

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

In the Matter of the Adoption of Policies) Docket No. 14-GIMX-190-MIS
Regarding Commission Internal Procedures.)

**STAFF'S REPORT IN RESPONSE TO COMMISSION REQUEST FOR FURTHER
INVESTIGATION**

I. Procedural Background

1. On November 7, 2013, the Commission issued its Amended Order Adopting Policies Regarding Commission Procedures. In its Order, the Commission set forth proposed internal procedures and invited interested entities to file written comments on the procedures.

2. Three parties filed written comments in response to the Commission's Order. On November 22, 2013, Commission Staff (Staff) filed its Legal Analysis Involving Quasi-Judicial Deliberations. On January 2, 2014, the Citizens' Utility Ratepayer Board (CURB) filed Comments in response to the Commission's Order. On January 3, 2014, Kansas City Power & Light Company (KCP&L) filed Comments in response to the Commission's Order. Staff also filed a Response to Comments of CURB and KCP&L on January 13, 2014.

3. On January 14, 2014, the Commission discussed this matter at its regularly-scheduled Commission meeting. Following discussion of the matter, the Commission ordered Staff to further investigate legal issues implicated in this docket and report its findings within six months. Specific legal issues identified by the Commission included its ability to hold legislative-style hearings and what that process would entail. Also, the Commission asked how other state public utility commissions (PUCs) have approached deliberations in compliance with

their respective open meetings acts. The Commission issued an Order formalizing its request for further investigation on January 16, 2014.¹

II. Staff's Findings

4. Staff researched both issues raised by the Commission. First, with regard to the processes of other state commissions, Staff's research indicates many states face the same issues that exist in Kansas. *See* Memorandum from Michael Duenes, attached as "Attachment 1." Other states' courts often refer to ratemaking as a legislative function. However, these pronouncements do not determine the PUC's deliberation policy in rate cases. Rather, other PUCs' deliberation policies depend on whether the relevant open meetings act excepts quasi-judicial, adjudicatory, or contested proceedings from the open meeting requirement. That is, regardless of what courts say about the nature of ratemaking, if a state's open meetings act provides an exception for private deliberations in quasi-judicial proceedings, the PUC generally deliberates in private. If there is no such exception, the deliberations are public.

5. With regard to the form of Commission hearings, this Commission cannot utilize legislative-style hearings. Kansas' public utilities statutes require all rate case proceedings to be held in accordance with the KAPA.² This requirement affords substantial due process rights to affected parties. The statutory mandate also lends support to the proposition that the Commission has been authorized to exercise a quasi-judicial function.

¹ Order Requesting Further Investigation, January 14, 2014.

² K.S.A. 66-117(g).

III. Recent Legal Developments – AG Opinion 2014-07

6. The Commission should also be aware of recently-issued Kansas Attorney General Opinion No. 2014-07 that is relevant to the legal issues raised in this docket and further supports Staff's previously-filed legal analysis. See AG Opinion 2014-07, attached as "Attachment 2." In summary, the AG's Opinion concludes that the KAPA and KOMA are mutually exclusive, and, when an agency is required to conduct administrative proceedings in accordance with the KAPA, the KOMA does not apply to any stage of such proceeding.

7. The AG's Opinion states, "[T]he KOMA and the KAPA are intended to be mutually exclusive."³ In support of this position, the opinion explains,

[T]he KOMA governs how a public body, exercising its policy making functions, must conduct business that affects the general public and applies to state and local governments. The public body holds a 'meeting.'" In contrast, the KAPA establishes administrative procedures and duties that affect the adjudication of *individual* cases and applies only to state agencies exercising quasi-judicial functions. The state agency holds a "proceeding" or "hearing."⁴

8. With regard to notice under the KOMA, whenever a board meets to discuss the business of the board, it must provide notice of the meeting to anyone who requests it. By contrast, when a board meets to serve as a presiding officer under the KAPA, the KAPA requires notice to be provided only to the parties to the proceeding and those having filed petitions to intervene in the proceeding.⁵ Furthermore, "[u]nder the KOMA, the public body must take formal action to issue a binding decision by a vote of the majority of members in an open meeting." However, "the KAPA does not require presiding officers to cast a public vote"

³ Attorney General Opinion No. 2014-07, p. 5. (AG Opinion 14-07, p. 5.)

⁴ AG Opinion 14-07, p. 5.

⁵ AG Opinion 14-07, p. 5.

because decisions made under the KAPA are rendered in a written order that is served on the parties.⁶

9. The Opinion continues, "KAPA proceedings include many stages other than an evidentiary hearing," yet only the evidentiary hearing stage must be open to the public.⁷ Although the evidentiary hearing stage must be open, the "hearing is not a meeting for purposes of the KOMA." Thus, because "an evidentiary hearing (despite being open to the public) is not a meeting for purposes of the KOMA, it seems unlikely that the legislature intended for *the other stages of a KAPA proceeding* (which KAPA does not require to be open) to be subject to the KOMA."⁸

IV. Options for Commission Action

10. The Commission may consider, but is not limited to, the following options:

1. Adopt a policy to conduct all deliberations in public, even if not required by statute.
2. Develop and adopt a policy allowing private deliberations in rate case proceedings under the KAPA.
3. Adopt no formal procedural policy at this time, and determine procedure on a case-by-case basis in consultation with legal counsel.

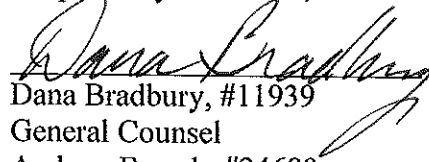
WHEREFORE, Staff requests the Commission accept Staff's Report in Response to the Commission Request for Further Investigation for Commission review and consideration and for such other relief as the Commission deems just and proper.

⁶ AG Opinion 14-07, p. 6.

⁷ AG Opinion 14-07, pp. 3, 9.

⁸ AG Opinion 14-07, p. 6 (emphasis added).

Respectfully submitted,



Dana Bradbury, #11939

General Counsel

Andrew French, #24680

Litigation Counsel

1500 SW Arrowhead Road

Topeka, KS 66604

Phone: (785)-271-3361

Fax: (785)-271-3167

Email: d.bradbury@kcc.ks.gov

1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

MEMORANDUM

To: Andrew French; Dana Bradbury

From: Michael Duenes

Date: April 30, 2014

Re: 14-GIMX-190-MIS; Whether the KAPA/ KOMA apply to Rate Cases

QUESTIONS PRESENTED

1. What guidance can the KCC derive from a brief survey of other states' experiences with rate case deliberations?
2. Can the KCC hold legislative-type hearings in rate cases, rather than adjudicatory hearings governed by the KAPA?

