



*Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner*

February 6, 2008

EXECUTIVE SUMMARY: SB 515

SB Bill 515, specifically Section 34, as drafted, would essentially allow any utility in Kansas to restructure and deregulate to the detriment of customers who have no representation at the decision-making level of their utility, which goes far beyond the intent of this bill. As drafted, this language would significantly alter the long standing regulatory governing public utilities in Kansas. Furthermore, the changes, as drafted could undermine protective measures taken in specific prior Orders of the Commission approving agreements among interested utilities and parties.

- ▶ If the Legislature determines SB 515 should be enacted, Section 34 should be narrowly tailored to eliminate unintended consequences.
- ▶ If the proposed language contained in Section 34 remains unchanged, any public utility in Kansas could simply alter its corporate structure, become a limited liability company, and evade regulation by the Kansas Corporation Commission and customer representation traditionally provided in a cooperative.
- ▶ By accepting the recommended changes of the Kansas Corporation Commission the Legislature will maintain the intent of Section 34 without compromising the ability of the Kansas Corporation Commission to regulate entities remaining under its jurisdiction and control.

- ▶ If the Legislature enacts SB 515, the Kansas Corporation Commission recommends the following changes to avoid unintended results that are contrary to the intent of the bill and negatively impact Kansas ratepayers:
 - Section 34(a) should read: "As used in this section, 'cooperative' means any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; or any limited liability company or corporation providing electric service at wholesale in the state of Kansas, owned by four or more electric cooperatives that provide retail service in the state of Kansas."

Section 34(f) should read: "Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory; charges, fees or tariffs for transmission services; sales of power for resale, other than sales between a cooperative as defined in subsection (a), that does not provide retail electric service and an owner of such cooperative; wire-stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-170 et seq., or 66-1,177 et seq., and amendments thereto.



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TESTIMONY BEFORE THE SENATE UTILITIES COMMITTEE

SB 515

Chairperson Emler and Distinguished Members of the Committee:

My name is Patrick T. Smith. I am Litigation Counsel for the Kansas Corporation Commission ("KCC" or "the Commission"). I am appearing today on behalf of the Kansas Corporation Commissioners and Staff.

My purpose in testifying before you today is to express the Commission's concerns regarding Senate Bill 515, specifically Section 34 containing amendments to K.S.A. 66-104d that, as drafted, would significantly alter the long standing KCC regulatory framework governing public utilities in Kansas. Furthermore, the changes, as drafted could undermine protective measures taken in specific prior Orders of the Commission approving agreements among interested utilities and parties.

My testimony will explain the unintended consequences of the proposed language, and the effect on Kansas customers. I will also discuss changes to the language of Sec. 34 of SB 515 that we believe could successfully mitigate the unintended consequences but still achieve the original intent of Sec. 34 should the bill move forward in the legislative process.

I. Sunflower Electric Power Company's Intent.

Commission Staff met with representatives of Sunflower Electric Power Company ("Sunflower") in mid-January to discuss what would become Sec. 34 of SB 515. Sunflower expressed its intent to establish a means for certain companies, including Sunflower, MKBC, and their common owner cooperatives, to opt-out of KCC regulation in favor of self-regulation by the cooperative. As two entities essentially owned by the same 6 electric cooperatives, the intent was to allow Sunflower and MKBC to have unregulated exchange of power, resources and compensation with their mutual owner cooperatives.

However, the actual language of Sec. 34 of SB 515, as currently proposed, is overbroad and has far-reaching, unintended consequences beyond the specific intended purpose expressed by Sunflower. For example, C-corp utilities such as Southern Pioneer could opt-out of regulation without providing any customer representation at the decision-making level thus leaving those customers unprotected and without say in the rate-making process.

