

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

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

BRIEF OF CITIZENS' UTILITY RATEPAYER BOARD

COMES NOW, the Citizens' Utility Ratepayer Board (CURB) and submits the following brief as allowed under the Commission's Order Opening General Investigation issued on November 21, 2017.

Background

1. On November 21, 2017, the Kansas Corporation Commission (Commission) opened a docket for a general investigation to determine the Commission's jurisdiction over any Municipal Energy Agency (MEA) created pursuant to K.S.A. 12-885, et. seq. In particular, the Commission's Order Opening General Investigation invited parties to file briefs addressing the following issues:

- 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. 12-885 *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.¹

2. CURB entered its appearance in this docket on December 1, 2017, in order to file a brief on the issues outlined by the Commission. CURB thanks the Commission for this opportunity to be heard on these important issues.

Discussion of Issues:

3. CURB will address the issues in the order in which they are presented in the Commission's Order Opening General Investigation. CURB supports the arguments advanced by the Commission Staff in Staff's Brief in Response to Kansas Power Pool's Motion to Dismiss ("Commission Staff Brief") filed in Docket No. 17-KPPE-092-COM. To the extent that the Commission Staff Brief answers the issues posed herein by the Commission, CURB adopts the Commission Staff Brief herein. Additionally, CURB believes the following authorities compel the conclusion that the Commission has general regulatory jurisdiction over MEAs, as outlined below.

- 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?**

4. The issues outlined by the Commission, including the above issue, call for statutory interpretation. Several legal canons and principles contained in Kansas appellate cases pertain to

¹ For purposes of addressing these issues, CURB assumes that the term "jurisdiction" as used in the issues posed herein means general jurisdiction that includes personal and subject matter jurisdiction over utilities and their activities. In its answers to the issues, CURB intends to refer to such general jurisdiction only, and its arguments are confined to defending the Commission's jurisdiction in a general sense. CURB will not address the jurisdictional aspects of any particular exercise of authority by the Commission as CURB believes that these specific jurisdictional issues are best determined upon specific facts. CURB notes that Commission orders are required to be within its statutory authority and based upon substantial evidence. Nonetheless, CURB does not believe that anything in the MEA act ousts the Commission from its general jurisdiction over MEAs.

the interpretation of statutes by Kansas courts. These canons and principles obviously govern the Commission's interpretation of K.S.A. 12-885, et seq., acting in its quasi-judicial role.

5. CURB submits that the plain language in the Municipal Energy Agency Act, K.S.A. 12-885 through K.S.A. 12-8,110 (hereinafter, "MEA Act") demonstrates that actions taken by MEAs (including those enumerated in K.S.A. 12-895) are subject to general regulation by the Commission, with the sole exception of certificates of convenience. Moreover, even if one were to assume *arguendo* that the MEA Act is ambiguous, the legal principles pertaining to statutory construction lead to the conclusion that the Commission has general regulatory jurisdiction over actions taken by MEAs after they obtain certificates of convenience in accordance with the MEA Act. Indeed, as shown below, the Kansas legislature intended the Commission to have broad regulatory authority over MEAs in order to ensure that the public interest is achieved relative to the activities of MEAs, including actions taken pursuant to K.S.A. 12-895.

6. The first step in determining the intent of the legislature is to look to the plain language of the statute, giving ordinary words their ordinary meanings. *Padron v. Lopez*, 289 Kan. 1089, 1097, 220 P.3d 345 (2009). *State v. Stallings*, 284 Kan. 741, 742, 163 P.3d 1232 (2007). This first step is important, for the Kansas Supreme Court notes as follows:

When a statute is plain and unambiguous, a court does not speculate as to the legislative intent behind it, will not read the statute to add something not readily found in it, and need not resort to statutory construction. It is only when the statute's language or text is unclear or ambiguous that courts move to the next analytical step, applying canons of construction or relying on legislative history construing the statute to effect the legislature's intent. *State ex rel. SRS v. Cleland*, 42 Kan.App.2d 482, 487-488, 213 P.3d 1091 (2009).

Absent ambiguity or irrational result, the literal language of a statute controls. *Edwards v. Valdez*, 789 F.2d 1477, 1481 (10th Cir.1986). Thus, if the terms of a statute are unambiguous and logical, a court will apply a statute strictly in accordance with said terms.

7. A statute is ambiguous when there are two or more interpretations that may fairly be made. *Appeal of Sterling Drilling Co.*, 9 Kan.App.2d 108, 109 673 P.2d 456 (1983). An ambiguity exists when (1) the words have more than one meaning; (2) there is an unusual use of otherwise unambiguous words, e.g., terms of art; or (3) the purpose, intent or object of the statute cannot be ascertained from the language therein. *In re George Rodman, Inc.*, 792 F.2d 125, 128 n. 8 (10th Cir.1986). The United States Supreme Court has stated, “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997).

