



Testimony Offered to the Senate Utilities Committee
In opposition to SB 293

Lindsay A. Campbell, Executive Vice President - General Counsel
Pioneer Electric Cooperative, Inc. & Southern Pioneer Electric Company

Also Representing Wheatland Electric Cooperative, Inc., The Victory Electric Cooperative Association, Inc., Prairie Land Electric Cooperative, Inc., Western Cooperative Electric Association, Inc. and Lane-Scott Electric Cooperative.

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Thank you, Chairman Olson and the Committee for allowing me to share concerns about SB 293. I am here today on behalf of Pioneer Electric Cooperative, Inc. (Pioneer) and Southern Pioneer Electric Company (Southern Pioneer) as well as the five other Distribution Member Owner Cooperatives of Sunflower and Mid-Kansas – Wheatland Electric Cooperative, Inc., The Victory Electric Cooperative Association, Inc., Prairie Land Electric Cooperative, Inc., Western Cooperative Electric Association, Inc. and Lane-Scott Electric Cooperative.

The Sunflower and Mid-Kansas Member Owners take bundled power supply and transmission service from Sunflower and Mid-Kansas and distribute that power over our distribution systems to service our respective certified retail and wholesale customers located in western Kansas.

We oppose SB 293 in its current form because the bill would result in Kansas ratepayers potentially paying for unnecessary or duplicative electric facilities. However, as outlined in the testimony of Sunflower and Mid-Kansas, we could support the ability of Municipal Energy Agencies (MEAs) to qualify for self-regulation and operate under the same deregulated status as electric cooperatives, but those discussions are still underway.

Our concern is that SB 293, as currently proposed, will have the effect of fully deregulating MEAs from any Commission authority or oversight. The proposed bill language would not require MEAs to obtain amendments to their initial certificate of public convenience from the Kansas Corporation Commission (KCC) for new or additional transmission or distribution facilities traversing the certified service territory of

another utility, and would effectively deregulate all wholesale power sales and transmission service activities by MEAs. This is critically different than the current self-regulation framework for cooperatives, provided in K.S.A. § 66-104d, where the KCC still retains jurisdiction over, *inter alia*, sales of power to non-members, all fees, charges and tariffs for transmission services, and amendments to Sunflower and Mid-Kansas's certificates of public convenience for transmission projects that traverse another utility's certified service territory. We believe these same provisions are appropriate for the KCC regulation of MEAs in order to ensure the protection of all Kansas ratepayers.

The MEAs state that this bill is simply an attempt to codify past KCC practice of not regulating MEAs. I do not believe this is an accurate characterization of MEA regulation by the KCC, and it ignores the significant changes in recent years relating to transmission activities and associated cost allocation for the facilities to Kansas ratepayers through the Southwest Power Pool (SPP).

The current statute governing KCC regulation of MEAs is found in K.S.A. § 12- 8,111(a). K.S.A. § 12-8,111(a) provides that while MEAs do not have to obtain an initial certificate of public convenience and necessity to operate as a public utility from the KCC, for all other matters, MEAs are fully regulated by the KCC in the same manner as a public utility.¹ The Commission has relied upon K.S.A. § 12-8,111 as a basis for asserting its jurisdiction over MEAs in prior KCC dockets. In 2009, the KCC issued an Order approving an Amended Operating Agreement between KPP and its Members and advising KPP to notify the Commission within 30 days of any change in KPP's membership.² In 2012, the Commission expressly asserted its jurisdiction over KPP's transmission rates when KPP attempted to include the costs of a transmission facility owned by the City of Winfield in its transmission formula based rate at SPP to be charged to all Kansas ratepayers located in the Westar pricing zone.³ In that Order, the Commission approved a Settlement Agreement between the parties which included a provision specifically preserving the right of the KCC to exercise any statutory right, including the right of access to information, and any statutory obligation, *including the obligation to ensure that KPP is providing efficient and sufficient service at just and reasonable rates*. In 2016, KPP filed an Application with the KCC seeking approval of a predetermination of ratemaking treatment of certain proposed transmission facilities. The KCC held in that Docket that it had jurisdiction over the transmission services of KPP.⁴ Further, it is of import to understand that the docketing of a proceeding is not the only indicator of the KCC exercising its jurisdiction. The Commission's Staff may work

¹ Kansas law provides that the Commission has the broad power, authority and jurisdiction to supervise and control electric public utilities and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. This includes the authority to ensure utilities furnish reasonably efficient and sufficient service and facilities, establish just and reasonable rates, charges and exactions, and make just and reasonable rules, classifications and regulations. See K.S.A. § 66-101b.

² KCC Docket No. 09-KPPE-255-CON.

³ KCC Docket No. 12-KPPE-630-MIS, Order Approving Stipulation and Agreement (June 29, 2012).

⁴ KCC Docket No. 16-KPPE-470-PRE.

with a public utility to address issues or concerns outside the parameters of a formal docket.

Moreover, the KCC past practice of relying on its statutory authority in Chapter 66 of the Kansas Statutes Annotated, and the language of K.S.A. § 12-8,111 as a basis for defining its jurisdiction over MEAs was recently confirmed by the KCC in a Commission Order arising out of a general investigation docket on the regulation of MEAs.⁵ In the Order, the KCC clearly confirmed that except for the requirement to obtain from the Commission an initial certificate of public convenience to operate as a public utility, MEAs are subject to the full supervision and control of the KCC in the same manner as a public utility.

