

**HOUSE BILL No. 2330**

By Committee on Energy, Utilities and Telecommunications

2-10

1 AN ACT concerning energy; relating to electric public utilities;  
2 authorizing certain sales of electricity pursuant to power purchase  
3 agreements; exempting such sales from the retail electric suppliers act  
4 and certain renewable energy suppliers from public utility regulation;  
5 amending K.S.A. 66-104, 66-1,170, 66-1,184 and 66-1264 and  
6 repealing the existing sections.  
7

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

9 New Section 1. (a) As used in this section:

10 (1) "Eligible generation facility" means an electric generation facility  
11 that:

12 (A) Uses solar photovoltaic cells and panels to generate electricity;

13 (B) is located on premises owned, operated, leased or otherwise  
14 controlled by a host customer-generator;

15 (C) is designed to offset part or all of the host customer-generator's  
16 electrical energy requirements; and

17 (D) is installed, owned and operated pursuant to the terms and  
18 conditions of a power purchase agreement.

19 (2) "Host customer-generator" means any retail electric customer of a  
20 utility and any successor or assign of a retail electric customer who is a  
21 party to a power purchase agreement with a solar energy developer.

22 (3) "Power purchase agreement" means a contractual agreement  
23 between a renewable energy supplier and a host customer-generator that  
24 sets forth the terms and conditions in which the renewable energy supplier  
25 agrees to install, own and operate an eligible generation facility on  
26 premises owned, operated, leased or otherwise controlled by the host  
27 customer-generator, and the host customer-generator agrees to purchase  
28 the electricity produced by such facility from the renewable energy  
29 supplier for a defined period of time.

30 (4) "Renewable energy supplier" means any person, firm, partnership,  
31 corporation or any other entity that transacts business in the state for the  
32 purpose of installing, owning and operating an eligible generation facility  
33 pursuant to a power purchase agreement.

34 (5) "Utility" means an electric public utility as defined in K.S.A. 66-  
35 101a, and amendments thereto, any cooperative as defined in K.S.A. 17-  
36 4603, and amendments thereto, or a municipally owned or operated

1 electric utility that provides retail electric service.

2 (b) A renewable energy supplier shall be permitted to sell the  
3 electricity generated by an eligible generation facility exclusively to the  
4 host customer-generator pursuant to a power purchase agreement. The  
5 eligible generation facility shall be subject to any interconnection and  
6 other requirements imposed on customer-generators pursuant to K.S.A.  
7 66-1,184 or 66-1263 et seq., and amendments thereto.

8 Sec. 2. K.S.A. 66-104 is hereby amended to read as follows: 66-104.

9 (a) The term "public utility," as used in this act, shall be construed to mean  
10 every corporation, company, individual, association of persons, their  
11 trustees, lessees or receivers, that now or hereafter may own, control,  
12 operate or manage, except for private use, any equipment, plant or  
13 generating machinery, or any part thereof, for the transmission of  
14 telephone messages or for the transmission of telegraph messages in or  
15 through any part of the state, or the conveyance of oil and gas through  
16 pipelines in or through any part of the state, except pipelines less than 15  
17 miles in length and not operated in connection with or for the general  
18 commercial supply of gas or oil, and all companies for the production,  
19 transmission, delivery or furnishing of heat, light, water or power. No  
20 cooperative, cooperative society, nonprofit or mutual corporation or  
21 association ~~which~~ that is engaged solely in furnishing telephone service to  
22 subscribers from one telephone line without owning or operating its own  
23 separate central office facilities; shall be subject to the jurisdiction and  
24 control of the commission as provided herein, except that it shall not  
25 construct or extend its facilities across or beyond the territorial boundaries  
26 of any telephone company or cooperative without first obtaining approval  
27 of the commission. ~~As used herein,~~ The term "transmission of telephone  
28 messages" shall include the transmission by wire or other means of any  
29 voice, data, signals or facsimile communications, including all such  
30 communications now in existence or as may be developed in the future.