8. The plain language of K.S.A. 12-885 and K.S.A. 12-8,111 shows that the legislature intended that MEAs be subject to regulation by the Commission under K.S.A. 66-101, *et seq.* The jurisdiction of the Commission over MEAs is plainly set forth in K.S.A 12-8,111. That particular statute states:

“Certificates of public convenience for municipal energy agencies; jurisdiction of corporation commission.

(a) The provisions of K.S.A. 12-885 to 12-8,109, inclusive, and any provisions amendatory or supplemental thereto, shall constitute a certificate of public convenience, and any municipal energy agency is authorized to operate as a public utility pursuant to such provisions without obtaining a certificate described in K.S.A. 66-131 or any amendments thereto.

(b) Except with respect to such certificate described in subsection (a), **any municipal energy agency created under the provisions of K.S.A. 12-885 to 12-8,109, inclusive, and any provisions amendatory or supplemental thereto, shall be subject to the jurisdiction of the state corporation commission in the same manner as a public utility.**” (our emphasis) *K.S.A. 12-8,111.*

The term “jurisdiction,” as used in the context of K.S.A. 12-8,111 is not susceptible to more than one reasonable definition, the use of the word in that statute is not unusual, and its use in K.S.A. 12-8,111 manifests clear intent to subject MEAs to general Commission oversight under K.S.A. 66-101, *et seq.* Therefore, as shown by the plain language of K.S.A. 12-8,111, MEAs are subject

to the jurisdiction of the Commission in the same manner as any other public utility with the sole exception of the need to obtain a certificate of public convenience from the Commission.

9. Moreover, the term “jurisdiction” is unambiguous in consideration of the broader context of the statute (and, indeed, the MEA Act) as a whole. The plain language of the MEA enabling statute shows that MEAs are subject to the general jurisdiction of the Commission. K.S.A. 12-885 provides:

“Subject to the provisions of K.S.A. 12-885 to 12-8,111, inclusive, and amendments thereto, any two or more cities may create a municipal energy agency for the purpose of planning, studying and developing supply, transmission and distribution facilities and programs and for the purpose of securing an adequate, economical and reliable supply of electricity and other energy and transmitting the same for distribution through the distribution systems of such cities. Any municipal energy agency created under the provisions of this act shall be a quasi-municipal corporation, except that nothing herein shall be construed as relieving any municipal energy agency created under the provisions of this act from liability for tortious acts.” (our emphasis) *K.S.A. 12-885.*

The Commission cannot ignore the reference to K.S.A. 12-8,111 in the enabling statute. The unconditional reference to K.S.A. 12-8,111 shows clear legislative intent that activities of MEAs shall be conducted only as lawfully permitted by the Commission, the same as with any other utility. The reference means that, not only does the Commission have personal jurisdiction over MEAs, it has general subject matter jurisdiction under K.S.A. 66-101, *et seq.*, over the activities of MEAs.

10. In view of the unconditional reference to K.S.A. 12-8,111 in the enabling statute, one cannot reasonably assert that all general powers enumerated in K.S.A. 12-895 are beyond the general jurisdiction of the Commission. The Kansas legislature did not place any statements in K.S.A. 12-895 to lessen the Commission’s general authority to regulate MEAs the same as it may regulate other utilities under K.S.A. 66-101 *et seq.* In regards to statutory construction, the Kansas Supreme Court has stated:

When a statute is plain and unambiguous, a court does not speculate as to the legislative intent behind it, **will not read the statute to add something not readily found in it**, and need not resort to statutory construction. It is only when the statute's language or text is unclear or ambiguous that courts move to the next analytical step, applying canons of construction or relying on legislative history construing the statute to effect the legislature's intent. (our emphasis) *State ex rel. SRS v. Cleland*, 42 Kan.App.2d 482, 487-488, 213 P.3d 1091 (2009).

11. The argument that MEAs' exercise of the powers set forth in K.S.A. 12-895 fall outside of the Commission's jurisdiction requires the addition of language in the MEA Act that "the Commission lacks jurisdiction if MEAs are acting within those powers." Under Kansas law, implying this additional language is not justified. K.S.A. 12-8,111 as well as K.S.A. 12-885 plainly state that (with one exception) MEAs' activities are subject to the Commission's general jurisdiction under K.S.A. 66-101 *et seq.* Therefore, given the all-inclusive reference to K.S.A. 12-8,111 in K.S.A. 12-885, it is unnecessarily duplicative to reiterate in K.S.A. 12-895 that actions of MEAs pursuant to the enumerated powers therein are generally subject to Commission oversight.