Unfortunately, Southern Pioneer has experience with MEAs attempting to bypass our local electric facilities by constructing duplicate facilities to avoid paying the rate for service over our facilities. Southern Pioneer electric facilities are planned and built on an integrated basis to serve both retail and wholesale customers, including MEAs and their member municipal utilities. Southern Pioneer is statutorily obligated to ensure safe and reliable service at just and reasonable rates, and makes substantial investments in its system to deliver such service to existing retail and wholesale customers, including municipal customers. The system planning associated with our statutory mandate are both time and resource intensive. Placing public utilities in the position of having a statutory obligation to provide such service, while allowing certain entities the ability to bypass a system planned with their load in mind, is not only a waste of utility resources but detrimental to the ratepayers who remain on the system who must now pay higher costs due the departure of a load that was contemplated during the planning and construction of utility facilities.

Another specific example of conflict with MEAs involves a situation when, in 2009, the MEAs, through a formal docket at the KCC, pushed for open access to the Mid-Kansas Member local electric systems, including Southern Pioneer's facilities.⁶ Pursuant to a settlement agreement approved by the KCC, Mid-Kansas and its Distribution Members agreed to provide MEAs with open access to our local facilities and to plan and build or upgrade the facilities necessary to serve the needs of wholesale customers, including MEAs and their municipal members. Southern Pioneer and the other Mid-Kansas Members agreed to this obligation with the understanding that in return for the Mid-Kansas Members investing capital in its local facilities to serve the needs of MEAs and their municipal customers, there would be available a long-term revenue stream to support and recovery the cost of the capital investments in the facilities necessary to accommodate the service needs of municipal customers.

Now some MEAs are unilaterally attempting to avoid paying their equitable share of the costs of these facilities by bypassing the facilities through what we believe to be the

⁵ See KCC Docket 18-GIME-217-GIE, Order on Jurisdiction (January 9, 2018).

⁶ See KCC Docket No. 11-GIME-597-GIE.

construction of duplicative or unnecessary electric facilities and services not in the public interest. Southern Pioneer has filed a complaint at the KCC, asking for Commission review of the bypass and construction of new electric facilities by the MEA.⁷ The Commission has asserted its jurisdiction over the matter pursuant to K.S.A. § 12-8,111 after the Commission Order was issued in the General Investigation Docket confirming its jurisdictional authority. An evidentiary hearing is to be set for this spring, and thereafter the Commission will make a determination based on findings of fact as to whether the MEA's activities constitute an unnecessary duplication of facilities and services in violation of Kansas law and public policy. It is our concern that passage of the proposed SB 293 as drafted would be fatal to our complaint at the KCC.

Further, if MEAs are allowed to bypass the local electric system and duplicate unnecessary facilities and services for the benefit of their own members without any Commission review or oversight of whether such activities are in the overall public interest, Kansas ratepayers will be unduly burdened as the costs of the facilities built to serve these municipal customers will be shifted to captive retail customers and the remaining wholesale customers.

These activities and impact to electric rates become even more of a concern in the event the construction of the duplicative facilities results in the MEAs and their partner independent transmission companies qualifying such facilities under the SPP for SPP rate recovery. If MEAs are not obligated to obtain a certificate of public convenience from the KCC for the construction of facilities, then the MEAs will be allowed to construct any project without KCC (or other regulatory) oversight and charge the costs of the project to all Kansas ratepayers in the utility zone where the project is located, not just the municipal ratepayers who are benefiting from the project.⁸

Therefore, not only will Kansas ratepayers be forced to pay for increased costs on the existing local system due to the MEA's bypass, but they will also be forced to pay for increased SPP transmission costs due to the construction of duplicative or unnecessary transmission facilities. This concern is only exacerbated with the current business model of independent transmission companies attempting to build transmission through partnerships with MEAs.

Taken to the fullest extent, MEAs, through their partnership with independent transmission companies, could duplicate the entire transmission system in Kansas without any KCC oversight and such costs would be paid for in whole or part by all Kansas ratepayers. It is crucial that the Commission fully retain its jurisdiction over MEAs as it pertains to transmission services, the certificate of convenience process for the construction or acquisition of transmission and distribution facilities, and ensuring sufficient and efficient electric facilities and services and the unnecessary duplication

⁷ See KCC Docket No. 17-KPPE-092-COM.

⁸ This will also allow the independent transmission companies an ability to circumvent the Commission's certification jurisdiction by utilizing the MEAs ability to plan, construct and operate transmission without a Commission certificate of convenience.

thereof. Doing so will promote the public policy in the State of Kansas designed to protect Kansas ratepayers against ruinous competition, to promote adequate and efficient service, and to limit the waste attendant on unnecessary duplication of facilities designed for the same purpose in the same area.⁹

In order to address this real and growing concern with the unfettered construction of unnecessary or duplicative electric facilities in this new paradigm with the entrance of independent transmission companies and the socialization of transmission costs, we would like to work with KMU on an amendment to SB 293. Specifically, an amendment that would not only incorporate in K.S.A. § 12-8,111 the same self-regulation provisions as found in K.S.A. § 66-104d for cooperatives, but an amendment that would also clarify in both K.S.A. § 12-8,111 and K.S.A. § 66-104, the Commission's jurisdiction and authority to review certificates of public convenience for transmission and distribution projects that traverse another utility's certified service territory, and the provision of sufficient and efficient service and unnecessary duplication of facilities and services. This will ensure the protection of all Kansas ratepayers by requiring that all utilities operate in a consistent regulatory environment for facilities that serve wholesale electric loads.

⁹ See *Kansas Gas & Electric Co. v. Public Service Commission*, 122 Kan. 462 where the policy was recognized and it was said "****In determining whether such certificate of convenience should be granted, (1) the public convenience ought to be the Commission's primary concern, (2) the interest of public utility companies already serving the territory secondary, and (3) the desires and solicitations of the applicant a relatively minor consideration."