

## **Cost Recovery for Utilities; Energy Generating Facilities; Net Metering; HB 2527**

**HB 2527** establishes new mechanisms for the recovery of costs associated with deferred depreciation and new gas-fired generating units; adds and amends law regarding electric public utilities, nuclear-powered and coal-fired electric generating facilities, and the Kansas Corporation Commission (KCC); and amends the Net Metering and Easy Connection Act to further develop regulation and expand capacity for investor-owned utilities to connect customers' renewable energy generation systems to the electric grid.

### ***Cost Recovery Mechanisms***

The bill creates and modifies definitions pertaining to cost recovery and rate-making procedures before the KCC. The bill establishes new mechanisms for the recovery of costs associated with deferred depreciation and new gas-fired generating units. Further, the bill modifies the qualification requirement for receiving a discounted electric rate and increases the term of the discount for certain facilities.

### ***Definitions***

The bill establishes definitions for provisions related to a utility's recovery of cost for regulatory assets (e.g., power plants, transmission lines). Among the new definitions are the following:

- “Qualifying electric plant” means all rate base additions by an electric public utility, but not including transmission facilities or new electric generating units;
- “Qualifying regulatory asset” means any regulatory asset balance arising from provisions related to the deferral of depreciation of qualifying electric plants, from the rate base cutoff date in the utility's most recent completed rate case to the cutoff date in the current general rate proceeding in which a revenue requirement impact cap is applied;
- “Rate base cutoff” means the date rate base additions are accounted for in a general rate proceeding. In the absence of a commission order that specifies the rate base cutoff date, “rate base cutoff date” would mean the date as reflected in any jointly proposed procedural schedule submitted by the parties in a general rate proceeding or the date that is agreed to by the parties; and
- “Weighted average cost of capital” means the return on rate base used to determine the revenue requirement or that was approved to be used for regulatory accounting purposes in the public utility's most recently ordered return on rate base in a general rate proceeding.

The bill provides a definition for “revenue requirement impact cap.” Beginning on July 1, 2024, this cap limits the revenue requirement that a utility could seek in a general rate proceeding for regulatory asset balances, and any excess to that cap results in the regulatory

asset balance being reduced. Calculating the impact cap bill requires multiplying 1/12 of 1.5 percent by the number of months between two dates: the effective date of new base rates in the utility's most recently completed rate case and the effective date of new base rates in a general rate case where the cap was initially applied. The resulting value is then multiplied by the revenue requirement from the preceding completed rate case. This definition will only apply to electric public utilities utilizing provisions pertaining to the deferral of depreciation to regulatory assets.

### *Depreciation Deferrals, Cost Recovery, and Return on Equity*

Beginning July 1, 2024, and ending on December 31, 2030, the bill allows an electric public utility to defer 90 percent of depreciation expenses and returns linked to qualifying electric plants in service as regulatory assets. This deferral will begin on July 1, 2024, once the utility notifies the KCC. Any remaining balances will be included in the utility's rate base and recovered through rates without any adjustments. The KCC has the authority to disallow balances it deems imprudent.

The bill specifies that the electric public utilities' earnings on the deferred balances will be calculated using the weighted average cost of capital (previously defined) applied to the change in the rate base related to the qualifying electric plant, along with any relevant taxes. The bill requires any portions of deferred balances not included in the rate base to be accounted for as carrying costs at the electric public utilities' weighted average cost of capital, including applicable taxes.

The bill requires that regulatory asset balances established by its provisions must be recovered from rates over a 20-year period, starting from the date the balance is incorporated into electric utility rates.

The bill authorizes the KCC, upon receiving an application from a public utility utilizing a deferral before December 31, 2028, to permit the utility to extend such deferrals until December 31, 2036. The KCC must reach its decision on the extended deferrals within 240 days of the application's filing and may conduct a hearing on the application if requested by relevant parties. If the KCC denies the application, the denial would affect only deferrals occurring after December 31, 2030.

### *Economic Development Rates; Requirements*

The bill adds to the list of facilities eligible to receive a discounted rate the facilities with a projected peak demand of 25 megawatts (MW) within two years of service under the discounted rate. Demand projections could not be the result of shifting existing demand from the customer's other facilities in the utility's certified service territory.