12. Significantly, the argument that "as long as an MEA is acting lawfully (and within its powers under K.S.A. 12-895)," it is not subject to approval by the Commission conflates the mere lawfulness of an action to the scope of the Commission's jurisdiction. It ignores the fact that the Commission has jurisdiction to determine the lawfulness and reasonableness of actions taken by public utilities. Just because an action taken by a public utility is lawful (under some Kansas statute), it does not mean that the Commission cannot disapprove the action as being unreasonable. It is in this vein that the Commission's authority to mete out the public interest becomes important.

13. In employing the broad scope of the Commission's general jurisdiction in K.S.A. 12-8,111, the Kansas legislature understood the importance of the Commission's authority to ensure that the public interest will be met by actions taken by MEAs. Courts should presume that the legislature acted with full knowledge and information about the statutory subject matter, prior

and existing law, and the judicial decisions interpreting the prior and existing law and legislation.

In re Adoption of G.L.V., 286 Kan. 1034, 1041-42, 190 P.3d 245 (2008).

14. Illustrative of the Commission's authority is its jurisdiction to hear complaints by those affected by public utility practices. K.S.A. 66-101e provides:

“Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.” K.S.A. 66-101e.

K.S.A. 66-101e plainly shows that the Commission has very broad authority to hear and determine whether any Kansas utility (including MEAs) practices are unreasonable, unfair or unreasonably inefficient practices, notwithstanding whether or not such practices are lawful.

15. In these regards, consider the facts and holdings of *Kansas Gas & Electric Co., v. Public Service Commission of Kansas*, 122 Kan. 462, 251 P. 1097 (1927). In that case, the Wichison Industrial Gas Company applied to the Commission for a certificate of convenience permitting it to transact business as a public utility in this state and particularly to supply gas to industrial plants in and about the cities of Wichita and Hutchinson. There were public utility protestants who filed protests that allowing Wichison Industrial Gas Company to supply gas to industrial plants (as set forth in the pertinent application) would encroach upon their businesses, and thus be contrary to the public interest. The Commission granted the application of Wichison Industrial Gas Company and the protestants filed a petition in the Shawnee County District Court, appealing that decision. The Commission and Wichison Industrial Gas Company demurred to the petition, arguing that:

“...the petition does not state facts sufficient to constitute a cause of action against this defendant, or entitle the plaintiffs, or either of them, to the relief prayed for.” *Kansas Gas & Electric Co., v. Public Service Commission of Kansas*, 122 Kan. 462 at 463.

In addressing that issue, the Kansas Supreme Court stated:

“In years ago, when competition was the rule, ‘with the race to the swift and the devil take the hindmost,’ a public service corporation established its plant, invested its capital, and investors put their savings in its stocks and bonds with their eyes open, knowing the possibility of their investments being rendered unprofitable by the intrusion of competitors in the same field. But they also had the allurements of possible large profits to stimulate their enterprise and to justify their speculative investments. Nowadays, public service companies and their stock and bond holders proceed on a different theory, which has for its basis their confidence in a fair and just administration of the Public Utilities Act. This act, while greatly restricting freedom of corporate action, is designed among other purposes to give a measure of security against ruinous competition to prudent investments of public service corporations which give the public reasonably efficient and sufficient service. The very enactment of the statute (R. S. 66-131), forbidding a public utility corporation to transact business without a certificate that the public convenience would be promoted thereby, was manifestly intended to put reasonable limitations to the evils attendant on unnecessary duplication of public utilities.” *Id.*

The Kansas Supreme Court noted, importantly, that the Commission had heard the issues and evidence raised by the Protestants before it issued its order approving the certificate of convenience. Refusing to substitute its judgment for the Commission, the Court upheld the Commission’s order.

16. However, this early case posits the clear jurisdiction of the Commission not only to determine the lawfulness of a utility’s action or practices, but also the reasonableness of the same. Thus, even if MEAs’ practices are lawful under K.S.A. 12-895 and Chapter 66 of the Kansas statutes, the Commission still has jurisdiction to determine the reasonableness of those practices. In any application, the Commission has jurisdiction to balance the interests of the parties, including ratepayers, to satisfy the public interest, aside from the lawfulness of such application. Thus, when a protestant’s complaint asserts facts showing that an action taken by an MEA is contrary to the

public interest, it does not generally appear to be warranted to dismiss the complaint solely upon the assertion of a failure to state a jurisdictional claim upon which relief can be granted. Rather, the Commission could hear such an assertion, as due process requires, and fashion relief which falls within the Commission's broad authority to regulate utilities in the public interest.

