

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)

**STAFF'S RESPONSE TO THE PETITIONS FOR RECONSIDERATION OF KEPCO
AND KEC AND REQUEST TO FILE OUT OF TIME**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), by and through counsel, Phoenix Z. Anshutz, hereby files its Response to Kansas Electric Cooperative, Inc.'s ("KEC") and Kansas Electric Power Cooperative, Inc.'s ("KEPCo") Petition for Reconsideration. Staff states as follows:

BACKGROUND

1. On August 20, 2019, the Commission issued its Order Opening General Investigation in the instant docket. In its Order, the Commission discussed Senate Bill No. 69 ("SB 69" or the "Bill"), which is a bill that directs the Legislative Coordinating Council to authorize a rate study of Kansas electric utilities.¹ Moreover, the Commission stated the purpose of the Bill is to provide information that may assist future legislative and regulatory efforts in developing electric policy that includes regionally competitive electric rates and reliable electric service.²

2. According to the language of SB 69, the utilities subject to the study include electric public utilities, electric cooperative public utilities exempt from Commission jurisdiction, and the three (3) largest municipally-owned or operated electric utilities by customer

¹ Order Opening General Investigation (Aug. 20, 2019).

² See id. at ¶ 1.

count.³ The Bill requires certain duties to be performed by the Commission, including; assisting any organization selected to conduct the study by sharing any subject matter knowledge; and facilitating the procurement of any necessary information requested by an organization for the study.

3. Furthermore, the Bill places the Commission responsible for paying the costs of the study through assessments upon the utilities that are subject to the study, regardless of whether such utilities are subject to the jurisdiction of the Commission.⁴

4. On August 20, 2019, the same day the Commission issued its Order Opening General Investigation, the Commission issued its Order Assessing Costs, in which it assessed the costs related to SB 69 to the electric public utilities, electric cooperative public utilities exempt from Commission jurisdiction, and the three (3) largest municipally-owned or operated electric utilities by customer count.

5. On September 9, 2019, KEPCo filed its Petition for Reconsideration of Order Assessing Costs.⁵ In its Petition, KEPCo noted that it is a wholesale generation and transmission supplier that provides power and energy to nineteen member distribution cooperatives in the state of Kansas, pursuant to all-requirement wholesale electric power agreements.⁶ As such, through the all-requirement contracts with their respective members, the costs incurred by KEPCo are passed through onto their members through rates.⁷ Because of this, by assessing the costs of the study associated with SB 69 based on revenue recorded by both KEPCo and its members, double assessment of the costs associated with the rate study would occur for KEPCo and its members. According to KEPCo, this double assessment occurs when the generation and

³ See id.

⁴ See id. at ¶ 4.

⁵ KEPCo Petition for Reconsideration of Order Assessing Costs (Sep. 9, 2019).

⁶ See id. ¶ 1.

⁷ See id. ¶ 4.

transmission cooperatives pass their assessment through to their member distribution cooperatives, which also would be assessed under the Order Assessing costs. In order to avoid unjust, unreasonable, and inappropriate double assessment, KEPCo requested the Commission clarify that Kansas intrastate sales for resale are not to be included in the Commission's assessment calculation.

6. Also on September 9, 2019, Kansas Electric Cooperatives, Inc. ("KEC") filed its Petition for Reconsideration of Order Assessing Costs. In its Petition, KEC explained that it is a statewide service organization for the rural electric distribution cooperatives and the generation and transmission ("G&T") cooperatives in Kansas, with KEC's membership including 28 distribution cooperatives and two G&T cooperatives which serve other consumer members in Kansas.⁸ The two G&T cooperatives are KEPCo and Sunflower Electric Power Corporation ("Sunflower"); all of the members of KEPCo and Sunflower are also KEC members. According to KEC, two KEC members belong to both G&Ts, Sunflower and KEPCo; through all-requirements contracts with their respective members, the costs incurred by KEPCo and Sunflower are passed on to their members through rates. Because of this, when the Commission assesses KEPCo and Sunflower and their individual members the costs associated with SB 69, it results in double assessment of the KEPCo and Sunflower revenue, which in part represents sales for resale revenue. This double assessment occurs when the G&T cooperatives pass their assessment through to their member distribution cooperatives, who are also assessed per the Order Assessing Costs.

7. In order to avoid unjust, unreasonable, and inappropriate double assessment, KEC requested the Commission clarify that not all Kansas intrastate sales for resale be included in the assessment calculation. Rather, the Commission should consider excluding from the assessed

⁸ KEC Petition for Reconsideration of Order Assessing Costs (Sep. 9, 2019).

utilities' revenue any sales to other utilities subject to assessment in this docket. Additionally, should the Commission choose not to remove sales for resale from the assessment calculation, KEC posits the Commission revise the Order Assessing Costs to indicate assessment will relate strictly to retail electric sales. Finally, KEC noted that the service list in this docket did not include any individual municipally owned or operated electric utilities, as required by SB 69.

STAFF'S RESPONSE AND LEGAL STANDARDS

8. Pursuant to K.S.A. 66-101, the Commission is given full power, authority and jurisdiction to supervise and control the electric public utilities doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. Moreover, under K.S.A. 66-101g, all grants of power, authority and jurisdiction made to the Commission, shall be liberally construed.

