

2003 SUMMARY OF LEGISLATION ON UTILITIES

The following is a summary of legislation affecting utilities in Kansas. This information was provided by the Legislative Research Department of the Kansas Legislature. A complete summary of all legislation in 2003 can be found at www.kslegislature.org/kldr

Determination of Rate-Making Principles and Treatment

Sub. for SB 104 permits a public utility to file with the Kansas Corporation Commission (KCC) a petition for a determination of the rate-making principles and treatment that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility's investment in either a transmission facility or a generating facility. The petition has to occur prior to the undertaking of construction or participation in either the transmission facility or the generating facility.

If a public utility seeks a determination of rate-making principles and treatment for a generating facility, then as a part of the filing it must submit a description of its conservation measures, demand side management efforts, its ten-year generation and load forecasts, and a description of all power supply alternatives.

If the KCC fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, those principles proposed by the public utility would be deemed to have been approved by the KCC and would be binding for ratemaking purposes during the life of the generating facility or transmission facility or during the term of the contract on a generating facility.

The public utility has one year from the effective date of the determination by the KCC to notify the KCC whether it will construct or participate in the construction of the generating or transmission facility or whether it will perform under terms of the contract.

Under the bill, "transmission facility" means:

- any existing line and supporting structures and equipment being upgraded for the transfer of electricity with an operating voltage of 69 kilovolts or more of electricity; or
- any new line and supporting structures and equipment being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

Also under the bill, the term "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000, annually.

Determination of Rate-Making Principles and Treatment

House Sub. for SB 263 permits a public utility to file with the Kansas Corporation Commission (KCC) a petition for a determination of the rate-making principles and treatment that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility's investment in either a transmission facility or a generating facility. The petition has to occur prior to the undertaking of construction or participation in either the transmission facility or the generating facility.

If a public utility seeks a determination of rate-making principles and treatment for a generating facility,

then as a part of the filing it must submit a description of its conservation measures, demand side management efforts, its ten-year generation and load forecasts, and a description of all power supply alternatives.

If the KCC fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, those principles proposed by the public utility would be deemed to have been approved by the KCC and would be binding for rate-making purposes during the life of the generating facility or transmission facility or during the term of the contract on a generating facility.

The public utility has one year from the effective date of the determination by the KCC to notify the KCC whether it will construct or participate in the construction of the generating or transmission facility or whether it will perform under terms of the contract.

Under the bill, “transmission facility” means (1) any existing line and supporting structures and equipment being upgraded for the transfer of electricity with an operating voltage of 69 kilovolts or more of electricity; or (2) any new line and supporting structures and equipment being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

Also under the bill, the term “contract” means a public utility’s contract for the purchase of electric power in the amount of at least \$5,000,000, annually.

(The substance of the bill was enacted and signed into law as **Sub. for SB 104**. It was later determined that there had been an engrossing error. This bill corrected that error.)

Renewable Energy Cooperatives, Transmission Line Financing, and Interconnection Agreements

HB 2018 enacts the Renewable Energy Electric Generation Cooperative Act. The bill also authorizes the Kansas Development Finance Authority (KDFA) to issue revenue bonds to finance the construction, upgrade, or acquisition of electric transmission lines. Finally, the bill imposes duties on the Kansas Corporation Commission (KCC) related to interconnection agreements between electric utilities and generators of electricity from renewable resources.

Renewable Energy Cooperatives. The Renewable Energy Electric Generation Cooperative Act provides for creation of a cooperative by five or more persons. The purpose of cooperatives created under the act is to generate electricity from renewable resources. All such cooperatives would be nonprofit, membership corporations. Electricity generated by these cooperatives may be sold only at wholesale. Members of these cooperatives must operate generation facilities that use renewable resources and have a capacity of at least 100 kilowatts of electricity.

Members also must agree to either sell at wholesale through the cooperative any excess electricity they generate, or sell through the cooperative any renewable attributes, or both. Renewable attributes are defined by existing law as tradeable renewable energy credits (with or without other features), tradeable emissions credits, emissions offsets or other market instruments created or obtained by use of renewable energy resources or technologies. Members who do not implement the agreement within, at most, two years no longer qualify for membership in the cooperative. The bill provides for a cooperative’s bylaws to place other conditions on membership.

The bill defines “renewable resources or technologies” to include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration, and landfill gas resources or technologies. “Person” under the bill is defined to include any natural person, firm, association, corporation, limited liability company, business trust, or partnership.

The bill establishes a framework for organization of renewable energy cooperatives that parallels the statutory framework in existing law for other electric cooperatives. In addition, these cooperatives are subject to the authority of the KCC as are other electric utilities. Further, the Commission must approve mergers of renewable energy electric cooperatives.

A renewable energy electric cooperative must pay for its use of existing distribution and transmission systems to transmit electricity, the costs of a generation interconnect study (if such a study is required), the costs of transmission system improvements, and other upgrades necessary for system operation. Any such costs are to be determined through negotiations between the cooperative and the owners of the distribution or transmission system.

