

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

Before Commissioners: Jay Scott Emler, Chairman
 Shari Feist Albrecht
 Pat Apple

In the Matter of the Application for Approval)
of the Consolidation of Kaw Valley Electric)
Cooperative, Inc. and Leavenworth-Jefferson)
Electric Cooperative, Inc., Forming a New)
Cooperative, FreeState Electric Cooperative,)
Inc.)

Docket No. 17-FSEE-084-COC

CERTIFICATE AND ORDER

NOW, the above-captioned matter comes on for consideration and determination by the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

1. On August 31, 2016, Kaw Valley Electric Cooperative, Inc. (KVEC) and Leavenworth-Jefferson Electric Cooperative, Inc. (LJEC) filed an Application with the Commission requesting approval of the Consolidation of KVEC and LJEC into FreeState Electric Cooperative, Inc. (FreeState), requesting an effective date of January 1, 2017, or as soon thereafter as approved by the Commission. Copies of the Articles of Consolidation and Agreement of Consolidation were submitted with the Application.

2. Applicants assert, and the Commission finds, that the two cooperatives are no longer subject to the jurisdiction of the Commission, as both properly deregulated pursuant to previously issued orders in Docket No. 01-KWVE-887-DRC and 93-LVJE-383-DRC, except to the extent stated in K.S.A. 66-104d(f).

3. Applicants further assert that they have entered into an Agreement of Consolidation wherein the two cooperatives agreed to consolidate their operations and form a new cooperative known as FreeState Electric Cooperative, Inc. Applicants state that the Articles of Consolidation and Agreement of Consolidation, together with the proposition for consolidation, were submitted to the respective members of Kaw Valley and LJEC, and that the respective memberships approved the proposed consolidation by an affirmative vote of two-thirds of the members voting at each cooperative. The voting was allowed by the bylaws of each cooperative and by the provisions of K.S.A. 17-4617.

4. Applicants request that the Commission allow the consolidated electric cooperative, FreeState, to assume all rights, duties and responsibilities which arise under certificates of convenience and authority currently separately held by Kaw Valley and LJEC. Applicants additionally request that FreeState not be subject to the jurisdiction of the Commission, except as specified in K.S.A. 66-104d(f).

5. Although as stated in Finding No. 4 above, all rights, duties and responsibilities of Kaw Valley and LJEC are assumed and transferred to FreeState, Staff would note the following:

A. Kaw Valley and LJEC will continue working with Staff to finalize a complete legal description of the FreeState territory, which is almost completed at this time.

B. Kaw Valley and LJEC further agree to complete all territory work and other associated responsibilities connected with Wash Up EL No. 38923.

6. On December 15, 2016, the Commission Staff ("Staff") submitted a Report and Recommendation to the Commission, recommending approval of the proposed consolidation and the issuance of a certificate of convenience and authority to FreeState. Staff states that the consolidation was effectuated in accordance with the provisions of K.S.A. 17-4617. Staff

additionally recommends that the certificate note that the Commission retains only the jurisdictional authority as set forth in K.S.A. 66-104d(f).

7. The Commission notes that, pursuant to K.S.A. 17-4631, “no merger or consolidation of any cooperative or corporation organized under the provisions of this act shall become effective until the same has been approved by the corporation commission of the state of Kansas.” After reviewing the Application, the associated attachments and Staff’s Report and Recommendation, the Commission finds that consolidation of Kaw Valley and LJEC electric cooperatives was effectuated in accordance with the provisions of K.S.A. 17-4617. Accordingly, the Commission grants the Applicants’ request to consolidate the two cooperatives into FreeState Electric Cooperative, Inc. Pursuant to K.S.A. 66-131, FreeState should be certified to assume the territories and all rights, duties, and responsibilities arising under the existing certificates of Kaw Valley and LJEC, pursuant to the terms of the application. Simultaneously with the consolidation, the individual certificates of Kaw Valley and LJEC should be set aside, cancelled and revoked. In addition, the Commission finds that the Commission’s jurisdiction over FreeState shall be limited to the areas authorized by K.S.A. 66-104d(f). The Commission finds that the public convenience will be promoted by the granting of this application.

IT IS, THEREFORE, BY THE COMMISSION CONSIDERED AND CERTIFIED:

A. The application to consolidate Kaw Valley Electric Cooperative, Inc. and Leavenworth-Jefferson Electric Cooperative, Inc. is hereby approved, and the current certified territories of each shall be acquired by and certificated to FreeState Electric Cooperative, Inc., permitting FreeState to operate as an electric public utility in these territories.