17. It is simply illogical to assert that, because K.S.A. 12-895 does not contain language expressly subjecting the exercise of those powers to the oversight of the Commission, any action lawfully taken under K.S.A. 12-895 does not require Commission approval. It neglects to consider that actions taken by MEAs may very well significantly and detrimentally affect the interests of ratepayers and utilities that the Commission is statutorily obligated to protect. In this respect, note that K.S.A. 12-895(a)(8) provides that MEAs are empowered "to establish, revise and collect rates or charges for electric power and other energy and all other services, facilities and commodities sold, furnished or supplied by the agency." To argue that K.S.A. 12-895(a)(8) allows MEAs to establish rates for electric power without approval by the Commission is to illogically allow MEAs to potentially engage in unduly discriminatory rate practices without any means to abate them. The Kansas legislature certainly did not intend such an illogical result.

18. Moreover, K.S.A. 12-895(a)(17) contains a "catch-all" clause allowing MEAs to conduct any other business necessary to effectuate the other powers enumerated in K.S.A. 12-895. If the argument is accepted that any action taken by MEAs under K.S.A. 12-895 is beyond the regulatory authority of the Commission, then essentially all actions taken by MEAs [under the broad grant issued in K.S.A. 12-895(a)(17)] defeats the jurisdiction of the Commission over MEAs. This result clearly eviscerates the jurisdictional authority granted to the Commission under K.S.A. 12-8,111.

19. These arguments run contrary to the rules of statutory construction long established by Kansas courts. Principally, a construction of a statute should be avoided which would render

the application of the statute impractical or inconvenient, or which would require the performance of a vain, idle, or futile thing, or attempt to require the performance of an impossible act. *In re Adoption of Baby Boy L.*, 231 Kan. 199, Syl. ¶ 8, 643 P.2d 168 (1982). Moreover, a statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits. If possible, doubtful provisions should be given reasonable, rational, sensible, and intelligent constructions. *In re Gantz*, 10 Kan.App.2d 299, 301, 698 P.2d 385 (1985).

20. Logically interpreted, K.S.A. 12-885 is an enabling statute allowing MEAs to be formed and operated while K.S.A. 12-895 enumerates certain powers granted to MEAs in those regards. However, nothing in those statutes (in particular, K.S.A. 12-895) eliminates the jurisdiction of the Commission (as unambiguously expressed in K.S.A. 12-8,111) to regulate MEAs the same as other Kansas public utilities. In sum, MEAs' enumerated powers under K.S.A. 12-895 do not fall outside the scope of the Commission's general jurisdictional authority under K.S.A. 12-8,111.

b) Does K.S.A. 12-885 *et seq.* limit the Commission's jurisdiction over MEAs?

21. K.S.A. 12-885 through K.S.A. 12-8,111 were enacted by the Kansas legislature in 1977 as a comprehensive Act pertaining to MEAs. K.S.A. 12-885 is the enabling statute, allowing MEAs to be formed; K.S.A. 12-886 contains pertinent definitions; K.S.A. 12-887 through 12-889 provide the means by which an MEA may be created through resolution and agreement and how that agreement may be amended; K.S.A. 12-890 through K.S.A. 12-894 provides certain formalities of MEAs as a corporation such as the existence of a resident agent and officers; K.S.A. 12-895 through K.S.A. 12-897 enumerate certain general powers and limitations of MEAs; and K.S.A. 12-898 through K.S.A. 12-8,107 pertain to financing of MEAs.

22. Significantly, K.S.A. 12-8,111 completes the comprehensive nature of the Act pertaining to MEAs by adding provisions relating to regulation of them. With the exception of the need for obtaining certificates of convenience, the Commission is granted authority to regulate MEAs, the same as it regulates other public utilities. It is obvious that, by authorizing the Commission to regulate MEAs, the Kansas legislature intended Commission regulation to be the means to ensure that activities and practices of MEAs conform to the public interest.

23. In these regards, the Kansas Supreme Court has stated:

“In construing statutes, the legislative intention is to be determined from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible.” *State v. Adee*, 241 Kan. 825, 829, 740 P.2d 611 (1987).

If it is accepted that K.S.A. 12-885, *et seq.* obviates the Commission’s jurisdiction, then the provisions contained in 12-8,111 would be eviscerated. Clearly, within the general jurisdiction of the Commission under K.S.A. 66-101, *et seq.*, any Commission order affecting MEAs must fall within the Commission’s lawful authority. These specific jurisdictional boundary issues would appear to be best determined upon a specific set of facts. However, for purposes of this general investigation, CURB believes it sufficient to note that the Commission’s general jurisdiction over MEAs is not limited by the MEA Act.

