

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 KANSAS MUNICIPAL ENERGY AGENCY

COMES NOW, the Kansas Municipal Energy Agency ("KMEA") and files this brief regarding jurisdiction, as directed by the November 28, 2017 *Order Opening General Investigation* issued by the Kansas Corporation Commission ("KCC") or ("Commission").

1. In its November 28, 2017 *Order Opening General Investigation*, the Commission states that "the general investigation into the extent of the Commission's jurisdiction over municipal energy agencies will focus on:

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. 12-855 *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 to 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."

2. Before addressing the Commission's questions listed above, it is important to understand what an MEA does and how it is organized. Therefore, **Section I** of this brief provides an overview of the origin and organization of KMEA, the services it provides, and the power supply projects it manages on behalf of its member municipalities. **Section I** explains that MEAs serve no captive retail customers, have no exclusive service territory, and are member-

city owned, managed and controlled. This background information frames the answers to the Commission’s questions, which are discussed in **Sections II-V**.

3. As explained in **Section II**, KMEA is authorized by statute to take certain actions and provide certain services to its members. These services are not monopolistic and are not regulated by the KCC when offered by other entities. Additionally, as explained in **Section III**, MEAs are not “public utilities.” The Commission cannot declare that it has broad jurisdiction over all MEA activities; rather, the Commission must regulate MEAs by reference to its existing regulation of entities that are considered public utilities, such as generation and transmission (“G&T”) cooperatives. **Section IV** of the brief explains that while the Commission may regulate MEAs by reference to its authority over G&T cooperatives, MEAs are specifically exempt from K.S.A. 66-131 and K.S.A. 66-136. Finally, **Section V** lists the areas of jurisdiction that the Commission may have over MEAs, which is limited—at most—to those areas of jurisdiction that the Commission has over deregulated G&T cooperatives.

I. Background on KMEA

A. Origin and Organization of KMEA

4. In 1980, KMEA was organized and authorized pursuant to the laws of the State of Kansas, including K.S.A. 12-885 *et seq.* KMEA is a quasi-municipal corporation established as a nonprofit joint action agency made up of electric municipalities. Its registered office is located at 6300 West 95th Street, Overland Park, Kansas. KMEA has over 70 member cities across the State of Kansas and provides wholesale capacity, energy, transmission, and other services to its member-owner municipal electric utilities. Municipal energy agencies are defined by statute as “a quasi-municipal corporation created by agreement between or among two or more cities pursuant to this act to exercise any of the powers granted by K.S.A. 12-885 to 12-8,111, and

amendments thereto, and including the acquisition, reconstruction, operation, repair, extension or improvement of electric generation or transmission facilities or the acquisition of any interest therein or any right to part or all of the capacity thereof.” The agreement creating KMEA was submitted to and approved by the Kansas Attorney General, and the approved agreement was then submitted to the Commission, all in accordance with K.S.A. 12-888.

5. KMEA’s business affairs are governed by a Board of Directors consisting of representatives of its city members.¹ Each KMEA member appoints two Directors and one alternate, and the Board of Directors elects nine Directors to serve on the Executive Committee of KMEA. The Executive Committee acts in place of the Board and has all powers of the Board except it does not have the authority: (1) to adopt annual budgets; (2) to approve contracts that entail the issuance of bond anticipation notes or revenue bonds, and; (3) to approve interest rates or official financing documents. Those actions require approval of the full Board of Directors. Member cities also govern KMEA’s actions through membership in the Power Supply Committee and Finance Committee, which review resources to meet future energy needs of members, fund future projects, and identify the financial objectives of the Agency and its members.

6. Municipal energy agencies are creatures of statute. A municipal energy agency created pursuant to K.S.A. 12-885 *et seq* may exercise, *inter alia*, the following powers in accordance with K.S.A. 12-895:

(a)(4) to enter into franchises, contracts and agreements with this state or the United States or instrumentality thereof, or any public or private person, partnership, association or corporation of this state or of the United States, for the planning, development,

¹ Attached hereto as **Exhibit A** is a list of current KMEA member cities and the Board of Directors. For additional background, a copy of KMEA’s 2016 Annual Report is available through the following link: <http://kmea.com/wp-content/uploads/2015/08/Annual-Report-2016.pdf>.

construction or operation of any facility for the production or transmission of electricity or other energy or for any common or other service rendered to, for or by such agency;

(a)(5) to make and enter into any other contract or agreement necessary or incidental to the performance of its duties and the execution of its powers under this act, including contracts for the purchase, sale, transmission, or exchange of power and other energy with the United States or with other energy systems, either privately, cooperatively or publicly owned, within and without the state, subject to the limitations and restrictions provided in this act;

(a)(8) 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;

(a)(13) subject to the provisions of K.S.A. 12-897 and amendments thereto, to purchase, sell, exchange or transmit electric energy within and outside the state in such amounts as it determines to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and may enter into agreements with any person with respect to that purchase, sale, exchange or transmission, on such terms and for such period of time as its board of directors determines;

(a)(17) to exercise all other powers not inconsistent with the constitution of the state of Kansas or the United States constitution, which powers may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes or to the exercise of any of the powers enumerated in this section.... (Emphasis supplied).

7. KMEA has been operating openly and conspicuously pursuant to the authority provided by K.S.A. 12-885 *et seq.* for decades, with the knowledge and implicit consent of the Commission. KMEA has corresponded regularly with the Commission and its Staff and has voluntarily provided copies of its contracts, but has never been asked to file its contracts or otherwise come under the jurisdiction of the Commission.

B. Overview of KMEA Member Services

8. In exercising its statutory powers, KMEA provides the following services to its member cities:²

² See, **Exhibit B**, attached hereto, for a comprehensive list of the services KMEA provides to its members.