IT IS, THEREFORE, BY THE COMMISSION ORDERED:

(A) That the certificates of Kaw Valley Electric Cooperative, Inc. and Leavenworth-Jefferson Electric Cooperative, Inc. are set aside, cancelled and revoked. The Commission shall retain jurisdiction over FreeState only to the extent specified in K.S.A. 66-104d(f).

(B) Any party may file a petition for reconsideration of this order within fifteen (15) days of the date this order is served. If service is by mail, service is complete upon mailing and an additional three days may be added to the above time frame.

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

BY THE COMMISSION IT IS SO CERTIFICATED AND ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: _____

Amy L. Green
Secretary to the Commission

JF

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

FROM: Gary Dawdy, Utility Engineer II
Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: December 15, 2016

SUBJECT: 17-FSEE-084-COC
In the Matter of the Application for Approval of the Consolidation of Kaw Valley Electric Cooperative, Inc. and Leavenworth Jefferson Electric Cooperative, Inc., Forming a New Cooperative, FreeState Electric Cooperative, Inc.

EXECUTIVE SUMMARY:

Kaw Valley Electric Cooperative, Inc. (Kaw Valley) and Leavenworth-Jefferson Electric Cooperative, Inc. (LJEC) have filed the above-captioned Application to provide for the consolidation of Kaw Valley and LJEC into FreeState Electric Cooperative, Inc. (FreeState). The Application includes attachments and acknowledgement which confirm that proper steps were taken by the boards of each cooperative to secure approval by their members. Staff is recommending that a Certificate and Order be issued by the Commission approving the consolidation, certificating FreeState and cancelling the certificates of Kaw Valley and LJEC.

BACKGROUND:

Kaw Valley and LJEC have filed the above-captioned Application to provide for the consolidation of Kaw Valley and LJEC into FreeState. Both electric cooperatives have properly deregulated pursuant to previously issued orders in Docket No. 01-KWVE-887-DRC and 93-LVJE-383-DRC. Both Kaw Valley and LJEC remain jurisdictional to the KCC only as provided under K.S.A. 66-104 d (f), and request in their Application that FreeState's jurisdiction also be limited to that same authority.

ANALYSIS:

Pursuant to K.S.A. 2015 Supp. 66-131, the Commission has jurisdiction to grant a certificate to a public utility seeking to transact business in the State of Kansas. K.S.A. 66-1,170 et seq. the Retail Electric Suppliers Act (RESA) requires each and every retail electric supplier to obtain a certificate from the Commission.

The statutory standard of review in this matter is whether the “public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state.” K.S.A. 2015 Supp. 66-131. Further, single electric certification shall be the standard in Kansas under K.S.A. 66-1,170 et seq.

As a part of their Application, Kaw Valley and LJEC have attached copies of their Articles of Consolidation and Agreement of Consolidation each signed by their respective boards.

In their Application, Kaw Valley and LJEC advise that all provisions of K.S.A. 17-4617 were followed with respect to the consolidation. They further state that both the Articles of Consolidation and Agreement of Consolidation, which are attached to the Application, were approved by the affirmative vote of not less than two-thirds of the members of each consolidating cooperative voting on the consolidation.

Kaw Valley and LJEC request, and Staff also recommends, that FreeState assume all rights, duties and responsibilities under each of their respective certificate authorities.

Kaw Valley and LJEC have requested and Staff is recommending expedited action by the Commission in order to accommodate Kaw Valley and LJEC’s need for KCC approval to close their consolidation transaction by January 1, 2017. Staff refers to this date as expedited because pursuant to K.S.A. 66-131(b) the Commission has until February 27, 2017, which is 180 days from the date the Application was filed (August 31, 2016), to take action on this filing. In addition, because the corresponding maps and legal descriptions were not filed by Kaw Valley and LJEC until November 7, 2016, Staff believes there exists a sound basis for requesting an extension of the February 27, 2017 deadline.

Notwithstanding the above, Staff is agreeable to accommodating Kaw Valley and LJEC’s expedited time-frame. This is because Staff has Kaw Valley and LJEC’s full cooperation to complete the following:

1. They will continue working with Staff to finalize a complete legal description of the FreeState electric territory, which is almost completed at this time.
2. They further agree to complete all territory work and other associated responsibilities connected with Wash Up EL No. 38923.

Although the responsibility for completion of these items would automatically transfer to FreeState, Staff mentions these two points in order to advise the

Commission and further to confirm that these points would be included in any Order issued in the docket.

Staff recommends that the Commission find that public convenience will be promoted by the granting of this Application.

The Commission action date is February 27, 2017.

RECOMMENDATION:

That a Certificate and Order be issued by the Commission approving the Consolidation, certificating FreeState and cancelling the certificates of Kaw Valley and LJEC.

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