is produced by a combination of owned assets, contract resources and locally owned resources pooled by the members themselves. With guidance from the membership, KPP has a diverse portfolio of resources from natural gas, hydro, wind and coal. Twenty percent of KPP's energy portfolio is renewable. All members have secured transmission rights through KPP's Network Integrated Transmission Services Agreement (NITSA) with the Southwest Power Pool (SPP).

By law, all municipal utilities in Kansas are allowed to have membership in KPP. This is reflected in the primary governing document approved by the Attorney General and unanimously approved by all members. Next, members acquire voting rights through a comprehensive operating agreement setting forth governance among the membership and declaring the mutual expectations. Additionally, all KPP members have signed a long-term, full-requirements contract for power purchase. These contracts were presented and individually approved by the

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governing bodies of the member cities. Accordingly, KPP does all related forecasting of energy needs. By agreement, KPP secures power supplies for all cities doing so within the configuration of the SPP Integrated Market.

As directed in statute, KPP is governed by a Board of Directors selected both from and by the membership. Each member city's governing body appoints a delegate to the KPP membership committee. The Board of Directors approve the annual budget and set operating policy. The membership committee annually oversees the review of operating costs and gives formal approval on electric rates before they are implemented.

Process examples: Only two examples are given regarding the approval process for rate setting and the incurrence of investment:

Example 1: Rates. Each November all members assemble for an annual Rate Forum (an Open Meeting). Careful review is made of the financial performance of the previous year. Also, focus is given on the methods for forecasting upcoming operating expenses and revenues. A proposed budget and subsequent wholesale electric rates for the next year is presented in draft form. Members ask questions and subsequently review the budget forecasts and rate proposals with their governing bodies. After reviewing comments and input from members a final budget and the resulting rates for the following year is prepared. Members again assemble in December at the annual membership meeting (an Open Meeting) where formal action is entertained to approve the rates.

Example 2: Power Supply. In September 2014, members assembled at KPP's annual Fall Planning Retreat (an Open Meeting) to discuss critical and competing power supply alternatives. Members directed KPP Staff to pursue due diligence on a preliminary intent to purchase an additional 20 Megawatts of the Dogwood Combined Cycle Plant. At two subsequent meetings of the membership during 2014 and 2015, members were fully updated on the economics, projected rate impact and expected operating parameters of the asset to be purchased. Following input taken from those meetings, the Board of Directors voted unanimously in 2015 to sign an Asset Purchase Agreement and to issue bonds.

Benchmarks: An independent audit occurs annually with formal report made to the Board of Directors. Audit results are published to ratings agencies and others. Infrequently, KPP will seek an independent cost-of-service analysis. KPP periodically updates its 10-year forecast on expenses and revenues. At least twice annually, KPP meets with member cities' City Councils or governing bodies to update on all activities and to take input. Monthly, KPP speaks by telephone with its members to review various cost components of the monthly bill and compare actual costs to those budgeted.

Conclusion: Although statute provides for regulation over municipal energy agencies (MEAs), the KCC has never asserted jurisdiction. On September 11, 2008 KPP asked the KCC to review and approve its operating agreement after being told by KCC Staff this was all that was legally required by the KCC. On March 10, 2009 the KCC issued a 4-page Order approving the

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operating agreement and only requiring the KPP to notify the KCC with changes in membership. That order is attached for your reference. Earlier this month, the KCC issued an order asserting almost complete jurisdiction over every facet of KPP's operations. In response, S.B. 293 seeks to clarify the extent to which the KCC should regulate these agencies. The Committee is reminded that municipal energy agencies have been created by the governing bodies of their own member cities. It is the members who set policy, set rates and determine governance. It is this mechanism that has saved Kansas communities millions of dollars in energy costs.

The KCC's order will significantly increase costs to customers served by cities that are part of municipal energy agencies. Municipal utilities make strategic decisions to achieve low cost for their rate base of citizens. Low cost among municipals is well demonstrated in the State of Kansas. Additional regulation not only slows down the time needed to effectively budget, but also increases the cost of providing services. For these reasons we respectfully ask for Committee members' unanimous approval to pass S.B. 293.