- a) **Power Supply Planning**, which involves assisting the member cities with their resource planning efforts for the municipal electric utility for the purpose of securing an economical and reliable supply of electricity. Investor-owned utilities (“IOUs”), electric cooperatives, and non-utility consultants offer these services outside the regulation of the Commission, because they are offered in a competitive market. MEAs do not have a monopoly on power supply planning, as municipalities may go to a variety of other sources for that service.
- b) **Energy Management Services**, which includes a 24/7 operations staff that manages the real-time wholesale operations for certain member cities. This includes scheduling certain power resources in the most economical and efficient manner. Again, this is a service offered by IOUs, cooperatives and non-utility consultants, which is not regulated by the Commission.
- c) **Project and Asset Management Services**, which involves assisting the member cities in managing a variety of projects, such as distribution and generation construction, to maximize the value of power supply assets. Such services are not monopolistic and not regulated by the Commission.
- d) **Joint action negotiation for purchasing opportunities**, which involves aggregating cities’ power supply needs to leverage purchasing opportunities. Through joint action and on behalf of the member cities, KMEA provides economical and reliable power supply options to member cities to incorporate into their resource portfolios. IOUs’ and cooperatives’ wholesale power supply negotiations are not regulated by the Commission.

- e) **Serving as the Market Participant in the Southwest Power Pool (“SPP”) Integrated Marketplace**, which is a wholesale market regulated by the Federal Energy Regulatory Commission (“FERC”). As Market Participant on behalf of a number of our member cities, KMEA provides a variety of unregulated, non-monopoly services related to the SPP Integrated Marketplace, including:
- i) submitting and managing transmission requests as SPP Transmission Customer for member cities;
 - ii) managing transmission congestion risk (Auction Revenue Rights (“ARRs”) and Transmission Congestion Rights (“TCRs”)) as directed by the member cities;
 - iii) forecasting member cities’ load and submitting daily demand bids for such loads at SPP;
 - iv) submitting generation outage information to SPP;
 - v) coordinating all generation runs (testing, accreditation, Market dispatch between SPP and cities); and
 - vi) managing generation, load, and transmission requirements with SPP.
- f) **Regulatory services on behalf of cities**, which involves representing member cities at various regulatory bodies including SPP, EPA, FERC, and KCC, on various topics that impact our member cities.
- g) **Providing access to real-time information of cities’ load, prices, and resources**, which is a service that could be offered by IOUs, cooperatives, or non-utility consultants and is not regulated by the Commission.

- h) **Providing other miscellaneous services**, including equipment loan program, financial credit health reviews, and other consulting-type services.

9. In fulfilling its duty to its members, KMEA actively seeks power marketing arrangements that match member cities' short-term and long-term power supply and capacity needs with power supply alternatives. KMEA member cities realize a broad range of supply options and competitive supplier pricing due to the larger market presence that the joint action approach brings. In conjunction with its member cities, KMEA has developed strategies to best utilize transmission rights. KMEA also has a Power Supply Committee that researches and determines new resources available for the membership to assist in securing a reliable, stable and economical energy supply.

C. Overview of KMEA's Power Supply Projects

10. On behalf of member cities, KMEA manages eight wholesale power supply projects: Energy Management Project ("EMP") 1, EMP 2, EMP 3, Southwestern Power Administration ("SPA"), the Western Area Power Administration ("WAPA"), the Eudora Project, the Jameson Energy Center Project, and the Grand River Dam Authority ("GRDA") Project. A brief description of each of these projects is as follows:

- a) EMP 1 was created in 2006 by a set of agreements between KMEA and five member cities. Pursuant to the EMP 1 agreement, these cities operationally combine their municipal electric systems to purchase electric power and transmission as a centrally dispatched group and to manage power supplied from their respective entitlements in the GRDA, SPA, and WAPA projects. The EMP 1 agreement provides for project governance, establishes common reliability and metering standards, and sets rules for sharing and exchanging power supply resources and determining project power

- supply pricing. In addition, KMEA provides SPP market participation services for the EMP 1 cities. The EMP 1 project has expanded over the last several years and currently is comprised of seven member cities.
- b) The EMP 2 Project was created in 2007 between KMEA and thirteen member cities, and three additional cities joined after 2007. These cities realized the same benefits as the EMP 1 project. The EMP 3 Project was created in 2012 between KMEA and ten member cities, and three additional member cities have since joined the EMP 3 Project. The same services are provided to the EMP 3 cities as in the EMP 1 and EMP 2 projects.
 - c) On January 19, 2000, KMEA and GRDA entered into a 10-year purchase power agreement for 39 MWs. The agreement consists of baseload capacity and energy which are delivered on long-term firm transmission. In 2005 the agreement was extended through April 30, 2026 and the amount increased to 84 MWs to accommodate the needs of eight new KMEA member cities. Currently, there are 28 cities that participate in the GRDA project.
 - d) The SPA Hydro Power Pool Project was created in 1983 when a group of KMEA member cities authorized KMEA to enter into a contract with SPA whereby the cities would take their individual entitlements of Federal hydro-electric power (totaling 11.2 MW). In 2000, the project participants, KMEA, and SPA entered into new agreements to extend the power supply through May 31, 2019. KMEA schedules power and bills its member city participants for their share in the project, and participants annually receive 10,800 MWh of firm energy during peak hours. Currently, 21 cities are part of the SPA Hydro Power Pool Project.

