

Substitute for HOUSE BILL No. 2516

By Committee on Utilities

2-12

10 AN ACT concerning utilities; providing certain incentives to increase
11 electric transmission system and electric generating capacity; relating
12 to powers and duties of the state corporation commission; relating to
13 inclusion of certain expenses in rates; amending K.S.A. 66-128 and
14 K.S.A. 2003 Supp. 66-1239 and 74-8946 and repealing the existing
15 sections.

16

17 *Be it enacted by the Legislature of the State of Kansas:*

18 New Section 1. As used in sections 2 through ~~5~~ 4, and amendments
19 thereto:

20 (a) "Appurtenances" means all substations, towers, poles and other
21 structures and equipment necessary for the bulk transfer of electricity.

22 (b) "Bulk transfer" means the transport of a large amount of elec-
23 tricity at high voltage.

24 (c) "Commission" means the state corporation commission.

25 (d) "Construction or upgrade of an electric transmission line and ap-
26 purtenances" means construction or upgrade of an electric transmission
27 line and appurtenances to be used for the bulk transfer of 34.5 kilovolts
28 or more of electricity.

29 (e) "Electric transmission line" means any line or extension of a line
30 **with an operating voltage of 34.5 kilovolts or more** which is at least
31 five miles in length and which is to be used for the bulk transfer of
32 electricity.

33 New Sec. 2. The Kansas development finance authority is authorized
34 to assist **owners or** operators of electric transmission lines and appurte-
35 nances in marketing bonds to finance the construction and upgrade of
36 such lines and appurtenances if:

37 (a) ~~The lines originate in this state and a~~ majority of the costs of the
38 construction and upgrade is for construction and upgrade of lines and
39 appurtenances located or to be located in this state; and

40 (b) the commission certifies that the portions of the lines and appur-
41 tenances located outside this state will improve the reliability and security
42 of the state's electric transmission system or will contribute to the long-
43 term economic well being of the state.

1 New Sec. 3. Upon application, the commission ~~shall~~ **may** provide for
2 recovery of capital expenditures for construction or upgrade of any elec-
3 tric transmission line or appurtenances over a period of 15 years, **unless**
4 **recovery of capital expenditures for construction or upgrade of the**
5 **transmission line or appurtenances is already provided for by tariffs**
6 **and rates approved by the federal energy regulatory commission or**
7 **its successors.**

8 ~~New Sec. 4. Any entity which, on or after January 1, 2004, constructs~~
9 ~~in this state new or expanded electric generation facilities having a ca-~~
10 ~~capacity of at least 100 kilowatts may either grant or lease interconnection~~
11 ~~facilities to transmission operators, upon agreement between the entity~~
12 ~~and operator and approval by the commission.~~

13 New Sec. ~~5~~ 4. (a) Upon application, the commission may approve:
14 (1) Any sale of transmission lines and appurtenances to an independent
15 transmission company or system operator which has been approved by
16 the federal energy regulatory commission; and (2) any contract for the
17 operation of transmission lines and appurtenances by an independent
18 transmission system operator or regional transmission organization which
19 has been approved by the federal energy regulatory commission.

20 (b) The commission shall afford the transactions described in this
21 section with appropriate rate-making treatment, including the reasonable
22 sharing of proceeds from asset sales between ratepayers and the utility.

23 Sec. ~~6~~ 5. K.S.A. 66-128 is hereby amended to read as follows: 66-
24 128. (a) The state corporation commission shall determine the reasonable
25 value of all or whatever fraction or percentage of the property of any
26 common carrier or public utility governed by the provisions of this act
27 which property is used and required to be used in its services to the public
28 within the state of Kansas, whenever the commission deems the ascer-
29 tainment of such value necessary in order to enable the commission to
30 fix fair and reasonable rates, joint rates, tolls and charges. In making such
31 valuations the commission may avail itself of any reports, records or other
32 things available to the commission in the office of any national, state or
33 municipal officer or board.

34 (b) (1) For the purposes of this act, except as provided by subsection
35 (b)(2), property of any public utility which has not been completed and
36 dedicated to commercial service shall not be deemed to be used and
37 required to be used in the public utility's service to the public.

38 (2) Any public utility property described in subsection (b)(1) may be
39 deemed to be completed and dedicated to commercial service if: (A)
40 Construction of the property will be commenced and completed in one
41 year or less; (B) the property is an electric generation facility that has a
42 capacity of 100 megawatts or less and converts wind, solar, biomass, land-
43 fill gas or any other renewable source of energy; (C) construction of the

1 property has been authorized by a siting permit issued under K.S.A. 66-
2 1,158 et seq. or 66-1,177 et seq., and amendments thereto; (D) the prop-
3 erty is an electric generation facility or addition to an electric generation
4 facility, which facility or addition to a facility is placed in service on or
5 after January 1, 2001; or (E) the property is an electric transmission line,
6 ~~as defined by K.S.A. 66-1,177, and amendments thereto~~, including all
7 towers, poles and other necessary appurtenances to such lines, which will
8 be connected to an electric generation facility ~~and which is placed in~~
9 ~~service on or after January 1, 2001.~~

10 (3) Electric generation facilities under the provisions of subsection
11 (b)(2)(D) or (b)(2)(E) shall not include facilities used in generating elec-
12 tricity by nuclear resources or technologies or by using renewable energy
13 resources or technologies, as defined in K.S.A. 79-201, and amendments
14 thereto.

