

SENATE BILL No. 339

By Committee on Utilities

1-29

1 AN ACT concerning electric utilities; relating to electric rates; state
2 corporation commission; approval of certain contract rates for
3 electricity; cost recovery from rate classes; ~~amending K.S.A. 66-101b~~
4 ~~and 66-109 and repealing the existing sections;~~ **report to the**
5 **legislature}**.
6

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

8 ~~New~~ Section 1. (a) Notwithstanding the provisions of K.S.A. 66-101b
9 and 66-109, and amendments thereto, the commission shall have the
10 authority to approve a contract rate, outside a general rate proceeding, that
11 is not based on the electric public utility's cost of service for a facility, if
12 the commission:

13 (1) (A) Determines that the facility would not continue operations, or
14 resume operations that had previously been suspended, in the state of
15 Kansas without such contract rate; and

16 (B) determines that the contract rate is in the interest of the state of
17 Kansas based on:

18 (i) The interests of the customers of the electric public utility serving
19 the facility;

20 (ii) an evaluation of the incremental cost to serve the facility; and

21 (iii) the interests of the citizens of the state generally in promoting
22 economic development, retaining the tax base, keeping employment
23 opportunities in the state and promoting such other benefits to the state as
24 the commission may determine are created by approval of the contract
25 rate;

26 (2) allocates the reduced revenues from the contract rate, as
27 determined by a comparison of the contract rate to the revenues that would
28 have been generated at the retail rate the facility would have paid without
29 such contract rate, to the electric public utility's other non-contract
30 customers through a uniform percentage adjustment. Such reduced
31 revenues shall be applied in each general rate proceeding of the electric
32 public utility serving the facility to all components of the base rates of all
33 customer classes, except the rates for service provided to customers under
34 any contract rate approved by the commission pursuant to subsection (a) or

1 (b) or the commission's general rate making authority; and

2 (3) (A) approves a tracking mechanism to track reductions in revenue
3 experienced by the electric public utility serving the facility as a result of
4 the contract rate from the date the contract rate becomes effective; and

5 (B) such reductions in revenue shall be deferred to a regulatory asset
6 and shall accrue interest at the weighted average cost of capital used by the
7 commission to set the electric public utility's rates in its most recently
8 concluded general rate proceeding with the balance of such regulatory
9 asset to be included in the rate base and revenue requirement of the electric
10 public utility in each of its general rate proceedings through an
11 amortization of the balance over a reasonable period until fully collected
12 from the electric public utility's non-contract rate customers.

13 (b) Notwithstanding the provisions of K.S.A. 66-101b and 66-109,
14 and amendments thereto, the commission shall have the authority to
15 approve a contract rate, outside a general rate proceeding, that is based on
16 the electric public utility's incremental cost of service for a facility, if the
17 commission:

18 (1) (A) Determines that the facility would not commence or expand
19 operations in the state of Kansas without such contract rate;

20 (B) determines that the contract rate recovers the incremental cost of
21 providing service to the facility; and

22 (C) determines that the contract rate is in the interest of the state of
23 Kansas based on:

24 (i) The interests of the customers of the electric public utility serving
25 the facility;

26 (ii) the incremental cost of serving the facility; and

27 (iii) the interests of the citizens of the state generally in promoting
28 economic development, ~~retaining~~ **expanding** the tax base, ~~keeping~~
29 **increasing** employment opportunities in the state and promoting such
30 other benefits to the state as the commission may determine are created by
31 approval of the contract rate; and

32 (2) uses the reduction in revenues that result from any contract rate
33 approved by the commission pursuant to this subsection that will be in
34 effect during the effective period of the rate for the purposes of
35 determining the electric utility's revenue requirement in each general rate
36 proceeding concluded after the effective date of this section.

37 (c) The contract rates authorized by this section may be approved by
38 the commission for a term of up to 10 years, and an electric public utility
39 may apply for reapproval of such contract rates for a facility that the
40 commission has granted approval under this section.

41 (d) The provisions of this section shall not affect any contract rates
42 approved by the commission prior to, and in effect on, the effective date of
43 this section. This section shall not:

1 (1) Affect or diminish the authority of the commission to approve just
2 and reasonable contract rates filed pursuant to the commission's general
3 ratemaking authority according to custom and practice of the commission
4 in place prior to the effective date of this section; or

5 (2) establish standards for approval of such contract rates.

6 (e) If the commission approves a contract rate pursuant to this
7 section, the commission shall not have the authority to modify or eliminate
8 any such rate during the specified term, subject to the conditions
9 established by this section.