31 (b) The term "public utility" shall also include that portion of every  
32 municipally owned or operated electric or gas utility located in an area  
33 outside of and more than three miles from the corporate limits of such  
34 municipality, but regulation of the rates, charges and terms and conditions  
35 of service of such utility within such area shall be subject to commission  
36 regulation only as provided in K.S.A. 66-104f, and amendments thereto.  
37 Nothing in this act shall apply to a municipally owned or operated utility,  
38 or portion thereof, located within the corporate limits of such municipality  
39 or located outside of such corporate limits but within three miles thereof  
40 ~~except as provided in K.S.A. 66-131a, and amendments thereto.~~

41 (c) Except as herein provided, the power and authority to control and  
42 regulate all public utilities and common carriers situated and operated  
43 wholly or principally within any city, or principally operated for the

1 benefit of such city or its people, shall be vested exclusively in such city,  
2 subject only to the right to apply for relief to the corporation commission  
3 as provided in K.S.A. 66-133, and amendments thereto, and to the  
4 provisions of K.S.A. 66-104e, and amendments thereto. A transit system  
5 principally engaged in rendering local transportation service in and  
6 between contiguous cities in this and another state by means of street  
7 railway, trolley bus and motor bus lines, or any combination thereof, shall  
8 be deemed to be a public utility as that term is used in this act and, ~~as such,~~  
9 shall be subject to the jurisdiction of the commission.

10 (d) The term "public utility" shall not include:

11 (1) Any activity of an otherwise jurisdictional corporation, company,  
12 individual, association of persons, their trustees, lessees or receivers as to  
13 the marketing or sale of compressed natural gas for end use as motor  
14 vehicle fuel; or

15 (2) *the activity of a renewable energy supplier with respect to the*  
16 *supplier's association with an eligible generation facility pursuant to*  
17 *section 1, and amendments thereto.*

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

22 (1) Is newly constructed and placed in service on or after January 1,  
23 2001; and

24 (2) is not in the rate base of:

25 (A) An electric public utility that is subject to rate regulation by the  
26 state corporation commission;

27 (B) any cooperative; as defined by K.S.A. 17-4603, and amendments  
28 thereto, or any nonstock member-owned cooperative corporation  
29 incorporated in this state; or

30 (C) a municipally owned or operated electric utility.

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

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

39 Sec. 3. K.S.A. 66-1,170 is hereby amended to read as follows: 66-  
40 1,170. As used in this act:

41 (a) "Distribution line" means an electric line used to furnish retail  
42 electric service, including any line from a distribution substation to an  
43 electric consuming facility; ~~but such term,~~ *except that "distribution line"*

1 does not include a transmission facility used for the bulk transfer of energy  
2 even if such energy is reduced in voltage and used as station power.

3 (b) "Electric consuming facility" means any entity ~~which~~ *that* utilizes  
4 electric energy from a central station service.

5 (c) "Commission" means the state corporation commission of the  
6 state of Kansas.

7 (d) "Retail electric supplier" means any person, firm, corporation,  
8 municipality, association or cooperative corporation engaged in the  
9 furnishing of retail electric service, *except that "retail electric supplier"*  
10 *does not include the activity of a renewable energy supplier with respect to*  
11 *such supplier's association with an eligible generation facility pursuant to*  
12 *section 1, and amendments thereto.*

13 (e) "Certified territory" means an electric service territory certified to  
14 a retail electric supplier pursuant to this act.

15 (f) "Existing distribution line" means a distribution line ~~which~~ *that* is  
16 in existence on the effective date of this act; and ~~which~~ is being or has  
17 been used as such.

18 (g) "Single certified service territory" means that service area ~~in~~  
19 ~~which~~ *where* only one retail electric supplier has been granted a service  
20 certificate by the commission.

21 (h) "Dual certified service territory" means that service area where  
22 more than one retail electric supplier has been granted a service certificate  
23 by the commission.