15 (c) *As used in this section, “electric transmission line” means any line*
16 *or extension of a line **with an operating voltage of 34.5 kilovolts or***
17 ***more** which is at least five miles in length and which is used or to be used*
18 *for the bulk transfer of ~~34.5 kilovolts or more of~~ electricity.*

19 New Sec. ~~7.~~ **6.** (a) If an electric public utility constructs new or ex-
20 panded electric generation capacity on or after January 1, 2004, in a
21 county where the population has not increased more than 5% between
22 the dates of the two most recent decennial censuses taken and published
23 by the United States bureau of the census, the state corporation com-
24 mission, in determining the utility’s revenue requirements, shall make
25 adjustments that allow the utility to retain benefits equivalent to 10% of
26 the net revenues from sales of electricity generated by such new or ex-
27 panded capacity to customers outside the state.

28 (b) The provisions of this section shall not apply to net revenues
29 which are subject to the provisions of K.S.A. 66-1,184a, and amendments
30 thereto.

31 New Sec. ~~8.~~ **7.** The state corporation commission shall allow an elec-
32 tric public utility, as defined in K.S.A. 66-101a, and amendments thereto,
33 to include in rates the utility’s prudent expenditures for research and
34 development by the utility or for investment in research and development
35 by research centers determined by the commission to be nationally rec-
36 ognized, ***provided such research and development expenditures or***
37 ***investments are intended to enhance reliability or efficiency of elec-***
38 ***tric utility service.***

39 Sec. ~~9.~~ **8.** K.S.A. 2003 Supp. 66-1239 is hereby amended to read as
40 follows: 66-1239. (a) As used in this section:

- 41 (1) “Commission” means the state corporation commission;
- 42 (2) “contract” means a public utility’s contract for the purchase of
43 electric power in the amount of at least \$5,000,000 annually;

1 (3) “generating facility” means any electric generating plant or im-
2 provement to existing generation facilities;

3 (4) “stake” means a public utility’s whole or fractional ownership
4 share or leasehold or other proprietary interest in a generating facility or
5 transmission facility;

6 (5) “public utility” has the meaning provided by K.S.A. 66-104, and
7 amendments thereto; and

8 (6) “transmission facility” means: (A) Any existing line, and support-
9 ing structures and equipment, being upgraded for the transfer of elec-
10 tricity with an operating voltage of ~~69~~ 34.5 kilovolts or more of electricity;
11 or (B) any new line, and supporting structures and equipment, being
12 constructed for the transfer of electricity with an operating voltage of 230
13 kilovolts or more of electricity.

14 (b) (1) Prior to undertaking the construction of, or participation in,
15 a transmission facility, a public utility may file with the commission a
16 petition for a determination of the rate-making principles and treatment,
17 as proposed by the public utility, that will apply to the recovery in whole-
18 sale or retail rates of the cost to be incurred by the public utility to acquire
19 such public utility’s stake in the transmission facility during the expected
20 useful life of the transmission facility.

21 (2) The commission shall issue an order setting forth the rate-making
22 principles and treatment that will be applicable to the public utility’s stake
23 in the transmission facility in all rate-making proceedings on and after
24 such time as the transmission facility is placed in service or the term of
25 the contract commences.

26 (3) The commission in all proceedings in which the cost of the public
27 utility’s stake in the transmission facility is considered shall utilize the
28 rate-making principles and treatment applicable to the transmission
29 facility.

30 (4) If the commission fails to issue a determination within 180 days
31 of the date a petition for a determination of rate-making principles and
32 treatment is filed, the rate-making principles and treatment proposed by
33 the petitioning public utility will be deemed to have been approved by
34 the commission and shall be binding for rate-making purposes during the
35 useful life of the transmission facility.

36 (5) If the commission does not have jurisdiction to set wholesale rates
37 for use of the transmission facility the commission need not consider rate-
38 making principles and treatment for wholesale rates for the transmission
39 facility.

40 (c) (1) Prior to undertaking the construction of, or participation in,
41 a generating facility or prior to entering into a new contract, a public
42 utility may file with the commission a petition for a determination of the
43 rate-making principles and treatment, as proposed by the public utility,

1 that will apply to recovery in wholesale or retail rates of the cost to be
2 incurred by the public utility to acquire such public utility's stake in the
3 generating facility during the expected useful life of the generating facility
4 or the recovery in rates of the contract during the term thereof.