10 (f) *{Starting in January 2023, the commission shall biennially*
11 *provide a status report to the legislature about any contract rates*
12 *authorized pursuant to this section. Such report shall include the:*

13 (1) *Number of entities with such contract rates;*

14 (2) *number of entities with increased load;*

15 (3) *number of entities with decreased load;*

16 (4) *aggregate load and change in aggregate load on an annual*
17 *basis;*

18 (5) *total subsidy and the subsidy for each individual contract;*

19 (6) *annual and cumulative rate increase on non-contract rate*
20 *customers; and*

21 (7) *estimated economic development impact of entities with contract*
22 *rates that occurred as a result of such contract rates through an*
23 *evaluation of the annual: (A) Total employment for such entities; (B)*
24 *change in employment for such entities; and (C) tax revenue generated*
25 *by such entities.*

26 {g} As used in this section:

27 (1) "Electric public utility" means the same as prescribed in K.S.A.
28 66-101a, and amendments thereto, **but does not include any such utility**
29 **that is a cooperative as defined in K.S.A. 66-104d, and amendments**
30 **thereto, or owned by one or more such cooperatives;** and

31 (2) "facility" means an existing or proposed building or buildings of
32 an existing or potential electric customer with existing or expected load
33 equal to, or in excess of, a monthly demand of 50 megawatts, and such
34 load may represent the aggregate demand of multiple meter accounts.

35 ~~New~~ Sec. 2. (a) Notwithstanding the provisions of K.S.A. 66-101b or
36 66-109, and amendments thereto, the commission shall authorize an
37 electric public utility to implement economic development rate schedules
38 that provide discounts from otherwise applicable standard rates for electric
39 service for new or expanded facilities of industrial or commercial
40 customers that are not in the business of selling or providing goods or
41 services directly to the general public. To be eligible for such discounts,
42 such customer shall:

43 (1) Have incentives from one or more local, regional, state or federal

1 economic development agencies to locate such new or expanded facilities
2 in the electric public utility's certified service territory;

3 (2) qualify for service under the electric public utility's non-
4 residential and non-lighting rate schedules for such new or expanded
5 facility; and

6 (3) not receive the discount together with service provided by the
7 electric public utility pursuant to any other special contract agreements.

8 (b) The discount authorized by this section shall only be applicable to
9 new facilities or expanded facilities that have:

10 (1) A peak demand that is reasonably projected to be at least 200
11 kilowatts within two years of the date the customer first receives service
12 under the discounted rate and is not the result of shifting existing demand
13 from other facilities of the customer in the electric public utility's certified
14 service territory and:

15 (A) Has an annual load factor that is reasonably projected to equal or
16 exceed the customer's annual system load factor within two years of the
17 date the customer first receives service under the discounted rate; or

18 (B) otherwise warrants a discounted rate based on any of the
19 following factors:

20 (i) The number of new permanent full-time jobs created or the
21 percentage increase in existing permanent full-time jobs created;

22 (ii) the level of capital investment;

23 (iii) additional off-peak usage;

24 (iv) curtailable or interruptible load;

25 (v) new industry or technology; or

26 (vi) competition with existing industrial customers; or

27 (2) a peak demand that is reasonably projected to be at least 300
28 kilowatts within two years of the date the customer first receives service
29 under the discounted rate and is not the result of shifting existing demand
30 from other facilities of the customer in the electric public utility's certified
31 service territory and:

32 (A) An annual load that is reasonably projected to be at least 55% of
33 the electric public utility's annual system load factor within two years of
34 the date the customer first receives service under the discounted rate; and

35 (B) the facility shall, once first achieved, maintain the peak demand
36 and load factor for the remaining duration of the discounted rate.

37 (c) The discount authorized by this section shall be determined by
38 reducing otherwise applicable charges associated with the rate schedule
39 applicable to the new or expanded existing facility by a fixed percentage
40 for each year of service under the discount for a period of up to five years.
41 The average of the annual discount percentages shall not:

42 (1) Exceed 20% for discounts that qualify pursuant to subsection (b)
43 (1), but may be between 5% to 30% in any year; and

1 (2) exceed 40% for discounts that qualify pursuant to subsection (b)
2 (2), but may be between 20% to 50% in any year.

3 (d) In each general rate proceeding concluded after the effective date
4 of this section, the commission shall allocate the reduced level of revenues
5 arising from the discounted rates provided for in this section through the
6 application of a uniform percentage adjustment to the revenue requirement
7 responsibility for all customer classes of the electric public utility
8 providing such discounted rate, including the classes with customers that
9 qualify for discounts under this act, except for rates for service provided to
10 customers under contract rates either approved by the commission
11 pursuant to section 1, and amendments thereto, or the commission's
12 general ratemaking authority.

13 (e) (1) The commission shall approve a tracking mechanism to track
14 reductions in revenue experienced by the electric public utility serving the
15 facility as a result of the discount rate from the date the discount rate
16 becomes effective; and

17 (2) such reductions in revenue shall be deferred to a regulatory asset
18 and shall accrue interest at the weighted average cost of capital used by the
19 commission to set the electric public utility's rates in its most recently
20 concluded general rate proceeding with the balance of such regulatory
21 asset to be included in the rate base and revenue requirement of the electric
22 public utility in each of the utility's general rate proceedings through an
23 amortization of the balance over a reasonable period until fully collected
24 from the utility's non-contract rate customers.

