

As Amended by House Committee

Session of 2007

HOUSE BILL No. 2576

By Committee on Federal and State Affairs

3-13

10 AN ACT concerning municipally owned or operated electric or natural
11 gas public utilities; concerning regulation by the state corporation com-
12 mission; amending ~~K.S.A. 66-1,174~~ and K.S.A. 2006 Supp. 66-104 and
13 repealing the existing ~~sections~~ **section**.

14

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

16 Section 1. K.S.A. 2006 Supp. 66-104 is hereby amended to read as
17 follows: 66-104. (a) The term “public utility,” as used in this act, shall be
18 construed to mean every corporation, company, individual, association of
19 persons, their trustees, lessees or receivers, that now or hereafter may
20 own, control, operate or manage, except for private use, any equipment,
21 plant or generating machinery, or any part thereof, for the transmission
22 of telephone messages or for the transmission of telegraph messages in
23 or through any part of the state, or the conveyance of oil and gas through
24 pipelines in or through any part of the state, except pipelines less than 15
25 miles in length and not operated in connection with or for the general
26 commercial supply of gas or oil, and all companies for the production,
27 transmission, delivery or furnishing of heat, light, water or power. No
28 cooperative, cooperative society, nonprofit or mutual corporation or as-
29 sociation which is engaged solely in furnishing telephone service to sub-
30 scribers from one telephone line without owning or operating its own
31 separate central office facilities, shall be subject to the jurisdiction and
32 control of the commission as provided herein, except that it shall not
33 construct or extend its facilities across or beyond the territorial boundaries
34 of any telephone company or cooperative without first obtaining approval
35 of the commission. As used herein, the term “transmission of telephone
36 messages” shall include the transmission by wire or other means of any
37 voice, data, signals or facsimile communications, including all such com-
38 munications now in existence or as may be developed in the future.

39 (b) The term “public utility” shall also include that portion of every
40 municipally owned or operated electric or gas utility located outside of
41 and more than three miles from the corporate limits of such municipality;
42 ~~but~~ Nothing in this act shall apply to a municipally owned or operated
43 utility, or portion thereof, located within the corporate limits of such

1 municipality or located outside of such corporate limits but within three
2 miles thereof except ~~as provided in K.S.A. 66-131a, and amendments~~
3 ~~thereto any municipally owned or operated electric or gas utility which~~
4 ~~serves more than 50,000 customers shall be subject to commission regu-~~
5 ~~lation concerning rates, charges and terms and conditions of service of~~
6 ~~such utility~~ **as provided in section 2, and amendments thereto.**

7 (c) Except as herein provided, the power and authority to control and
8 regulate all public utilities and common carriers situated and operated
9 wholly or principally within any city or principally operated for the benefit
10 of such city or its people, shall be vested exclusively in such city, subject
11 only to the right to apply for relief to the corporation commission as
12 provided in K.S.A. 66-133, and amendments thereto, and to the provi-
13 sions of K.S.A. 66-104e, and amendments thereto. A transit system prin-
14 cipally engaged in rendering local transportation service in and between
15 contiguous cities in this and another state by means of street railway,
16 trolley bus and motor bus lines, or any combination thereof, shall be
17 deemed to be a public utility as that term is used in this act and, as such,
18 shall be subject to the jurisdiction of the commission.

19 (d) The term “public utility” shall not include any activity of an oth-
20 erwise jurisdictional corporation, company, individual, association of per-
21 sons, their trustees, lessees or receivers as to the marketing or sale of
22 compressed natural gas for end use as motor vehicle fuel.

23 (e) At the option of an otherwise jurisdictional entity, the term “pub-
24 lic utility” shall not include any activity or facility of such entity as to the
25 generation, marketing and sale of electricity generated by an electric gen-
26 eration facility or addition to an electric generation facility which:

27 (1) Is newly constructed and placed in service on or after January 1,
28 2001; and

29 (2) is not in the rate base of: (A) An electric public utility that is
30 subject to rate regulation by the state corporation commission; (B) any
31 cooperative, as defined by K.S.A. 17-4603 and amendments thereto, or
32 any nonstock member-owned cooperative corporation incorporated in
33 this state; or (C) a municipally owned or operated electric utility.

