

SENATE BILL No. 323

By Committee on Utilities

1-24

1 AN ACT concerning electricity; relating to service rights of retail electric
2 suppliers; relating to termination of a retail electric supplier's service
3 rights; amending K.S.A. 66-1,176 and repealing the existing section.
4

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

6 Section 1. K.S.A. 66-1,176 is hereby amended to read as follows: 66-
7 1,176. (a) (1) Whenever a city proposes to annex land that is located
8 within the certified territory of a retail electric supplier, the city shall
9 provide notice to the retail electric supplier ~~in the manner prescribed by~~
10 ~~K.S.A. 12-520a, and amendments thereto. All rights of a retail electric~~
11 ~~supplier to provide electric service in an area annexed by a city shall~~
12 ~~terminate 180 days from the date of annexation, unless such electric~~
13 ~~supplier is then holding a valid franchise for service in the area granted by~~
14 ~~the annexing city. Such period of 180 days shall be extended to 210 days~~
15 ~~from the date of annexation if a franchise is granted to the retail electric~~
16 ~~supplier pursuant to referendum conducted according to applicable~~
17 ~~franchise laws of the state of Kansas within such period of 210 days no~~
18 ~~less than 30 days prior to the city making a selection pursuant to~~
19 ~~subsection (a)(2).~~

20 (2) Whenever the city annexes land that is located within the certified
21 territory of a retail electric supplier, the city shall negotiate for the issuance
22 of a franchise agreement pursuant to K.S.A. 12-2001, et seq., and
23 amendments thereto, with a retail electric supplier holding a certificate
24 within the annexed area. Nothing herein shall be construed to require a
25 supplier holding both a certificate of convenience and a franchise for the
26 area annexed to obtain a new franchise. The city shall ~~have the final~~ *make*
27 *the* selection of which supplier receives a franchise to operate within the
28 annexed area. When making such selection, the city shall consider certain
29 factors including, but not limited to: ~~(1) (A) The public convenience and~~
30 ~~necessity; (2) (B) rates of various suppliers; (3) (C) desires of the customer~~
31 ~~or customers to be served; (4) (D) economic impact on the suppliers; (5)~~
32 ~~(E) economic impact on the customers of the suppliers; (6) (F) the utility's~~
33 ~~operational ability to serve the annexed area; (7) (G) avoiding the wasteful~~
34 ~~duplication of facilities; (8) (H) avoiding unnecessary encumbrance on the~~
35 ~~landscape; and (9) (I) preventing the waste of materials and natural~~
36 ~~resources; (J) proposals from any retail electric supplier holding a~~

1 *certificate in the annexed area; and (K) whether the selection is in the best*
2 *interests of the public. Within 30 days after the final decision of the city,*
3 *any supplier aggrieved thereby may file an appeal in the district court of*
4 *the county in which the annexed area is located to determine the*
5 *reasonableness of the final decision. In the event that an appeal of the*
6 *decision is filed in the district court, the retail electric supplier providing*
7 *service at the time of annexation shall continue to provide service until*
8 *such time as the appeal has been concluded. In the event service rights are*
9 *terminated pursuant to this section, the commission shall certify such*
10 *annexed area as a single certified territory to the supplier holding a*
11 *franchise for or then providing retail electric service in the city*
12 *immediately prior to the annexation. When considering factors contained*
13 *in subparagraphs (A) through (K) or any other factors, the city shall*
14 *produce a record of the city's deliberations and findings upon each factor*
15 *and the basis for the city's selection. Such record shall be available as a*
16 *public record within 10 days after the city makes a selection.*

17 (3) *A retail electric supplier providing service at the time of*
18 *annexation shall continue to provide service until the service rights of*
19 *such retail electric supplier are terminated pursuant to subsection (a)(5).*

20 (4) *Within 30 days after the city has made a selection, the city shall*
21 *cause its selection and a copy of the record produced by the city pursuant*
22 *to subsection (a)(2) to be filed with the commission and shall provide*
23 *notice to each retail electric supplier holding a certificate in the annexed*
24 *area of such filing. Upon receipt of such notice, a retail electric supplier*
25 *holding a certificate in the annexed area shall have 15 days to request that*
26 *the commission review the city's selection. If a review is requested, the*
27 *commission shall conduct a hearing in accordance with the Kansas*
28 *administrative procedure act to review the city's selection to ensure that*
29 *such selection: (A) Was properly evaluated based on the factors listed in*
30 *subsection (a)(2); and (B) is not unjust, unreasonable, unreasonably*
31 *inefficient or insufficient, unduly preferential or unjustly discriminatory*
32 *and is in the best interests of the public. The commission shall not be*
33 *limited to a review of the record produced by the city and may take*
34 *additional evidence upon the factors listed in subsection (a)(2) and may*
35 *consider additional factors as necessary. The commission shall have 60*
36 *days after a review is requested to issue an order approving or denying the*
37 *city's selection. Such order shall become operative and effective upon*
38 *service of the order.*

39 (5) *In the event the commission's order:*

40 (A) *Approves a city's selection to grant a franchise to a retail electric*
41 *supplier that does not hold a certificate in the annexed area or to a*
42 *supplier that holds a certificate in part of the annexed area, all rights to*
43 *provide electric service in the annexed area of any retail electric supplier*

1 *that was not selected by the city shall terminate 180 days from the date the*
2 *order becomes operative and effective. When the service rights of such*
3 *retail electric supplier are terminated, the commission shall certify such*
4 *annexed area as a single certified territory to the new retail electric*
5 *supplier selected by the city. The 180-day termination period shall be*
6 *tolled upon the filing of an appeal pursuant to subsection (a)(6);*