24. Indeed the scope of the Commission’s jurisdiction is expressly contained in that statute, as follows:

“Except with respect to [certificates of convenience] described in subsection (a), any municipal energy agency created under the provisions of K.S.A. 12-885 to 12-8,109, inclusive, and any provisions amendatory or supplemental thereto, shall be subject to the jurisdiction of the state corporation commission in the same manner as a public utility.” *K.S.A. 12-8,111(b)*.

There is no provision in the entire Act pertaining to MEAs which expressly narrows the scope of the Commission’s jurisdiction and authority beyond that contained in K.S.A. 12-8,111(a). No such

provision should be read in to the Act. A court should hesitate to cut down the scope of a statute except where there is a clear justification for so doing. *Boeing Co. v. Kansas Employment Sec. Bd. of Review*, 193 Kan. 287, 291, 392 P.2d 904 (1964).

25. Furthermore, if one considers the regulatory scheme of electric utilities in Kansas, there is no justification for reducing the scope of the Commission's jurisdiction over MEAs. Under K.S.A. 66-104, utilities are broadly defined. Every company for the production, transmission, delivery and furnishing of heat, light, water or power is a utility subject to comprehensive regulation by one or more regulatory bodies. *K.S.A. 66-104*. Municipal utilities (to the extent that they are located within three miles of the municipal boundaries) are governed by municipal governance. Certain electric cooperatives may elect to be exempt from Commission regulation, to be instead regulated by the electric cooperative's board. Considered as a whole, Kansas statutes provide that all electric utilities are companies vested with a public interest to the end that such utilities are subject to public regulation.

26. However, if K.S.A. 12-885, *et seq.* are interpreted to generally limit the Commission's jurisdiction over MEAs, there are potentially significant areas where MEAs would simply not be regulated. Clearly, no particular city has statutory authority to regulate an MEA. Unless activities of an MEA would be considered interstate commerce under the Federal Power Act, the Federal Energy Regulatory Commission would not exert jurisdiction. It is unfathomable that the Kansas legislature would intend that MEAs should not be subject to regulation, while every other utility in Kansas is subject to very comprehensive regulation.

27. Such an assertion is contrary to the rules of statutory construction. The legislature is presumed to intend that a statute be given a reasonable construction to avoid unreasonable or absurd results. *State v. Barnes*, 275 Kan. 364, Syl. ¶ 2, 64 P.3d 405 (2003). Moreover, words in a

statute must be construed in light of the context and the general purpose of the enactment. *In re Brenner*, 151 Kan. 788, 100 P.2d 688 (1940).

28. Obviously, the Kansas legislature intended municipalities to be able to create MEAs but also desired to ensure that they shall operate in the public interest. Utility style regulation by the Commission was determined to be integral to that latter goal, and the Kansas legislature expressly placed such regulation in the Act. Therefore, in light of the pertinent rules of statutory construction and, in particular, the obvious purposes of the MEA Act, it cannot be reasonably asserted that K.S.A. 12-885 *et seq.* limit the general jurisdiction of the Commission over MEAs except as provided in 12-8,111(a).

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?

29. The plain language in K.S.A. 12-8,111 demonstrates that the only specific exception to general Commission regulation (being the same authority it has to regulate other public utilities) is certification under K.S.A. 66-131. Thus, all other statutes pertaining to general regulation of utilities by the Commission in Chapter 66 of the Kansas statutes may have application. Such a position is consistent with the rules of statutory construction.

30. For instance, it is a general rule of statutory construction that “if a statute specifies exceptions to its general application, other exceptions not explicitly mentioned are excluded.” *United States v. Goldbaum*, 879 F.2d 811, 813 (10th Cir. 1989). Thus, where the legislature has acted to except certain categories from the operation of a particular law, it is to be presumed that the legislature in its exceptions intended to go only as far as it did, and that additional exceptions are not warranted. *Colorado Public Interest Research Group, Inc. v. Train*, 507 F.2d 743 (10th Cir.

1974). Thus, under the pertinent rules of statutory construction, the only specific exception to broad jurisdictional authority of the Commission over MEAs would be certification under K.S.A. 66-131.