BRIEF ANSWERS

1. In other states, judicial rulings that ratemaking is a legislative function do not determine state public utility commission (PUC) deliberation policy in rate cases. Rather, PUC deliberation policy depends on whether a state's open meetings act (OMA) excepts quasi-judicial, adjudicatory, or contested cases. That is, regardless of what courts say about the nature of ratemaking, if a state's OMA provides an exception for private deliberations in quasi-judicial proceedings, the PUC deliberates in private.¹ If there is no such exception, the deliberations are public. In Kansas, the KOMA provides an exception for private deliberations in quasi-judicial proceedings.
2. No. If the KCC holds a hearing in a specific rate case, that hearing must be a quasi-judicial proceeding governed by the KAPA.

DISCUSSION

The Commission has asked interested parties to address the question of whether the Commission may hold rate case deliberations privately. In response, Commission Staff recommended that, although the Commission "exercises legislative power in setting rates, it is

¹ Iowa is an exception, as its open meetings statute gives the PUC discretion regarding whether to hold private deliberations, and the current commissioners favor public deliberations.

body” under the KAPA.³ Thus, the KAPA authorizes the Commission to deliberate privately in rate case hearings.⁴

The Citizens Utility Ratepayer Board (CURB), on the other hand, argued that “[r]atemaking is a legislative function, and no matter what kind of court-like procedures . . . are used in performing that function, the ratemaking function of the Commission remains prospective and legislative.”⁵ If the Commission’s rate case hearings are solely quasi-legislative then CURB argues commissioner deliberations in such hearings fall within the KOMA, and thus, must be public.⁶ Kansas City Power & Light filed similar comments to those of CURB.

A KCC Order sought further investigation regarding other states’ approaches to the above questions.

I. The experience of other states

a. States that conduct private deliberations in rate hearings

Idaho, Maryland, Michigan, and Washington are states whose Commissioners hold private rate case deliberations.

1. Idaho

In Idaho, “deliberation” is defined in the state’s open meetings statutes.⁷ Further, a “meeting” is defined as “the convening of a governing body of a public agency to make a decision or to *deliberate toward a decision* on any matter.”⁸ Yet, Idaho’s statutes provide an exception to its open meetings requirement in that “[d]eliberations of . . . the public utilities commission . . . in a fully submitted *adjudicatory* proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by [the open meetings act] to take place in a meeting open to the public.”⁹

The Chief Legal Counsel at the Idaho Public Utilities Commission¹⁰ confirmed that close to 100% of Idaho’s rate case hearing deliberations are conducted in private, based on numerous policy rationales. First, there are many components to a rate case decision. Thus, Commissioners make many statements in deliberations about the various aspects of a complex rate case, and the Commissioners do not want interested parties attempting to scrutinize their deliberations about each component. A second problem with public deliberations is that Commissioners may say one thing in public and have something else come out in the final order. The orders are the only binding authority, but parties may seize on pre-order statements by the Commissioners. This

³ *Id.* at ¶ 7.

⁴ See K.S.A. 2012 Supp. 75-4318(g)(1).

⁵ Comments of CURB, January 2, 2014, ¶ 9.

⁶ *Id.* at ¶ 82.

⁷ Idaho Code Ann. § 67-2341(2) (1992) (defining “deliberation” as “the receipt or exchange of information or opinion relating to a decision”).

⁸ *Id.* at § 67-2341(6) (emphasis added).

⁹ *Id.* at § 67-2342(2) (emphasis added).

¹⁰ Telephone Interview with Don Howell, Chief Legal Counsel, Idaho Public Utilities Commission (Feb. 7, 2014).

leads to a third problem, namely, that some of the public utilities in Idaho are publicly traded companies. Certain interested parties may find public deliberations give them inside information on what the Commission is going to do going forward. Some may begin to rely on non-binding public statements which convey unreliable information, or people may glean reliable information from public deliberations, thereby giving them the inside track over people who have not become aware of such deliberations. Finally, the possibility of inaccurate reporting on deliberative statements may have a chilling effect on those statements, thus defeating the primary purpose of public deliberations.

Although Idaho's courts consider ratemaking to be a legislative, rather than a judicial, function,¹¹ Idaho's Commissioners utilize statutory authority to hold rate hearing deliberations in private.¹²

2. Maryland

Maryland's open meetings laws require "the *deliberations* and decisions that the making of public policy involves" to be open to the public.¹³ A meeting is the "conven[ing of] a quorum of a public body for the *consideration* or transaction of public business."¹⁴ However, the statutes also state that the "determination of a contested case" is a "quasi-judicial function," which would seem to include rate cases.¹⁵ Maryland's OMA provides that its provisions requiring open deliberations do not apply to a quasi-judicial function.¹⁶ Maryland's Chief Public Utility Law Judge¹⁷ confirmed that "[d]eliberations of the Commissioners *in quasi-judicial matters, such as rate cases*, are closed deliberations and are not open to the public."¹⁸ She added: "Typically, the only deliberations of the Commissioners that are open to the public are the rule making sessions, which are quasi-legislative and therefore subject to the open meetings act."¹⁹

The characterization of Maryland's rate cases as "quasi-judicial matters" is interesting when viewed against Maryland's case law, which "recogniz[es] that rate making is *a legislative function*."²⁰ Maryland's Court of Appeals, however, has explained these two characterizations by noting:

"While these [administrative] agencies at times perform some activities which are legislative in nature and thus have been dubbed as quasi-legislative duties,

¹¹ *Indus. Customers of Idaho Power v. Idaho Pub. Util. Comm'n*, 1 P.3d 786, 790 (Idaho 2000),

¹² Idaho Code Ann. § 67-2342(2).

¹³ Md. Code Ann., State Gov't § 10-501 (West) (emphasis added).

¹⁴ *Id.* at § 10-502(g) (emphasis added).

¹⁵ *Id.* at § 10-502(i)(1); see also § 10-202(d)(1) (defining a "contested case" as "a proceeding before an agency to determine: (i) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only after an opportunity for an agency hearing; or (ii) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing").

¹⁶ *Id.* at § 10-503(a)(1)(iii).

¹⁷ E-mail from Terry J. Romine, Chief Public Utility Law Judge, Maryland Public Service Commission, to Michael Duenes, Law Clerk, Kansas Corporation Commission (Feb. 18, 2014).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Pub. Serv. Comm'n of Maryland v. Baltimore Gas & Elec. Co.*, 329 A.2d 691, 694 (Md. 1974) (emphasis added).

they in addition take on a judicial coloring in that frequently, within the exercise of their power, they are called upon to make factual determinations and thus adjudicate, and it is in that sense that they are also recurrently considered to be acting in a quasi-judicial capacity.”²¹

Thus, Maryland’s Public Service Commission is able to square its understanding of rate case hearings as quasi-judicial - determined through private deliberations - with the Court’s determination that rate making is a legislative function.