The bill clarifies how long certain facilities will be eligible to receive discounted rates and extend the discounted rate from 5 to 10 years for facilities with a projected peak demand of 25 MW. The bill would stipulate the maximum average discount for these facilities cannot exceed 40.0 percent, but discounts may range between 20.0 percent and 50.0 percent in the first five-year period. In the second five-year period, the maximum average discount cannot exceed 20.0 percent, but discounts may be between 10.0 percent and 30.0 percent in such period.

The bill prohibits the inclusion in the calculation of the public utilities revenue requirements any variance in revenues resulting from discounted rates, compared with what revenues may have been without the discounts.

The bill provides an exception for any reduction in revenue resulting from any discount that was tracked by the public utility and deferred to a regulatory asset prior to July 1, 2024, by allowing such reduction to be recoverable in any general rate proceeding initiated on or after July 1, 2024, through an equal percentage adjustment to the revenue requirement responsibility for all customer classes of the public utility, including the customer classes that include customers that qualify for discounts pursuant in continuing law.

#### *Continuation of Discount Rates for Certain Facilities*

The bill authorizes electric public utilities to offer discount rates for facilities with a projected peak demand of 25 MW until December 31, 2030, unless they apply to the KCC for continued authorization of the discounted rate until December 31, 2036. The bill requires an application for continued authorization to be received on or before December 31, 2028. The KCC is required to make a determination within 240 days of the application's filing and could conduct a hearing on the application if requested by relevant parties. If the KCC denies the application, the denial affects only discounted rates that will have occurred after December 31, 2030.

#### *Removal of Tracking Requirements*

The bill removes the requirements for a utility to track reductions in revenue as a result of the discounted rate and defer those reductions in revenue to a regulatory asset.

#### *Rate-making, Generally*

The bill modifies the definition of "contract" to increase the threshold at which a utility needs to receive a KCC determination on rate-making principles from \$5.0 million to \$10.0 million. The bill also clarifies that a public utility may file with the KCC for a determination of rate-making principles for cost recovery when it acquires a stake in a generating facility.

#### *Rate-making Principles for New Gas-fired Generation*

The bill establishes rules for how a gas-fired power plant's costs could be covered by utility rates. If the KCC decides it is reasonable for the utility to invest in the plant, the utility would be able to recover 100 percent of construction costs at the weighted average cost of capital, not to exceed the cost estimate found reasonable by the KCC. The cost recovery from customers could begin no sooner than 365 days after construction begins and within 60 days of filing to utilize the cost recovery mechanism. The rates may be adjusted every six months until new base rates reflecting the plant's costs are established.

Electric public utilities are only authorized to recover construction costs with this mechanism until December 31, 2030, unless they make application to the KCC for continued authorization of the cost recovery mechanism before December 31, 2036. An application for

continued authorization must be received on or before December 31, 2028. The KCC will be required to make its determination within 240 days of the application's filing and may conduct a hearing on the application if requested by relevant parties. If the KCC denies the application, the denial will affect only discounted rates that will have occurred after December 31, 2030.

The KCC will have the authority, after a hearing, to require a public utility to issue a refund to customers if it utilizes a mechanism to recover costs of a facility under construction and subsequently terminates the initiative to acquire a stake in the facility.

### *Legislative Intent and KCC Rate-making Procedures*

The bill expresses legislative intent as it applies to petitions for determination of rate-making principles for the construction of transmission and generating facilities and increases from 180 days to 240 days the amount of time the KCC will have to make a determination on petitions.

The bill establishes the following requirements for the KCC in regard to such matters:

- Issue a determination on such petitions expeditiously;
- Attempt to issue a determination before the 240-day deadline;
- Provide notice of the public utility's intent to file a petition to each party or intervenor involved in the utility's most recent rate case;
  - Petitions to intervene will be submitted after a public utility files the petition; and
- Adopt a procedural schedule within 30 days after a petition is filed.

### *Energy Generating Facilities*

The bill adds and amends law regarding electric public utilities, nuclear-powered and coal-fired electric generating facilities, and the KCC.