31. Moreover, a strict or narrow interpretation is ordinarily applied to statutory exceptions. In these regards, when a court construes a statute, any doubt should be resolved against the exception, and anyone claiming to be relieved from the statute's operation must establish that he comes within the exception. *Broadhurst Foundation v. New Hope Baptist Soc.*, 194 Kan. 40, 44, 397 P.2d 360 (1964). In other words, an exception in a statute which restricts the general enacting clause should be strictly construed so as to exclude only those cases which are fairly within the terms of the exception. *McGinnis v. Kansas City Power & Light Co.*, 231 Kan. 672, 679, 647 P.2d 1313 (1982). Under Kansas law, exceptions are not to be interpreted so broadly as to swallow the rule. *In re Woods*, 743 F.3d 689 (10th Cir. 2014). Given these rules of statutory construction, an MEA must be able to show that an exemption from Commission regulation is contained in the pertinent statutes and intended by the Kansas legislature.

32. Courts should not engraft an exception that the legislature has not included in the statute. *Law v. Law Co. Bldg. Associates*, 295 Kan. 551, Syl. ¶ 5, 289 P.3d 1066 (2012). To assert that the Commission's general jurisdiction is less than that actually expressed in K.S.A. 12-8,111 is to engraft a general exception that the Kansas legislature did not include in the MEA Act. Thus, other than for purposes of certification under K. S .A. 66-131, the Commission's general authority to regulate MEAs is the same as its authority to generally regulate public utilities.

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.

33. As noted above, CURB believes that the Commission does not have jurisdiction to approve or disapprove of certification under K.S.A. 66-131 for MEAs. CURB is unaware of any other specific limitations with respect to the Commission's general authority to regulate MEAs. In the Kansas Municipal Energy Agency Response on Intervention and Brief Regarding Intervention filed in Docket No. 17-KPPE-092-COM, Kansas Municipal Energy Agency ("KMEA") acknowledges that an examination of how the Commission's statutory authority and an MEAs' powers and obligations will intersect and be reconciled may be necessary. CURB agrees that an examination of these issues (in an appropriate docket) could be required. Yet, the issues posed in this docket appear to call for general statutory interpretation; thus, it is not necessary in this docket to attempt to delineate specific jurisdictional boundaries, as these can be best determined upon specific sets of facts. Rather, for the purposes of this docket, CURB believes that no provision in the MEA Act expressly (or by implication) negates the general jurisdiction of the Commission over MEAs as provided in K.S.A. 12-8,111.

WHEREFORE, CURB respectfully requests that the Commission take into consideration the principles of law discussed above, and resolve this docket accordingly.

Respectfully submitted,



David W. Nickel, Consumer Counsel #11170
Thomas J. Connors, Attorney #27039
Todd E. Love, Attorney #13445
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
d.nickel@curb.kansas.gov
tj.connors@curb.kansas.gov
t.love@curb.kansas.gov

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

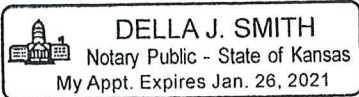
ss:

I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



David W. Nickel

SUBSCRIBED AND SWORN to before me this 15th day of December, 2017.





Notary Public

My Commission expires: 01-26-2021.

CERTIFICATE OF SERVICE

18-GIME-217-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 15th day of December, 2017, to the following:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

GLEND A CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
glenda@caferlaw.com

TERRI PEMBERTON, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
terri@caferlaw.com

DAVID H. SNAPP, ATTORNEY
DAVID H. SNAPP, LC
100 MILITARY PLZ STE 211
DODGE CITY, KS 67801-4945
DSNAPP3@STARRTECH.NET

E. JAY DEINES, ATTORNEY
DEINES & DEINES
110 N MAIN
PO BOX 398
WAKEENEY, KS 67672
ejdeines@ruraltel.net

SUSAN B. CUNNINGHAM, ATTORNEY
DENTONS US LLP
7028 SW 69TH ST
AUBURN, KS 66402-9421
susan.cunningham@dentons.com

CHRISTOPHER D. KRYGIER, DIRECTOR,
RATES AND REGULATORY AFFAIRS
(CENTRAL REGION)
EMPIRE DISTRICT ELECTRIC COMPANY
602 S JOPLIN AVE
JOPLIN, MO 64801
Chris.Krygier@LibertyUtilities.com

JILL SCHWARTZ, SR. MANAGER, RATES
AND REGULATORY AFFAIRS (CENTRAL
REGION)
EMPIRE DISTRICT ELECTRIC COMPANY
602 S JOPLIN AVE
JOPLIN, MO 64801
Jill.Schwartz@LibertyUtilities.com

JOSEPH D. GASPER
GASPER LAW OFFICE
419 MAIN ST
PO BOX 251
STOCKTON, KS 67669
gasperlaw@ymail.com

