

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 339

As Amended by Senate Committee of the Whole

Brief*

SB 339, as amended, would create law related to the authority of the Kansas Corporation Commission (KCC) to regulate electric public utility rates to allow contract and discounted rates for certain facilities, as specified below. The KCC would be authorized to approve such rates notwithstanding provisions governing its power to require utilities to establish just and reasonable rates to maintain efficient and sufficient electric service and to prohibit variations from established rate schedules.

Contract Rates Not Based on Cost of Service to Facility

The bill would allow the KCC to approve a contract rate, outside a general rate proceeding, that is not based on the electric public utility's cost of service for a facility, if the KCC:

- Determines such facility would not continue operations, or continue operations that had previously been suspended within the state, and the rate is in the interest of the state based on:
 - The interests of the customers of the utility serving the facility;
 - An evaluation of the incremental cost to serve the facility; and
 - The interests of the citizens of the state generally in promoting economic development, retaining the tax base, keeping

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

employment opportunities in the state, and other benefits created by approval of the contract rate, as determined by the KCC; and

- Allocates the reduced revenues from the contract rate (as determined by a comparison of the contract rate to the revenues that would have been generated at the retail rate the facility would have paid without such contract rate) to the utility's other non-contract customers through a uniform percentage adjustment. The bill would require the reduced revenues to be applied in the base rates of all customer classes, except the base rates for service provided to customers under any approved contract rate, in each general rate proceeding involving the utility serving the facility.

Contract Rates Based on Incremental Cost of Service to Facility

The bill would allow the KCC to approve a contract rate, outside a general rate proceeding, that is based on the utility's incremental cost of service for a facility, if the KCC:

- Determines the facility would not commence or expand operations in the state without a contract rate;
- Determines the contract rate recovers the incremental cost of providing service to the facility and is in the best interest of the state based on:
 - The interests of the customers of the utility serving the facility;
 - The incremental cost of serving the facility; and
 - The interests of the citizens of the state generally in promoting economic development, expanding the tax base,

increasing employment in the state, and other benefits created by approval of the contract rate, as determined by the KCC; and

- Uses the reduction in revenues that result from any contract rate approved by the KCC pursuant to the bill during the rate's effective period for the purposes of determining the utility's revenue requirement in each general rate proceeding concluding after July 1, 2020.

Terms and Renewal

The bill would specify the KCC could approve each type of contract rate for a term of up to ten years, with the ability to renew such rates, upon the utility's application for reapproval. The KCC would not have the authority to modify or eliminate any approved contract rate during the specified term.

Effect on Prior Contract Rates

The provisions of the bill would not affect, or establish standards for approval of, any contract rates approved by the KCC prior to and in effect on July 1, 2020, and would not affect or diminish the KCC's general ratemaking authority to approve just and reasonable contract rates prior to July 1, 2020.

Discounted Rates

The bill would authorize the KCC to approve the implementation of economic development rate schedules providing discounts from standard rates for electric service for new or expanded facilities of industrial or commercial customers that are not in the business of selling or providing goods or services directly to the general public.

Eligibility

To be eligible for discounted rates, the industrial or commercial customer would be required to:

- Have incentives from one or more local, regional, state, or federal economic development agencies to locate new or expanded facilities in the utility's certified service territory;
- Qualify for service under the utility's nonresidential and non-lighting rate schedules for a new or expanded facility; and
- Not receive the discount together with service provided by the utility pursuant to any other special contract agreements.

Applicability

The discount authorized by the bill would be applicable only to new facilities or expanded facilities that meet the following requirements:

- A peak demand that is reasonably projected to be at least 200 kilowatts within two years of the date the customer first receives service under the discounted rate and is not the result of shifting existing demand from other facilities of the customer in utility's certified service territory; and
 - Has an annual load factor that is projected to equal or exceed the customer's annual system load factor within two years of the date the customer first receives service under the discounted rate; or
 - Otherwise warrants a discounted rate based on any of the following factors:

1. The number of new permanent full-time jobs created or the percentage increase in existing permanent full-time jobs created;
 2. The level of capital investment;
 3. Additional off-peak usage;
 4. Curtailable or interruptible load;
 5. New industry or technology; or
 6. Competition with existing industrial customers; or
- A peak demand that is reasonably projected to be at least 300 kilowatts within two years of the date the customer first receives service under the discounted rate and is not the result of shifting existing demand from other facilities of the customer in the utility's certified service territory; and
 - An annual load that is reasonably projected to be at least 55 percent of the utility's annual system load factor within two years of the date the customer first receives service under the discounted rate; and
 - Maintain the peak demand and load factor for the remaining duration of the discounted rate.

Calculation of Discount

The discount authorized by the bill would be determined by reducing otherwise applicable charges associated with the rate schedule that applies to the new or expanded existing facility by a fixed percentage for each year of service under the discount for a period of up to five years.