7 *(B) denies a city's selection, the city may make another selection*
8 *pursuant to subsection (a)(2). Nothing shall prohibit a city from*
9 *reselecting any previously selected retail electric supplier; or*

10 *(C) approves a city's selection to grant a franchise to a retail electric*
11 *supplier that holds a certificate in all of the annexed area, the city and*
12 *such retail electric supplier shall continue to negotiate for the issuance of*
13 *a franchise agreement pursuant to K.S.A. 12-2001 et seq., and*
14 *amendments thereto, if no franchise agreement exists between the city and*
15 *such retail electric supplier.*

16 *(6) An order of the commission issued pursuant to this subsection is*
17 *subject to review in accordance with the Kansas judicial review act. A*
18 *petition for review shall be filed in a court of competent jurisdiction within*
19 *30 days after the commission has issued its order. In the event that an*
20 *appeal of the commission's order is filed, the retail electric supplier*
21 *holding a certificate in the annexed area shall continue to provide service*
22 *until such time as the appeal has been concluded and until service rights*
23 *have been terminated pursuant to subsection (a)(5).*

24 ~~*(b) In the event the supplier holding a franchise or then providing*~~
25 ~~*retail electric service that a new retail electric supplier does not effect the*~~
26 ~~*assumption of electric service to the annexed area at the termination of the*~~
27 ~~*applicable 180-day or 210-day period as provided in a retail electric*~~
28 ~~*service provider's service rights pursuant to subsection (a), then the*~~
29 ~~*originally certified supplier shall have the right to continue service to the*~~
30 ~~*annexed area and charge its ordinary rates therefor until such supplier does*~~
31 ~~*assume service to the annexed area. Such service shall be free of any*~~
32 ~~*franchise fee or other compensation to the city or the electric supplier*~~
33 ~~*holding the franchise. If the supplier holding a franchise has not assumed*~~
34 ~~*service to the annexed area within 180 days following the applicable 180-*~~
35 ~~*day or 210-day period provided in subsection (a), the city may require the*~~
36 ~~*originally certified supplier to obtain a franchise in order to continue*~~
37 ~~*service to the annexed area. Unless otherwise mutually agreed upon by the*~~
38 ~~*affected suppliers, no assumption of electric service shall occur within 15*~~
39 ~~*days following notice to the originally certified supplier of the intended*~~
40 ~~*changeover time.*~~

41 *(c) Whenever the service rights of a retail electric supplier are*
42 *terminated pursuant to subsection (a), fair and reasonable compensation*
43 *shall be paid to such retail electric supplier by the supplier subsequently*

1 authorized to provide electric service. Such compensation shall be an
2 amount mutually agreed upon by the affected suppliers or the sum of the
3 following:

4 (1) The depreciated replacement cost for the electric utility facilities
5 in the territory in which the service rights have been terminated pursuant
6 to subsection (a). As used in this paragraph, "depreciated replacement
7 cost" shall mean the original installed cost of the facilities, adjusted to
8 present value by utilizing a nationally recognized index of utility
9 construction costs, less accumulated depreciation based on the book
10 depreciation rates of the selling utility as filed with and approved by the
11 state corporation commission, which are in effect at the time of
12 acquisition;

13 (2) all reasonable and prudent costs of detaching the electric system
14 facilities to be sold and all reasonable and prudent costs of reintegrating
15 the remaining electric system facilities of the retail electric supplier whose
16 service rights are terminated pursuant to subsection (a);

17 (3) an amount equal to two times the gross revenues attributable to
18 the customers in the terminated territory during the 12 months next
19 preceding the date of transfer of the service pursuant to subsection (a); ~~and~~

20 (4) an amount equal to the state and federal tax liability created by the
21 taxable income pursuant to the provisions of this paragraph and paragraphs
22 (1), (2) ~~and~~, (3) *and* (5) by the retail electric supplier whose service rights
23 are terminated pursuant to subsection (a), calculated without regard to any
24 tax deductions or benefits not related to the sale of assets covered herein;
25 *and*

26 (5) *an amount equal to 15% of the gross revenues of total retail sales*
27 *attributable to new customers in the territory in which service rights have*
28 *been terminated for a period of 10 years following the date of termination*
29 *of service rights of the retail electric supplier. Payments shall be made in*
30 *annual installments to the retail electric supplier whose service rights are*
31 *terminated pursuant to subsection (a). Gross revenues shall be determined*
32 *based on the rates charged and billed at the time each annual payment is*
33 *made. Such retail electric supplier shall have the right to review, audit or*
34 *cause to be audited the subsequent supplier's financial records with*
35 *respect to retail electric service in the territory in which service rights*
36 *have been terminated to determine the amount payable pursuant to this*
37 *paragraph.*

38 (d) ~~In the event that the parties are unable to agree upon an amount of~~
39 ~~compensation to be paid~~ *compensation due* pursuant to subsection (c) *is*
40 *disputed*, after 60 days following the date of termination of service rights,
41 either party may apply to the district court having jurisdiction where any
42 portion of the facilities are located; for determination of compensation.
43 Such determination shall be made by the court sitting without a jury.

1 (e) *Notwithstanding the provisions of K.S.A. 66-1,176b, and*
2 *amendments thereto, a retail electric supplier shall be entitled to*
3 *compensation pursuant to subsections (c) and (d) if a franchise agreement*
4 *between a city and a retail electric supplier was agreed to pursuant to this*
5 *section and K.S.A. 12-2001 et seq., and amendments thereto, but was*
6 *terminated pursuant to K.S.A. 66-1,176b, and amendments thereto, within*
7 *10 years after such franchise agreement was effectuated by the parties.*

8 Sec. 2. K.S.A. 66-1,176 is hereby repealed.

9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.