

2005 Summary of Legislation on Utilities

Corporation Commission Participation in Regional Transmission Organization

HB 2407 enacts a new statute authorizing the Kansas Corporation Commission's representative to a regional transmission organization (RTO) to participate fully in the decision-making activities of the RTO, if the organization is recognized by the Federal Energy Regulatory Commission (FERC) and at least one Kansas electric public utility is a member of the RTO. The bill also provides that authority contained in the bill neither limits the Commission's regulatory jurisdiction nor its authority to appeal decisions of an RTO. The bill specifically would not relieve the Commission of its obligation and authority to ensure that electric public utilities provide efficient and sufficient service.

Utility Emergencies

HB 2461 enacts a new statute as part of the Kansas Emergency Management Act authorizing the Division of Emergency Management to declare a limited emergency related to utility services in certain circumstances. The Division may declare an emergency at the request of any utility when conditions exist that constitute an emergency as described in regulations of the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation.

The bill specifies that an emergency could be declared only for the purpose of exempting drivers of utility service vehicles from limitations on hours of service prescribed by regulations of the Kansas Corporation Commission (KCC). The exemption would be further limited by federal regulations pertinent to such exemptions.

The Adjutant General would be authorized to adopt rules and regulations to implement the act.

Municipal Energy Agencies

HB 2045 amends three statutes that govern municipal energy agencies. Under Kansas law, municipal energy agencies may be formed by two or more cities to secure electricity for the participating cities.

The bill repeals the:

- Minimum size requirement for energy agencies' boards of directors and the requirement that board members reside within one of the participating cities;
- Requirement that energy agencies abide by state budget and cash-basis laws; and
- Requirement that municipal energy agencies make filings with the Secretary of State pursuant to the Uniform Commercial Code to perfect a security interest against personal property or fixtures of the agency.

Kansas Electric Transmission Authority

HB 2263 enacts the Kansas Electric Transmission Authority Act creating the Kansas Electric Transmission Authority (Authority). The purpose of the Authority is to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the state's economy, and facilitate the consumption of Kansas energy through improvements in the state's electric transmission infrastructure. The Authority will fulfill that purpose through building electric transmission facilities or by facilitating the construction, upgrade, and repair of third party transmission facilities.

The bill also enacts a new law authorizing the Kansas Corporation Commission to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities costs associated with the construction or improvement of electric transmission facilities under certain circumstances. Costs covered by the bill are those incurred for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities are subject to the jurisdiction of the Corporation Commission for implementation of the Act.

Finally, the bill amends prior law to authorize the Kansas Corporation Commission (KCC) to determine the reasonableness of and regulate and supervise curtailment of service from a gas gathering system to an end-use customer.

Transmission Authority Governance. The Transmission Authority Board of Directors will be composed of seven voting members: three appointed to staggered four-year terms by the Governor, subject to Senate confirmation; and the chairpersons and ranking minority members of the House and Senate utilities committees.

The Governor's appointees must be qualified Kansas voters who possess special knowledge or have at least five years' managerial experience in the field of electric transmission or generation

development. No more than two gubernatorial appointees may be members of the same political party. A member of the Board appointed by the Governor may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing conducted in accordance with the provisions of the Kansas Administrative Procedure Act. Board members will be paid compensation (\$35/day, or legislative pay), subsistence, expenses, and mileage as provided by statute for other state boards and commissions.

Transmission Authority Powers. In order to carry out the purposes of the Act, the Authority has broad, general authority including the ability to adopt rules and regulations. The Authority also may plan, finance, construct, develop, acquire, own, and dispose of transmission facilities. In addition to general authority to function as a public entity and to implement the Act, the Authority may contract for maintenance and operation of transmission facilities. The Authority cannot directly operate or maintain transmission facilities. The Authority will continue in existence until terminated by law.

Other specific powers of the Authority include the ability to enter into contracts with the Kansas Development Finance Authority (K DFA) which is authorized to issue bonds and provide financing for construction, upgrading, or repair of the Authority's transmission facilities and acquisition of right-of-way for those facilities. K DFA bond revenue also may be used to make loans to finance construction, upgrading, or repair of transmission facilities owned by third parties and acquisition of right-of-way for those facilities.

Transmission facilities financed with K DFA-issued bonds need not be wholly located in Kansas if the majority of the cost of the project is for facilities located within the state and the Kansas Corporation Commission (KCC) certifies that those portions of the project located outside the state will improve the reliability and security of the state's transmission system or will contribute to the long-term well being of Kansas.

The Authority will recover its costs through tariffs of the Southwest Power Pool (SPP) Regional Transmission Organization. If all costs are not recovered through SPP tariffs, the Authority will recover the remainder of its costs through assessments against utilities that benefit from Authority projects and that have retail customers in Kansas. Each utility's assessment will be based on its benefit from the project as determined by the KCC. Electric utilities will recover costs attributable to such assessments from their customers in a manner approved by the KCC, or, in the case of municipal and cooperative electric utilities, by their governing boards.

Transmission Authority Limitations. The Authority may exercise the rights and powers granted by the Act in regard to transmission infrastructure only:

- If private entities are not meeting the need and are not willing to finance and own required new infrastructure; and
- In regard to transmission facilities approved by the SPP.