3. Michigan

Much like Idaho, Michigan’s open meetings statutes define a “meeting” as “the convening of a public body at which a quorum is present for the purposes of *deliberating toward* or rendering a decision on a public policy.”²² Michigan law further states that “[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.”²³ However, the open meetings laws on deliberations do not apply to the public service commission when it is deliberating the merits of a case.”²⁴

According to the Michigan PSC’s Director of Regulatory Affairs, Michigan has ALJs who preside over rate case hearings and submit a Proposal for Decision to the three Commissioners, who then review the Proposal and can accept or reject it.²⁵ Michigan’s open meetings exception for rate case deliberations came into being about 20 years ago. Before that, the Commission’s attorneys had to guess what the Commissioners wanted, and then circulate orders. It was a very cumbersome process. Michigan prefers private deliberations for much the same reasons as Idaho. Private deliberations are more efficient, they stop people from focusing on why there is a change from a specific Commissioner statements during deliberations to what the final order says, they prevent anyone from gaining inside information, and they prevent a chilling effect on Commissioner statements and opinions during deliberations. If there is any pushback against private deliberations, it comes almost exclusively from the press, and there has been no outcry in Michigan for public deliberations.

As in other states, Michigan’s courts have deemed ratemaking to be a legislative function.²⁶ Yet, again, the Michigan Legislature recognizes that rate hearings are “contested cases,” which are quasi-judicial in nature, and therefore authorizes private deliberations in such cases.

4. Washington

²¹ *Dep’t of Natural Res. v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 222, 334 A.2d 514, 522 (Md. 1975).

²² Mich. Comp. Laws Ann. § 15.262(b) (West 2001).

²³ *Id.* at § 15.263(3).

²⁴ *Id.* at § 15.263(7)(f).

²⁵ Telephone Interview with Bob Kehres, Director of the Regulatory Affairs Division, Michigan Public Service Commission (Feb. 10, 2014).

²⁶ *Ford Motor Co. v. Pub. Serv. Comm’n*, 562 N.W.2d 224, 229 (Mich. Ct. App. 1997) (holding that “[r]atemaking by the PSC is a legislative function”).

Washington deserves mention because of the strength with which its courts have held that ratemaking is legislative. The Washington Supreme Court has held that “[w]hile ratemaking may have an administrative aspect, even under a functional analysis, that aspect *is not quasi-judicial*. We have consistently held *rate setting is a legislative act*, even with respect to rate allocation and design... Since ratemaking is a legislative act, appellants’ only due process right is in nonarbitrary rates.”²⁷ Moreover, the court emphasized the point: “If we were to characterize rate setting as quasi-judicial, it would be so not only for ratepayers with the highest costs, but for all ratepayers. Every ratepayer would be entitled to notice and the procedural safeguards that accompany quasi-judicial decisions.”²⁸ However, Washington’s Open Public Meetings Act states that it “shall not apply to . . . [m]atters governed by chapter 34.05 RCW, the Administrative Procedures Act.”²⁹ Any Washington Utilities and Transportation Commission (UTC) “adjudication” (e.g., rate proceedings) falls within RCW 34.05.³⁰ Washington’s Director of the UTC’s Administrative Law Division confirms that its rate hearings are quasi-judicial, that deliberations in such cases are held privately, and there has been no pushback against this policy.³¹

One may conclude from the above states that judicial determinations regarding the legislative nature of ratemaking have no bearing on whether public utilities commissions may deliberate in private in rate cases. Even where state courts assert the legislative nature of ratemaking, state legislatures have often created laws allowing for private deliberations in adjudicatory matters.³²

b. A state with a choice between private or public deliberations in rate cases

Iowa’s statutes give the Utilities Board discretion regarding deliberations in rate cases. Under its open meetings provisions, “[a] governmental body *may* hold a closed session only to the extent a closed session is necessary . . . [t]o discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.”³³ Chapter 17A is Iowa’s Administrative Procedure Act, which defines a “contested case” as “a proceeding including but not restricted to ratemaking . . . in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.”³⁴

According to the Deputy General Counsel of the Iowa Utilities Board, deliberations in rate cases start out as open, but if two vote to close the deliberations, they will be closed. It is their option.³⁵ Whether deliberations will be open or closed depends on the makeup of the Board

²⁷ *Earle M. Jorgensen Co. v. City of Seattle*, 665 P.2d 1328, 1332 (Wash. 1983) (emphasis added).

²⁸ *Id.*

²⁹ Wash. Rev. Code Ann. § 42.30.140 (West).

³⁰ *See Id.* at § 34.05.010(1).

³¹ Telephone Interview with Greg Kopta, Director, Administrative Law Division, Washington Utilities and Transportation Commission (Feb. 10, 2014).

³² *See e.g.* Idaho, Maryland, Michigan, and Washington.

³³ Iowa Code Ann. § 21.5(1)(f) (West) (emphasis added).

³⁴ *Id.* at § 17A.2(5).

³⁵ Telephone Interview with Gary Stump, Deputy General Counsel, Iowa Utilities Board (Feb. 7, 2014).

and its preferences.³⁶ The Board has discretion even though Iowa's courts have held ratemaking proceedings are legislative in nature.³⁷ The current Board seems to favor open deliberations, and the parties to a case like to hear what the Board members say.³⁸

c. States that conduct public deliberations in rate hearings

Colorado and Nevada both conduct rate case deliberations in public and are bound to do so by their open meetings statutes.

1. Colorado

The Colorado open meetings law states that “the formation of public policy is public business and may not be conducted in secret,”³⁹ and thus, “[a]ll meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.”⁴⁰ Colorado courts have deemed ratemaking to be “quasi-legislative,”⁴¹ and held deliberations must be open in order to “serv[e] the interest of public accountability.”⁴² Notably, there is no exception for quasi-judicial deliberations in Colorado’s open meetings statutory scheme.