II. Sec. 34 – Amendment to K.S.A. 66-104d

Sec. 34 has two subsections, (a) and (f), that are of particular concern to the KCC:

Subsection (a)

Subsection (a) amends K.S.A. 66-104d which is the statute authorizing cooperatives with fewer than 15,000 customers to opt-out of regulation by the KCC. The proposed amendment would open the definition of such cooperatives to “any member-owned corporation or limited liability company” providing electric service either at retail or wholesale. This would eliminate the 15,000 customer cap on cooperatives and open up the op-out authority to utilities with other corporate structures. Although the intent was to encompass Sunflower (a large member-owned company cooperative) and MKEC (an LLC), the proposed language goes well beyond this intent and could potentially allow any Kansas utility to restructure and opt-out of KCC regulation. Many regulated utilities could argue they are a “member owned company” or simply convert to an LLC and opt-out of KCC regulation.

The KCC has two specific concerns with this unintended consequence:

1) Utility customers would not have any representation in the decision-making process for their rates or utility operation.

2) The proposed amendments would leave large Kansas utilities open to purchase by private ownership and avoiding KCC or cooperative regulation at the expense of customer protections.

The KCC’s only interest in this bill is to point out these unintended consequences and recommend to the legislature that if SB 515 moves forward in the approval process, the definition of a “cooperative” that may opt-out of KCC regulation should be limited to the intended category of Kansas utilities: **Any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; or any limited liability company or corporation providing electric service at wholesale in the state of Kansas, owned by four or more electric cooperatives that provide retail electric service.**

This would limit the ability for a utility to opt-out of KCC regulation without proper customer representation at the decision-making level. (*i.e.* It would only allow a true cooperative, as defined by the electric cooperative act, to regulate itself.) This would also limit self-regulation to LLC’s that are owned by multiple retail electric cooperatives (MKEC).

Subsection (f)

Subsection (f) amends K.S.A. 66-104d(f) which maintains the KCC’s jurisdiction over a cooperative with regard to key issues such as service territories, transmission services, sales of wholesale power, and transmission siting. The proposed amendment to subsection (f) inserts an exception to KCC jurisdiction for sales of wholesale power “between a member-owned generation and transmission cooperative and a member of such cooperative.” This language is

intended to allow entities such as Sunflower, MKEC, and their member-owners to transact business in a self-regulated manner as determined by the member cooperatives.

If the legislature decides to move forward with this bill, the Commission's concern is that the definition of "cooperative" in proposed subsection (a) would allow unregulated transactions involving electric distribution companies that do not have customer representation in the decision-making process regarding retail sales rates. In order to protect customers that are not represented in the cooperative, the KCC recommends an amendment to subsection (f) to tie the definition of a generation and transmission "cooperative" to the KCC's definition in subsection (a) and limit the self-regulated transactions to those between the generation and transmission cooperative and its member-owners (the Sunflower/MKEC scenario). Such language would read: **Nothing in this section shall be construed to affect . . . the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to . . . sales of power for resale other than sales between a generation and transmission cooperative, as defined in subsection (a), that does not provide retail electric service and an owner of such cooperative.**

III. Conclusion

In sum, there are substantial unintended consequences related to the proposed changes in K.S.A. 66-104d, as drafted. If the legislature elects to move forward with this bill, the suggested changes herein would eliminate many of the unintended consequences identified by the Kansas Corporation Commission while maintaining the intent of the bill.

Thank you for the opportunity to appear before you today. I am happy to entertain any questions that you may have.