#### *Requirements for Nuclear-powered and Coal-fired Electric Generating Facilities*

The bill includes nuclear-powered and coal-fired electric generating facilities, if determined by the KCC to be just, reasonable, and necessary for the provision of sufficient and efficient service in law regarding rate-making principles and treatment. The bill requires nuclear-powered and coal-fired electric generating facilities to do the following:

- Retain rate base appropriate to the facility;

- Recover expenses associated with operational costs to provide greater certainty that generating capacity will be available to all customers, including during extreme weather events; and
- Recover any portion of the rate base and expenses that are necessary for generation facilities to operate at a low-capacity factor or to provide additional capacity while remaining offline during normal operating conditions.

#### *Abandonment or Retirement of Nuclear-powered or Fossil-fuel-fired Electric Generating Units*

The bill prohibits the KCC from approving the retirement of a unit, authorizing surcharges or issuance of bonds for the decommissioning of a unit, or taking any other action that would authorize or allow for the recovery of costs related to the retirement of a unit, including stranded asset recovery, unless:

- The utility demonstrates that the public utility would be able to meet current and reasonably anticipated future resource adequacy requirements of the regional transmission organization or independent system operator; and
- The abandonment or retirement of the unit will not harm the utility's ratepayers or decrease the utility's regional rate competitiveness, unless the KCC determines higher costs are justified in specified factors and are consistent with the integrated resource planning framework. The utility would be required to provide the KCC with evidence of all known direct and indirect costs related to the retirement or abandonment of the unit and demonstrate such cost savings or avoided or mitigated cost increases to customers will occur as a result.

#### *Petition for Determination of Rate-making Principles and Treatment*

The bill amends law to extend the timeline from 180 days to 240 days for the KCC to make a determination of rate-making principles and treatment proposed by a petitioning public utility. The bill also establishes guidelines for the KCC, upon the instance a public utility files a petition for a determination of rate-making principles and treatment to require the following:

- The issuance of a determination in an expeditious manner; and
- When circumstances allow, issue a determination in a time frame shorter than the 240-day deadline.

The bill requires a public utility to provide the KCC with notice no less than 30 days before the filing of a petition. The bill requires the KCC, upon receipt of the notice, to provide a notice of the public utility's intent to file a petition to each person or entity involved in the public utility's most recently concluded base rate case.

The bill establishes proceedings guidelines, which require:

- The application for intervention in any proceedings to be submitted no later than 10 days after the public utility's filing of a petition for determination of rate-making principles and treatments; and
- The KCC to adopt a procedural schedule for the proceedings no later than 30 days after a petition is filed for a determination of rate-making principles and treatments.

*Annual Reports*

The bill requires the KCC to prepare and submit to the Legislature by December 1 of each year an annual report based on the preceding calendar year that provides:

- The number of unit retirement requests in the state;
- The nameplate capacity of each of the requested units;
- Whether the request was approved or denied by the KCC;
- The impact of any KCC-approved retirement of a unit on the:
  - Utility's and state's generation capacity by fuel type;
  - Required capacity reserve margins for the utility and the overall capacity reserve margin within the state;
  - The utility's need for capacity additions or expansions at new or existing facilities as a result of a unit retirement; and
  - The utility's need for additional power or capacity reserve arrangements; and
- Whether the retirement resulted in stranded costs for ratepayers that will be recovered by the utility through securitization or through some other charge on the customer bill.

The provisions of this section of the bill will expire on July 1, 2034.

***Net Metering and Easy Connection Act***

The bill amends the Net Metering and Easy Connection Act (Act) to further develop regulation and expand capacity for investor-owned utilities (IOUs) to connect customers' renewable energy generation systems, such as rooftop solar panels systems, to the electric grid.

The bill amends definitions in continuing law and establishes new definitions within the Act. The bill increases, over 4 years, the total percentage of allowed net metered

interconnections for IOUs to 5.0 percent of peak demand. The bill establishes the methodology for monthly billing calculation of certain customer-generators using time-varying rates (different billing rates for the use of electricity at certain times of the day). The bill requires that customer-generators be “appropriately sized,” codifies the formula used to determine the appropriate size, and establishes requirements on exporting capacity to the electric grid.