Nevertheless, “[t]he thought processes of Colorado PUC decision-makers cannot be used as evidence to impeach a PUC decision or order,” for this would only have a chilling effect on Commissioner deliberations.⁴³ This is consistent with the Colorado PUC’s policy that “statements made by Commissioners during deliberations not incorporated into a written order do not have the force of a Commission decision.”⁴⁴

2. Nevada

Nevada’s courts are clear that “rate making is primarily a legislative function.”⁴⁵ Nevada’s open meeting statute is equally clear that public bodies must hold public deliberations.⁴⁶ According to Nevada’s PUC, this includes rate case deliberations,⁴⁷ for this creates “[t]ransparency and accountability.”⁴⁸ Nevada’s OMA determines its Commission’s

³⁶ *Id.*

³⁷ See *Iowa-Illinois Gas and Elec. Co. v. Iowa State Com. Commn.*, 412 N.W.2d 600, 605 (Iowa 1987).

³⁸ Gary Stump, *supra*.

³⁹ Colo. Rev. Stat. Ann. § 24-6-401 (West).

⁴⁰ *Id.* at § 24-6-402(2)(a).

⁴¹ *Home Builders Ass’n of Metro. Denver v. Pub. Utilities Comm’n of State of Colo.*, 720 P.2d 552, 560 (Colo. 1986),

⁴² *Bd. of County Com’rs of County of San Miguel v. Colorado Pub. Utilities Commn.*, 157 P.3d 1083, 1093 (Colo. 2007).

⁴³ *Id.*

⁴⁴ E-mail from Mariya Cassin, Commission Counsel, Colorado Public Utilities Commission, to Michael Duenes, Law Clerk, Kansas Corporation Commission (Feb. 13, 2014).

⁴⁵ *Nevada Power Co. v. Pub. Serv. Com’n*, 544 P.2d 428, 436 (Nev. 1975). See also *Nevada Power Co. v. Dist. Ct.*, 102 P.3d 578, 585-86 (Nev. 2004) (stating that “the power to prescribe rates for . . . a public utility company is a legislative function as distinguished from judicial power”).

⁴⁶ Nev. Rev. Stat. Ann. § 241.010(1) (West) (stating that “[i]t is the intent of the law that their actions be taken openly and that their deliberations be conducted openly”).

⁴⁷ E-mail from Roman Borisov, Administrative Attorney, Nevada Public Utilities Commission, to Michael Duenes, Law Clerk, Kansas Corporation Commission (Feb. 13, 2014).

⁴⁸ *Id.*

deliberations policy,⁴⁹ specifically providing that “[t]he meetings of a public body that are quasi-judicial in nature are subject to the provisions of” the OMA.⁵⁰ The Nevada Public Utilities Commission characterizes rate case hearings as “quasi-judicial,” noting that “[w]e conduct rulemaking dockets for quasi-legislative proceedings.”⁵¹ Further, the Commission thought there would be “significant pushback” by at least some members of the public if deliberations were conducted in private.⁵²

The following chart summarizes the above state survey, demonstrating the principle that each state’s OMA/ APA controls the state’s rate hearing deliberations policy.

State	How Ct Views Ratemaking	Statute – OMA/ APA	PUC Action
Idaho	Legislative	OMA exempts deliberations on adjudicatory proceedings	Virtually 100% private deliberations
Maryland	Legislative	OMA: Contested cases are quasi-judicial	Private deliberations
Michigan	Legislative	OMA: public deliberations provision does not apply to PUC	Prefers private deliberations
Washington	Legislative	OMA does not apply to matters governed by APA. Adjudicatory proceedings fall within APA.	Private deliberations
Iowa	Legislative	OMA: PUC may hold closed session in contested cases, per APA	Discretionary; deliberations start as open, but may close
Colorado	Legislative	OMA: no exceptions for PUC deliberations	Public deliberations; but Commissioner statements do not have effect of written PUC order
Nevada	Legislative	OMA: no exceptions for PUC deliberations	Public deliberations

In the above survey, state judicial holdings that ratemaking is a legislative function do not trump the state’s OMA exception for PUC deliberations in rate cases. The same scenario follows in Kansas. Although Kansas courts hold ratemaking to be a legislative function,⁵³ the KOMA exempts public deliberations when a body authorized by law to exercise quasi-judicial functions is deliberating matters relating to a decision involving such quasi-judicial functions.⁵⁴ Kansas statutes require rate case proceedings to be held pursuant to the KAPA, thus, implicating a quasi-judicial function.⁵⁵

II. The possibility of legislative-type hearings in rate cases

⁴⁹ *Id.*

⁵⁰ Nev. Rev. Stat. Ann. § 241.016(1)

⁵¹ Email from Roman Borisov, *supra*.

⁵² *Id.*

⁵³ *see Kansas Gas & Elec. Co. v. State Corp. Com’n*, 239 Kan. 483, 491, 720 P.2d 1063, 1072 (1986),

⁵⁴ *See* K.S.A. 75-4318(g)(1).

⁵⁵ K.S.A 66-117(g).

If ratemaking is indeed a legislative function, this raises the question of whether the KCC may decide rate cases through legislative-type hearings. There are no Kansas authorities that provide the specific contours of legislative-type hearings and when they may be used.⁵⁶ Moreover, Kansas' public utilities statutes require all rate case proceedings to be held in accordance with the KAPA.⁵⁷ Of course, parties in a rate case may waive a hearing and may decide matters by informal settlement. The KCC may also use a summary proceeding in certain cases, but its use is "subject to a party's request for a hearing on the order." Hence, if a party requests a hearing, the KCC may not use summary proceedings, but must grant a formal KAPA hearing. In any event, the proceeding must be in compliance with the KAPA. Non-KAPA legislative-type hearings in rate case proceedings are not contemplated by the Kansas statutes.

Conclusion

The above survey of other states demonstrates that, although the state courts hold ratemaking to be a legislative function, a state PUC's ability to hold private deliberations in rate proceedings depends on whether the state's OMA has a quasi-judicial exception for rate proceeding deliberations. The KOMA has such a quasi-judicial exception for deliberations in proceedings held pursuant to the KAPA. Moreover, the KCC does not have the option of holding legislative-type hearings in rate cases because the Kansas public utilities statutes require rate case proceedings to be held pursuant to the KAPA. The Commissioners have the option of holding public deliberations in rate cases, and the KOMA's intent provides grounds for a policy of openness. Some states have found that policy compelling. Other states remain leery of open deliberations and question the purposes to which access to deliberative speech will be put.

⁵⁶ "Legislative-type" hearings would seem to be hearings related to rulemaking. The KCC must hold a public meeting to adopt new rules and regulations, see K.S.A. 77-421(e), yet "[a]dministrative rulemaking generally does not involve public hearings unless specifically provided for by other statutes or regulations." *Bd. of Cty. Commissioners of Sumner Cty. v. Bremby*, 286 Kan 745, 755, 189 P.3d 494, 502 (2008).

⁵⁷ K.S.A. 66-117(g).