The average of the annual discount percentages could not exceed 20 percent for discounts for facilities that have a projected peak demand of at least 200 kilowatts, but could be between between 5 percent to 30 percent in any year. For

facilities that have a projected peak demand of at least 300 kilowatts, the average of the annual discount percentages could not exceed 40 percent, but could be between 20 percent to 50 percent in any year.

In each general rate proceeding concluded after July 1, 2020, the KCC would be required to allocate the reduced level of revenues arising from the discounted rates provided by the bill through the application of a uniform percentage adjustment to the revenue requirement responsibility for all customer classes of the utility providing the discounted rate, including the classes with customers that qualify for discounts under the bill, except for contract rates either approved by the KCC pursuant to the bill or its general ratemaking authority.

Tracking Mechanisms and Deferred Regulatory Assets

For both contract rates and discounted rates, the KCC would be required to approve a mechanism to track the utility's reductions in revenue as a result of the contract rate or discounted rate from the date the rate becomes effective. Such reductions in revenue would be required to be deferred to a regulatory asset and would accrue interest at the weighted average cost of capital used by the KCC to set the utility's rates in its most recent general rate proceeding. The balance of the regulatory asset would be included in the rate base and revenue requirement of the utility in each of its general rate proceedings through an amortization of the balance over a reasonable period until fully collected from the utility's non-contract rate customers.

General Applicability

The bill would clarify provisions related to discounted rates would not apply to those related to contract rates approved by the KCC pursuant to the bill or the KCC's general ratemaking authority in place prior to July 1, 2020.

Definitions

The bill would define various terms used in the bill, including:

- “Electric public utility” would have the same meaning as used elsewhere in Chapter 66 of the *Kansas Statutes Annotated*, but would not include any utility that is a cooperative or is owned by one or more such cooperatives;
- “Facility” would mean an existing or proposed building or buildings of an existing or potential electric customer with existing or expected load equal to, or in excess of, a monthly demand of 50 megawatts, and the load may represent the aggregate demand of multiple meter accounts;
- “Expanded facility” would mean a separately metered facility of the customer, unless the utility determines the additional costs of separate metering of a facility would exceed the associated benefits or that it would be difficult or impractical to install or read the meter, that has not received service in the electric utility’s certified service territory in the previous 12 months; and
- “New facility” would mean a building of the customer that has not received electric service in the electric utility’s certified service territory in the previous 12 months.

Status Reports

The bill would require the KCC to provide a status report to the Legislature biennially, starting in January 2023, regarding utilities’ use of contract rates and discounted rates, with the following items to be included:

- Number of entities with such contract or discounted rates;
- Number of entities with increased load;
- Number of entities with decreased load;
- Aggregate load and change in aggregate load on an annual basis;
- Total subsidy and the subsidy for each individual contract;
- Annual and cumulative rate increase on non-contract rate customers; and
- Estimated economic development impact of entities with contract rates or discounted rates that occurred as a result of such contract rates through an evaluation of the entities' annual total employment, change in employment, and tax revenue generated.

Background

The bill was introduced by the Senate Committee on Utilities at the request of Evergy.

In the Senate Committee hearing, representatives of Cavern Technologies, Databank, Ltd., Evergy, Kansas Economic Development Alliance, Kansas Industrial Consumers Group, and the Wichita Regional Chamber of Commerce provided proponent testimony. The proponents generally stated the bill would make Kansas businesses more competitive with those in surrounding states. Written-only proponent testimony was submitted by the Greater Topeka Chamber of Commerce, Greater Wichita Partnership, Kansas Chamber of Commerce, Kansas City Area Development Council, Lenexa Chamber of Commerce, Liberty Utilities, Olathe Chamber of Commerce, and Overland Park Chamber of Commerce.

A representative of the Kansas Electric Cooperatives provided neutral testimony, requesting an amendment to exempt electric cooperatives from the definition of “electric public utility” under the bill.

Representatives of the Citizens’ Utility Ratepayer Board (CURB) and KCC provided opponent testimony. The CURB representative stated concerns that the bill would unfairly benefit utilities over ratepayers and reduce the ability of the KCC to regulate rates. The KCC representative stated the bill’s provisions do not follow the recent London Economics International rate study’s considerations in designing economic development riders and is premature as a result and does not comply with established criteria established by KCC order regarding ratemaking treatment for revenue losses.

The Senate Committee amended the bill to clarify cooperatives are excluded from the definition of “electric public utility” and adopted a technical amendment to remove references to current law governing the KCC’s power to require utilities to establish just and reasonable rates to maintain efficient and sufficient electric service and to prohibit variations from established rate schedules.

The Senate Committee of the Whole amended the bill to require the KCC to submit a biennial report, starting in January 2023, to the Legislature regarding utilities’ use of contract rates and discounted rates.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KCC indicates the agency would need to hire outside consultants to assist in determining the special contract rates authorized by enactment of the bill and estimates the cost of each study to be \$10,000 to \$20,000 for each utility that files an application, with total annual costs totaling \$75,000 to \$200,000. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor’s Budget Report*.