34 (f) Additional generating capacity achieved through efficiency gains
35 by refurbishing or replacing existing equipment at generating facilities
36 placed in service before January 1, 2001, shall not qualify under subsec-
37 tion (e).

38 (g) For purposes of the authority to appropriate property through
39 eminent domain, the term “public utility” shall not include any activity
40 for the siting or placement of wind powered electrical generators or tur-
41 bines, including the towers.

42 ~~Sec. 2. K.S.A. 66-1,174 is hereby amended to read as follows: 66-~~
43 ~~1,174. A municipally owned or operated retail electric supplier shall be~~

1 subject to commission jurisdiction as a public utility, as defined in K.S.A.
2 66-104, and amendments thereto, with respect to all operations within its
3 certified territory extending more than three miles beyond its corporate
4 limits. A municipal retail electric supplier shall be subject to regulation
5 by the commission in matters relating to the right to serve in the territory
6 within three miles of the corporate city boundary, except that the com-
7 mission shall have no jurisdiction concerning such retail electric supplier
8 within its corporate limits. *Notwithstanding any provision of law to the*
9 *contrary, any municipally owned or operated retail electric supplier*
10 *which serves more than 50,000 customers shall be subject to commission*
11 *regulation concerning rates, charges and terms and conditions of service*
12 *of such supplier.*

13 **New Sec. 2. (a) As used in this section, “municipal**
14 **utility” means any municipally owned or operated electric or nat-**
15 **ural gas utility which serves more than 50,000 customers.**

16 **(b) The state corporation commission shall investigate all rates,**
17 **joint rates, tolls, charges and exactions, classifications and sched-**
18 **ules of rates of a municipal utility if there is filed with the com-**
19 **mission, not more than one year after a change in such utility’s**
20 **rates, joint rates, tolls, charges and exactions, classifications or**
21 **schedules of rates, a petition signed by not less than 5% of all the**
22 **utility’s customers or 3% of the utility’s customers from any one**
23 **rate class. If, after investigation, the commission finds that such**
24 **rates, joint rates, tolls, charges or exactions, classifications or**
25 **schedules of rates are unjust, unreasonable, unjustly discrimina-**
26 **tory or unduly preferential, the commission shall have the power**
27 **to fix and order substituted therefor such rates, joint rates, tolls,**
28 **charges and exactions, classifications or schedules of rates as are**
29 **just and reasonable.**

30 **(c) The municipal utility’s rates, joint rates, tolls, charges and**
31 **exactions, classifications or schedules of rates complained of shall**
32 **remain in effect subject to change or refund pending the state**
33 **corporation commission’s investigation and final order.**

34 **(d) Any customer of a municipal utility wishing to petition the**
35 **commission pursuant to subsection (b) may request from the utility**
36 **the names, addresses and rate classifications of all the utility’s cus-**
37 **tomers or of the utility’s customers from any one or more rate**
38 **classes. The municipal utility, within 21 days after receipt of the**
39 **request, shall furnish to the customer the requested names, ad-**
40 **resses and rate classifications and may require the customer to**
41 **pay the reasonable costs thereof.**

42 **(e) Nothing in this section shall be construed to authorize the**
43 **state corporation commission to regulate payments by a municipal**
utility to the municipality owning or operating such utility.

- 1 **(f) The commission shall assess its expenses of any investigation**
2 **or proceeding pursuant to this section against the municipal utility.**
3 Sec. 3. ~~K.S.A. 66-1,174 and K.S.A. 2006 Supp. 66-104~~ **are** hereby
4 repealed.
5 Sec. 4. This act shall take effect and be in force from and after its
6 publication in the statute book.