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

April 1, 2014

ATTORNEY GENERAL OPINION NO. 2014- 07

J.R. Behan, Chairman
Kansas Board of Emergency Medical Services
900 SW Jackson St., Room 1031
Topeka, KS 66612

Re: State Departments; Public Officers and Employees–Public Officers and Employees–Open Meetings Act; Meetings of State and Subdivisions Open to Public; Exceptions; Closed or Executive Meetings

Statutes; Administrative Rules and Regulations and Procedure–Administrative Procedure Act–Orders Affecting Licensure; Hearings

Synopsis: The Kansas Administrative Procedure Act (KAPA) applies to the activities of the investigations committee of a state licensing board only to the extent that the board's statutes expressly provide that proceedings under those statutes are governed by the KAPA. KAPA proceedings are not required to be open to observation by the public with the exception of an evidentiary hearing. Under the KAPA, an agency's decision is made in an order that is served on the parties; a public vote is not required.

If the KAPA does not apply, then the actions of an investigations committee must be held in accordance with the Kansas Open Meetings Act (KOMA). Under the KOMA, the investigations committee of a licensing board may consult with an attorney in a closed or executive session and it may recess to engage in quasi-judicial deliberations regarding a decision in a specific case. However, all other parts of an investigative or disciplinary proceeding and all policy or general discussions must occur in a public meeting, unless otherwise provided by law. Under the KOMA, binding decisions must be made by a vote in an open meeting. Cited herein: K.S.A. 2013 Supp. 65-6112; 65-6129c; 65-6132; 65-6133; K.S.A. 75-4317; K.S.A. 2013 Supp. 75-4317a; 75-4318; 75-4319; 77-201; K.S.A. 77-501; K.S.A. 2013 Supp. 77-503; K.S.A. 77-

508; K.S.A. 2013 Supp. 77-511; K.S.A. 77-512; K.S.A. 2013 Supp. 77-514; 77-523; K.S.A. 77-526.

* * *

Dear Mr. Behan:

On behalf of the Kansas Board of Emergency Medical Services (KSBEMS), you ask for our opinion on whether the investigations committee of a professional licensing board authorized to exercise quasi-judicial powers must conduct its affairs in a meeting open to the public. In your letter, you state that the KSBEMS Investigations Committee consists of five board members out of a 15-member board, and committee meetings may include any of the following activities:

- Staff reports on the status of pending investigations and findings from completed investigations;
- Discussions among Investigations Committee members, staff and board counsel to determine whether probable cause exists to file a disciplinary petition;
- Investigations Committee member review of documents and evidence from investigations to decide whether to impose discipline or offer a consent agreement to resolve the matter in question;
- Discussion and votes on whether to recommend that the Board adopt policies regarding investigations and reviews of applications for Board certification; and,
- Investigations Committee review of applications for certification from applicants with criminal histories.

Your question involves both the Kansas Open Meetings Act (KOMA)¹ and the Kansas Administrative Procedure Act (KAPA).² Before specifically addressing KSBEMS investigations, we first review these two acts.

KAPA Overview

The Kansas Administrative Procedure Act provides procedural rights and duties³ for decisions made by state agencies.⁴ The KAPA applies “only to the extent that other statutes expressly provide that the provisions of [KAPA] govern proceedings under

¹ K.S.A. 75-4317 *et seq.*

² K.S.A. 77-501 *et seq.*

³ K.S.A. 2013 Supp. 77-503(b).

⁴ *Denning v. Johnson County Sheriff's Civil Service Board*, 46 Kan. App. 2d 688, 702 (2011) (the definition of state agency under the KAPA expressly excludes “political subdivisions of the state”) and Attorney General Opinion No. 95-97 (city and county governments are not a state agency under the KAPA).

those statutes.⁵ In other words, the KAPA does not apply to proceedings before a state licensing board unless a statute specifies that such proceedings must be held in accordance with the KAPA.

Under the KAPA, a licensing agency may take action regarding a license after giving notice and the opportunity for an evidentiary hearing.⁶ An evidentiary hearing provides the opportunity for “full disclosure of all relevant facts and issues,” and affords all parties “the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence”⁷ In other words, a KAPA evidentiary hearing is an administrative version of a “trial” used to gather facts so that a licensing agency can decide a case in a fair and objective manner.

KAPA proceedings include many stages other than the evidentiary hearing. The KAPA expressly provides that a hearing is not required for a decision on whether to issue or not issue a complaint, summons, or similar accusation, or to initiate or not to initiate an investigation, prosecution, or other proceeding.⁸ Agencies may issue summary proceeding orders without first holding a hearing, subject to the affected party’s right to request an evidentiary hearing on the order.⁹ When an evidentiary hearing is requested, agencies may hold prehearing conferences to address other preliminary matters.¹⁰

The only stage of a KAPA proceeding that KAPA requires to be open to public observation is the evidentiary hearing.¹¹ The KAPA explicitly states that a KAPA hearing is *not* a meeting for the purposes of the KOMA.¹² A prior Attorney General Opinion reached the opposite conclusion.¹³ However, that opinion was issued before the KAPA was amended in 2009 to clarify that a KAPA hearing is *not* a meeting under the KOMA.¹⁴

Under the KAPA, an agency’s decision in a particular case is made by written order.¹⁵ The KAPA does not require a public vote for a decision to be effective; rather, the

⁵ K.S.A. 2013 Supp. 77-503(a); see also *Heiland v. Dunnick*, 270 Kan. 663, 672 (2001) (“The Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.*, sets up a framework for administrative review. However, by its own terms, the KAPA applies only to the extent that other statutes expressly provide that its provisions govern proceedings under those statutes.”).

⁶ K.S.A. 77-512.

⁷ K.S.A. 2013 Supp. 77-523(b).

⁸ K.S.A. 77-508.

⁹ K.S.A. 2013 Supp. 77-537(a).

¹⁰ K.S.A. 77-517.

¹¹ K.S.A. 2013 Supp. 77-523(f). The presiding officer may close parts of a hearing pursuant to a provision of law requiring confidentiality or expressly authorizing closure.

¹² *Id.*

¹³ See, Attorney General Opinion No. 97-40 (“We believe the legislature intended the KOMA, including the quasi-judicial deliberations exception, to apply to KAPA hearings, which meet the definition of a meeting.”).

¹⁴ See L. 2009, Ch. 109, § 11; now codified in K.S.A. 2013 Supp. 77-523(f).