- e) Pursuant to contracts with the WAPA Hydro Power Pool Project, which began in 1989, 47 project participants are entitled to firm hydro-electric capacity totaling 33.5 MW in the summer and 28.8 MW in the winter, with associated energy of 103,108 MWh annually. In 1997 KMEA and WAPA agreed to extend the contract to October 1, 2024. In 2010, WAPA began its Power Marketing Initiative (“PMI”) campaign for all existing customers. The PMI resulted in new contracts that extended the project for an additional 30 years, until 2054. In 2016 all 47 KMEA members in the WAPA project executed the 30-year extension. WAPA energy is scheduled to enable KMEA’s participating cities to avoid demand charges and replace high-cost, peak-hour energy. KMEA schedules power and handles the billing and accounting for the cities, while also serving as a liaison between its member cities and WAPA.
- f) KMEA owns the 27 MW Jameson Energy Center located in the city of Garden City, which is operated by the City of Garden City. The KMEA ownership of the facility is through a capital lease structure, and ownership will be transferred to Garden City upon repayment of the debt. Financial arrangements that result in ownership of utility equipment, but no operation or control of such equipment, do not confer “public utility” status on the owners.³
- g) The Eudora Project is similar to the EMP projects with respect to the services KMEA provides to the city. The City of Eudora elected not to join an EMP, so it is the sole participant in this project.

³ The Commission has previously found “that while a literal reading of K.S.A. 66-104 could be interpreted to mean that the legal ownership of utility equipment could trigger our regulatory jurisdiction, we [believe] that such a literal interpretation was never intended.” Order and Certificate, Docket No. 156,521-U, p. 9 (Sept. 17, 1987). The Commission explained that “[t]he focus of K.S.A. 66-104 is on the firm providing service rather than the property used.” *Id.*

II. 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?

Short Answer: Yes, because (i) most services offered by MEAs would not be regulated if offered by a public utility, and (ii) the enumerated powers specifically allow the MEAs' boards of directors to determine power sale terms and other specifically authorized actions.

A. Most Services Offered by MEAs Would not Be Regulated if Offered by a Public Utility

11. To evaluate whether a municipal energy agency's enumerated statutory powers fall outside the Commission's jurisdictional authority to regulate a municipal energy agency "in the same manner as a public utility," it is necessary to review what statutory powers a municipal energy agency possesses and what services it provides to its members. To re-phrase the Commission's question slightly, are KMEAs' enumerated powers, and the specific services it provides pursuant to its statutory powers, services the Commission would regulate if KMEA was a traditional public utility or if the same services were performed by a public utility?

12. The Commission is an administrative agency of limited jurisdiction, and its jurisdiction is limited to that conferred by statute.⁴ The services, noted above, that KMEA provides to its members, are not services that are regulated by the Commission and do not fit within the confines of the Commission's jurisdiction. Energy management services are provided by regulated investor-owned utilities, such as Westar Energy, but their contracts for services are neither filed with nor approved by the Commission. Further, the primary purpose of regulation is to monitor and control monopoly public utility services to captive retail ratepayers. KMEA provides no monopoly services and has no captive retail ratepayers. KMEA cities voluntarily join KMEA, and may leave at any time, consistent with the terms of their contracts with KMEA.

⁴ *Kansas Pipeline Partnership v. State Corp. Comm'n of the State of Kansas*, 916 P.2d 76, 81, 22 Kan.App.2d 410 (Kan. Ct. App. 1996), *Cities Service Gas Co. v. State Corp. Comm'n*, 197 Kan. 338, 342, 416 P.2d 736 (1966); *Kansas-Nebraska Natural Gas Co. v. Kansas Corp. Comm'n*, 4 Kan.App.2d 674, 675, 610 P.2d 121, *rev. denied* 228 Kan. 806 (Kan. Ct. App. 1980).

13. KMEA was created by its member cities as a joint action agency to collaboratively develop Projects that provide economical supplies of wholesale electric power to the members' municipal electric utilities. The shared costs and support provided by KMEA allow its member cities to accomplish their goals of providing safe, reliable, and cost-efficient power supply and services to their municipal retail customers. KMEA is similar to a not-for-profit entity in that it charges its members for the actual expenditures incurred. Any differences between a Project's revenue and expenses are retained in the project as part of accumulated net position.

14. For each Project, KMEA has entered into purchase power agreements with suppliers and contracts with transmission providers on behalf of the members participating in the project. KMEA then contracts with each participating member for a proportionate share of the wholesale power supply on the same terms and at the same costs that KMEA is obligated to pay under the power supply and transmission contracts, plus an administrative fee for KMEA. Notably, the administrative fee is established by KMEA's members on an annual basis. The administrative fee is based upon an allocation factor, consisting of a ratio of 50% MWh and 50% KMEA Staff time spent on each project. These allocations are approved annually by the KMEA Finance Committee and Executive Committee for submittal to the full Board of Directors.

15. KMEA sells no electric power at retail, so the Retail Electric Suppliers Act, K.S.A. 66-1,170 *et seq.* and the provisions therein regarding retail electric service within exclusive territories do not apply to KMEA. Kansas law specifically restricts direct sales to a retail customer by a municipal energy agency. K.S.A. 12-897. Further, the municipalities to which KMEA provides services are not regulated by the Commission, with the exception of municipal services and facilities beyond the three-mile corporate limits of such municipality.

KMEA owns no transmission facilities, no distribution facilities, and provides no local delivery transmission services. In addition, KMEA has no franchise and no certificated service territory.