5 (2) Any utility seeking a determination of rate-making principles and
6 treatment under subsection (c)(1) shall as a part of its filing submit the
7 following information: (A) A description of the public utility's conserva-
8 tion measures; (B) a description of the public utility's demand side man-
9 agement efforts; (C) the public utility's ten-year generation and load fore-
10 casts; and (D) a description of all power supply alternatives considered
11 to meet the public utility's load requirements.

12 (3) In considering the public utility's supply plan, the commission
13 may consider if the public utility issued a request for proposal from a
14 wide audience of participants willing and able to meet the needs identi-
15 fied under the public utility's generating supply plan, and if the plan
16 selected by the public utility is reasonable, reliable and efficient.

17 (4) The commission shall issue an order setting forth the rate-making
18 principles and treatment that will be applicable to the public utility's stake
19 in the generating facility or to the contract in all rate-making proceedings
20 on and after such time as the generating facility is placed in service or
21 the term of the contract commences.

22 (5) The commission in all proceedings in which the cost of the public
23 utility's stake in the generating facility or the cost of the purchased power
24 under the contract is considered shall utilize the rate-making principles
25 and treatment applicable to the generating facility or contract.

26 (6) If the commission fails to issue a determination within 180 days
27 of the date a petition for a determination of rate-making principles and
28 treatment is filed, the rate-making principles and treatment proposed by
29 the petitioning public utility will be deemed to have been approved by
30 the commission and shall be binding for rate-making purposes during the
31 useful life of the generating facility or during the term of the contract.

32 (d) The public utility shall have one year from the effective date of
33 the determination of the commission to notify the commission whether
34 it will construct or participate in the construction of the generating or
35 transmission facility or whether it will perform under terms of the
36 contract.

37 (e) If the public utility notifies the commission within the one-year
38 period that the public utility will not construct or participate in the con-
39 struction of the generating or transmission facility or that it will not per-
40 form under the terms of the contract, then the determination of rate-
41 making principles pursuant to subsection (b) or (c) shall be of no further
42 force or effect, shall have no precedential value in any subsequent pro-
43 ceeding, and there shall be no adverse presumption applied in any future

1 proceeding as a result of such notification.

2 (f) If the public utility notifies the commission under subsection (d)
3 that it will construct or participate in a generating facility or purchase
4 power contract and subsequently does not, it will be required to notify
5 the commission immediately and file an alternative supply plan with the
6 commission per subsection (c) within 90 days.

7 Sec. ~~10~~ **9**. K.S.A. 2003 Supp. 74-8946 is hereby amended to read as
8 follows: 74-8946. (a) As used in this section:

9 (1) “Appurtenances” means all substations, towers, poles and other
10 structures and equipment necessary for the bulk transfer of electricity.

11 (2) “Electric transmission line” means any line or extension of a line
12 which is at least five miles long and which is used for the bulk transfer of
13 electricity.

14 (b) The Kansas development finance authority is hereby authorized
15 to issue revenue bonds in amounts sufficient to pay the following de-
16 scribed costs of construction, upgrading and acquisition, including any
17 required interest on the bonds during such construction, upgrading and
18 acquisition, plus all amounts required for the costs of bond issuance and
19 any required reserves on the bonds: (1) Construction or upgrading of
20 electric transmission lines and appurtenances *which are owned and op-*
21 *erated by an electric municipal utility or which are to be used for the*
22 *transfer of **electricity with an operating voltage** of 69 34.5 kilovolts or*
23 *more of electricity; (2) acquisition of the right-of-way on which *such**
24 *transmission lines and appurtenances to be used for the transfer of 69 kilovolts*
25 *or more of electricity are to be constructed; and (3) upgrading of *such**
26 *electric transmission lines and appurtenances to be used for the transfer*
27 *of 69 kilovolts or more of electricity. The bonds, and interest thereon,*
28 *issued pursuant to this section shall be payable from revenues derived*
29 *from use of the transmission lines.*

30 (c) The provisions of subsection (a) of K.S.A. 74-8905, and amend-
31 ments thereto, shall not prohibit the issuance of bonds by the Kansas
32 development finance authority for the purposes of this section and any
33 such issuance of bonds is exempt from the provisions of subsection (a) of
34 K.S.A. 74-8905, and amendments thereto, which would operate to pre-
35 clude such issuance.

36 (d) Revenue bonds, including refunding revenue bonds, issued here-
37 under shall not constitute an indebtedness of the state of Kansas, nor
38 shall they constitute indebtedness within the meaning of any constitu-
39 tional or statutory provision limiting the incurring of indebtedness.

40 (e) Revenue bonds, including refunding revenue bonds, issued here-
41 under and the income derived therefrom are and shall be exempt from
42 all state, county and municipal taxation in the state of Kansas, except
43 Kansas estate taxes.

- 1 Sec. ~~11~~ **10**. K.S.A. 66-128 and K.S.A. 2003 Supp. 66-1239 and 74-
- 2 8946 are hereby repealed.
- 3 Sec. ~~12~~ **11**. This act shall take effect and be in force from and after
- 4 its publication in the statute book.