¹⁵ K.S.A. 77-526.

decision is effective upon service of the final order upon the party and the party's attorney, if any.¹⁶

KOMA Overview

The Kansas Open Meetings Act generally requires that meetings of governmental bodies subject to its provisions must be open to the public.¹⁷ A "meeting" is defined as any gathering in person or through a medium for interactive communication by a majority of the membership of the body "for the purpose of discussing the business or affairs of the body."¹⁸ Governmental bodies subject to the KOMA include state and local agencies, boards, and committees and subcommittees thereof.¹⁹ Thus, the KOMA has a much broader application than the KAPA.

The KOMA allows a public body to enter into a closed or executive session for specific purposes, such as to discuss matters related to non-elected personnel or for consultation with an attorney which would be deemed privileged in the attorney-client relationship.²⁰ A public body may not hold an executive session for matters that do not fall within the list of permitted subjects for executive sessions in K.S.A. 2013 Supp. 75-4319(b) unless some other law requires closure.²¹ "Exceptions to the requirement of openness are to be narrowly construed."²² It should be noted that the KOMA does *not* permit executive sessions for the purpose of receiving information regarding investigations of licensees from board staff.²³

The KOMA also expressly states that its open meetings requirement does not apply to "any administrative body that is authorized by law to exercise quasi-judicial functions *when such body is deliberating matters relating to a decision involving such quasi-judicial functions.*"²⁴ A "quasi-judicial function" is one that "requires a weighing of the evidence, a balancing of the equities, an application of rules, regulations and ordinances to facts, and a resolution of specific issues."²⁵ "[Q]uasi-judicial is a term applied to administrative boards or officers empowered to investigate facts, weigh

¹⁶ K.S.A. 77-530(a); 77-531.

¹⁷ K.S.A. 2013 Supp. 75-4318.

¹⁸ K.S.A. 2013 Supp. 75-4317a.

¹⁹ K.S.A. 2013 Supp. 75-4318(a) (KOMA applies to "all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds").

²⁰ See K.S.A. 2013 Supp. 75-4319(b).

²¹ See, e.g., Attorney General Opinion No. 2008-22 ("if the topic [of a meeting of the board of trustees of a county hospital] regards an individual patient . . . a discussion could take place in executive session in order to protect personal privacy"); and Attorney General Opinion No. 89-42 (opining that discussions by a governing body of a public hospital concerning peer review and risk management reports are not required to be held in accordance with the KOMA).

²² Attorney General Opinion No. 2009-21. See also Attorney General Opinion Nos. 2008-22; 96-61; and 87-10.

²³ See K.S.A. 2013 Supp. 75-4319(b) (listing the subjects that may be discussed at a closed or executive session).

²⁴ K.S.A. 2013 Supp. 75-4318(g)(1) (emphasis added).

²⁵ *Golden v. City of Overland Park*, 224 Kan. 591, 597 (1978).

evidence, draw conclusions as a basis for official actions, and exercise discretion of a judicial nature.”²⁶ Deliberation means “[t]he act of carefully considering issues and options before making a decision or taking some action.”²⁷

Binding action may not occur during a recess for quasi-judicial deliberations under the KOMA; any formal vote on a matter deliberated under the KOMA must be conducted in an open meeting.²⁸

The KAPA and the KOMA are Mutually Exclusive

In our opinion, the KOMA and the KAPA are intended to be mutually exclusive. That is, when a statute states that a licensing board shall conduct administrative proceedings in accordance with the KAPA, it is the KAPA, not the KOMA, that governs such proceedings, and the KOMA is inapplicable. We find support for this opinion throughout both acts.

General Considerations

The purpose of each act is fundamentally different. The KOMA governs how a public body, exercising its policy-making functions, must conduct business that affects the general public and applies to both state and local governments. The public body holds a “meeting.” In contrast, the KAPA establishes administrative procedures and duties that affect the adjudication of *individual* cases and applies only to state agencies exercising quasi-judicial functions. The state administrative agency holds a “proceeding” or “hearing.” While KAPA hearings are open to the public, the public has a diminished interest in the stages of a KAPA proceeding other than the evidentiary hearing. In our opinion, it is consistent with the public interest to allow preliminary actions in a professional disciplinary case to occur outside the public view, because it is possible for an investigation to reveal that a complaint against a licensee is meritless, that no probable cause exists to determine that a violation occurred, or that private or confidential information, such as medical records or criminal history information, must be discussed.

Notice under the KAPA and the KOMA

Under the KOMA, whenever a majority of the membership of a state licensing board or any committee or subcommittee of the board meets to discuss the business of the board, it must provide notice of such meeting to any person who has requested notice. By contrast, when a licensing board or committee or subcommittee of the board meets to serve as the presiding officer in KAPA proceedings, the KAPA requires notice to be provided only to the parties to the KAPA proceeding and persons who have filed written

²⁶ *Thompson v. Amis*, 208 Kan. 658, 663 (1972).

²⁷ Black’s Law Dictionary (9th ed. 2009), accessed on March 28, 2014.

²⁸ K.S.A. 2013 Supp. 75-4318(a); Attorney General Opinion Nos. 97-41, 79-225.

petitions to intervene in the matter.²⁹ The KAPA does *not* require notice to be provided to the general public whenever a licensing board meets to conduct KAPA proceedings.

Only KAPA Evidentiary Hearings Open to the Public

The KOMA requires all meetings of a state licensing board and its committees, subcommittees and subordinate groups to be open to the public. By contrast, the only portion of a KAPA proceeding that the KAPA requires to be open to public observation is the evidentiary hearing, and even then the legislature explicitly provided that a KAPA hearing is *not* a meeting under KOMA.³⁰ Given the fact that an evidentiary hearing (despite being open to the public) is not a meeting for purposes of the KOMA, it seems unlikely that the legislature intended for the other stages of a KAPA proceeding (which KAPA does not require to be open) to be subject to the KOMA.

KAPA Presiding Officer vs. KOMA Majority

The KAPA permits a licensing board to designate one or more board members to serve as the presiding officer for a KAPA proceeding.³¹ In addition, the KAPA allows a licensing board to refer a proceeding to the Office of Administrative Hearings to be decided by a hearing officer that is not a board member.³² Thus, the KAPA permits a single person — not necessarily a board member — to hear and decide a proceeding.

By contrast, the KOMA requires decisions by a majority of the body to be made in a public meeting.³³ Even if a licensing board by a majority vote in a public meeting delegates the task of deciding licensure and/or disciplinary matters to a committee of the board, that committee must also decide cases by majority vote in a public meeting.³⁴

Service of Order vs. Public Votes

The KAPA does not require presiding officers to cast a public vote. This is because decisions made under the KAPA are rendered in written orders that are served on the parties.³⁵

Under the KOMA, a public body must take formal action to issue a binding decision by a vote of the majority of members in an open meeting.³⁶

²⁹ K.S.A. 77-516(b); 77-518(a).