B. KMEA's Services Are Specifically Authorized By Statute

16. As briefly noted above, a municipal energy agency created pursuant to K.S.A. 12-885 *et seq* may exercise, *inter alia*, the following powers in accordance with K.S.A. 12-895:

(a)(4) to enter into franchises, contracts and agreements with this state or the United States or instrumentality thereof, or any public or private person, partnership, association or corporation of this state or of the United States, for the planning, development, construction or operation of any facility for the production or transmission of electricity or other energy or for any common or other service rendered to, for or by such agency;

(a)(5) to make and enter into any other contract or agreement necessary or incidental to the performance of its duties and the execution of its powers under this act, including contracts for the purchase, sale, transmission, or exchange of power and other energy with the United States or with other energy systems, either privately, cooperatively or publicly owned, within and without the state, subject to the limitations and restrictions provided in this act;

(a)(13) subject to the provisions of K.S.A. 12-897 and amendments thereto, to purchase, sell, exchange or transmit electric energy within and outside the state in such amounts as it determines to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and may enter into agreements with any person with respect to that purchase, sale, exchange or transmission, on such terms and for such period of time as its board of directors determines;

(a)(17) to exercise all other powers not inconsistent with the constitution of the state of Kansas or the United States constitution, which powers may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes or to the exercise of any of the powers enumerated in this section....[Emphasis supplied.]

17. K.S.A. 12-895(a)(13) gives KMEA's Board of Directors specific authority to determine the terms of power sales, including rates and duration, so in entering into PPAs on behalf of its members KMEA is acting within its statutory authority. K.S.A. 12-895(a)(13) also authorizes KMEA to contract with SPP to procure transmission arrangements on behalf of its members. Likewise, K.S.A. 12-895(a)(5) gives KMEA the authority to "enter into any other

contract necessary or incidental in the performance of its duties, including contracts for the purchase, sale, transmission or exchange of power with other energy systems.” Accordingly, the contracts between KMEA and its municipal members for their proportionate share of power from the Projects are similarly within KMEA’s statutory authority. In accordance with statutory interpretation principles, we must presume that the legislature was aware of the KCC’s general authority to set rates and terms for power sales, and yet the legislature gave the Board of Directors, and not the KCC, specific authority to decide the rates and terms.⁵

III. Does K.S.A. 12-855 *et seq.* limit the Commission’s jurisdiction over MEAs?

Short Answer: Yes, because pursuant to K.S.A. 12-8,111 the Commission can only regulate MEAs “in the same manner as a public utility” and not “as a public utility.” Because MEAs are most analogous to deregulated G&T cooperatives, the Commission should, at most, regulate MEAs “in the same manner as” deregulated G&T cooperatives.

18. It is clear from the plain language of K.S.A. 12-8,111 that an MEA is not a “public utility.” If the legislature had intended for an MEA to be a public utility, it could have easily drafted the statute to read that MEAs “shall be subject to the jurisdiction of the state corporation commission *as a public utility.*” Instead, the statute provides that MEAs “shall be subject to the jurisdiction of the state corporation commission *in the same manner as* a public utility,” thereby distinguishing MEAs from entities that meet the definition of “public utility” under K.S.A. 66-104. It must be presumed that the legislature was aware of K.S.A. 66-104 when it enacted K.S.A. 12-8,111, because the former statute was in existence long before the legislature enacted the latter in 1981.⁶ Additionally, it is settled law in Kansas that a specific

⁵ *State v. Henning*, 289 Kan. 136, 144-45, 209 P.3d 711 (2009) (noting that there is a “general presumption that the legislature acts with full knowledge of existing law”).

⁶ *Id.*

statute will control over a general statute.⁷ K.S.A. 12-8,111 is specific to the KCC’s jurisdiction over MEAs and therefore must control over the general definition of “public utility” in K.S.A. 66-104.⁸ As such, the distinction that the legislature drew between MEAs and “public utilities” must be presumed to be intentional *and* meaningful. Indeed, the principle rule of statutory interpretation is that the intent of the legislature governs if that intent can be ascertained.⁹ As stated by the Supreme Court of Kansas, “the legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted.”¹⁰ These rules of statutory interpretation must be followed regardless of whether the statute is found to be ambiguous.¹¹ Thus, K.S.A. 12-8,111 must be interpreted in a manner that gives effect to the legislature’s intent to distinguish MEAs from public utilities.

19. Because MEAs are not public utilities, the Commission may only regulate MEAs by reference to its existing jurisdiction and common practices related to entities that are considered public utilities. The Commission cannot simply find that MEAs are subject to the broad jurisdiction and authority of the Commission and thereby develop unique and separate regulation of MEAs. Such an approach would not constitute regulation “in the same manner as” a public utility. The Commission cannot make broad stroke findings that MEAs are subject to rate regulation without considering how such regulation would function in practice and whether

⁷ *In re Adoption of H.C.H.*, 297 Kan. 819, 833, 304 P.3d 1271 (2013); *Nuessen v. Sutherlands*, 352 P.3d 587, 590 (Kan. Ct. App. 2015).

⁸ When there is a specialized means for doing something, that specialized means is the more specific, and therefore controlling. *See, e.g., In re E.J. D.* 348 P.3d 512, 515 (Kan. 2015).

⁹ *In re Adoption of H.C.H.*, 297 Kan. 819, 826, 304 P.3d 1271 (2013); *Board of County Comm’rs of Leavenworth County v. Whitson*, 281 Kan. 678, 685, 132 P.3d 920 (2006).

¹⁰ *In re Adoption of G.L.V.*, 286 Kan. 1034, 1040-41, 190 P.3d 245 (2008).

¹¹ *Merryfield v. Sullivan*, 301 Kan. 397, 343 P.3d 515 (2015); *State v. Looney*, 299 Kan. 903, 906, 327 P.3d 425 (2014).

that regulation would be “in the same manner as” the Commission’s existing regulation of a public utility.

