

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

In the Matter of a General Investigation            )  
Regarding the Rate Study and Assessment        )       Docket No. 20-GIME-068-GIE  
Expenses Resulting from Substitute for Senate    )  
Bill No. 69.    )

**PETITION FOR RECONSIDERATION OF ORDER ASSESSING COSTS**

COME NOW, Kansas Electric Power Cooperative, Inc. (“KEPCo”), Sunflower Electric Power Corporation (“Sunflower”), and Mid-Kansas Electric Company, Inc. (“Mid-Kansas”) (collectively, “Petitioners”), and, pursuant to K.S.A. 66-1502, K.S.A. 77-529, and K.A.R. 82-1-235, hereby petition the State Corporation Commission of the State of Kansas (“Commission”) to reconsider its Order Assessing Costs issued August 21, 2019<sup>1</sup> by clarifying that Kansas intrastate sales for resale will not be included in the cost allocation and assessment calculation related to the SB 69 retail rate study. For their Petition for Reconsideration of Order Assessing Costs (“Petition”), Petitioners state as follows:

I. Background

1. KEPCo is a corporation duly organized and existing under the laws of the State of Kansas, with its registered office and principal place of business at 600 SW Corporate View, Topeka, Kansas, 66615. KEPCo is engaged in the business of a generation and transmission electric cooperative supplier providing power and energy to nineteen member distribution cooperatives in the state of Kansas pursuant to all-requirements wholesale electric power

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<sup>1</sup> While the Commission’s Order Assessing Costs is dated August 20, 2019, the attached Certificate of Service indicates the Order was served on August 21, 2019 by first class mail or hand delivery. Petitioners received service of the Order Assessing Costs by first class mail.

agreements.<sup>2</sup> KEPCo Members serve more than 125,000 retail meters in the eastern two-thirds of Kansas, which equates to approximately 300,000 Kansans.

2. Sunflower is a nonprofit, membership corporation organized and existing under K.S.A. 17-6001 *et seq.*, and all laws supplemental and amendatory thereto, operating as a cooperative to generate, furnish, transmit, and sell electric power and energy at wholesale and, in general, with the power to do all things necessary, useful, and appropriate to accomplish such purposes. Sunflower's principal office is located at 301 West 13th Street, Hays, Kansas, 67601, and it holds a certificate of convenience and necessity from the Commission to transact business as an electric public utility for the generation, transmission, and sale of electric energy for resale by its six member cooperatives.<sup>3</sup>

3. Mid-Kansas is a nonprofit, membership corporation, with the power to generate, furnish, transmit, and sell electric power and energy at wholesale and, in general, with the power to do all things necessary, useful, and appropriate to accomplish such purposes. Mid-Kansas' principal office is located at 301 West 13<sup>th</sup> Street, Hays, Kansas, 67601, and it holds a certificate of convenience and necessity from the Commission to transaction business as an electric public utility for the generation, transmission, and sale of electric energy for resale by its six member cooperatives.<sup>4</sup>

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<sup>2</sup> KEPCo's members include: Ark Valley Electric Cooperative Association, Inc.; Bluestem Electric Cooperative, Inc.; Brown-Atchison Electric Cooperative Association, Inc.; Butler Rural Electric Cooperative Association, Inc.; Caney Valley Electric Cooperative Association, Inc.; CMS Electric Cooperative, Inc.; DS&O Electric Cooperative, Inc.; Flint Hills Rural Electric Cooperative Association, Inc.; FreeState Electric Cooperative, Inc.; Heartland Rural Electric Cooperative, Inc.; Lyon-Coffey Electric Cooperative, Inc.; Ninnescah Rural Electric Cooperative Association, Inc.; Prairie Land Electric Cooperative, Inc.; Radiant Electric Cooperative, Inc.; Rolling Hills Electric Cooperative, Inc.; Sedgwick County Electric Cooperative Association, Inc.; Sumner-Cowley Electric Cooperative, Inc.; Twin Valley Electric Cooperative, Inc.; and The Victory Electric Cooperative Association, Inc. (collectively referred to as the "KEPCo Members").

<sup>3</sup> Sunflower's members include: Lane-Scott Electric Cooperative, Inc.; Pioneer Electric Cooperative, Inc.; Prairie Land Electric Cooperative, Inc.; The Victory Electric Cooperative Association, Inc.; Western Cooperative Electric Association, Inc.; and Wheatland Electric Cooperative, Inc. (collectively referred to as the "Sunflower Members").

<sup>4</sup> Mid-Kansas' members include: Lane-Scott Electric Cooperative, Inc.; Southern Pioneer Electric Company; Prairie Land Electric Cooperative, Inc.; The Victory Electric Cooperative Association, Inc.; Western Cooperative

4. According to the Commission’s website, the Commission issued its Order Opening General Investigation in the above-captioned docket on August 20, 2019 (“Order Opening Docket”).<sup>5</sup> The docket was opened based on Staff’s recommendation that the Commission open a general investigation to allow the Commission and its Staff “to track time and assess expenses” related to the retail rate study authorized by the passage of Substitute for Senate Bill No. 69 (“SB 69”). See Utilities Division Report and Recommendation, attached to Order Opening Docket, at p. 1. Specifically, Staff noted that SB 69 places responsibility on the Commission to pay for the costs of the study through assessments on the utilities that are subject to the study, including regulated electric public utilities, self-regulating electric cooperative public utilities, and the three largest municipally owned or operated electric utilities. Id. at p. 2. Hence, Staff recommended that the Commission open a general investigation to “track time assigned to the study” and “issue assessments to all affected electric public utilities.” Id. at p. 4.