SARAH STEELE
GILMORE & BELL, P.C.
ONE MAIN PLACE
100 NORTH MAIN, STE. 800
WICHITA, KS 67202
ssteele@gilmorebell.com

MITCHELL L. HERREN, ATTORNEY
HINKLE LAW FIRM L.L.C.
1617 NORTH WATERFRONT PARKWAY
SUITE 400
WICHITA, KS 67206
mherren@hinklaw.com

CASEY L. JONES, ATTORNEY
HINKLE LAW FIRM L.L.C.
8621 E 21ST ST N STE 200
WICHITA, KS 67206-2991
cjones@hinklaw.com

BRETT D. LEOPOLD, PRESIDENT
ITC GREAT PLAINS, LLC
3500 SW FAIRLAWN RD STE 101
TOPEKA, KS 66614-3979
BLEOPOLD@ITCTRANSCO.COM

ROBERT J. HACK, LEAD REGULATORY
COUNSEL
KANSAS CITY POWER & LIGHT
COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST
31ST FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
ROB.HACK@KCPL.COM

TIM RUSH, DIR. REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT
COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST
31ST FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
TIM.RUSH@KCPL.COM

ROGER W. STEINER, CORPORATE
COUNSEL
KANSAS CITY POWER & LIGHT
COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST
31ST FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
roger.steiner@kcpl.com

BRIAN G. FEDOTIN, DEPUTY GENERAL
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
b.fedotin@kcc.ks.gov

STEPHAN SKEPNEK, LITIGATION
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
s.skepnek@kcc.ks.gov

PAUL MAHLBERG, GENERAL MANAGER
KANSAS MUNICIPAL ENERGY AGENCY
6300 W 95TH ST
OVERLAND PARK, KS 66212-1431
MAHLBERG@KMEA.COM

SAM MILLS, DIRECTOR, MANAGING
DIRECTOR, ELECTRIC OPERATIONS
KANSAS MUNICIPAL ENERGY AGENCY
6300 W 95TH ST
OVERLAND PARK, KS 66212-1431
MILLS@KMEA.COM

MARK CHESNEY, CEO & GENERAL
MANAGER
KANSAS POWER POOL
100 N BROADWAY STE L110
WICHITA, KS 67202
mchesney@kpp.agency

LARRY HOLLOWAY, ASST GEN MGR
OPERATIONS
KANSAS POWER POOL
100 N BROADWAY STE L110
WICHITA, KS 67202
lholloway@kpp.agency

CURTIS M. IRBY, GENERAL COUNSEL
KANSAS POWER POOL
LAW OFFICES OF CURTIS M. IRBY
200 EAST FIRST ST, STE. 415
WICHITA, KS 67202
CMIRBY@SBCGLOBAL.NET

DOW MORRIS, GENERAL MANAGER
LANE-SCOTT ELECTRIC COOPERATIVE,
INC.
410 S HIGH
PO BOX 758
DIGHTON, KS 67839-0758
dow.morris@lanescott.coop

ED WILTSE, GENERAL MGR.
LANE-SCOTT ELECTRIC COOPERATIVE,
INC.
410 S HIGH
PO BOX 758
DIGHTON, KS 67839-0758
ed.wiltse@lanescott.coop

JOHN F. MCCLYMONT, ATTORNEY
McCLYMONT LAW OFFICE, PA
120 S STATE ST
PO BOX 364
NORTON, KS 67654
JFMC@ATT.NET

JAMES BRUNGARDT, MANAGER,
REGULATORY RELATIONS
MID-KANSAS ELECTRIC COMPANY, LLC
301 W 13TH ST
PO BOX 980
HAYS, KS 67601
jbrungardt@sunflower.net

COREY LINVILLE, VICE-PRESIDENT,
POWER SUPPLY AND DELIVERY
MID-KANSAS ELECTRIC COMPANY, LLC
301 W 13TH ST
PO BOX 980
HAYS, KS 67601
CLINVILLE@SUNFLOWER.NET

AL TAMIMI, VICE-PRESIDENT,
TRANSMISSION PLANNING AND POLICY
MID-KANSAS ELECTRIC COMPANY, LLC
301 W 13TH ST
PO BOX 980
HAYS, KS 67601
atamimi@sunflower.net

ROBERT MUIRHEAD, VICE PRESIDENT
CUSTOMER SERVICE
MIDWEST ENERGY, INC.
1330 CANTERBURY ROAD
PO BOX 898
HAYS, KS 67601-0898
bmuirhead@mwenergy.com

PATRICK PARKE, GENERAL MANAGER
MIDWEST ENERGY, INC.
1330 CANTERBURY ROAD
PO BOX 898
HAYS, KS 67601-0898
PATPARKE@MWENERGY.COM