20. There are several different types of entities that are considered public utilities, including IOUs, retail distribution cooperatives, G&T cooperatives, transmission-only entities, municipalities that operate three or more miles outside of their corporate boundaries, and independent power producers (“IPPs”) that elect not to opt-out under K.S.A. 66-104(e). In theory, the Commission could choose to regulate KMEA “in the same manner as” any of these entities. For example, the Commission could choose to regulate KMEA “in the same manner as” a transmission-only entity, such as ITC Great Plains, LLC. The Commission grants transmission-only entities project-specific certificates of convenience (“COCs”) and has jurisdiction over transmission siting, but since KMEA is not required to obtain a COC and does not own any transmission, there would be nothing for the Commission to regulate. Likewise, the Commission could choose to regulate KMEA “in the same manner as” an IOU (such as Westar Energy, Inc. or Kansas City Power & Light Company). The Commission has jurisdiction over IOUs regarding COCs, retail rates and terms of service, retail service territory, transmission siting, and wire stringing. However, KMEA is not required to obtain a COC, does not provide retail service, does not have an exclusive retail service territory, and does not own transmission or distribution assets subject to wiring stringing or siting rules. Therefore, if the Commission regulates KMEA “in the same manner as” an IOU, there is nothing for it to regulate.

21. KMEA is most analogous to G&T cooperatives, such as Mid-Kansas Electric Cooperative (“MKEC”), Sunflower Electric Cooperative (“Sunflower”), and Kansas Electric Power Cooperative (“KEPCo”). Like the G&T cooperatives, KMEA is governed by its members and supplies energy at wholesale to its members. The board of directors at an MEA consists of

the MEA's members, just as the board of directors at a G&T cooperative consists of the cooperative's members. Because of these similarities, if the Commission regulates MEAs, it makes the most sense for the Commission to regulate MEAs "in the same manner as" a G&T cooperative.

22. Due to the governance rights of members of G&T cooperatives, they may vote to deregulate, thereby removing Commission jurisdiction over rates between the G&T cooperative and its own members. KMEA should be regulated as a deregulated G&T cooperative rather than a regulated G&T cooperative for several reasons. First, all G&T cooperatives, as well as other cooperatives, in the state have deregulated pursuant to K.S.A. 66-104d.¹² As explained above, "in the same manner as" means that the Commission may only regulate by reference to its existing jurisdiction and common practices related to entities that are considered public utilities. Therefore, the Commission cannot regulate MEAs "in the same manner as" a regulated G&T cooperative, because such a thing does not exist in Kansas. Second, it would be patently unfair for the Commission to regulate MEAs as a regulated G&T cooperative, because there are no statutory provisions for an MEA to opt-out of regulation. K.S.A. 66-104d sets forth a process for a cooperative to poll its members on the question of deregulation and notify the Commission of an affirmative vote by a majority of its members. There are no equivalent deregulation provisions for an MEA. Third, as discussed above, the enumerated powers granted to MEAs

¹² KCC Docket Nos. 10-SEPE-072-DRC (Election of Sunflower Electric Power Corporation to deregulate); 14-MKEE-253-DRC (Election by Mid-Kansas Electric Company to deregulate); 10-KEPE-225-DRC (Deregulate Certificate for Kansas Electric Power Cooperative, Inc.); *see also*, *e.g.*, Docket Nos. 11-PNRE-373-DRC (Application for Pioneer Electric Coop); 13-MDWE-704-DRC (Notification by Midwest Energy-electric); 13-MDWG-705-DRC (Notification by Midwest Energy to deregulate-natural gas); 14-WHLE-546-DRC (Election of Wheatland Cooperative to self-regulate); 14-VICE-565-DRC (Election of Victory Electric Coop to self-regulate); 15-LNSE-023-DRC (Election of Lane-Scott to self-regulate).

give the board of directors of an MEA authority to provide power to its members on such terms as it determines appropriate. The Commission must recognize this authority, and should do so by equating MEAs with a deregulated G&T cooperative. Fourth, due to the governance rights of MEA members, there is no public policy reason to regulate rates between an MEA and its own members.

23. Once a G&T cooperative deregulates, the Commission only retains jurisdiction with regard to service territory, transmission rates, wholesale sales to non-member third parties, wire stringing, and transmission line siting.¹³ KMEA is not contesting the Commission's jurisdiction over these limited categories. Although not currently at issue for KMEA, to the extent that KMEA builds transmission or sells power at wholesale to non-member third parties, it may be subject to Commission jurisdiction. Such jurisdiction may be appropriate because KMEA would be charging third-parties, who do not have representation on KMEA's board of directors or other existing recourses to resolve disputes.

24. The Commission also has jurisdiction over deregulated G&T cooperatives for the purpose of complaints lodged by not less than 20% of the G&T cooperatives' members or 5% of the aggregate retail customers of such members, pursuant to K.S.A. 66-104d(g)(1). This is the only instance in which the Commission has jurisdiction over the services provided by a deregulated G&T cooperative to its members. Members of the cooperative cannot circumvent the requirements of K.S.A. 66-104d(g)(1) by filing a complaint pursuant to K.S.A. 66-101e, because K.S.A. 66-101e is not an independent grant of jurisdiction. While K.S.A. 66-101e gives parties the right to file complaints, the subject matter of the complaints must be something over which the Commission has jurisdiction. Because MEAs must be regulated "in the same manner

¹³ K.S.A. 66-104d(f).

as” deregulated G&T cooperatives, the same conditions would apply to complaints against MEAs.

IV. 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 to the MEA Act?

Short Answer: The Commission may only regulate MEAs by reference to its existing jurisdiction and common practices related to entities that are considered public utilities. Additionally, MEAs are specifically exempted from the requirements to obtain a COC under K.S.A. 66-131 and, by extension, are exempt from K.S.A. 66-136.

25. The Commission’s authority to regulate MEAs is not “the same as” its authority to regulate public utilities—the Commission may only regulate MEAs “in the same manner as” its existing regulation of public utilities. This is a subtle but important distinction, and it is a distinction required by K.S.A. 12-8,111. The significance of the distinction is that the Commission may not exert *unique* regulation over an MEA—it may only regulate MEAs by reference to its *existing* regulations of others.

