

Before the Senate Committee on Utilities

January 30, 2018

Neutral Testimony
On Senate Bill 323

Submitted by Jeff McClanahan, Director, Utilities Division
On Behalf of
The Staff of the Kansas Corporation Commission

Chair Olson, Vice Chair Petersen, Ranking Minority Member Hawk, and members of the Committee, thank you for the opportunity to provide testimony to your Committee today on behalf of the Staff of the Kansas Corporation Commission (Commission).

The Commission Staff is taking a neutral position on SB 323. But I would like to use this opportunity to explain and highlight some of the provisions of the bill from our perspective.

K.S.A 66-1,176 as amended by SB 323 will, among other things, require the Commission to arbitrate disputes between cities and retail electric suppliers regarding which entity should be allowed to serve territory newly annexed by the city. The Commission and its Staff are the subject matter experts for this type of dispute and are the logical choice of an unbiased party used to facilitate a decision regarding retail electric service. Staff is concerned, however, with the time limitations SB 323 places on the Commission to reach a decision. SB 323 requires the Commission to file its decision within 60 days of receiving a request to arbitrate a dispute. Allowing for a Commission hearing and time to write a final order would allow Staff only 30 to 40 days to complete its investigation and file a report. Staff recommends this time be set at a minimum of 180 days in order to develop a record of its investigation and reach a decision that can withstand an appeal to District Court.

Under the Kansas Administrative Procedures Act (KAPA), the Commission is required to base its decisions on facts presented in the case. To develop these facts, Staff and all interveners issue discovery requests which are similar to affidavits. Depending in the complexity of the case, there may be several rounds of discovery requests from all parties in the case before enough facts are gathered to make a reasonable decision in the public interest. Each round of data requests allows the responding party seven days to gather information and submit their response to Staff. If the response is not sufficient or raises additional questions, another round of data requests are submitted. When this process is combined with Staff's ongoing workload, the ability to complete the analysis and reach the correct decision within 60 days will be difficult.

When a city annexes property, K.S.A. 66-1,176 requires the city to negotiate a franchise agreement with the current electric supplier of the annexed territory or any additional electric suppliers the city wishes to consider for serving the territory. To preserve due process rights for the electric utility

servicing the area prior to annexation, K.S.A. 66-1,176 as amended by SB 323 lists nine factors the city must consider in making a decision to offer a franchise to any electric supplier. Of the nine factors, only two –(a)(2)(B): rates of various suppliers; and (a)(2)(C): desire of customer or customers being served- can be considered to be objective factors. Answers to the remaining seven factors are complex, subjective or even abstract in nature. That is not say a reasonable answer cannot be determined for each factor, but some will be difficult to derive.

For your consideration, Staff’s analysis of requirements of SB 323 outside of the time limitation is as follows:

SB 323 amends section (a)(2) of K.S.A 66-1,176 by adding two additional factors the city must consider for selecting any electric supplier being offered a franchise in the newly annexed territory. Those factors are:

(a)(2)(J): Proposals from any retail electric supplier holding a certificate in the annexed area; and
(a)(2)(K): Whether the selection is in the best interests of the public.

SB 323 does not provide any criteria on how the city is to evaluate the retail electric supplier’s proposal or provide guidance for the city in determining the best interests of the public.

Paragraph 4 of SB 323 would amend K.S.A. 66-1,176 to require a city to file its selection for an electric supplier of the annexed territory along with its answers to the 11 factors in section (a)(2) with the Corporation Commission. SB 323 requires this information to be filed with the Commission regardless of any disputes between the city or potential electric suppliers.

SB 323 allows the retail electric supplier servicing the territory prior to annexation to request the Commission review the city’s selection process. If such a request is made, the Commission shall determine if the 11 factors in section (a)(2) were evaluated properly by the city in making the electric supplier selection, and it must determine if the selection process was just, reasonable, reasonably efficient or sufficient, not unduly preferential or unjustly discriminatory and in the best interests of the public. Although these seven abstract adjectives are similar in nature, SB 323 requires the Commission to consider each one along with the other 11 factors in the bill.

If the Commission denies the city’s selection of retail electric provider for the newly annexed area, the city may select a different provider after applying the 11 factor test and resubmit its selection. The city may choose the same provider it selected in its first evaluation, but ostensibly, it would re-evaluate the 11 factors based on the guidance provided by the Commission’s first order in the matter.

Regardless of the complexity of the project, the process as envisioned by K.S.A 66-1,176 and amended by SB 323 is a workable process, and Staff has experience dealing with abstract terms such as “unjustly discriminatory”. Again our biggest concern remains the short timeframe within which SB 323 requires the Commission to reach a decision.

Because SB 323 is amending K.S.A. 66-1,176, Staff would respectfully suggest the committee consider two additional modifications to the statute that we believe will clarify and update the current law.

First, Staff recommends a change to Section 1 of the bill to limit the scope of the law to only those cities which operate electric distribution systems for the retail supply of electricity. In its current form, the law would allow any city to select a retail electric supplier for a newly annexed territory. The intent of the statute appears to be limited to only those cities that operate electric distribution

systems. To avoid confusion in the future, Staff believes the following language would clarify this intent:

Section 1. K.S.A. 66-1,176 is hereby amended as follows: 66-1,176 (a) (1) Whenever a city that owns and operates an electric utility furnishing retail electric service to the public proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier....

The second change to existing language we offer for your consideration is found in subparagraph (c)(1). In its definition of the term “depreciated replacement costs”, this paragraph identifies the book depreciation rates of the selling utility as those “filed and approved by the state corporation commission, which are in effect at the time of the acquisition”. Although such a filing may be available for the electric utilities regulated by the Commission, nearly all electric cooperative public utilities and municipal electric public utilities in Kansas are exempt from Commission jurisdiction.¹ Such utilities would not have book depreciation rates filed with or approved by the Commission.

To update this requirement in 66-1,176, Staff recommends the following amendment be considered in SB 323:

(c)(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated pursuant to subsection (a). As used in this paragraph, "depreciated replacement cost" shall mean the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility ~~as filed with and approved by the state corporation commission,~~ which are in effect at the time of acquisition;

Thank you for the opportunity to offer our perspective on the proposed bill and the opportunity to appear before your committee.

¹ See K.S.A. 66-104b, 66-104d, and 66-104f.