

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Application of City of)
Wellington for a Certificate of Convenience and) Docket No. 19-WELE-008-COC
Authority to Transact the Business of an Electric)
Public Utility in the State of Kansas.)

ORDER AND CERTIFICATE

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

1. On July 12, 2018, the City of Wellington filed an Application seeking a Certificate of Public Convenience and Authority to serve a 3-acre tract of land it annexed on November 21, 2017, in Sumner County, Kansas, which encompasses the following described land:

A tract of land commencing at a point 57.40 feet North of the Southeast corner of the Southwest Quarter (SW1/4) of Section Twelve (12), Township Thirty-two (32) South, Range One (1) West of the 6th P.M., Sumner County, Kansas: thence West on the North right-of-way line of U.S. 160 Highway, a distance of 340 feet, thence North on a line parallel to the East line of said Quarter Section a distance of 370 feet, thence East a distance of 340 feet to the line of said Quarter Section, thence South 370 feet to the point of beginning.

2. Pursuant to K.S.A. 66-1,176, the City of Wellington and Sumner-Cowley Electric Cooperative Association, Inc. (Sumner-Cowley) negotiated for the issuance of a franchise agreement and the City of Wellington considered the eleven factors set forth in K.S.A. 66-1,176 (a) (2)¹ in determining whether Sumner-Cowley, the previously certificated utility, would be able

¹ Laws 2018, ch. 6, § 3

to secure a franchise to continue serving the area. After considering the factors, the City determined that Sumner-Cowley should not be granted a franchise and elected to provide electric service to the annexed territory through its municipal electric utility operation, as was its prerogative under the annexation procedures set forth in K.S.A. 66-1,176 (a) (2).²

3. On September 14, 2018, the Commission Staff (Staff) submitted its Report and Recommendation dated September 12, 2018 to the Commission, which is attached and incorporated by reference, recommending the Application of the City of Wellington to provide service to the annexed territory be granted and a transfer of territory from Sumner-Cowley to the City be found to be in the public interest. Sumner-Cowley filed a companion Application in Docket No. 19-SMCE-083-CCS to cease operation as an Electric Cooperative Utility in the annexed area set forth in paragraph no. 1 above and no longer seeks to provide retail electric service in the area.

4. The Staff reviewed the City of Wellington Application to confirm the legal description included as part of the transfer request and incorporated it as an attachment to the Report and Recommendation. The Staff found the legal description to be accurate and recommended the updated territorial descriptions of the respective parties be updated within the Commission's certified territory map.

5. The Commission has jurisdiction to grant a Certificate to a public utility seeking to transact the business of an electric utility in Kansas. The Retail Electric Suppliers Act (RESA) in K.S.A. 66-1,170 et seq. requires the State of Kansas to be divided into electric service territories where only a single electric provider is permitted to supply retail electric service. The RESA

² *Id.*

allows any city annexing territory to select a retail electric service provider as part of the single certification process. The City of Wellington has selected its municipal utility operation as the service provider for the annexed territory. Based on the Staff Report and Recommendation, which is hereby adopted, the Commission determines that granting the Application promotes the public convenience and the transfer should be approved with the City of Wellington being given the authority to provide retail electric service in the annexed territory, all in accordance with K.S.A. 2017 Supp. 66-131 and K.S.A. 66-1,176, as amended.³

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. The Application of the City of Wellington, Kansas is hereby granted.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).⁴
- C. 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.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 09/25/2018



Lynn M. Retz
Secretary to the Commission

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³ *Id.*

⁴ K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

STATE OF KANSAS



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GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight D. Keen

FROM: Jason Kerr, Electric Utility Engineering Technician
Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: September 12, 2018

SUBJECT: 19-SMCE-083-CCS
In the Matter of the Application of Sumner Cowley Electric Cooperative, Inc. for Permission to Cease Operating as an Electric Cooperative Utility in the State of Kansas. Sumner County, Wellington KS.

19-WELE-008-COC
In the Matter of the Application of City of Wellington for a Certificate of Convenience and Authority to Transact the Business of an Electric Public Utility in the State of Kansas. Portions of Sumner County, City of Wellington.

EXECUTIVE SUMMARY:

Sumner Cowley Electric Cooperative, Inc. (Sumner Cowley) is seeking the approval of the Commission to cease operating as an electric utility in a small tract of land that was annexed by the City of Wellington in Sumner County. The City of Wellington (City) provided notice to the Commission of the annexation of the small parcel of land.

Staff recommends that the Commission grant these Applications.

BACKGROUND:

On August 22, 2018, Sumner Cowley filed an Application to Cease in Docket 19-SMCE-083-CCS. In Docket 19-WELE-008-COC, the City filed an Application for a Certificate of Public Convenience and Authority to give notice to the Commission of a recent annexation, on July 12, 2018.

The City annexed this 3-acre tract of land on November 21, 2017, and notified Sumner Cowley that the City intended to provide retail electric service to the property. As allowed by Kansas Statute,¹ Sumner Cowley requested a franchise from the City to continue providing service to the customer; however, Wellington rejected Sumner Cowley's request on March 20, 2018.

The Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas.² K.S.A. 66-1,170 et seq. the Retail Electric Suppliers Act (RESA) requires the State of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. Notwithstanding the mandated single electric provider service territories, RESA allows any city annexing territory to select a retail electric service provider. Under these circumstances, the Commission is required to certify the annexed territory to the electric supplier selected by the city.³

ANALYSIS:

Staff has reviewed the Applications and determined that the legal descriptions and maps provided with the Applications are accurate. Staff has also confirmed that the attached legal description, marked attachment A, is not in conflict with the Commission's Certificate records.

The Commission action date is January 7, 2019.

RECOMMENDATION:

Staff recommends that the Commission grant this Application. Upon approval, the updated territory descriptions will be reflected in the Commission's certified territory map.

¹ K.S.A. 66-1,176(a).

² K.S.A. 66-131.

³ K.S.A. 66-1,174 and 66-1,176(a).

ATTACHMENT A
Legal Description of Territory Transferred Between
Sumner Cowley Electric Cooperative, Inc. and City of Wellington
Docket No. 19-SMCE-083-CCS and 19-WELE-008-COC

SUMNER COUNTY

A tract of land commencing at a point 57.40 feet North of the Southeast corner of the Southwest Quarter (SW1/4) of Section Twelve (12), Township Thirty-two (32) South, Range One (1) West of the 6th P.M., Sumner County, Kansas: thence West on the North right-of-way line of U.S. 160 Highway, a distance of 340 feet, thence North on a line parallel to the East line of said Quarter Section a distance of 370 feet, thence East a distance of 340 feet to the line of said Quarter Section, thence South 370 feet to the point of beginning.

CERTIFICATE OF SERVICE

19-WELE-008-COC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 09/26/2018.

ATTN: CITY CLERK
CITY OF WELLINGTON
CITY ADMINISTRATION CENTER
317 S WASHINGTON
WELLINGTON, KS 67152

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CLETAS C. RAINS, GENERAL MANAGER/CEO
SUMNER-COWLEY ELECTRIC COOPERATIVE, INC.
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WELLINGTON, KS 67152
Fax: 620-326-6579
cleter@sucocoop.com

/s/ DeeAnn Shupe

DeeAnn Shupe