26. In addition to the foregoing distinction, K.S.A. 12-8,111 specifically exempts MEAs from the certificate of convenience requirements of K.S.A. 66-131. Additionally, by its plain terms, K.S.A. 66-136 applies only to contracts and transfers affecting a “franchise or certificate of convenience and necessity granted to a common carrier or public utility governed by the provisions of this act,” *i.e.*, a franchise or COC granted pursuant to K.S.A. 66-131. Since MEAs are not granted franchises or COCs pursuant to K.S.A. 66-131, the provisions of K.S.A. 66-136 are not applicable to MEAs.

V. 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.

Short Answer: The Commission lacks authority and jurisdiction to regulate an MEA’s member services to the extent those same services would not be jurisdictional if provided by a public utility.

27. This request presumes the Commission has authority over all things unless there is specific authority denying such authority. However, the Commission is an administrative agency of limited jurisdiction, and its jurisdiction is limited to that conferred by statute.¹⁴ Asking KMEA to list every possible category operation and site to legal authority denying the Commission's jurisdiction over such operation requires KMEA to prove a negative on an indeterminate number of issues. Nevertheless, **Section I** of this brief lists several areas of operation and explains why the Commission does not have jurisdiction over those areas. The request is more appropriately framed as follows: "list the areas of operation where the Commission has authority or jurisdiction to regulate an MEA as if it were a public utility and state the legal authority granting the Commission's authority or jurisdiction." KMEA's response to the reframed request is straight forward: at most, the Commission has jurisdiction over MEAs with regard to:

- a. Retail service territory (but MEAs do not have retail service territories)
- b. Transmission rates (to the extent MEAs have transmission facilities)
- c. Wholesale sales to non-member third parties (to the extent MEAs make such sales)
- d. Wire stringing (to the extent MEAs have distribution or transmission facilities)
- e. Transmission line siting (to the extent MEAs have transmission facilities that meet the size and length thresholds of the siting statute).

This authority comes from the appropriate reading of K.S.A. 12-8,111 and reference to the Commission's jurisdiction over deregulated G&T cooperatives in K.S.A. 66-104d(f). As discussed above, MEAs are most analogous to deregulated G&T cooperatives, and to the extent

¹⁴ *Kansas Pipeline Partnership v. State Corp. Com'n of the State of Kansas*, 916 P.2d 76, 81, 22 Kan.App.2d 410 (1996), *Cities Service Gas Co. v. State Corporation Commission*, 197 Kan. 338, 342, 416 P.2d 736 (1966); *Kansas-Nebraska Natural Gas Co. v. Kansas Corporation Commission*, 4 Kan.App.2d 674, 675, 610 P.2d 121, rev. denied 228 Kan. 806 (1980).

the Commission asserts jurisdiction over MEAs, it should regulate them “in the same manner as” deregulated G&T cooperatives.

CONCLUSION

28. KMEA does not serve any captive retail customers, it has no exclusive service territory, it is member-city owned, managed and controlled, and it does not provide any monopolistic services. The services KMEA provides are specifically authorized by statute and are governed by the recipients of the services. MEAs are not themselves “public utilities,” so if the Commission exerts any jurisdiction over MEAs, it must be in “the same manner as” the Commission’s jurisdiction over existing public utilities and it must take into account the member-centric structure of MEAs.

Respectfully submitted,

POLSINELLI PC

By:



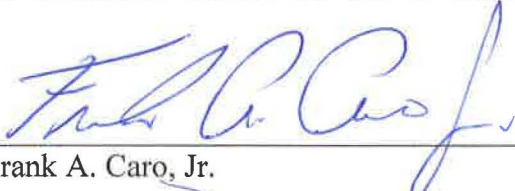
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VERIFICATION

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

Frank A. Caro, Jr., being first duly sworn upon her oath, deposes and states that she is Counsel for Kansas Municipal Energy Agency, that she has read and is familiar with the foregoing Entry of Appearance, and that the statements therein are true to the best of her knowledge, information and belief.



Frank A. Caro, Jr.

Subscribed and sworn to before me this 15th day of December, 2017.

BRENDA L. LEE
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
CLAY COUNTY
MY COMMISSION EXPIRES 9/29/2018
COMMISSION # 14428629



