

CHAPTER 176  
HOUSE BILL No. 2597  
(Amends Chapter 112)

AN ACT concerning municipally owned or operated electric or natural gas public utilities; concerning regulation by the state corporation commission; amending K.S.A. 66-1,174 and K.S.A. 2006 Supp. 66-104 and repealing the existing sections; also repealing K.S.A. 66-1,174, as amended by section 3 of 2007 House Bill No. 2032 and K.S.A. 2006 Supp. 66-104, as amended by section 2 of 2007 House Bill No. 2032 and sections 1, 4 and 5 of 2007 House Bill No. 2032.

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

New Section 1. (a) The rates, charges and terms and conditions of service of a municipally owned or operated electric or natural gas public utility for retail services provided outside of and more than three miles from the corporate limits of the municipality shall not be subject to the jurisdiction, regulation, supervision or control of the state corporation commission, except as provided in subsection (b), if:

(1) The customers served in such area number no more than 40% of the total number of customers served by such utility;

(2) the rates and charges for customers in such area are no greater than the rates and charges for the customers served by such utility within the corporate limits of the municipality and the terms and conditions of service are the same. However, after the effective date of this act, the rates and charges for customers in such area may not be increased more than 10% each calendar year until such rates and charges are equal to the rates and charges for customers within the corporate limits of the municipality;

(3) not less than 10 days in advance of any meeting at which changes to the rates, charges or terms and conditions of service will be considered, the municipal entity with authority to determine the utility's rates, charges and terms and conditions of service provides customers in such area both notice of the time and place of such meeting and a description of the changes to be considered. The notice shall also include a statement concerning the right to petition the commission as set forth in subsection (b);

(4) the municipality furnishes, within 21 days after the receipt of a request for such information, the names, addresses and rate classifications of customers in such area; and

(5) the municipality provides to the commission an annual report on or before May 1 stating the number of customers served in such area and the total number of customers served as of the end of the preceding calendar year.

(b) If, not more than one year after a change in rates, charges or terms and conditions of service for services provided in the area described in subsection (a), there is filed with the commission a petition signed by not less than 25% of the customers in such area protesting such change, the commission shall investigate all rates, charges and terms and conditions of service for services in such area. The change shall remain in effect, subject to new rates, charges and terms and conditions, pending the commission's investigation and final order. If, after investigation, the commission finds any rate, charge or term or condition of service to be unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefore such rates, charges and terms and conditions of service as are just and reasonable and may also require refunds of any unjust, unreasonable, unjustly discriminatory or unduly preferential rates or charges. In determining the reasonableness and justness of rates and charges, the commission may consider whether the rates or charges reflect operating margins that allow the municipality to unreasonably use revenues derived from the operation of the utility outside of and more than three miles from the corporate limits of such municipality for other municipal operations or uses.

(c) Nothing in this act shall be construed to affect the single certified service territory of a municipally owned or operated utility or the authority of the commission, as otherwise provided by law, over such utility with regard to service territory, charges for transmission services, sales of power for resale, wire stringing, transmission line siting, pipeline safety and underground utility damage prevention, pursuant to K.S.A. 66-131, 66-183, 66-1,150 et seq., 66-1,170 et seq., 66-1,177 et seq. and 66-1801 et seq., and amendments thereto.

Sec. 2. K.S.A. 2006 Supp. 66-104 is hereby amended to read as follows: 66-104. (a) The term “public utility,” as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term “transmission of telephone messages” shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

(b) The term “public utility” shall also include that portion of every municipally owned or operated electric or gas utility located *in an area* outside of and more than three miles from the corporate limits of such municipality, but *regulation of the rates, charges and terms and conditions of service of such utility within such area shall be subject to commission regulation only as provided in section 1, and amendments thereto*. Nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. 66-131a, and amendments thereto.

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

(d) The term “public utility” shall not include any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel.

(e) At the option of an otherwise jurisdictional entity, the term “public utility” shall not include any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility which:

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

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

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

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

Sec. 3. K.S.A. 66-1,174 is hereby amended to read as follows: 66-

1,174. *Except as provided by section 1, and amendments thereto*, a municipally owned or operated retail electric supplier shall be subject to commission jurisdiction as a public utility, as defined in K.S.A. 66-104, and amendments thereto, with respect to all operations within its certified territory extending more than three miles beyond its corporate limits. A municipal retail electric supplier shall be subject to regulation by the commission in matters relating to the right to serve in the territory within three miles of the corporate city boundary, except that the commission shall have no jurisdiction concerning such retail electric supplier within its corporate limits.

Sec. 4. K.S.A. 66-1,174 and 66-1,174, as amended by section 3 of 2007 House Bill No. 2032, K.S.A. 2006 Supp. 66-104 and 66-104, as amended by section 2 of 2007 House Bill No. 2032 and sections 1, 4 and 5 of 2007 House Bill No. 2032 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 9, 2007.

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