³⁰ K.S.A. 2013 Supp. 77-523(f).

³¹ See K.S.A. 2013 Supp. 77-514(g) and K.S.A. 77-516(a).

³² K.S.A. 2013 Supp. 77-514(a).

³³ K.S.A. 2013 Supp. 75-4318(a) (“... no binding action by such bodies shall be by secret ballot”); see also K.S.A. 2013 Supp. 75-4319(c) (“No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.”).

³⁴ Whether a licensing board has the authority to delegate such matters depends upon its statutes. We assume for the purposes of this opinion that the KSBEMS has such authority.

³⁵ See K.S.A. 77-526(c) and (g); see also K.S.A. 77-529(b).

³⁶ See K.S.A. 75-4318(a) and K.S.A. 2013 Supp. 75-4319(c).

The KAPA and the KOMA Cannot be Reconciled

In our opinion, the above provisions of the KAPA and the KOMA cannot be reasonably read as requiring simultaneous compliance with both acts. Therefore, it is our opinion that where a statute requires a licensing board to conduct a proceeding in accordance with the KAPA, that board is not required to comply with the KOMA during any stage of the proceeding.

KSBEMS Disciplinary Proceedings

Having reviewed the provisions of the KAPA and the KOMA, we turn now to your specific question about KSBEMS licensure and disciplinary proceedings. K.S.A. 2013 Supp. 65-6133(b) provides that the KSBEMS "may limit, modify, revoke or suspend an attendant's or instructor-coordinator's certificate or the board may refuse to renew such certificate in accordance with the provisions of the Kansas administrative procedure act."³⁷ The KSBEMS may also revoke, limit, modify, suspend or refuse to renew an ambulance operator's permit or training officer's certificate in accordance with the KAPA.³⁸ Therefore, these proceedings must be held in accordance with the KAPA, not KOMA.

KSBEMS statutes are silent on whether the KAPA applies to proceedings to *grant or deny* an original or reinstatement application. Therefore, the KAPA does not govern these proceedings and they must be held in accordance with the KOMA.³⁹ This important distinction affects the extent to which Investigations Committee proceedings must be open to public observation.

KSBEMS Proceedings under KAPA

When the KSBEMS Investigations Committee is operating under the KAPA, it can conduct proceedings without notice or public observation on matters such as receiving staff reports on the status of pending investigations and findings from completed investigations; determining whether probable cause exists to impose discipline; determining whether sufficient grounds exist to refuse to renew a certificate; and deciding whether adverse action such as the modification, suspension, or revocation of a certificate is warranted under the facts of a particular case. The only stage of the proceeding that must be open to public observation is the evidentiary hearing. Any decision by the Investigations Committee in a particular case should be rendered in a written order that is served upon the party and the party's attorney.

³⁷ K.S.A. 2013 Supp. 65-6133(b).

³⁸ K.S.A. 2013 Supp. 65-6129c and 65-6132.

³⁹ Not every application must be decided by the professional licensing board itself. A board may delegate to staff the authority to approve or deny applications that do not require the exercise of discretion. See, e.g., Attorney General Opinion No. 90-36.

KSBEMS Proceedings under KOMA

When operating under the KOMA, a meeting of a majority of members of the KSBEMS Investigations Committee for the purpose of discussing the business or affairs of the Committee must generally be open to the public. However, the Investigations Committee may vote to enter into an executive session for the purpose of consulting with the Board's litigation counsel on matters such as whether to offer a consent agreement to an applicant for certification, whether sufficient grounds exist to deny an application for certification, or on any other matter for which the Investigation Committee's litigation counsel may provide legal guidance.

The Investigations Committee may also recess an open meeting to engage in quasi-judicial deliberations.⁴⁰ With two exceptions, all of the activities of the Investigations Committee described on page 2 constitute quasi-judicial functions because they involve the weighing of evidence, the application of statutes and Board regulations to the facts, and the exercise of discretion in resolving specific issues. The first exception is discussion related to the adoption of Board policies. Because adoption of Board policies does not involve a specific quasi-judicial matter, any such discussion must be held in an open meeting. The second exception is staff reports to the Investigations Committee. When staff is reporting information or evidence in a case, the Committee is not yet deliberating on that case and is subject to the KOMA.⁴¹

When the Investigations Committee has concluded its quasi-judicial deliberations, it must resume the open meeting and take a formal vote to render a binding decision. If the Committee cannot form a consensus and is not yet ready to make a decision, the Committee must reconvene the open meeting and announce that no consensus was reached and thus there will be no formal vote on a decision. Thereafter, the Investigations Committee may continue their deliberations at any regularly scheduled or special meeting. At such a meeting, the Committee may recess from the open meeting to engage in quasi-judicial deliberations, but any binding decision must be made by public vote in an open meeting.

Conclusion

The extent to which the investigations committee of a professional licensing board may conduct licensing and disciplinary matters outside of an open meeting depends on the

⁴⁰ When an open meeting has been recessed to conduct quasi-judicial deliberations, the public body should not allow the presence of another person to present additional evidence. *Loewen v. U.S.D. No. 411*, 15 Kan. App. 2d 612, 620-21 (1991) ("When acting as a quasi-judicial body, the Board is not empowered to gather additional information beyond that presented to the hearing committee. It must comport with the requirements of due process. . . [T]he presence of antagonistic or unnecessary parties to the [deliberations is] questionable under our open meetings concept, and it smacks of unfairness to the [licensee] whose rights are being considered.")

⁴¹ See Attorney General Opinion No. 97-41 ("When exercising a judicial function, the distinction is made between the gathering of information to be considered during deliberations and the actual act of deliberating over the information. The former must be conducted during an open meeting while the later is exempt from an open meeting.")

board's licensing statutes. In the case of the KSBEMS, all proceedings to limit, modify, revoke, suspend or refuse to renew an attendant, instructor-coordinator or training officer certificate or an operator's permit shall be in accordance with the KAPA. Other than evidentiary hearings, no other stage of KAPA proceedings is required to be held publicly. In a KAPA proceeding, the Investigations Committee does not need to take a vote in an open meeting for its decision in a case to be effective; the Committee's decision is rendered by written order that is served upon the parties.

