

**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 Cooperatives, Inc. (“KEC”) and, pursuant to K.S.A. 66-1502, K.S.A. 77-529, and K.A.R. 82-1-235, hereby petitions the State Corporation Commission of the State of Kansas (“Commission”) to reconsider its Order Assessing Costs issued August 21, 2019¹ by clarifying that certain intrastate sales for resale will not be included in the cost allocation and assessment calculation related to the Substitute for Senate Bill No. 69 (SB 69) retail rate study. In addition, KEC respectfully requests further clarification from the Commission identifying the individual utilities which will be assessed under the Order Assessing Costs. For its Petition for Reconsideration of Order Assessing Costs (“Petition”), KEC states as follows:

I. Background

1. KEC 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 7332 SW 21st St., Topeka, Kansas, 66615. KEC is the statewide service organization for the rural electric distribution cooperatives and the generation and transmission (G&T) cooperatives in Kansas. Formed in 1941, KEC represents the interests of, and provides services, support, programs, and training to, the rural electric cooperatives operating in Kansas. The services provided by KEC include, but

¹ 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.

are not limited to, legal assistance, regulatory support, education, training and safety programs, communications services, legislative research, and lobbying.

2. KEC's membership includes 28 distribution cooperatives and two G&T cooperatives which serve consumer-members in Kansas. The two G&T cooperatives are Kansas Electric Power Cooperative, Inc., (KEPCo) and Sunflower Electric Power Corporation (Sunflower), each of which are owned by electric distribution cooperatives. 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 agreements.² KEPCo members serve more than 125,000 retail meters in the eastern two-thirds of Kansas, which equates to approximately 300,000 Kansans. 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 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

² 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").

for resale by its six member cooperatives.³ All of the members of KEPCo are members of KEC and all of the members of Sunflower are members of KEC.

3. 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”).⁴ 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 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.

4. 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.⁵ See Order Assessing Costs at p. 1.

³ 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”).

⁴ Please note, the Order Opening Docket, which appears on the Commission’s website, is unsigned and undated. The Commission’s website does however indicate a filing date of August 20, 2019.

⁵ 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.

5. On Sept. 2, 2019,⁶ KEC filed a Petition to Intervene in the above captioned docket.

6. As the statewide association representing both distribution cooperatives and G&T cooperatives in Kansas, KEC objects to an assessment methodology for carrying out the Commission's Order Assessing Costs which fails to mitigate against some cooperative revenues being assessed more than once. As more fully set out below, to assess the costs related to the SB 69 retail rate study on all Kansas intrastate sales, including certain sales for resale, would result in an unjust allocation of costs to some Kansas utilities who buy energy from other Kansas utilities, and therefore to their Kansas consumers,.

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

⁶ KEC filed a Petition to intervene electronically and notice was served electronically or by mail to those on the service list on Sept. 2, 2019, which was a legal holiday, and as such, the filing date on the Commission's website is noted as being Sept. 3, 2019.

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, the majority of KEC's members are either KEPCo or Sunflower members, as well. Two KEC members belong to both G&Ts. The G&Ts are wholesale generation and transmission suppliers to their retail distribution members. Through all-requirements contracts with their respective members, the costs incurred by G&Ts are passed on to their members through their rates. Therefore, to assess both the G&Ts and their individual members the costs associated with the SB 69 retail rate study would result in the double assessment of the KEPCo and Sunflower revenue, which represent sales for resale.

11. Double assessment occurs when the generation and transmission cooperatives pass their assessment through to their member distribution cooperatives, who are also assessed per the Order Assessing Costs as well as for those distribution cooperatives who purchase generation and transmission services directly from an investor-owned utility who, in turn, passes the allocable share of its assessment on to its customers (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 who, in turn, passes the allocable share of its assessment to a G&T cooperative 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, KEC respectfully requests that the Commission clarify that not all Kansas intrastate sales for resale will be included in the assessment calculation. Rather, the commission should consider excluding from the assessed utilities' revenue any sales to other utilities subject to assessment in the instant docket. 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. Should the Commission choose not to remove said sales for resale from the assessment calculation, another alternative is to revise the Order Assessing Costs to indicate assessment will relate strictly to retail electric sales. By excluding wholesale, off-system sales and transmission revenues, the distribution cooperatives and their consumer-members will not be subject to duplicate assessment.

14. While likely there are a variety of ways to ensure cooperatives and their consumer-members are protected from paying more than their fair share of the costs related to the retail rate study, it appears the most equitable option is to grant KEC's request for reconsideration by clarifying that Kansas intrastate sales for resale to other utilities subject to assessment in the instant docket will not be included in the assessment calculation. Alternatively, the Commission could indicate assessment will relate strictly to retail electric sales.

15. Substitute for Senate Bill 69 provides that the Commission will pay the costs of the SB 69 study from an assessment "upon the utilities that are subject to the study..."⁷ The bill also notes those subject to the study are electric public utilities, electric cooperatives, and "the three largest municipally owned or operated electric utilities by customer count."⁸ Staff also

⁷ Kansas Session Laws, Ch. 31, §1(b)(5).

⁸ Kansas Session Laws, Ch. 31, §1(a).

noted the study subjects by group in their Utilities Division Report and Recommendation, at p. 1. Although the three largest municipal electric utilities by customer count are subject to assessment of the SB 69 study costs, we are unsure whether those entities have been identified. The service list in this docket, appearing on the Commission's website last updated Sept. 4, 2019, did not include any individual municipally owned or operated electric utilities. The only municipal entity on the list is Kansas Municipal Energy Agency. KEC anticipates knowing exactly which electric utilities will be subject to the SB 69 assessment could be critical information for responding to information requests that may be coming from the entity selected to conduct the SB 69 study. Those requests may be served on KEC or some or all of our individual KEC members. Senate Bill 69 provides a limited time frame in which subject utilities are to respond to information requests from the entity selected to conduct the study⁹ thus, knowing all of the individual utilities subject to the study and the study assessment as early as possible could be extremely helpful. Therefore, KEC respectfully requests the Commission clarify the specific electric public utilities, electric cooperatives and three largest municipally owned or operated utilities subject to the SB 69 study and study assessment.

WHEREFORE, for the above and foregoing reasons KEC submits their Petition for Reconsideration in the above-captioned docket and respectfully request the Commission reconsider its decision by clarifying that certain intrastate sales for resale to other utilities subject to assessment in the instant docket will not be included in the cost allocation and assessment calculation related to the SB 69 retail rate study and provide further clarification by specifically identifying the individual utilities which will be assessed under the Order Assessing Costs.

Respectfully submitted,

⁹ Kansas Session Laws, Ch. 31, §1(a).

/s/ Leslie J. Kaufman

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

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

I, Leslie J. Kaufman, being of lawful age, hereby state that I have caused the above and foregoing Petition for Reconsideration to be prepared on behalf of Kansas Electric Cooperatives, 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/ Leslie J. Kaufman

Leslie J. Kaufman

Executed on this 9th day of September, 2019.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Petition for Reconsideration is being served via U. S. mail, postage prepaid, hand delivery, or electronically mailing on this 9th 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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