

## CHAPTER 120

Substitute for HOUSE BILL No. 2516

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

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

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

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

(b) "Bulk transfer" means the transport of a large amount of electricity at high voltage.

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

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

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

New Sec. 2. The Kansas development finance authority is authorized to assist owners or operators of electric transmission lines and appurtenances in marketing bonds to finance the construction and upgrade of such lines and appurtenances if:

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

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

New Sec. 3. Upon application, the commission shall provide for recovery of capital expenditures for construction or upgrade of any electric transmission line or appurtenances over a period of 15 years, unless: (a) The commission determines there is good cause to deny the application; or (b) recovery of capital expenditures for construction or upgrade of the transmission line or appurtenances is already provided for by tariffs and rates approved by the federal energy regulatory commission or its successors.

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

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

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

Sec. 6. K.S.A. 66-128 is hereby amended to read as follows: 66-128.

(a) The state corporation commission shall determine the reasonable value of all or whatever fraction or percentage of the property of any common carrier or public utility governed by the provisions of this act which property is used and required to be used in its services to the public within the state of Kansas, whenever the commission deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges. In making such valuations the commission may avail itself of any reports, records or other things available to the commission in the office of any national, state or municipal officer or board.

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

(2) Any public utility property described in subsection (b)(1) may be deemed to be completed and dedicated to commercial service if: (A) Construction of the property will be commenced and completed in one year or less; (B) the property is an electric generation facility that has a capacity of 100 megawatts or less and converts wind, solar, biomass, land-fill gas or any other renewable source of energy; (C) construction of the property has been authorized by a siting permit issued under K.S.A. 66-1,158 et seq. or 66-1,177 et seq., and amendments thereto; (D) the property is an electric generation facility or addition to an electric generation facility, which facility or addition to a facility is placed in service on or after January 1, 2001; or (E) the property is an electric transmission line, as defined by K.S.A. 66-1,177, and amendments thereto, including all towers, poles and other necessary appurtenances to such lines, which will be connected to an electric generation facility and which is placed in service on or after January 1, 2001.

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

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

New Sec. 7. (a) If an electric public utility constructs new or expanded electric generation capacity on or after January 1, 2004, in a county where the population has not increased more than 5% between the dates of the two most recent decennial censuses taken and published by the United States bureau of the census, the state corporation commission, in determining the utility's revenue requirements, shall make adjustments that allow the utility to retain benefits equivalent to 10% of the net revenues from sales of electricity generated by such new or expanded capacity to customers outside the state.

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

New Sec. 8. The state corporation commission shall allow an electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, to include in rates the utility's prudent expenditures for research and development by the utility or for investment in research and development by research centers determined by the commission to be nationally recognized, provided such research and development expenditures or investments are intended to enhance reliability or efficiency of electric utility service.

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

(1) "Commission" means the state corporation commission;

(2) "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000 annually;

(3) "generating facility" means any electric generating plant or improvement to existing generation facilities;

(4) "stake" means a public utility's whole or fractional ownership share or leasehold or other proprietary interest in a generating facility or transmission facility;

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

(6) "transmission facility" means: (A) Any existing line, and supporting structures and equipment, being upgraded for the transfer of electricity with an operating voltage of ~~69~~ 34.5 kilovolts or more of electricity; or (B) 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.

(b) (1) Prior to undertaking the construction of, or participation in, a transmission facility, a public utility may file with the commission a petition for a determination of the rate-making principles and treatment,

as proposed by the public utility, that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the transmission facility during the expected useful life of the transmission facility.

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

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

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

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

(c) (1) Prior to undertaking the construction of, or participation in, a generating facility or prior to entering into a new contract, a public utility may file with the commission a petition for a determination of the rate-making principles and treatment, as proposed by the public utility, that will apply to recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the generating facility during the expected useful life of the generating facility or the recovery in rates of the contract during the term thereof.

(2) Any utility seeking a determination of rate-making principles and treatment under subsection (c)(1) shall as a part of its filing submit the following information: (A) A description of the public utility's conservation measures; (B) a description of the public utility's demand side management efforts; (C) the public utility's ten-year generation and load forecasts; and (D) a description of all power supply alternatives considered to meet the public utility's load requirements.

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

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

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

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

(d) The public utility shall have one year from the effective date of the determination of the commission to notify the commission 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.

(e) If the public utility notifies the commission within the one-year period that the public utility will not construct or participate in the construction of the generating or transmission facility or that it will not perform under the terms of the contract, then the determination of rate-making principles pursuant to subsection (b) or (c) shall be of no further force or effect, shall have no precedential value in any subsequent pro-

ceeding, and there shall be no adverse presumption applied in any future proceeding as a result of such notification.

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

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

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

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

(b) The Kansas development finance authority is hereby authorized to issue revenue bonds in amounts sufficient to pay the following described costs of construction, upgrading and acquisition, including any required interest on the bonds during such construction, upgrading and acquisition, plus all amounts required for the costs of bond issuance and any required reserves on the bonds: (1) Construction or upgrading of electric transmission lines and appurtenances *which are owned and operated by an electric municipal utility or which are to be used for the transfer of electricity with an operating voltage of 69 34.5 kilovolts or more of electricity*; (2) acquisition of the right-of-way on which *such* transmission lines and appurtenances ~~to be used for the transfer of 69 kilovolts or more of electricity~~ are to be constructed; and (3) upgrading of *such* electric transmission lines and appurtenances ~~to be used for the transfer of 69 kilovolts or more of electricity~~. The bonds, and interest thereon, issued pursuant to this section shall be payable from revenues derived from use of the transmission lines.

(c) The provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issuance of bonds by the Kansas development finance authority for the purposes of this section and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto, which would operate to preclude such issuance.

(d) Revenue bonds, including refunding revenue bonds, issued hereunder shall not constitute an indebtedness of the state of Kansas, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

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

Sec. 11. K.S.A. 66-128 and K.S.A. 2003 Supp. 66-1239 and 74-8946 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 21, 2004.

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