The KAPA only applies to the extent that other statutes expressly provide that the provisions of the KAPA govern proceedings under those statutes. Therefore, in the case of the KSBEMS, decisions to grant or deny an original or reinstatement application for an attendant, instructor-coordinator or training officer certificate or an operator's permit are not pursuant to the KAPA, but instead must occur in accordance with the KOMA. Such decisions must occur in a meeting open to the public. However, the Investigations Committee may recess into a closed or executive session for the purpose of consultation with an attorney that would be deemed privileged in the attorney-client relationship. In addition, the Investigations Committee may recess for quasi-judicial deliberations for a specific case, but the Investigations Committee's decision in the case must be made by a vote in a meeting open to the public.

To the extent that Attorney General Opinion 97-40 reaches a different conclusion concerning the applicability of the KOMA to the KAPA, it is withdrawn.

Because the applicability of the KOMA and the KAPA depend on each licensing board's statutes and the facts of each circumstance, a licensing board should consult with the board's general counsel for further guidance on this issue.

Sincerely,

Derek Schmidt
Attorney General

Lisa A. Mendoza
Assistant Attorney General

CERTIFICATE OF SERVICE

14-GIMX-190-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Report in Response to Commission Request for Further Investigation was served by electronic service on this 1st day of May, 2014, to the following parties who have waived receipt of follow-up hard copies.

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

GLENDA CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
glenda@caferlaw.com

TERRI PEMBERTON, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
terri@caferlaw.com

NIKI CHRISTOPHER, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
n.christopher@curb.kansas.gov

DAVID SPRINGE, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.springe@curb.kansas.gov

SUSAN B. CUNNINGHAM, ATTORNEY
DENTONS US LLP
7028 SW 69TH ST
AUBURN, KS 66402-9421
Fax: 816-531-7545
susan.cunningham@dentons.com

LINDA GARDNER, ATTORNEY
EMBARQ COMMUNICATIONS, INC.
D/B/A CENTURYLINK COMMUNICATIONS
KSOPKJ0701
5454 W 110TH ST
OVERLAND PARK, KS 66211-1204
Fax: 913-397-3598
linda.gardner@embarq.com

C. EDWARD PETERSON, ATTORNEY
FINNEGAN CONRAD & PETERSON LC
1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MO 64111
Fax: 816-756-0373
epeters@fcplaw.com

C. EDWARD WATSON II., ATTORNEY
FOULSTON SIEFKIN LLP
1551 N WATERFRONT PKWY STE 100
WICHITA, KS 67206-4466
Fax: 316-267-6345
cewatson@foulston.com

CURTIS M. IRBY, ATTORNEY
GLAVES IRBY & RHOADS
1050 MARKET CENTER
155 N MARKET
WICHITA, KS 67202
Fax: 316-264-6860
cmirby@sbcglobal.net

CERTIFICATE OF SERVICE

14-GIMX-190-MIS

THOMAS E. GLEASON, JR., ATTORNEY
GLEASON & DOTY CHTD
PO BOX 6
LAWRENCE, KS 66049-0006
Fax: 785-856-6800
gleason@sunflower.com

JAMES M. CAPLINGER, ATTORNEY
JAMES M. CAPLINGER, CHARTERED
823 SW 10TH AVE
TOPEKA, KS 66612-1618
Fax: 785-232-0724
jjim@caplinger.net

JAMES M. CAPLINGER, JR., ATTORNEY
JAMES M. CAPLINGER, CHARTERED
823 SW 10TH AVE
TOPEKA, KS 66612-1618
Fax: 785-232-0724
jrcaplinger@caplinger.net

COLLEEN R. JAMISON
JAMES M. CAPLINGER, CHARTERED
823 SW 10TH AVE
TOPEKA, KS 66612-1618
Fax: 785-232-0724
colleen@caplinger.net

JOHN R. WINE, JR.
410 NE 43RD
TOPEKA, KS 66617
Fax: 785-246-0339
jwine2@cox.net

ROGER W. STEINER, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2787
roger.steiner@kcpl.com

ANDREW FRENCH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3314
a.french@kcc.ks.gov

MELISSA R. SKELTON
KANSAS ELECTRIC COOPERATIVES, INC.
PO BOX 4267
TOPEKA, KS 66604-0267
Fax: 785-478-4852
mskelton@kec.org

WILLIAM G. RIGGINS, SR VICE PRES AND GENERAL
COUNSEL
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
Fax: 785-271-4888
briggins@kepco.org

JOHN P. DECOURSEY, DIRECTOR, LAW
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421 W 129TH ST
OVERLAND PARK, KS 66213-2634
Fax: 913-319-8622
jdecoursey@oneok.com

WALKER HENDRIX, DIR, REG LAW
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421 W 129TH ST
OVERLAND PARK, KS 66213-2634
Fax: 913-319-8622
whendrix@oneok.com

MARK E. CAPLINGER
MARK E. CAPLINGER, P.A.
7936 SW INDIAN WOODS PL
TOPEKA, KS 66615-1421
mark@caplingerlaw.net

CERTIFICATE OF SERVICE

14-GIMX-190-MIS

TERESA J. JAMES, ATTORNEY
MARTIN, PRINGLE, OLIVER, WALLACE & BAUER, LLP
6900 COLLEGE BLVD STE 700
OVERLAND PARK, KS 66211-1842
Fax: 913-491-3341
tjjames@martinpringle.com

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PL STE 900
KANSAS CITY, MO 64112
Fax: 913-451-6205
acallenbach@polsinelli.com

FRANK A. CARO, JR., ATTORNEY
POLSINELLI PC
900 W 48TH PL STE 900
KANSAS CITY, MO 64112
Fax: 913-451-6205
fcaro@polsinelli.com

CARSON M. HINDERKS, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
carson@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
jim@smizak-law.com

BRUCE A. NEY, GENERAL ATTORNEY
SOUTHWESTERN BELL TELEPHONE CO.
D/B/A AT&T KANSAS
220 SE 6TH AVE RM 515
TOPEKA, KS 66603-3596
Fax: 785-276-1948
bruce.ney@att.com

LINDSAY SHEPARD, EXECUTIVE MANAGER CORPORATE
COMPLIANCE & ASSOCIATE GENERAL COUNSEL
SUNFLOWER ELECTRIC POWER CORPORATION
301W. 13TH
PO BOX 1020 (67601-1020)
HAYS, KS 67601
Fax: 785-623-3395
lshepard@sunflower.net

TIMOTHY E. MCKEE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
Fax: 316-630-8101
temckee@twgfirm.com

MARK D. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
Fax: 620-792-2775
mcalcara@wcrf.com

TAYLOR P. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
Fax: 620-792-2775
tcalcara@wcrf.com

CATHRYN J. DINGES, CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
cathy.dinges@westarenergy.com

CERTIFICATE OF SERVICE

14-GIMX-190-MIS



Pamela Griffeth
Administrative Specialist