The Authority is required to publish notice of its intent to provide facilities or services in the *Kansas Register* and a newspaper and trade magazine in the area where the service or facilities will be provided. Private entities will have three months to notify the Authority of their intention and ability to perform the acts, finance, and construct the facilities, or provide the service contemplated by the Authority. If no private entity expresses its intent to build the facility or provide the service, or if the private entity fails to begin the project within six months, the Authority may proceed with the project.

If a private entity begins, but fails to make satisfactory progress toward completion of a project, the Authority may provide notice of its intent to complete the project and proceed to do so if no private entity expresses willingness to complete the project.

Transmission Authority Oversight and Regulation. The Authority is required to provide an annual report to the Governor and the Legislature. The report must include any audit of the Authority performed under the Act. The Legislative Post Audit Committee may authorize financial compliance audits of the Authority. The cost of any post audit will be borne by the Authority.

The Authority is not supervised or subject to regulation by the KCC, except in regard to wire stringing and transmission line siting. In those instances, other existing statutes govern.

Transmission Authority Taxation. The Authority is not required to pay Kansas income tax and its purchases would be exempt from sales tax. The Authority's transmission facilities would be exempt from property tax to the extent they would be exempt if privately owned.

Transmission Authority Cooperation with State and Local Entities. State agencies and local units of government must provide information, assistance, and advice requested by the Authority. Those entities will be reimbursed by the Authority. State agencies and local governments also are authorized to lease, lend, grant, or convey land to the Authority without advertising or obtaining a court order for the transaction.

Transmission Authority State General Fund Loan. Any State General Fund financing provided by the Legislature to the Authority would be a loan to be repaid with interest in a single payment within ten years. Any such loan will not be considered an indebtedness of the state and would accrue interest at the statutory rate set for inactive state accounts.

Transmission Authority Open Meetings and Open Records Acts Exceptions. Exceptions to the Open Meetings and Open Records acts are provided to protect competitive positions of third parties and the security of transmission facilities. Those exceptions apply to:

- Proprietary information obtained with a promise of confidentiality;
- Information about the location of transmission facilities and related security measures; and
- Information about transmission capacity or availability that is not generally available to all electricity market participants.

Other exemptions to the Open Meetings and Open Records Acts also are available to the Authority.

Transmission Authority Board Conflicts of Interest. Board members and staff are required to disclose in writing any interest in contracts or transactions with the Authority. No Authority member or staff with an interest in an Authority transaction may participate in authorization of the transaction.

Board members are required to file statements of substantial interest as required by Kansas' ethics laws. Employees, agents, and advisors of the Authority who have a substantial interest in contracts or transactions with the Authority also are required to file statements of substantial interest.

Recovery of Costs of Electric Transmission Facility Construction and Improvement. In addition, the bill authorizes the KCC to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities costs associated with the construction or improvement of electric transmission facilities under certain circumstances. Costs covered by the bill are those incurred for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities are subject to the jurisdiction of the Corporation Commission for implementation of the Act. The KCC is authorized to approve inclusion of the specified costs in retail utility rates if it finds:

- That a regional transmission organization identified the construction or upgrade as appropriate for reliability of the electric transmission system or for economic benefit to transmission owners and customers; and
- A state agency has determined that the project will provide measurable economic benefit to Kansas electric consumers that would exceed anticipated project costs.

The KCC is authorized to approve recovery of project costs in retail electric rates only if those costs are not otherwise being recovered. The KCC is authorized to consider the following when determining whether to approve inclusion of project costs in retail rates:

- The speed with which electric consumers will benefit from the transmission facility;
- The long-term benefits of the facility to Kansas electric customers; and
- Whether those factors outweigh other less costly options.

Applications for cost recovery for projects covered by the Act must include information required by the KCC to enable it to make those determinations.

The KCC will be required to conduct an expedited review of any request filed pursuant to the Act if the application includes evidence that expedited construction or upgrade will provide significant, measurable economic benefit to Kansas electric consumers. Regional transmission organization recommendation or approval of a project covered by the Act creates a rebuttable presumption of the appropriateness of the project for system reliability or economic benefit.

Any project cost recovery authorized by the KCC pursuant to the Act must be assessed against all utilities that have customers in Kansas and that receive benefits from the project. Individual assessments will be based on benefits received by the utility from the project. In making its decision regarding benefit and cost allocation, the KCC may consider funding and cost recovery mechanisms developed by regional transmission organizations and is required to consider transmission users' payments approved by the Federal Energy Regulatory Commission or the regional transmission organization.

Curtailment of Consumer Service From Gas Gathering Systems. Finally, the bill requires providers of end-user services from a gas gathering system to give notice to the KCC and to customers at least 30 days prior to curtailment of services, except in the case of an emergency.

In the case of an emergency, service to a residence or to a commercial office may be cut off immediately. Notice in cases of immediate termination of service must be given immediately to the end-user and to the public utility. The company that turned off the gas service is required to report the curtailment within 24 hours to the KCC along with the evidence upon which the company based its good faith belief that immediate curtailment of service was necessary. If the KCC determines that a good-faith basis for the curtailment did not exist and that the curtailment was unnecessary, the company will be responsible for the cost of the service curtailment, including reconnection and temporary heating costs.

Eminent Domain and Siting of Wind Powered Generators

Among other provisions, SB 63 adds a new provision to the statutory definition of "public utility." The bill provides that, for the purpose of taking property through the exercise of eminent domain, the term "public utility" does not include siting or placement of wind-powered electrical generators or turbines including towers.