### *Definitions*

The bill adds several defined terms:

- “Export” means electricity transmitted from a customer-generator to the electric grid;
- “Generating capacity” means excess electricity generated by net metered facilities;
- “Permission to operate” means the operational date of the customer-generator’s net metered facility;
- “Supplied” means electricity provided by an IOU to a net metered electrical system; and
- “Witness test” means an on-site measurement or verification by a utility representative.

The bill revises the definition of “customer-generator” to specify that the customer-generator will fully deliver remaining energy output to the utility.

The bill also amends the definition of “customer-generator” to add provisions requiring the installed mechanism responsible for interrupting electricity flow to be certified by Underwriter Laboratories, an accredited safety organization.

### *Allowable Net Metered Interconnections*

The bill amends eligibility for an IOU net metering option by requiring a customer-generator to be in good standing with the utility.

The bill increases the threshold of generating capacity produced by all net metered systems from the current 1.0 percent by 1.0 percent annually until 2027. From 2027 and each following year, the cap will be limited to 5.0 percent of the utility’s historic highest annual peak demand since 2014. The bill authorizes the KCC to increase the 5.0 percent cap after conducting a hearing authorized by continuing law.

The bill authorizes an IOU to introduce incentive programs for customer-generators that began operation after July 1, 2024.

### *Monthly Variable Time-of-use Billing for Certain Customer Generators*

The bill establishes criteria for billing net metered facilities for electricity supplied by the IOU and crediting a net metered facility/system for energy exported to the utility in a given billing cycle for those net metered facilities that began operating on or after July 1, 2024, and are participating in an optional time-varying rate (rate).

The bill requires the utility to measure the net energy supplied or exported for each time-of-use period established by the optional rate in the same manner as it measures supplied energy to other customers in the same class of service (residential, business, or industrial). Customer-generators will be billed for net supplied energy exceeding their exported energy using the same time-of-use periods, to include all other charges applied to non-customer-generators in a given customer class. If the energy exported from the customer-generator exceeds the energy supplied during a time-of-use period, the IOU will be required to credit a customer-generator at least 100 percent of the IOU monthly system average cost of energy per kilowatt (kW) hour, with any net credit, and net of all other charges applied to the same customer class. The credit will be applied to the next billing period.

In essence, a customer-generator consuming more energy than it produces will be billed for the difference. If the customer-generator produces more energy than it consumes, the utility will apply the difference in cost as a credit on the customer-generator's next bill.

### *Appropriate Net Metered System Size*

For customer-generators that began to operate after July 1, 2014, the bill amends the export limitations to remove the delineation between classes of service and increase the amount of electricity subject to net metering to 150 kW for all classes.

The bill codifies the formula used to calculate the appropriate size of a customer-generator's export capacity in kW-hours using 12 months of historic consumption. If a customer-generator does not have historic consumption, the bill requires the export capacity to be calculated by 7.15 kW-hours per square foot of conditioned space, which will be rounded up to the nearest standard size:

- By 2 kW for facilities with capacity between 2 and 20 kW; and
- By 5 kW for facilities with capacity between 20 and 150 kW.

The bill establishes the following limitation to a net metered facility's export capacity for those customer-generators that begin operating a net-metered facility/system on or after July 1, 2026:

- Export generating capacity shall not exceed 50 percent; and
- Energy storage capacity, including electric vehicles and portable storage devices, are not to be included in the sizing formula unless the device has the ability to add export capacity.

The bill requires a customer-generator that operates a net-metered facility/system designed to export an amount of power that differs from the system's generating capacity to comply with the following:

- Own and maintain necessary export-limiting devices (which control the power generation of a generator, such as a solar panel);
- Restrict the export-limiting device settings to qualified individuals;
- Allow the utility to require a witness test of the export-limiting device function prior to operation;
- Seek approval from the utility prior to increasing the system's export capacity;
- Allow the utility to conduct periodic testing of the export-limiting device; and
- Cease operation if the export-limiting device's settings are incorrect or if the device fails to limit the export of power below the designed capacity for a period exceeding 15 minutes in a single event.

The bill clarifies that a utility cannot restrict the brand or model of an export-limiting device if the device is approved for use by the system manufacturer or Underwriter Laboratories.