Exhibit A

KMEA Member Cities and Board of Directors

City	Director	City	Director	City	Director	City	Director
1 Alma	Michael Slobodnik Jeff Clark Sharon White	21 Dighton	Craig Collins George VonLeonrod Christine Birney	41 Iola	Mike Phillips Chuch Heffern Brandon Westerman	61 Osawatomie	Don Cawby Stewart Kasper Mark Govea
2 Altamont	Peggy Ybarra LeaAnn Myers Lizabeth Finley	22 Enterprise	Paul Froelich Deana Payne	42 Jetmore	Michael Ort Derek Olson Brian Beil	62 Osborne	Scott Nuzum Marvin McCormick Jason Kibbe
3 Anthony	Steve Wilkinson Larry Berry Amber Kummer	23 Erie	Darrell Bauer Jason Thompson	43 Johnson City	Tyce McMillan Seth Nelson	63 Ottawa	Sara Caylor Dennis Tharp Jeff Oleson
4 Arma	Scott Popejoy Ray Vail	24 Eudora	Mike Hutto Eldon Brown Nathan Jones	44 Kansas City	Dong Quach Jerry Ohmes Jerin Purtee	64 Prescott	Rolland Grigsby Kevin Wood Kathy Wood
5 Ashland	Doug Roberts Rock Hill	25 Fredonia	Bill Jones Carolyn Anderson	45 Kiowa	Lou Leone Trish Brewer Brandon Farney	65 Pomona	Dean Wineinger Steven Lemons
6 Attica	Michael Swonger Angela Alexander Charles Berry	26 Garden City	Mike Muirhead Cliff Sonnenberg Kent Pottorf	46 LaCrosse	Duane Moeder Bruce Jones Roland Holopirek	66 Pratt	Bill Hlavachick Jamie Huber Roy Eckert
7 Augusta	Mike Rawlings Josh Shaw	27 Gardner	Andrew Krievins Gonzalo Garcia Clint Barney	47 Lakin	Robbie McComb Nick Hansen Amanda Riedl	67 Russell	Duane Banks Jon Quinday Jim Cross
8 Baldwin City	Tony Brown Glenn Rodden Rob Culley	28 Garnett	Chris Weiner Bob Mills W. Gordon Blackie	48 Larned	Bradley Eilts Harry Zielke Ralph Streit	68 St. Francis	Scott Schultz J.R. Landenberger Bruce Swihart
9 Belleville	Neal Lewis Russ Piroutek Brian Phillips	29 Girard	Brandon Foraker Chris Franklin	49 Lincoln Center	Jack Crispin JR Jeff Ahring Melodee Larsen	69 St. John	Jeff Williamson Marshall Sanders Ryan Christie
10 Beloit	Jason Rabe Manny Milbers Ronald Sporleder	30 Glasco	Mike Dove Edward Bellows	50 Lindsborg	Gregory DuMars Bill Taylor Blaine Heble	70 Seneca	Jim Mitchell Matthew Rehder Bruce Deters
11 Blue Mound	Max Krull Don Rhynerson Byron Coates	31 Glen Elder	Jerri Senger Eldon Behymer Ryan Duskie	51 Lucas	Mitchall Woodruff Travis Naegele Craig Langdon	71 Sharon Springs	Patrick Gibbs Brad Hatfield Dennis Sharp
12 Burlingame	Wes Colson Patty Atchison	32 Goodland	Dustin Bedore Annete Fairbanks Lukas Wolak	52 Mankato	Donald Koester Chris Rhea	72 Stafford	Patrick Dick Jami Downing Dennis Dye
13 Burlington	Alan Schneider R. Standley Luke	33 Greensburg	Sandra Jungemann Kyler Ludwig Mick Kendall	53 Marion	Travis Schafers Randy Kelsey Marty Fredrikson	73 Sterling	John Wagerle Taggart Wall John Wagerle
14 Cawker City	Greg Linton Janice Cornely Drew Duskie	34 Herington	David Kahle David Gerhke Kathleen Souza	54 Meade	Armando Gonzales JD Hegwood Dean Cordes	74 Stockton	Kim Thomas Jeff Scott Keith Schlaegel
15 Chanute	Larry Gates Jeff Cantrell Rick Willis	35 Hill City	Mort Plunkett Dennis Mersch Greg Deines	55 Montezuma	Dwight Watson Staci Gibson Matthew Axtell	75 Troy	Margaret Sutherland Gary Clary Robert Jenkins
16 Chapman	John Dudte Bobby Kam Tim Jury	36 Hillsboro	Mike Duerksen Larry Paine Bob Watson	56 Moundridge	Kevin Schmidt Larry Stucky Randy Frazer	76 Wamego	Thomas Beem Merl Page
17 Cimarron	Jeff Acton Shannon Hoskinson Darrell DuPree	37 Hoisington	Jonathan Mitchell Donita Crutcher Bernard Kruse	57 Neodesha	Brandon Hearn Eddy Truelove Bobby Busch	77 Washington	Richard Applegarth Don Imhoff Carl Chalfant
18 Centralia	John Holland Keith Heideman Dustin Walters	38 Holton	Kerwin McKee Ira Harrison Scott Fredrickson	58 Norton	Chad Buckley Jim Miller Dan Sisk	78 Waterville	Chuck Tryon Jonathan Oatney Tony Mann
19 Coffeyville	Kendal Francis Gene Ratzlaff Mike Shook	39 Horton	Wade Edwards James Martin Tim Lentz	59 Oberlin	Troy Haas Ladd Wendelin Dan Castle	79 Wellington	John Bales Roger Estes Shane Shields
20 Colby	Pat Mallory Tyson McGreer Gary Adrian	40 Hugoton	Gary Rowden Charlie Wagner Logan Frederick	60 Osage City	Rodney Willis Joey Lamond Dennis Combes	80 Winfield	Gus Collins Jeremy Willmoth Gregory Thompson

Who is KMEA?

In 1980, the Kansas Municipal Energy Agency (“KMEA” or “Agency”) was officially formed under Kansas law as a quasi-municipal corporation established as a nonprofit joint action agency made up of electric municipalities.

KMEA has similar rules as a city — such as open meetings and open records.

The Agency was authorized by Act, to plan, finance and construct projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate, economical and reliable supply of electricity and other energy for its members. This is the core essence of our Agency. The Agency was also authorized to issue and sell revenue bonds for the purpose of providing funds to pay all or part of the cost of the acquisition, purchase and construction of such projects.

In 1982, the Agency completed its first power supply project named the Nearman Project by purchasing 37.5 MW from the Kansas City, Kansas Board of Public Utilities Nearman Unit Number 1. Since 1983, the Agency has succeeded in bringing hydropower into the state from the Southwest Power Administration and the Western Area Power Administration, along with numerous other power supply. In 1998, KMEA was successful in having the original Act amended, which eliminated the need for its members to have a generating municipal electric utility. This change in legislation opened the doors for “distribution only” municipal electric systems to become KMEA members.