Members of renewable energy electric cooperatives located in the territory of a retail electric supplier may be charged a monthly fee for services provided by the retail supplier. That fee would cover costs of providing standby electric service, distribution system repair and maintenance, and other reasonable costs of being a provider of last resort. Renewable energy cooperatives and cooperatives' members are specifically prohibited from reselling electricity to their providers of last resort.

Transmission Line Financing. The bill also authorizes the K DFA to issue revenue bonds to pay for construction, upgrading, and acquisition of electric transmission lines, and certain related expenses. Transmission lines that are eligible for bond financing are those used for transfer of at least 69 kilovolts of electricity. "Electric transmission line" is defined to mean any line or line extension that is at least five miles long and used for bulk transfer of electricity. The availability of the bond financing mechanism created by the bill is not restricted to renewable energy electric cooperatives. Bonds issued under authority created by the bill are payable from revenue generated from the use of transmission lines.

Interconnection Agreements. Finally, the bill requires that by September 30, 2003, the KCC establish standard provisions, including applicable fees of interconnection agreements between electric public utilities and generators of electricity from renewable resources. This provision of the bill is applicable to parallel electricity generators as well as to renewable energy cooperatives.

Transmission of Electricity

HB 2130 amends existing law regarding siting of electrical power transmission lines. The bill also enacts new law regarding recovery of electricity transmission costs.

In regard to transmission line siting, the bill requires the Kansas Corporation Commission (KCC) to consider specific benefits during its decision making process regarding the reasonableness and necessity of the proposed line location. Benefits enumerated in the bill are those accruing to consumers inside and outside the state and Kansas economic development.

The bill also enacts a new statute allowing electric utilities to pass through to retail customers costs of electric transmission in a manner consistent with the determination of transmission related costs by an appropriate regulatory authority. Those costs will be added to customers' bills as a separate transmission delivery charge. The initial transmission delivery charge will be based on transmission-related costs approved by the KCC in the utility's most recent retail rate filing. When a transmission delivery charge initially becomes effective, the utility's retail rates will be reduced so that the sum of the retail rate and the transmission charge is equal to the retail rate in effect immediately before the transmission charge became effective.

The transmission delivery charge can subsequently be adjusted by the utility any time a transmission related cost is incurred as a result of an order of a regulatory authority with jurisdiction over transmission. Electric utilities are required to file a report with the KCC at least 30 business days prior to changing the transmission

delivery charge. If the KCC determines that all or part of the charge did not result from an order of a regulatory body, the Commission may require the charge to be changed and impose appropriate remedies. A change in the transmission charge will not trigger a review or adjustment of the retail rates in effect at the time of the transmission charge change.

Energy Efficiency Standards

HB 2131 amends the law regarding thermal efficiency standards of commercial, industrial, and residential buildings. Specifically, the bill:

- Designates the International Energy Conservation Code 2003 as the thermal efficiency standard for new commercial and industrial buildings;
- Requires disclosure of residential building energy efficiency information to the buyer or a prospective buyer, upon request or prior to closing; and
- Provides for rewording of the residential energy efficiency disclosure form to refer to the International Energy Conservation Code 2003 and to a Home Energy Rating score of 80 or greater on the Mortgage Industry National Home Energy Rating System Accreditation Standard (June 15, 2002).

Recovery of Security Costs

HB 2374 enacts the Kansas Energy Security Act which directs the Kansas Corporation Commission (KCC) to include specified provisions in its procedures to implement KSA 66-1233. (The cited statute was enacted in 2002 and provides for gas and electric utilities to recover from customers certain costs incurred from implementing security measures implemented to protect electricity and natural gas production and transmission. The 2002 enactment will sunset on July 1, 2004.)

Procedures implemented pursuant to the bill and provisions of the 2002 statute apply to security expenditures made after September 11, 2001. The KCC's determination of whether a security-related expenditure is prudent may not be based on standard regulatory principles and methods of recovery.

Specifically, the bill requires the KCC to:

- Treat as confidential information regarding the amount and method of cost recovery;
- Issue protective orders for filings connected with recovery of security costs to enable the Citizens' Utility Ratepayer Board to receive and review documents if it intervenes in these cases;
- Create procedures that reflect rules of other regulatory entities governing the release of information and documentation submitted to the KCC, its staff, or interveners;
- Prevent the security cost recovery from being identified on customers' bills;
- Provide that the security cost recovery charge be allocated and added to all wholesale and retail rates and future contracts (any contract existing on the effective date of the act, which does not specifically prohibit the addition of these charges, would have security cost recovery charges added);
- Provide for an expedited review of security-related filings;

- Provide for review only of security-related items to ensure that proposed items provide enhanced security;
- Deny any expenditure that is not prudent or is not related to security; and
- Allow recovery of capital expenditures over a period no greater than one-half the usable life of the capital investment.

Hydrocarbon Storage

HB 2448 amends a statute that prohibits underground porosity storage of hydrocarbons (e.g., natural gas or propane) in certain rock formations that contain water with relatively low (less than 5,000 milligrams per liter) salt concentrations. Under the bill, such storage can be continued if the porosity storage facility was in use prior to July 1, 2002.