Thank you for your consideration.

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**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Thomas E. Wright, Chairman
 Michael C. Moffet
 Joseph F. Harkins

In the Matter of Kansas Power Pool (KPP),)
Municipal Energy Agency, Seeking Approval of) Docket No. 09-KPPE-255-CON
Its Contract for an Amended Operating)
Agreement.)

ORDER APPROVING AMENDED OPERATING AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On September 11, 2008, Kansas Power Pool (KPP) filed for Commission approval of its Amended Operating Agreement between KPP and its member cities. A Suspension Order was issued on October 1, 2008, suspending the application until May 9, 2009.

2. On February 19, 2009, Commission staff (Staff) submitted its memorandum recommending Commission approval of KPP's Amended Operating Agreement.

3. According to Staff, KPP is a municipal energy agency, as defined under Kansas law. When KPP began operations, KPP was acting as an agent on behalf of its members to obtain power or sell excess capacity, duties which did not require Commission approval. However, Staff discovered that KPP had changed its operations and determined KCC review and approval of certain contracts was necessary.

4. Staff stated in its memorandum it contacted KPP and requested copies of power supply agreements/contracts entered into by KPP. KPP complied with all of Staff's requests by submitting the requested documents.

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5. According to Staff, KPP began acquiring contracts to purchase power on its own on February 2, 2008, which KPP would then sell to its member cities. Previously, KPP had only obtained power supply from third parties on behalf of KPP's members.

6. In its memorandum, Staff summarized the changes contained in KPP's Amended Operating Agreement:

- a) Attachment 1 was added to reflect the member cities of KPP that have signed the Operating Agreement.
- b) Clarifications were added in Article IV reflecting the rate exhibit. In addition, Article V, Section 5.2 clarifies that load forecasts are formatted in the form of Exhibit C.
- c) Section 7.2 was deleted. This section stated that if there was a transmission outage, the City had the option first to generate for its own load. SPP was concerned with the word "first." Because this section only dealt with the case of a transmission outage, KPP eliminated it to appease SPP, as it appeared to be a non-issue with regard to this agreement.
- d) Clarifying language was added to Section 9.1 and Section 10.2(b).
- e) KPP amended Article XII by deleting several references that are no longer applicable, and clarifying that KPP's board of directors is responsible for approving its annual budget in accordance with Kansas Statutes. KPP eliminated Section 12.2(d), which stated that "the annual budget is approved by the board of directors on a yearly basis and approvals reflected in our minutes," as this was duplicative. Further, KPP does not believe it is necessary to attach Exhibit F, the annual budget.

C. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2008 Supp. 77-529.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn.; Moffet, Com.; Harkins, Com.

Dated: MAR 10 2009

ORDERED MAILED

MAR 10 2009

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

MAS:cik

- f) KPP clarified Article XIII by formally adopting how amendments to the agreement would be made.
- g) Article XIV has been revised to clearly reflect how a situation of withdrawal of a member and services which they are taking or providing will be handled. Applications to SPP for Network Service require a minimum five-year commitment. The Amended Operating Agreement allows a member to withdraw from KPP after two years. This is the main intent of this amendment, as KPP cannot commit a member city to long-term power supply without the city's approval.
- h) KPP has revised Articles XV and XVI to further clarify how proper notice, bills or invoices shall be made.

7. Staff stated in its memorandum that the changes outlined in paragraph six of this order clarify the content of KPP's Operating Agreement and conform with Kansas law. Staff recommends Commission approval of the Amended Operating Agreement and that KPP should notify the Commission of any changes in its membership.

8. The Commission finds and concludes that KPP's Amended Operating Agreement should be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Amended Operating Agreement between Kansas Power Pool and its member cities is approved.

B. KPP should notify the Commission within 30 days of any changes in membership.