25 (f) The provisions of this section shall not apply to rates for service
26 provided to customers under contract rates approved by the commission
27 pursuant to section 1, and amendments thereto, or the commission's
28 general ratemaking authority according to custom and practice of the
29 commission in place prior to the effective date of this section.

30 (g) *{Starting in January 2023, the commission shall biennially*
31 *provide a status report to the legislature about any discounts from*
32 *tariffed rates authorized pursuant to this section. Such report shall*
33 *include the:*

34 (1) *Number of entities with such discounts;*

35 (2) *number of entities with increased load;*

36 (3) *number of entities with decreased load;*

37 (4) *aggregate load and change in aggregate load on an annual*
38 *basis;*

39 (5) *total subsidy and the subsidy for each individual contract;*

40 (6) *annual and cumulative rate impact on non-contract rate*
41 *customers; and*

42 (7) *estimated economic development impact of entities with*
43 *discounted rates that occurred as a result of such discounts through an*

1 *evaluation of the annual: (A) Total employment for such entities; (B)*
2 *change in employment for such entities; and (C) tax revenue generated*
3 *by such entities.*

4 (h) }For the purposes of this section:

5 (1) "Electric public utility" means the same as prescribed in K.S.A.
6 66-101a, and amendments thereto, **but does not include any such utility**
7 **that is a cooperative as defined in K.S.A. 66-104d, and amendments**
8 **thereto, or owned by one or more such cooperatives;**

9 (2) "expanded facility" means a separately metered facility of the
10 customer, unless the utility determines that the additional costs of separate
11 metering of such facility would exceed the associated benefits or that it
12 would be difficult or impractical to install or read the meter, that has not
13 received service in the electric utility's certified service territory in the
14 previous 12 months; and

15 (3) "new facility" means a building of the customer that has not
16 received electric service in the electric utility's certified service territory in
17 the previous 12 months.

18 ~~Sec. 3.—K.S.A. 66-101b is hereby amended to read as follows: 66-~~
19 ~~101b. *Except as provided in sections 1 and 2, and amendments thereto,*~~
20 ~~every electric public utility governed by this act shall be required to~~
21 ~~furnish reasonably efficient and sufficient service and facilities for the use~~
22 ~~of any and all products or services rendered, furnished, supplied or~~
23 ~~produced by such electric public utility, to establish just and reasonable~~
24 ~~rates, charges and exactions and to make just and reasonable rules,~~
25 ~~classifications and regulations. Every unjust or unreasonably~~
26 ~~discriminatory or unduly preferential rule, regulation, classification, rate,~~
27 ~~charge or exaction is prohibited and is unlawful and void. The commission~~
28 ~~shall have the power, after notice and hearing in accordance with the~~
29 ~~provisions of the Kansas administrative procedure act, to require all~~
30 ~~electric public utilities governed by this act to establish and maintain just~~
31 ~~and reasonable rates when the same are reasonably necessary in order to~~
32 ~~maintain reasonably sufficient and efficient service from such electric~~
33 ~~public utilities.~~

34 ~~Sec. 4.—K.S.A. 66-109 is hereby amended to read as follows: 66-109.~~
35 ~~*Except as provided in sections 1 and 2, and amendments thereto,* no~~
36 ~~common carrier or public utility governed by the provisions of this act~~
37 ~~shall, knowingly or willfully, charge, demand, collect or receive a greater~~
38 ~~or less compensation for the same class of service performed by it *such*~~
39 ~~*common carrier or public utility* within the state, or for any service in~~
40 ~~connection therewith, than is specified in the printed schedules or~~
41 ~~classifications, including schedules of joint rates; or demand, collect or~~
42 ~~receive any rate, joint rate, toll, fare or charge not specified in such~~
43 ~~schedule or classification: *Provided, except that rates different from those*~~

1 ~~specified in the printed schedule or classification of rates may be charged~~
2 ~~by any public utility, street or interurban railway, by agreement with the~~
3 ~~customer, in cases of charity, emergency, festivity or public entertainment:~~
4 ~~*Provided, That, and any utility governed by the provisions of this act may*~~
5 ~~*grant to the officers, employees and agents of such utilities free or reduced*~~
6 ~~*rates or service upon like terms and in the same manner as is now provided*~~
7 ~~*by law relating to common carriers:*~~
8 ~~Sec. 5.—K.S.A. 66-101b and 66-109 are hereby repealed.~~
9 ~~Sec. 6: 3. This act shall take effect and be in force from and after its~~
10 ~~publication in the statute book.~~