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Summary of Testimony in Support of Sub. SB 323 – Feb. 19, 2018
Presented by: Bruce Graham, CEO, Kansas Electric Cooperatives, Inc.

Section 3 of Sub. SB 323 amends the provisions of Kansas law related to single certified service territories for electric utilities.

This language is the product of many hours of negotiations between Kansas Electric Cooperatives and Kansas Municipal Utilities and reflects the carefully crafted agreement of the parties involved.

The bill amends the process in which a municipality must engage when determining which utility would serve land annexed by a city -- the municipal or the incumbent certificated utility.

Under the negotiated proposal, the incumbent retail electric supplier will receive no less than 30 days' notice ahead of the city's selection of a retail electric supplier to an area being annexed.

The current list of factors a municipality must consider will be expanded to specifically state any retail electric supplier in the annexed area may present a proposal for continuing electric service into the future. The city must also consider the public interest in selecting a supplier. Another requirement is the municipality must create and make available a record of its deliberations on the selection factors stated in the law.

The original SB 323 provided for review of the city's selection before the Kansas Corporation Commission (KCC). The negotiated agreement removes the KCC review and returns the appeal to district court.

Sub. SB 323 will implement a compensation component for future development in annexed territory, something missing in current law. If the previously certificated utility is not selected to serve the annexed area going forward, and parties cannot agree on compensation, compensation will be 8.5 percent of gross revenue for new customers in the annexed territory. That compensation formula will apply to the area being annexed for a 10 year period from the date service is terminated. The compensation formula in current law for existing customers in an annexed area remains unchanged.

All of the provisions of the bill become effective upon publication in the Kansas Register.

Nothing in this bill prohibits or restricts the ability of a municipality to proceed with an annexation. If the revised process is achieved, the municipality can proceed and the certified electric territory will be amended.

—end—



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HOUSE ENERGY, UTILITIES AND TELECOMMUNICATIONS COMMITTEE

Testimony in Support of Sub. SB 323 – Feb. 19, 2018

Presented by:

Bruce Graham, Chief Executive Officer, Kansas Electric Cooperatives, Inc.

Chairman Seiwert and members of the House Committee on Energy, Utilities and Telecommunications, thank you for the opportunity to appear today in support of Sub. SB 323. I am Bruce Graham, CEO of the Kansas Electric Cooperatives, Inc. KEC is a voluntary membership association that serves 28 not-for-profit distribution electric cooperatives and three generation and transmission electric cooperatives in Kansas.

This bill covers three significant topics and I will address Section 3, beginning on page 6. The provisions of this section are a further refinement of the service territory act that was originally approved by the Kansas Legislature in 1976. That action directed the Kansas Corporation Commission (KCC) to assign utilities a territory that would be served by a single provider. Prior to 1976, the state allowed dual, overlapping certification but properly determined that exclusive territory was in the public interest to avoid duplication of poles and wires, unnecessary encumbrance of the landscape, and permit utilities to plan a generation, transmission and distribution system to serve that territory. Along with exclusive service boundaries, came an obligation to deliver electricity to anyone desiring to live in that territory.

In 2002, an agreement between utilities in the state amended territory legislation to require a municipality to consider nine factors as part of the process of determining which utility would serve land annexed by a city -- the municipal or the incumbent certificated utility. Nothing in that 2002 act prohibited annexation, it simply sets a standard for evaluation of service providers in the public interest.

Both Colin Hansen, Executive Director of Kansas Municipal Utilities (KMU), and myself were closely involved in the discussions that culminated in the 2002 legislation. One of the goals was to engage the municipality and the incumbent certified utility in negotiations that would provide the incumbent utility, usually an electric cooperative, with an opportunity to present a proposal to maintain service in an area proposed to be annexed.

Since passage of the law, the legislative intent has been recognized in some cases and there have been discussions between the entities. In other cases, the legislative intent has not been fully observed.

In 2014, KEC contacted KMU to discuss this and other concerns with the process. Both organizations agreed that a first step would be to create a guidelines document to refresh all parties on the process and encourage productive discussions in advance of a decision on the service provider. That document was crafted by a task force of members from both organizations and distributed in 2015. The guidelines document is simply a reminder of the statutory requirements. It goes on to suggest initiatives for negotiations but does not create any new requirements.

The provisions of Sub. SB 323 related to service territory will put in statute many of those voluntary recommendations. Representatives of both KMU and KEC have agreed to the following amendments to current statute:

1. The incumbent retail electric supplier will receive notice no less than 30 days ahead of the municipality's selection of a retail electric supplier for an area being annexed.
2. The current list of statutory factors a municipality must consider will be expanded to specifically state any retail electric supplier in the annexed area may present a proposal for continuing electric service into the future. The municipality must also consider the public interest in selecting a supplier.
3. The municipality must create and make available a record of its deliberations on the selection factors stated in the law.
4. The original SB 323 provided for review of the municipality's selection before the Kansas Corporation Commission (KCC). The negotiated agreement removes the KCC review and returns the appeal to district court as stated in current law.
5. Current law provides a compensation formula to the incumbent utility for customers they lose in an annexed area. That remains unchanged. A compensation component for future development in annexed territory is included in this agreed upon proposal. If the previously certificated utility is not selected to serve the annexed area going forward, and parties cannot agree on compensation, compensation will be 8.5 percent of gross revenue for new customers in the annexed territory. That compensation formula will apply to the area being annexed for a 10 year period from the date service is terminated.
6. All of the provisions of Sub. SB 323 become effective upon publication in the Kansas Register.

Nothing in this bill prohibits or restricts the ability of a municipality to proceed with an annexation. If the revised process is achieved, the municipality can proceed and the certified electric territory will be amended.

We know many in the Kansas Legislature were hoping we could find a mutual solution between our parties that will be in the best interests of the public. KEC and KMU believe we have that in the package before you today. Sub. SB 323 is the product of many hours of negotiations and currently reflects the carefully crafted agreement of the parties involved. We hope the Committee and the Kansas Legislature will see the merits of these provisions and we respectfully request the bill be approved as it is presented to you today, without further amendment. Thank you.