



February 20, 2013

Testimony on Kansas Restraint of Trade Act Bills  
HB 2224, HB 2225, HB 2275

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Chairman Lance Kinzer  
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Chairman Kinzer, Vice Chairman Bruchman, Ranking Minority Member Pauls, and distinguished members of the House Committee on Judiciary, I want to thank you for this opportunity to testify on behalf of Kansas Electric Cooperatives, Inc. (KEC) concerning the bills on the Kansas Restraint of Trade Act (KRTA) (HB 2224, HB 2225, and HB 2275).

KEC joins and supports the testimony provided by Leslie Kaufman of the Kansas Cooperative Council. This testimony will not repeat testimony she has provided. The purpose of KEC's testimony is to specifically advocate for a clarification to an exemption to KRTA for your rural electric cooperatives (RECs) in Kansas. A balloon amendment is attached, which KEC requests the Committee adopt.

In HB 2224, an exemption is not currently set forth in New Section 1(c) to exempt RECs, and KEC believes such an exemption is necessary. HB 2225 is a repeal of KRTA, and thus no exemptions are contained in the bill. In HB 2275, a partial exemption concerning RECs is set forth in New Section 1(c)(7). The exemption reads:

“(7) any company or corporation that complies with the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto; ...”

While this is a good start, the exemption in HB 2275 does not include all RECs in Kansas. There are certain RECs that are governed by and organized under Kansas statutes other than the Electric Cooperative Act. Therefore, KEC requests this Committee, in the final amended form of KRTA, include the following language to clarify an exemption for all RECs in Kansas:

“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 any manner therein provided; or any limited liability company or corporation, or wholly owned subsidiary thereof, providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any member-owned corporation formed prior to 2004.”

This language mirrors language set forth in K.S.A. 2012 Supp. 66-104d(a), which is the definition of an electric cooperative public utility. It adds the phrase “or wholly owned subsidiary thereof” to include one of KEC’s members that has become a subsidiary of another REC since that definition was crafted. Each element in the definition of K.S.A 2012 Supp. 66-104d(a) was carefully worded to include all member-owned electric cooperatives at the time, including retail providers, and generation and transmission (G&T) providers.

I wish also to point your attention to K.S.A. 50-148(b), a statute in KRTA:

**50-148. Trade and person defined.** As used in this act: (a) "Trade" means the business of buying or selling any commodity of general use within the state; and  
(b) "person" or "persons" includes individuals, corporations, limited liability companies, general partnerships, limited partnerships, firms, companies, voluntary associations and other associations or business entities, existing under or authorized by the state of Kansas, or the laws of any other state, territory, or foreign country. ***The provisions of this act shall not apply to persons whose business is under the supervision and control of the state corporation commission or the banking department.*** [Emphasis added.]

In this statute of KRTA, an exemption is set forth to make the provisions of KRTA not applicable to entities under the supervision and control of the Kansas Corporation Commission. KEC believes RECs are exempt from KRTA under this provision, even if the REC has deregulated from Commission jurisdiction for the purpose of setting rates. As set forth in K.S.A. 2012 Supp. 66-104d(f), deregulated RECs remain under the supervision and control of the Commission with regard to certified service territory; charges, fees or tariffs for transmission services; wire stringing rules; transmission line siting; and sales of power for resale, other than sales between a cooperative that does not provide retail electric service and an owner of such cooperative.

However, KEC still requests this Committee include the full exemption for RECs as set forth above, which would clarify and reduce any uncertainty as to the application of the exemption in K.S.A. 50-148(b), were it to be faced with a legal challenge. KEC believes including this full exemption for RECs would further clarify the intent of the Kansas Judicial Council committees examining this issue to exempt all cooperatives in Kansas from KRTA.

Thank you again for the opportunity to testify on behalf of KEC.

Best,



Melissa Doeblin  
Manager of Government Relations  
Kansas Electric Cooperatives, Inc.

*Kansas Electric Cooperatives, Inc. (KEC) is the Kansas statewide service organization for 29 electric distribution cooperatives and three generation and transmission cooperatives. Formed on August 18, 1941, and headquartered in Topeka, KEC represents the interests and provides needed services and programs to electric cooperatives that serve member/consumers within the state. KEC functions for the mutual benefit of its members to promote rural electrification and foster the principles on which electric cooperatives were founded.*

**HOUSE BILL No. 2224**

By Committee on Judiciary

2-5

1 AN ACT concerning the Kansas restraint of trade act, amending K.S.A.  
2 50-101 and 50-112 and repealing the existing sections.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. (a) The purpose of this section, and the amendments  
6 to K.S.A. 50-101 and 50-112 by this act, is to clarify and reduce any  
7 uncertainty or ambiguity as to the application of the Kansas restraint of  
8 trade act and applicable evidentiary standards to certain types of business  
9 contracts, agreements and arrangements that are not intended to  
10 unreasonably restrain trade or commerce and do not contravene public  
11 welfare.

