

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

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

In the Matter of a General Investigation to)
Determine the Commission's Jurisdiction) Docket No. 18-GIME-217-GIE
over Municipal Energy Agencies.)

ORDER OPENING GENERAL INVESTIGATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, the Commission finds:

1. In the 17-KPPE-092-COM Docket (17-092 Docket), Southern Pioneer Electric Company filed a Complaint against Kansas Power Pool (KPP), alleging KPP is attempting to bypass Southern Pioneer's facilities which will unduly burden Southern Pioneer's customers through increased rates by duplicating facilities.¹ On October 3, 2017, KPP filed a Motion to Dismiss, arguing the Commission lacks subject matter jurisdiction over KPP's wholesale transmission service decisions.²

2. On October 19, 2017, Kansas Municipal Energy Agency (KMEA) sought to intervene in the 17-092 Docket because the Docket may resolve jurisdictional questions directly impacting KMEA's ability and duty to serve its members.³ KMEA noted the Commission has

¹ Complaint of Southern Pioneer Electric Company Against the Kansas Power Pool, 17-KPPE-092-COM, Sept. 8, 2016, p. 1.

² Motion to Dismiss, Docket No. 17-KPEE-092-COM, Oct. 3, 2017, p. 6.

³ Petition to Intervene of Kansas Municipal Energy Agency, Oct. 19, 2017, ¶ 7.

not addressed the specific enumerated statutory powers granted to a municipal energy agency by K.S.A. 66-12-885 *et seq*, and sought to brief the jurisdictional issues.⁴

3. On October 23, 2017, Southern Pioneer and Mid-Kansas Electric Company⁵ (Mid-Kansas) filed their opposition to KMEA's Petition to Intervene and suggested the Commission open a general investigation into the jurisdictional issues presented in order to allow all interested parties the opportunity to participate.⁶

4. On October 24, 2017, Southern Pioneer and Mid-Kansas filed their opposition to KPP's Motion to Dismiss, claiming in relevant part, Kansas law specifically states that KPP operates as a public utility subject to the jurisdiction and control of the Commission.⁷

5. On October 24, 2017, KMEA filed a brief on jurisdiction. On October 30, 2017, KPP filed its brief on jurisdiction. On October 31, 2017, KPP filed its Motion to File a Reply Brief in Support of Its Motion to Dismiss. On November 3, 2017, Southern Pioneer and Mid-Kansas filed their Response to Kansas Municipal Energy Agency Response on Intervention and Brief Regarding Jurisdiction. Also on November 3, 2017, Staff filed its Brief in Response to Kansas Power Pool's Motion to Dismiss. The Commission takes administrative notice of the briefs on jurisdiction filed in the 17-092 Docket.

6. On November 13, 2017, Wheatland Electric Cooperative, Inc. filed a Petition to Intervene in the 17-092 Docket, claiming, "Wheatland has a direct and substantial interest in the outcome of these proceedings, especially as it relates to the jurisdictional issues."⁸

⁴ *Id.*, ¶ 8.

⁵ Mid-Kansas was granted intervention in the 17-092 Docket on March 30, 2017.

⁶ Response of Southern Pioneer Electric Company and Mid-Kansas Electric Company, LLC to Petition to Intervene of Kansas Municipal Energy Agency, 17-092 Docket, Oct. 23, 2017, p. 1.

⁷ Joint Brief of Southern Pioneer Electric Company and Mid-Kansas Electric Company, LLC in Response to Kansas Power Pool's Motion to Dismiss, 17-092 Docket, Oct. 24, 2017, ¶ 8.

⁸ Petition to Intervene, 17-092 Docket, Nov. 13, 2017, ¶ 8.

7. The Commission agrees with Southern Pioneer and Mid-Kansas's suggestion to open a general investigation into the Commission's jurisdiction over municipal energy agencies. All of the parties that filed jurisdictional briefs in the 17-092 Docket are made party to the general investigation. Any other entities wishing to participate in the general investigation shall enter their appearance by December 4, 2017.

8. The general investigation into the extent of the Commission's jurisdiction over municipal energy agencies will focus on:

- a) Do the MEAs' enumerated powers under K.S.A. 12-895 fall outside the scope of the Commission's jurisdictional authority under K.S.A. 12-8,111?
- b) Does K.S.A. 12-855 *et seq.* limit the Commission's jurisdiction over MEAs?
- c) Other than for purposes of certification under K.S.A. 66-131, is the Commission's authority to regulate MEAs the same as its authority to regulate public utilities, including actions taken by MEAs pursuant the MEA Act?; and
- d) List the areas of operation where the Commission lacks authority or jurisdiction to regulate an MEA as if it were a public utility. State the legal authority denying the Commission's authority or jurisdiction.

To the extent the parties have already briefed those questions in the 17-092 Docket, no additional briefing is necessary. If the parties need to supplement their briefs to address those questions, they should file the supplementary briefs in this Docket by December 15, 2017. Parties that file entries of appearance shall also file their jurisdictional briefs by December 15, 2017. Reply briefs are due December 22, 2018. Pursuant to K.A.R. 82-1-232(b)(2), the Commission believes

an evidentiary hearing is unnecessary to resolve a legal question. The Commission will issue its Order by January 18, 2018.

9. The Commission finds it appropriate to open this Docket and the costs of this proceeding will be assessed against electric utilities operating in the state of Kansas.

10. The Commission designates Brian G. Fedotin, Deputy General Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone number (785) 271-3105, b.fedotin@kcc.ks.gov, as Prehearing Officer in this proceeding.⁹ The prehearing officer may conduct any prehearing conferences necessary to address any matters appropriately considered in a prehearing conference, including all items listed in K.S.A. 77-517(b) of the Kansas Administrative Procedure Act (KAPA). The Commission may designate other staff members to serve in this capacity.

11. The Commission approves the use of electronic service of all testimony, briefs, and orders, without requiring provision of follow-up hard copies as required by K.A.R. 82-1-216(a)(6). Testimony and briefs must be served electronically by 5:00 p.m., on the date due, without requiring service among the parties of a follow-up hard copy. The Commission directs electronic service of testimony and briefs include service on the Prehearing Officer at b.fedotin@kcc.ks.gov.

THEREFORE, THE COMMISSION ORDERS:

A. A General Investigation Docket is opened to determine the Commission's jurisdiction over municipal energy agencies.

⁹ K.S.A. 77-514; K.S.A. 77-516; K.S.A. 77-551(c).

B. The Commission takes administrative notice of the briefs on jurisdiction filed in the 17-092 Docket.

C. All of the parties that filed jurisdictional briefs in the 17-092 Docket are made party to the general investigation. Any other entities wishing to participate in the general investigation shall enter their appearance by December 4, 2017. Briefs by December 15, 2017. Reply briefs are due December 22, 2018.

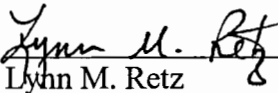
D. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.¹⁰

E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: NOV 28 2017



Lynn M. Retz
Secretary to the Commission

BGF

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NOV 28 2017

¹⁰ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-GIME-217-GIE

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on NOV 28 2017.

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