24 (i) "Station power" means electric energy used for operating  
25 equipment necessary for the process of generating electricity at any  
26 generating plant owned by a utility or a generating plant specified in  
27 ~~subsection (e) of K.S.A. 66-104(e), and amendments thereto, and placed in~~  
28 use on or after January 1, 2002, whether such electrical energy is generated  
29 at such generating plant or provided through the adjacent transformation  
30 and transmission interconnect, ~~but~~ *except that "station power"* does not  
31 include electric energy used for heating, lighting, air conditioning and  
32 office needs of the buildings at a generating plant site.

33 Sec. 4. K.S.A. 66-1,184 is hereby amended to read as follows: 66-  
34 1,184. (a) Except as provided in subsection (b), every public utility ~~which~~  
35 *that* provides retail electric services in this state shall enter into a contract  
36 for parallel generation service with any person who is a customer of such  
37 utility, upon request of such customer, whereby such customer may attach  
38 or connect to the utility's delivery and metering system an apparatus or  
39 device for the purpose of feeding excess electrical power ~~which~~ *that* is  
40 generated by such customer's energy producing system into the utility's  
41 system. No such apparatus or device shall either cause damage to the  
42 public utility's system or equipment or present an undue hazard to utility  
43 personnel. Every such contract shall include, but need not be limited to,

1 provisions relating to fair and equitable compensation on such customer's  
 2 monthly bill for energy supplied to the utility by such customer.

3 (b) (1) For purposes of this subsection:

4 (A) *"Hospital" means the same as defined in K.S.A. 65-425, and*  
 5 *amendments thereto.*

6 (B) *"Military installation" means any base, camp, post, station, yard,*  
 7 *center, homeport facility for any ship or other facility under the*  
 8 *jurisdiction of the department of defense, including any leased facility,*  
 9 *located in Kansas.*

10 (C) *"Religious organization" means any organization, church, body*  
 11 *of communicants or group, or a society of individuals united for religious*  
 12 *purposes, gathered in common membership for mutual edification in piety,*  
 13 *worship and religious observances at a definite place.*

14 (D) *"School" means any school of a school district, accredited private*  
 15 *primary or secondary school, postsecondary educational institution,*  
 16 *community college, technical college, municipal university or accredited*  
 17 *independent institution of postsecondary education.*

18 (E) *"Utility" means an electric public utility; as defined by K.S.A. 66-*  
 19 *101a, and amendments thereto, any cooperative; as defined by K.S.A. 17-*  
 20 *4603, and amendments thereto, or a nonstock member-owned electric*  
 21 *cooperative corporation incorporated in this state; or a municipally owned*  
 22 *or operated electric utility;*

23 ~~(B) "School" means Cloud county community college and Dodge~~  
 24 ~~City community college.~~

25 (2) Every utility ~~which~~ *that* provides retail electric services in this  
 26 state shall enter into a contract for parallel generation service with any  
 27 person who is a customer of such utility, if such customer is a residential  
 28 customer of the utility ~~and owns with~~ *with* a renewable generator ~~with~~ *having*  
 29 a capacity of 25 kilowatts or less, ~~or is~~ *or is* a commercial customer of the utility  
 30 ~~and owns with~~ *with* a renewable generator ~~with~~ *having* a capacity of 200  
 31 kilowatts or less ~~or is~~ *or is*, a school ~~and owns,~~ *religious organization or*  
 32 *hospital with* a renewable generator ~~with~~ *having* a capacity of 1.5  
 33 megawatts or less *or a United States military installation.* Such generator  
 34 shall be appropriately sized for such customer's anticipated electric load. A  
 35 commercial customer who uses the operation of a renewable generator in  
 36 connection with irrigation pumps shall not request more than 10 irrigation  
 37 pumps connected to renewable generators *to* be attached or connected to  
 38 the utility's system. At the customer's delivery point on the customer's side  
 39 of the retail meter, such customer may attach or connect to the utility's  
 40 delivery and metering system an apparatus or device for the purpose of  
 41 feeding excess electrical power ~~which is~~ *generated* by such customer's  
 42 energy producing system into the utility's system. No such apparatus or  
 43 device shall either cause damage to the utility's system or equipment or

1 present an undue hazard to utility personnel. Every such contract shall  
2 include, but need not be limited to, provisions relating to fair and equitable  
3 compensation for energy supplied to the utility by such customer. Such  
4 compensation shall be not less than 100% of the utility's monthly system  
5 average cost of energy per kilowatt hour, except that in the case of  
6 renewable generators with a capacity of 200 kilowatts or less, such  
7 compensation shall be not less than 150% of the utility's monthly system  
8 average cost of energy per kilowatt hour. A utility may credit such  
9 compensation to the customer's account or pay such compensation to the  
10 customer at least annually or when the total compensation due equals \$25  
11 or more.