Senate Bill 515

Current Proposed Language

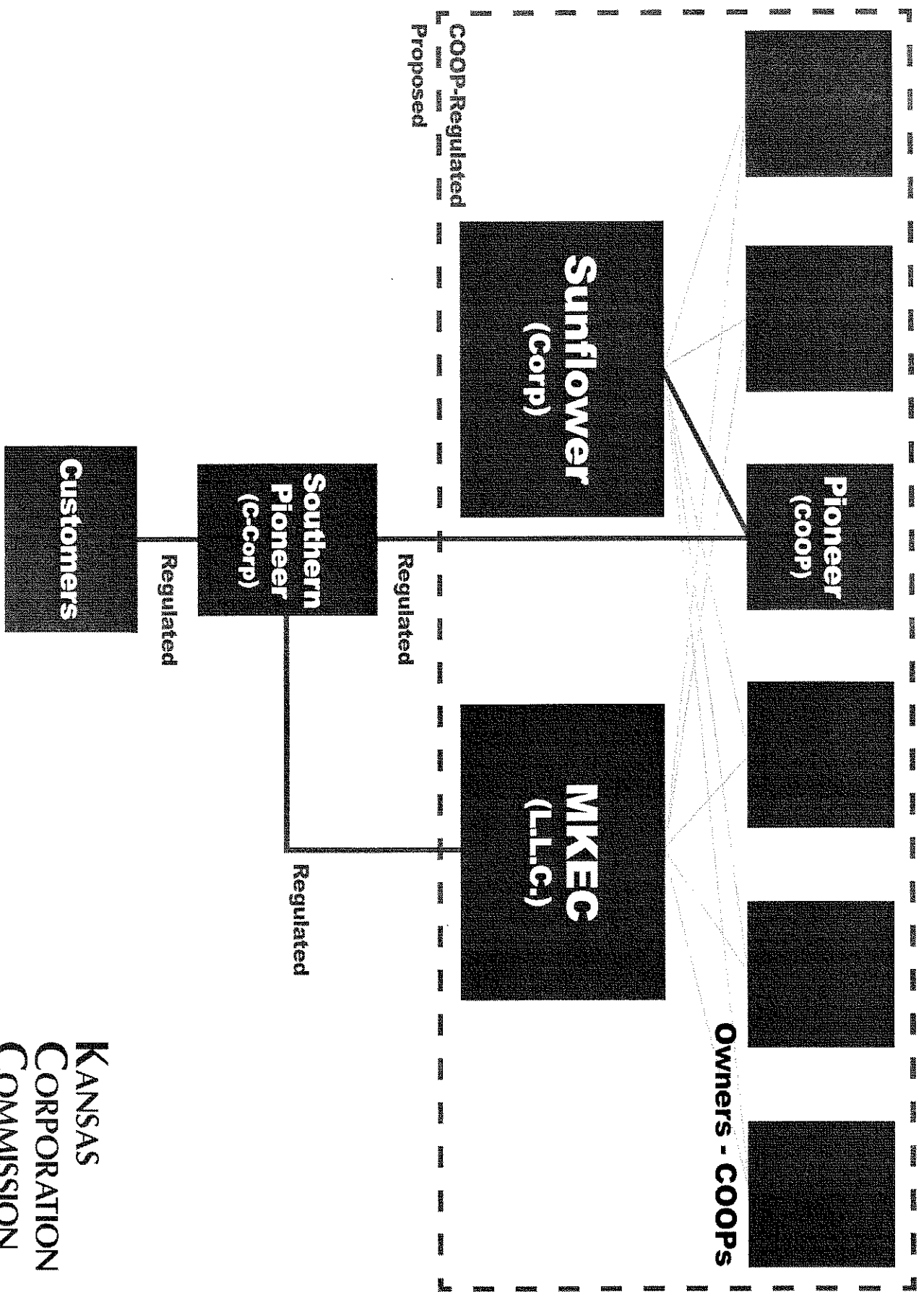
Sec. 34. K.S.A. 66-104d is hereby amended to read as follows: 66-104d. (a) As used in this section, "cooperative" means any cooperative as defined by K.S.A. 17-4603, and amendments thereto, which has fewer than 15,000 customers and which provides power principally at retail member-owned corporation or limited liability company providing electric service either at retail or wholesale in the state of Kansas.

(f) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory, charges, fees or tariffs for transmission services, sales of power for resale other than sales between a member-owned generation and transmission cooperative and a member of such cooperative, wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq., or 66-1,177 et seq., and amendments thereto.

KCC's Proposed Language Amending SB 515

Sec. 34. K.S.A. 66-104d is hereby amended to read as follows: 66-104d. (a) As used in this section, "cooperative" means any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; member-owned corporation or any limited liability company or corporation providing electric service either at retail or at wholesale in the state of Kansas, owned by four or more electric cooperatives that provide retail electric service.

(f) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory, charges, fees or tariffs for transmission services, sales of power for resale other than sales between a member-owned generation and transmission cooperative, as defined in subsection (a), that does not provide retail electric service and a member an owner of such cooperative, wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq., or 66-1,177 et seq., and amendments thereto.



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