5. On August 21, 2019, the Commission issued its Order Assessing Costs in order to assess the costs of this proceeding against the utilities that are subject to the SB 69 retail rate study pursuant to Staff’s recommendation. See Order Assessing Costs at p. 1.

6. As more fully set out below, to assess the costs related to the SB 69 retail rate study based on all Kansas intrastate sales, including sales for resale, would result in an unjust allocation of costs to Kansas utilities, and therefore Kansas customers, who buy energy from other Kansas utilities.

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Electric Association, Inc.; and Wheatland Electric Cooperative, Inc. (collectively referred to as the “Mid-Kansas Members”).

<sup>5</sup> Please note, the Order Opening Docket, which was electronically served on Petitioners and appears on the Commission’s website, is unsigned and undated. However, the Commission’s website indicates a filing date of August 20, 2019.

## II. Legal Standard for Filing Petitions for Reconsideration

7. Pursuant to K.A.R. 82-1-235, any party aggrieved by a Commission order or decision may file a petition for reconsideration. The regulation further states that all petitions for reconsideration must be filed pursuant to the appropriate statutory provisions relating to them.

K.A.R. 82-1-235(a).

8. K.S.A. 66-1502, the statute which pertains to the costs and expenses of Commission investigations, states in relevant part:

The state corporation commission shall give such public utility...notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. At such hearing, the public utility...may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such public utility... .

9. Pursuant to the Kansas Administrative Procedure Act, any party may file a petition for reconsideration within fifteen days after service of a final order stating the specific grounds upon which relief is requested. K.S.A. 77-529(a)(1). Because service of the Order Assessing costs was by first class U.S. mail, three days are added to the reconsideration period. K.S.A. 77-531(b). Based on the August 21, 2019 service date of the Order Assessing Costs, a petition for reconsideration is timely filed on or before September 9, 2019. K.S.A. 77-503(c).

## III. Specific Grounds for Reconsideration

10. As stated above, Petitioners are wholesale generation and transmission suppliers to their retail distribution Members. Through all-requirements contracts with their respective Members, the costs incurred by Petitioners are passed on to their Members through their rates. Therefore, to assess the costs of the study associated with the SB 69 retail rate study based on

revenue recorded by both Petitioners and their Members would result in the double assessment of the KEPCo, Sunflower, and Mid-Kansas revenue.

11. Double assessment would occur when both the generation and transmission cooperatives pass their assessment through to their Member distribution cooperatives, which also would be assessed per the Order Assessing Costs. Further, distribution and generation and transmission cooperatives that purchase generation and transmission services from an investor-owned utility may be allocated costs of the study through the rates they pay to that utility (e.g., sale by Westar Energy, Inc. to Midwest Energy, Inc., Doniphan Electric Cooperative Association, Inc., FreeState Electric Cooperative, Inc., and Nemaha-Marshall Electric Cooperative Association, Inc.). Triple assessment could occur through generation and transmission sales by an investor-owned utility that, in turn, passes the allocable share of its assessment to generation and transmission cooperatives that, in turn, pass said share of assessment costs on to their Members (e.g., sale by Westar Energy, Inc. to KEPCo on behalf of its Members).

12. In order to avoid such an unjust, unreasonable, and inappropriate result, the Petitioners respectfully request that the Commission clarify that Kansas intrastate sales for resale will not be included in the assessment calculation. By removing these sales for resale from the assessment calculation, customers of utilities who purchase generation and transmission services from other utilities will not be unjustly burdened by duplicative assessments.

13. While likely there are a variety of ways to ensure the KEPCo, Sunflower, and Mid-Kansas Members are protected from paying more than their fair share of the costs related to the retail rate study, it appears the cleanest option is to grant Petitioners' request for

reconsideration by clarifying that Kansas intrastate sales for resale will not be included in the assessment calculation.

WHEREFORE, for the above and foregoing reasons Petitioners KEPCo, Sunflower, and Mid-Kansas submit their Petition for Reconsideration in the above-captioned docket and respectfully request the Commission to clarify that Kansas intrastate sales for resale will not be included in the cost allocation and assessment calculation related to the SB 69 retail rate study.

Respectfully submitted,

*/s/ Susan B. Cunningham*

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**VERIFICATION**  
**(K.S.A. 53-601)**

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the above and foregoing Petition for Reconsideration of Order Assessing Costs to be prepared on behalf of Kansas Electric Power Cooperative, Inc., Sunflower Electric Power Corporation, and Mid-Kansas Electric Company, Inc.; that I have read and reviewed the Petition; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

*/s/ Susan B. Cunningham*

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Susan B. Cunningham

Executed on this 6<sup>th</sup> day of September, 2019.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Petition for Reconsideration of Order Assessing Costs was electronically served or served via U.S. mail on this 6<sup>th</sup> day of September, 2019, to the following named persons appearing on the Commission's service list as last modified on September 4, 2019, with corrections.

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/s/ *Susan B. Cunningham*

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