RANDY MAGNISON, EXECUTIVE VICE
PRESIDENT - ASSISTANT CEO
PIONEER ELECTRIC COOP. ASSN., INC.
1850 W OKLAHOMA
PO BOX 368
ULYSSES, KS 67880-0368
rmagnison@pioneerelectric.coop

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

FRANK A. CARO, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
fcaro@polsinelli.com

ALAN MILLER, CEO
PRAIRIE LAND ELECTRIC
COOPERATIVE, INC.
PO BOX 360
NORTON, KS 67654
amiller@ple.coop

KELLY B. HARRISON, PRESIDENT
PRAIRIE WIND TRANSMISSION, LLC
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
KELLY.HARRISON@WESTAREENERGY.COM

RANDY MAGNISON, EXEC VP & ASST
CEO
SOUTHERN PIONEER ELECTRIC
COMPANY
1850 W OKLAHOMA
PO BOX 430
ULYSSES, KS 67880-0430
rmagnison@pioneerelectric.coop

LINDSAY SHEPARD, EXECUTIVE VP -
GENERAL COUNSEL
SOUTHERN PIONEER ELECTRIC
COMPANY
1850 W OKLAHOMA
PO BOX 430
ULYSSES, KS 67880-0430
lshepard@pioneerelectric.coop

RENEE BRAUN, CORPORATE
PARALEGAL, SUPERVISOR
SUNFLOWER ELECTRIC POWER
CORPORATION
301 W. 13TH
PO BOX 1020 (67601-1020)
HAYS, KS 67601
RBRAUN@SUNFLOWER.NET

JAMES BRUNGARDT, MANAGER,
REGULATORY RELATIONS
SUNFLOWER ELECTRIC POWER
CORPORATION
301 W. 13TH
PO BOX 1020 (67601-1020)
HAYS, KS 67601
JBRUNGARDT@SUNFLOWER.NET

THOMAS K. HESTERMANN, MANAGER,
REGULATORY RELATIONS
SUNFLOWER ELECTRIC POWER
CORPORATION
301 W. 13TH
PO BOX 1020 (67601-1020)
HAYS, KS 67601
TKHESTERMANN@SUNFLOWER.NET

AMY FELLOWS CLINE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
amycline@twgfirm.com

TIMOTHY E. MCKEE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
TEMCKEE@TWGFFIRM.COM

TOM LOWERY, OPERATIONS MANAGER
VICTORY ELECTRIC COOPERATIVE
ASSN., INC.
3230 N 14TH ST
PO BOX 1335
DODGE CITY, KS 67801-1335
tom@victoryelectric.net

MARK D. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
MCALCARA@WCRF.COM

TAYLOR P. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
TCALCARA@WCRF.COM

JAMES M. MCVAY, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
JMCVAY@WCRF.COM

MO AWAD, DIRECTOR, REGULATORY
COMPLIANCE
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
mo.awad@westarenergy.com

CATHRYN J. DINGES, SENIOR
CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
cathy.dinges@westarenergy.com

JEFFREY L. MARTIN, VICE PRESIDENT,
REGULATORY AFFAIRS
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
JEFF.MARTIN@WESTARENERGY.COM

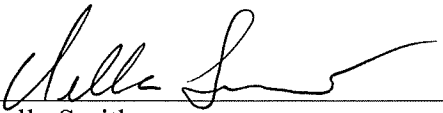
PATRICK T. SMITH, CORPORATE
COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
PATRICK.SMITH@WESTARENERGY.COM

LARRY WILKUS, DIRECTOR, RETAIL
RATES
WESTAR ENERGY, INC.
FLOOR #10
818 S KANSAS AVE
TOPEKA, KS 66601-0889
larry.wilkus@westarenergy.com

DENNIS DEINES, CO-GENERAL
MANAGER
WESTERN COOPERATIVE ELECTRIC
ASSN., INC.
635 S 13TH ST
PO BOX 278
WAKEENEY, KS 67672-0278
dennisd@westerncoop.com

STACEY MALSAM, MANAGER OF
ACCOUNTING & FINANCE
WESTERN COOPERATIVE ELECTRIC
ASSN., INC.
635 S 13TH ST
PO BOX 278
WAKEENEY, KS 67672-0278
staceym@westerncoop.com

ANGELA M. CLOVEN
THE EMPIRE DISTRICT ELECTRIC COMPANY
PO BOX 127
602 S JOPLINE AVENUE
JOPLIN, MO 64802-0127
acloven@empiredistrict.com



Della Smith
Administrative Specialist