9. Pursuant to K.S.A 66-1502:

“Whenever, in order to carry out the duties imposed upon it by law, the state corporation commission, in a proceeding upon its own motion, on complaint, or upon an application to it, shall deem it necessary to investigate any public utility or common carrier or make appraisals of the property of any public utility, such public utility or common carrier, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of \$100, including both direct and indirect expenses incurred by the commission or its staff or by the citizens' utility ratepayer board, shall pay such expenses which shall be assessed against such public utility or common carrier by the commission.”

10. Additionally, as set forth in K.S.A. 66-1505, any public utility or common carrier subject to assessment may file with the Commission objections setting out in detail the grounds upon which such public utility or common carrier regards such assessment to excessive, erroneous, unlawful or invalid. The objecting utility or common carrier bears the burden of proving such assessments are excessive, erroneous, unlawful or invalid.

STAFF'S RESPONSE AND LEGAL ANALYSIS

11. After carefully reviewing the Petitions and arguments of both KEPCo and KEC, Staff concurs with KEPCo and KEC's assertions that double assessment will occur to the extent that sales for resale revenue (to other Kansas entities included in the assessment list) is included in the assessable revenues. Because this sales for resale revenue will also be reflected in the purchasing entities' revenues, a revision to the Commission's assessment methodology in this case is reasonable.

12. Typically, expenses for utility-specific investigations are billed at 100 percent. For general investigations which can include several companies, Commission practice is to prorate expenses to each utility in the docket based on the utility's percentage of gross intrastate operating revenue in proportion to the total gross intrastate operating revenue of all utilities involved.

13. K.S.A. 66-1505 grants public utilities assessed under K.S.A. 66-1502 15 days to file objections arguing the assessment is excessive, erroneous, unlawful, or invalid. After weighing the arguments posed by the challenging utility, the Commission then determines if the assessment (or any part of it) is excessive, erroneous, unlawful, or invalid. The Commission then renders an order upholding, invalidating, or amending the assessment. Because the utilities may challenge the expense assessments, the Commission has discretion in allocating investigative expenses.

14. Additionally, under K.S.A 66-101, the Commission has full power, authority and jurisdiction to supervise electric public utilities. When coupled with K.S.A. 66-101g, which states all powers granted to the Commission shall be liberally construed, the Commission's power to issues assessments under K.S.A. 66-1502 for docket-specific costs becomes quite broad

and likely indicates the Commission has the authority to allocate docket-specific costs as it sees fit. In fact, the Commission is given this leeway in K.S.A. 66-1503 which grants the Commission significant discretion regarding the amount to assess public utilities in the event there is a general assessment deficiency.

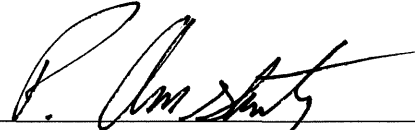
15. Given the wide statutory berth the Commission enjoys when it comes to investigation assessment and allocation, and the Commission's ability to determine excessiveness of investigation assessments, Staff believes the Commission is well within its bounds to allocate docket-specific investigative expenses in a variety of ways in order to address certain docket-specific assessment issues.

16. Regarding the proposals suggested by both KEPCo and KEC, Staff agrees that sales for resale to an entity also receiving assessment costs in this docket should be removed from the assessment calculation. In order to accomplish that, Staff suggests the Commission instruct all of the parties on the service list to provide an itemized list of sales for resale (by entity included in the assessment) that is included in their gross intrastate operating revenue so that Staff may update the assessment percentages. Additionally, Staff suggests the Commission adopt the service list attached to this Response as the official service list for the docket. The attached service list includes electric public utilities, electric cooperative public utilities exempt from Commission jurisdiction, and the three (3) largest municipally owned or operated electric utilities by customer count, and thus complies with SB 69.

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission order all parties to this docket provide an itemized list of sales to resale that is included in their gross intrastate operating revenue; once Staff receives that information, it will update the assessment percentages accordingly. Additionally, Staff respectfully requests the

Commission adopt the service list attached to this response as the official service list for this docket. Finally, Staff respectfully requests the Commission accept this Response out-of-time and for any other relief the Commission deems just and reasonable.

Respectfully Submitted



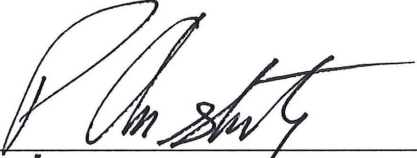
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VERIFICATION

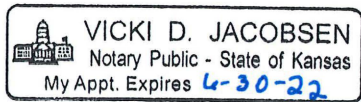
STATE OF KANSAS)
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Phoenix Z. Anshutz, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Response to PFRs to Order Assessing Costs*, and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Phoenix Z. Anshutz, S.Ct. # 27617
Litigation Counsel
The State Corporation Commission
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SUBSCRIBED AND SWORN to before me this 2nd day of October, 2019





Notary Public

My Appointment Expires: June 30, 2022

CERTIFICATE OF SERVICE

20-GIME-068-GIE

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to the Petitions for Reconsideration of KEPCO and KEC and Request to File Out of Time was served via electronic service this 2nd day of October, 2019, to the following:

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