Today, over 70 Kansas Municipalities benefit from being members of KMEA. By joining KMEA, these cities come together to strengthen their effectiveness in dealing with common challenges. Through the joint action approach, the cities employ the Agency to undertake projects that they would find impractical if attempted separately.

Attached are the vision and mission statements of our Agency. These statements are what guide our Agency in providing the services and benefits to our member cities.

Mission Statement

KMEA is passionately committed to the success of our members fulfilling their primary mission of providing reliable and cost effective energy to their communities. We pledge our relentless focus and dedication to providing new and innovative solutions to help our members achieve this mission.

Vision Statement

KMEA will remain steadfast in our ongoing commitment of adding value and helping our members navigate the rapidly evolving and complex industry. Our Agency will be actively engaged and responsive to our members’ short-term, intermediate, and long-term energy needs with innovative solutions. KMEA will be at the forefront of emerging industry developments that could adversely or positively impact our members, whether market driven, regulatory or technological. KMEA will be agile, as member needs and market trends dictate, and every employee will bring their drive and expertise to maximize the value we provide our members. We will maintain a member-centric approach; one of continuous improvement, so that we remain the energy solution provider of choice.

Member Services

Member Services comprise the full array of specialized services and expertise that KMEA brings to bear to leverage joint action and assist our membership in meeting the needs of their respective communities. Member Services is not restricted to a department, but rather it is shared equally by all functional areas of the agency. Each and every KMEA employee falls under the umbrella of “Member Services,” because serving our members is chief among our responsibilities. All KMEA employees provide services to our members according to their specific function

within the agency. Stated another way, Member Services is not a department, but a culture; a culture which ensures individually, and collectively, that service and value is what KMEA provides to our members; members we are privileged to serve. There are nine areas that our services can be categorized – 1) Electric Operations, 2) Transmission and Security, 3) Resource Planning & Development, 4) Project and Asset Management, 5) Power Supply, 6) Finance and Accounting, 7) Natural Gas, 8) Marketing Communications, and 9) Legal and Auditing. The attached table provides the specific services that we provide or can provide our members.



Exhibit B

KMEA MEMBER SERVICES	Electric Operations	Transmission & Security	Resource Planning & Development	Project & Asset Management	Power Supply	Finance & Accounting	Natural Gas	Marketing Communications	Legal & Auditing
Power Supply Planning - Provide power supply planning for the cities individually and as group			X		X				
Project Based Agency - Allows Cities to choose from multiple resources to build a portfolio to meet the Cities' needs			X		X				
Aggregation - Aggregate Cities' needs to leverage pricing and better power supply opportunities	X				X				
Contract management and administration for power supply				X					
Established Regulatory Dispute Fund whereby members has access to funds to assist with legal/regulatory disputes									X
Load forecasting services	X								
24-hour, real-time support	X								
Invoicing - Facilitate invoices from multiple sources and consolidation of billing						X			
Review of Invoices - Check for accuracy and compliance with agreements						X			
Act as Market Participant in the Southwest Power Pool Integrated Marketplace	X			X					
- Provide credit at SPP on cities' behalf						X			
- Submit and manage all transmission requests as SPP Transmission Customer for member cities		X							
- Manage transmission congestion risk for cities (ARRs & TCRs)		X		X					
- Submit daily demand bids for load at SPP	X								
- Disaggregate SPP settlements down to unique, city-level charges						X			
- Perform shadow settlements on all SPP charges						X			
- Review billing and dispute resolution with SPP and report to cities				X		X			
- Submit generation outage information into SPP's CROW application for cities	X								
- Coordinate all generation runs (testing, accreditation, Market dispatch) between SPP and cities	X				X				
- Manage generation, load, and transmission requirements with SPP	X	X		X	X				
- Contract for meter agent services and review meter agent data	X			X					
Interface with local service providers on behalf of Cities				X					X
Provide access to real time information of Cities' load, prices, resources, etc.	X			X		X			

Exhibit B

KMEA MEMBER SERVICES	Electric Operations	Transmission & Security	Resource Planning & Development	Project & Asset Management	Power Supply	Finance & Accounting	Natural Gas	Marketing Communications	Legal & Auditing
Conduct meetings and other opportunities to provide information and allow networking with other Cities	X		X	X				X	
- EMP Groups (meet monthly)	X	X		X	X				
- Power Supply Committee (meet as needed)			X						
- Finance Committee (meet as needed)						X			
- Joint EMP Advisory Committee (meet as needed)	X	X	X	X	X				
- KMEA Executive Committee (meet monthly)	X	X	X	X	X	X		X	X
- KMGa Executive Committee (meet monthly)							X	X	X
Provide solutions to optimize Cities' assets within the various Energy Management Projects	X	X	X	X	X				
Provide representation at SPP with staff membership on various key committees and working groups				X				X	
Represent Cities' interests through joint action at the local, state, and federal levels								X	X
- Provide Testimony at State Legislative Committees on Electric & Gas topics (i.e., ROFR)									X
- Follow Electric and Gas Cases that have could have impact on member Cities									X
- Intervene in Regulatory cases that do have impact on member Cities (i.e., KCPL acquisition of Westar)									X
Assist cities with NERC requirements as needed		X							
Provide optional credit scoring services upon request						X			
Equipment Loan Program – Current technology for loan to member cities				X				X	
Provide other consulting services as requested								X	X
Provide Natural Gas Supply to members through the Kansas Municipal Gas Agency							X		
Contract management and administration for gas supply							X		
Transmission Development - Assist member cities on improving local access and reliability issues		X	X	X					
- Manage transmission interconnection requests at SPP		X							
- Provide Project Management of transmission projects				X					
- Providing financing/ownership of such transmission projects						X			

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Entry of Appearance was mailed, postage prepaid, this 15th day of December, 2017, to:

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