12 (b) (1) Except as provided in subsection (b)(2), an arrangement,  
13 contract, agreement, trust, understanding or combination shall not be  
14 deemed a trust pursuant to the Kansas restraint of trade act, K.S.A. 50-101  
15 through 50-162, and amendments thereto, and shall not be deemed  
16 unlawful, void, prohibited or wrongful under any provision of the Kansas  
17 restraint of trade act, K.S.A. 50-101 through 50-162, and amendments  
18 thereto, if that arrangement, contract, agreement, trust, understanding or  
19 combination is a reasonable restraint of trade or commerce. An  
20 arrangement, contract, agreement, trust, understanding or combination is a  
21 reasonable restraint of trade or commerce if such restraint is reasonable in  
22 view of all of the facts and circumstances of the particular case and does  
23 not contravene public welfare.

24 (2) The reasonableness standard described in subsection (b)(1) shall  
25 not apply to any claim of horizontal price-fixing between or among  
26 competitors that otherwise violates the Kansas restraint of trade act,  
27 K.S.A. 50-101 through 50-162, and amendments thereto.

28 (c) The Kansas restraint of trade act, K.S.A. 50-101 through 50-162,  
29 and amendments thereto, shall not apply to:

30 (1) Any association that complies with the provisions and application  
31 of article 16 of chapter 17 of the Kansas Statutes Annotated, and  
32 amendments thereto, the cooperative marketing act;

33 (2) any trust, agreement or arrangement that complies with the  
34 provisions and application of 7 U.S.C. § 291 et seq., the Capper-Volstead  
35 act;

36 (3) any trust, agreement or arrangement that complies with the

1 provisions and application of 7 U.S.C. § 181 et seq, the packers and  
2 stockyards act, ~~and~~

3 (4) any franchise agreements or covenants not to compete,

4 (d) If any provision of this section or the application thereof to any  
5 person or circumstance is held invalid, the invalidity does not affect other  
6 provisions or applications of this section which can be given effect without  
7 the invalid provision or application, and to this end the provisions of this  
8 section are severable.

9 (e) This section shall be a part of and supplemental to the Kansas  
10 restraint of trade act, K.S.A. 50-101 through 50-162, and amendments  
11 thereto.

12 Sec. 2. K.S.A. 50-101 is hereby amended to read as follows: 50-101.  
13 *Except as provided in section 1, and amendments thereto*, a trust is a  
14 combination of capital, skill, or acts, by two or more persons, for either,  
15 any or all of the following purposes:

16 *First.* To create or carry out restrictions in trade or commerce, or aids to  
17 commerce, or to carry out restrictions in the full and free pursuit of any  
18 business authorized or permitted by the laws of this state.

19 *Second.* To increase or reduce the price of merchandise, produce or  
20 commodities, or to control the cost or rates of insurance.

21 *Third.* To prevent competition in the manufacture, making,  
22 transportation, sale or purchase of merchandise, produce or commodities,  
23 or to prevent competition in aids to commerce.

24 *Fourth.* To fix any standard or figure, whereby such person's price to  
25 the public shall be, in any manner, controlled or established, any article or  
26 commodity of merchandise, produce or commerce intended for sale, use or  
27 consumption in this state.

28 *Fifth.* To make or enter into, or execute or carry out, any contract,  
29 obligation or agreement of any kind or description by which such person  
30 shall: (a) Bind or have to bind themselves not to sell, manufacture, dispose  
31 of or transport any article or commodity, or article of trade, use,  
32 merchandise, commerce or consumption below a common standard figure;  
33 (b) agree in any manner to keep the price of such article, commodity  
34 or transportation at a fixed or graded figure;

35 (c) in any manner establish or settle the price of any article or  
36 commodity or transportation between them or themselves and others to  
37 preclude a free and unrestricted competition among themselves or others  
38 in transportation, sale or manufacture of any such article or commodity; or

39 (d) agree to pool, combine or unite any interest they may have in  
40 connection with the manufacture, sale or transportation of any such article  
41 or commodity, that such person's price in any manner is affected. Any such  
42 combinations are hereby declared to be against public policy, unlawful and  
43 void.

; and  
(5) 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 any manner  
therein provided; or any limited  
liability company or corporation, or  
wholly owned subsidiary thereof,  
providing electric service at  
wholesale in the state of Kansas  
that is owned by four or more  
electric cooperatives that provide  
retail service in the state of  
Kansas; or any member-owned  
corporation formed prior to 2004

1 Sec. 3. K.S.A. 50-112 is hereby amended to read as follows: 50-112.  
2 *Except as provided in section 1, and amendments thereto, all*  
3 *arrangements, contracts, agreements, trusts, or combinations between*  
4 *persons made with a view or which tend to prevent full and free*  
5 *competition in the importation, transportation or sale of articles imported*  
6 *into this state, or in the product, manufacture or sale of articles of domestic*  
7 *growth or product of domestic raw material, or for the loan or use of*  
8 *money, or to fix attorney or doctor fees, and all arrangements, contracts,*  
9 *agreements, trusts or combinations between persons, designed or which*  
10 *tend to advance, reduce or control the price or the cost to the producer or*  
11 *to the consumer of any such products or articles, or to control the cost or*  
12 *rate of insurance, or which tend to advance or control the rate of interest*  
13 *for the loan or use of moneys to the borrower, or any other services, are*  
14 *hereby declared to be against public policy, unlawful and void.*  
15 Sec. 4. K.S.A. 50-101 and 50-112 are hereby repealed.  
16 Sec. 5. This act shall take effect and be in force from and after its  
17 publication in the Kansas register.