

## 2020 Kansas Statutes

**12-8,111. Municipal energy agencies not subject to commission jurisdiction; conditions; exceptions; requirements for certificates of public convenience; jurisdiction of corporation commission.** (a) The provisions of K.S.A. 12-885 through 12-8,109, and amendments thereto, shall constitute a certificate of public convenience, and any municipal energy agency is authorized to operate as a public utility pursuant to such provisions without obtaining a certificate described in K.S.A. 66-131, and amendments thereto, except a municipal energy agency shall be required 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, as defined in K.S.A. 66-1,170, and amendments thereto, after the effective date of this section. In determining public convenience and necessity, the state corporation commission shall apply the provisions of K.S.A. 66-1,170 et seq., and amendments thereto, to a municipal energy agency to the same extent it does to a retail electric supplier, as defined in K.S.A. 66-1,170, and amendments thereto.

(b) Except with respect to such certificate described in subsection (a), any municipal energy agency created under the provisions of K.S.A. 12-885 through 12-8,109, and amendments thereto, shall be subject to the jurisdiction of the state corporation commission in the same manner as a public utility.

(c) Except as otherwise provided in subsection (g), a municipal energy agency may elect to be exempt from the jurisdiction, regulation, supervision and control of the state corporation commission by complying with the provisions of subsection (d).

(d) To be exempt under subsection (c), a municipal energy agency shall have an election of its voting members as established in the governing documents of the municipal energy agency as follows:

(1) An election under this subsection may be called by the governing body of the municipal energy agency or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10% of the members of the municipal energy agency.

(2) The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 nor more than 45 days before the date of the meeting.

(3) If the municipal energy agency mails information to its members regarding the proposition for deregulation other than notice of the election, the municipal energy agency shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than 1% of the municipal energy agency's members. All expenses incidental to mailing the additional information, including any additional postage required to mail such additional information, shall be paid by the signatories to the petition.

(4) If the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the municipal energy agency shall notify the state corporation commission in writing of the results within 10 days after the date of the election.

(5) Voting on the proposition for deregulation shall be in accordance with the governing documents of the municipal energy agency.

(e) A municipal energy agency exempt under this section may elect to terminate its exemption in the same manner as prescribed in subsection (d).

(f) An election under subsection (d) or (e) may be held not more than once every two years.

(g) Nothing in this section shall be construed to affect the authority of the state corporation commission, as otherwise provided by law, over a 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 those 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 pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments thereto. Nothing in this subsection shall be construed to affect the authority of the commission pursuant to K.S.A. 66-144, and amendments thereto.

(h) (1) Notwithstanding a municipal energy agency's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of charges or rates of such municipal energy agency if there is filed with the commission, not more than one year after a change in such municipal energy agency's rates, joint rates, tolls, charges and exactions, classifications or schedules of charges or rates, a petition signed by not less than 20% of the municipal energy agency's voting members as established in the governing documents of the municipal energy agency. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of charges or rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of charges or rates as are just and reasonable.

(2) The municipal energy agency's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates complained of shall remain in effect subject to change or refund pending the state corporation commission's investigation and final order.

(i) (1) If a municipal energy agency is exempt under this section, not less than 10 days' notice of the time and place of any meeting of the voting members as established in the governing documents of the municipal energy agency at which rate changes or charges are to be discussed and voted on shall be given to all members of the municipal energy agency and such meeting shall be open to all members.

(2) Violations of this subsection shall be subject to civil penalties and enforcement in the same manner as provided for by K.S.A. 75-4320 and 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et seq., and amendments thereto.

(j) (1) Any municipal energy agency exempt under this section shall maintain a schedule of rates and charges at the municipal energy agency headquarters and shall make copies of such schedule of rates and charges available to the general public during regular business hours.

(2) Any municipal energy agency which fails, neglects or refuses to maintain such copies of schedule of rates and charges under this subsection shall be subject to a civil penalty of not more than \$500.

(k) A municipal energy agency that has elected to be exempt under the provisions of subsection (d) shall include a provision in its notice to its members, either before or after a rate change, of the member's right to request the commission to review the rate change, as allowed in subsection (h).

(l) Nothing in this section shall be construed to affect the single certificated retail service territory of any retail electric supplier, as defined in K.S.A. 66-1,170, and amendments thereto.

**History:** L. 1981, ch. 255, § 2; L. 2018, ch. 6, § 1; Mar. 8.