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REVISOR of STATUTES

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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Energy, Utilities and Telecommunications
From: Nick Myers, Office of Revisor of Statutes
Date: February 19, 2018
Subject: Substitute for Senate Bill 323

Substitute for Senate Bill 323 would make amendments to statutes that relate to municipal energy agencies, electric cooperatives, and retail electric service territory when land is annexed by a city.

Municipal Energy Agency Amendments

Municipal energy agencies are governed by the provisions of the municipal energy agency act (K.S.A. 12-885 through 12-8,111). K.S.A 12-8,111 authorizes municipal energy agencies to operate as public utilities in the state without first obtaining a certificate of public convenience and necessity from the Kansas Corporation Commission. Current law also provides that, except with respect to such certificate, municipal energy agencies shall be subject to the jurisdiction of the KCC in the same manner as a public utility.

Section 1 of SB 323 would amend K.S.A. 12-8,111 relating to the jurisdiction of the KCC over municipal energy agencies. New language in subsection (a) would require a municipal energy agency to file for a certificate for transmission rights for any electric facilities used to transmit electricity that are constructed in the certificated territory of a retail electric supplier under the retail electric suppliers act. When considering such transmission rights certificate, the KCC would be required to apply the provisions of the retail electric suppliers act to a municipal energy agency to the same extent the KCC applies such provisions to a retail electric supplier under such act.

New subsections (c) through (l) of section 1 would authorize municipal energy agencies to elect to be exempt from the jurisdiction, regulation, supervision, and control of the KCC. To be exempt from KCC jurisdiction, a municipal energy agency would be required to hold an

election of the voting members, provide notice of the election to its members, and vote pursuant to the governing documents of the municipal energy agency. Upon an affirmative vote of a majority of the voting members, the municipal energy agency would be exempt from KCC jurisdiction.

New subsection (g) would provide that the KCC would still have authority over an exempt municipal energy agency with regard to: (1) Service territory; (2) charges, fees or tariffs for transmission services other than charges, fees or tariffs to its own members or charges, fees or tariffs for transmission services that are recovered through an open access transmission tariff of a regional transmission organization which has its rates approved by the Federal Energy Regulatory Commission; (3) sales of power for resale, other than sales to its own members; and (4) wire stringing, transmission line siting, and the extension of electric facilities used to transmit electricity. Additionally, the KCC would be authorized to petition the FERC if it finds that any interstate rates or charges are unjust, unreasonable, or violate rules and regulations of the FERC.

Under new subsection (h), the KCC would be authorized to investigate the rates and charges of an exempt municipal energy agency if, not more than one year after a municipal energy agency changes its rates, 20% of the municipal energy agency's voting members petition the KCC to investigate the change. If the KCC finds that the new rates are unjust or unreasonable, the KCC would then have the authority to fix the rates of the exempt municipal energy agency.

Under new subsections (i) through (k), an exempt municipal energy agency would be required to provide notice of rate changes to its members, make all rates and charges available to the public, and provide notice to its members of the right to request the KCC to review of a rate change.

Electric Cooperative Amendments

Current law authorizes electric cooperatives to elect to be exempt from the jurisdiction, regulation, supervision, and control of the KCC. Even if an electric cooperative is exempt, the KCC retains authority over a cooperative with regard to: (1) service territory; (2) charges, fees or tariffs for transmission services; (3) sales of power for resale except for certain sales between a cooperative; and (4) wire stringing and transmission line siting.

Section 2 of SB 323 would add a provision providing that the KCC would not have authority over an exempt electric cooperative with regard to charges or fees for transmission

services that are recovered through an open access transmission tariff of a regional transmission organization which has its rates approved by the FERC. Another new provision would authorize the KCC to petition the FERC if it finds that any interstate rates or charges are unjust, unreasonable, or violate rules and regulations of the FERC.

Retail Electric Service Territory Amendments

Currently, K.S.A. 66-1,176 provides procedures for determinations of retail electric service territory when a city annexes land that is located within the certified territory of a retail electric supplier. Under current law, a city must select and grant a franchise to a retail electric supplier for such retail electric supplier to continue operating within the newly annexed area. If the retail electric supplier is not selected to enter into a franchise agreement with the city, the rights of such retail electric supplier are statutorily terminated 180 days from the date of annexation. SB 323 would amend certain procedures relating to this process.

Current law provides that a city must provide notice to the retail electric supplier of a proposal to annex land pursuant to K.S.A. 12-520a relating to notice of annexation procedures. Under SB 323, a city would be required to provide notice to the retail electric supplier no less than 30 days prior to the city making a selection for a franchise agreement.

Current law provides that a city is authorized to select which retail electric supplier receives a franchise to operate within the annexed area. When making this selection, the city is required to consider certain factors including: (1) The public convenience and necessity; (2) rates of various suppliers; (3) customer desires; (4) economic impact on the suppliers; (5) economic impact on the customers; (6) the operational abilities to serve the annexed area; (7) avoiding the wasteful duplication of facilities; (8) avoiding unnecessary encumbrance on the landscape; and (9) preventing the waste of materials and natural resources.

SB 323 would require a city to consider two additional factors including proposals from retail electric suppliers holding a certificate in the annexed area and whether the selection is in the public interest as it relates to all the factors. SB 323 would also require a city to produce a public record of the city's deliberations upon each factor and the basis for the city's selection. A city would be required to make such record available within 10 days following the city's selection.

SB 323 would provide that, within 30 days after the city has made a selection, any retail electric supplier aggrieved by a city's selection could file an appeal of such selection with the

district court. The district court would determine whether the city complied with its obligations and whether the selection was based on substantial, competent evidence. The district court would be authorized to take additional evidence on any of the above-mentioned factors.

Current law provides that, when the service rights of a retail electric service provider are terminated after annexation, such retail electric service provider is entitled to fair and reasonable compensation from the supplier subsequently authorized to provide retail electric service in the annexed area. If compensation is not mutually agreed upon, such compensation is statutorily determined as the sum of: (1) The depreciated replacement cost for the electric facilities in the area; (2) reasonable costs of detaching and reintegrating electric system facilities; (3) two times the gross revenues attributable to the customers in the area during the 12 months next preceding the date of transfer; and (4) state and federal tax liability created by the taxable income pursuant to the compensation.

SB 323 would add a fifth compensation paragraph to include compensation in an amount equal to 8.5% of the gross revenues of total retail sales attributable to new customers in the area for a period of 10 years following the date of termination. Payments of this amount would be required to be made in annual installments. The terminated retail electric supplier would have the right to audit the subsequent supplier's financial records with respect to such territory to determine the amounts due pursuant to this provision.

Current law, in K.S.A. 66-1,176b, provides termination procedures for when a valid franchise is in effect. SB 323 would provide that if a city enters into a franchise agreement with retail electric supplier to provide electric service in a newly annexed area, and the city then terminates such agreement within 10 years after such agreement was effectuated, the retail electric supplier would be entitled to compensation as provided in K.S.A. 66-1,176, as opposed to the compensation provided when a franchise agreement is terminated pursuant to K.S.A. 66-1,176b.