

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

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

In the Matter of the Application of Brown-Atchison )  
Electric Cooperative for Permission to Cease        )  
Operating as a(n) Electric Utility in the State of    )      Docket No. 18-BRAE-331-CCS  
Kansas. Specifically in Portion of Section 12,        )  
Township 8 South, Range 17 East, Jefferson        )  
County, Kansas.    )

**ORDER GRANTING APPLICATION TO CEASE TRANSACTING  
THE BUSINESS OF AN ELECTRIC PUBLIC UTILITY**

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:

**I. BACKGROUND**

1.      On February 5, 2018, Brown-Atchison Electric Cooperative Assn., Inc. (Brown-Atchison) filed an Application requesting to cease transacting the business of an electric public utility in a portion of Jefferson County, Kansas. Brown-Atchison is an electric public utility as defined in K.S.A. 2016 Supp. 66-104. A public hearing was neither requested nor held on Brown-Atchison's Application.

2.      Brown-Atchison requests the Commission issue an Order granting it the authority to cease transacting the business of as an electric public utility in the following described territory to wit:

Territory lying South and West of the Delaware River in the North ½ of Section 12, Township 8 South, Range 17 East, in Jefferson County, Kansas, as detailed on the Map attached as Exhibit A to the Application.

3. On February 14, 2018, the Commission Staff (Staff) submitted its Report and Recommendation dated February 13, 2018, recommending the Commission grant Brown-Atchison's Application and find that public convenience will be promoted by granting Brown-Atchison's request to cease transacting business as an electric public utility in the territory described in paragraph 2 above.

## **II. LEGAL STANDARDS AND DISCUSSION**

4. Pursuant to K.S.A. 2016 Supp. 66-131, the Commission has jurisdiction to grant a Certificate to any 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 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 also provides that retail electric suppliers may enter into agreements to amend boundaries between their facilities. The agreements are subject to Commission approval, and if so approved, the Commission shall issue a certificate accordingly.<sup>1</sup>

5. According to Staff, Brown-Atchison and FreeState Electric Cooperative, Inc. (FreeState) propose a transfer of the electric service territory described in paragraph 2 above in order to accommodate the Kansas Department of Wildlife, Parks and Tourism regarding new service for a marsh pump located in Brown-Atchison's certified area. Because of the geography, Brown-Atchison proposed that it release this certified area to FreeState and, subject to the Commission's approval, FreeState has agreed to provide service to the territory described in paragraph 2 above.<sup>2</sup> On February 7, 2018, Free-State filed a companion Application in Docket No. 18-FSEE-337-COC requesting a Certificate of Convenience and Authority (Certificate)

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<sup>1</sup> K.S.A. 66-1,175.

<sup>2</sup> Report and Recommendation, page 2.

authorizing it to provide electric service in the subject territory. Staff indicates that it has reviewed the Applications of both Brown-Atchison and FreeState determining that the legal descriptions and maps provided with the Applications are accurate. Staff also confirms that the legal descriptions provided by the parties are not in conflict with the Commission's Certificate records. Concluding, Staff determines that public convenience will be promoted by the requested territory transfer and recommends the Commission grant the Applications of both Brown-Atchison and FreeState.<sup>3</sup>

### **III. FINDING AND CONCLUSION**

6. The Commission adopts Staff's analysis and recommendation of February 13, 2018, as stated in its Report and Recommendation, which is attached hereto and made a part hereof by reference, and finds that Brown-Atchison's Application should be granted, and that public convenience and necessity will be promoted by issuing an Order authorizing Brown-Atchison to cease transacting the business of an electric public utility in the territory described in paragraph 2 above.

#### **IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Application of Brown-Atchison Electric Cooperative Assn., Inc. is hereby granted and Brown-Atchison is hereby authorized to cease transacting the business of an electric public utility in the territory described in paragraph 2 above.

B. The parties have fifteen (15) days, plus three (3) 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. 2016 Supp. 77-529(a)(1).

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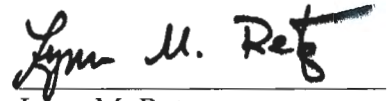
<sup>3</sup> Id., page 2.

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; Apple, Commissioner

Dated: Feb. 27, 2018

A handwritten signature in black ink, reading "Lynn M. Retz". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Lynn M. Retz  
Secretary to the Commission

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**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Pat Apple

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

**DATE:** February 13, 2018

**SUBJECT:** 18-BRAE-331-CCS  
In the Matter of the Application of Brown-Atchison Electric Cooperative for  
Permission to Cease Operating as an Electric Utility in the State of Kansas.  
Specifically in a portion of Section 12, Township 8 South, Range 17 East, Jefferson,  
Kansas.

18-FSEE-337-COC  
In the Matter of the Application of FreeState Electric Cooperative for a Certificate  
of Convenience and Authority to Transact the Business of an Electric Public Utility  
in the State of Kansas. Jefferson County.

**EXECUTIVE SUMMARY**

In Docket 18-BRAE-331-CCS, Brown-Atchison Electric Cooperative (Brown-Atchison) is seeking the approval of the Commission to cease operating as an electric utility in a portion of territory lying south and west of the Delaware River in Section 12, Township 8 South, Range 17 East, in Jefferson County. In Docket 18-FSEE-337-COC, FreeState Electric Cooperative (FreeState) is requesting a Certificate for that certified territory.

Staff recommends that the Commission grant these Applications and find that public convenience will be promoted by this transaction.

**BACKGROUND:**

On February 5, 2018, Brown-Atchison filed an Application to Cease in Docket No. 18-BRAE-331-CCS. On February 7, 2018, FreeState filed a Companion Application for a Certificate in Docket No. 18-FSEE-337-COC.<sup>1</sup>

The Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas.<sup>2</sup> 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 also provides that retail electric suppliers can enter into agreements to amend boundaries between their facilities. The agreements are filed in the form of Certificates and, if approved by the Commission, Certificates to amend territory are issued.

**ANALYSIS:**

Brown-Atchison requests authority to cease in the territory lying south and west of the Delaware River in the North 1/2 of Section 12; Township 8 South; Range 17 East; Jefferson County, Kansas, as shown in Exhibit A in the Application Cease from Brown-Atchison.

Kansas Department of Wildlife, Parks and Tourism contacted Brown-Atchison regarding new service for a marsh pump located in their certified area. Because of the geography, Brown-Atchison proposed to release this certified area to FreeState, and FreeState has agreed to provide service in this electric certified territory.

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 legal descriptions are not in conflict with the Commission's Certificate records.

**RECOMMENDATION:**

Staff recommends that the Commission grant these Applications and find that public convenience will be promoted by this transaction.

The Commission action date is August 4, 2018.

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<sup>1</sup> FreeState Application is referenced in EL 39335.

<sup>2</sup> K.S.A. 66-131

## CERTIFICATE OF SERVICE

18-BRAE-331-CCS

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 Feb. 27, 2018.

JIM CURRIE, GENERAL MANAGER  
BROWN-ATCHISON ELEC. COOP. ASSN., INC.  
1712 CENTRAL  
PO BOX 230  
HORTON, KS 66439  
Fax: 785-486-3910  
jcurrie@baelectric.com

MATTHEW MAGILL, ENGINEERING MANAGER  
FREESTATE ELECTRIC COOPERATIVE, INC.  
WEST DISTRICT  
1100 SW AUBURN RD  
TOPEKA, KS 66615-1426

OTTO NEWTON, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3167  
o.newton@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

/S/ DeeAnn Shupe  
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DeeAnn Shupe