12 (3) A customer-generator of any investor owned utility shall have the  
13 option of entering into a contract pursuant to this subsection~~(b)~~ or  
14 utilizing the net metering and easy connection act. The customer-generator  
15 shall exercise the option in writing, filed with the utility.

16 (c) The following terms and conditions shall apply to contracts  
17 entered into under subsection (a) or (b):

18 (1) The utility~~will~~ shall supply, own, and maintain all necessary  
19 meters and associated equipment utilized for billing. ~~In addition, and~~ For  
20 the purposes of monitoring customer generation and load, the utility may  
21 install at its expense, load research metering. The customer shall supply, at  
22 no expense to the utility, a suitable location for meters and associated  
23 equipment used for billing and for load research;

24 (2) for the purposes of insuring the safety and quality of utility  
25 system power, the utility shall have the right to require the customer, at  
26 certain times and as electrical operating conditions warrant, to limit the  
27 production of electrical energy from the generating facility to an amount  
28 no greater than the load at the customer's facility of which the generating  
29 facility is a part;

30 (3) the customer shall furnish, install, operate, and maintain in good  
31 order and repair~~and~~, without cost to the utility, such relays, locks and  
32 seals, breakers, automatic synchronizer, and other control and protective  
33 apparatus as shall be designated by the utility as being required as suitable  
34 for the operation of the generator in parallel with the utility's system. In  
35 any case where the customer and the utility cannot agree to terms and  
36 conditions of any such contract, the state corporation commission shall  
37 establish the terms and conditions for such contract. ~~In addition,~~ The utility  
38 may install, own, and maintain a disconnecting device located near the  
39 electric meter or meters. Interconnection facilities between the customer's  
40 and the utility's equipment shall be accessible at all reasonable times to  
41 utility personnel. Upon notification by the customer of the customer's  
42 intent to construct and install parallel generation, the utility shall provide  
43 the customer a written estimate of all costs that will be incurred by the

1 utility and billed to the customer to accommodate the interconnection. The  
2 customer may be required to reimburse the utility for any equipment or  
3 facilities required as a result of the installation by the customer of  
4 generation in parallel with the utility's service. The customer shall notify  
5 the utility prior to the initial energizing and start-up testing of the  
6 ~~customer-owned generator~~, and the utility shall have the right to have a  
7 representative present at such test;

8 (4) the utility may require a special agreement for conditions related  
9 to technical and safety aspects of parallel generation; and

10 (5) the utility may limit the number and size of renewable generators  
11 to be connected to the utility's system due to the capacity of the  
12 distribution line to which such renewable generator would be connected,  
13 and in no case shall the utility be obligated to purchase an amount greater  
14 than 4% of such utility's peak power requirements.

15 (d) Service under any contract entered into under subsection (a) or (b)  
16 shall be subject to either the utility's rules and regulations on file with the  
17 state corporation commission, which shall include a standard  
18 interconnection process and requirements for such utility's system, or the  
19 current federal energy regulatory commission interconnection procedures  
20 and regulations.

21 (e) In any case where the ~~owner of the renewable generator~~ *customer*  
22 and the utility cannot agree to terms and conditions of any contract  
23 provided for by this section, the state corporation commission shall  
24 establish the terms and conditions for such contract.

25 (f) The governing body of any school desiring to proceed under this  
26 section shall, prior to taking any action permitted by this section, make a  
27 finding that either:

28 (1) Net energy cost savings will accrue to the school from such  
29 renewable generation over a 20-year period; or

30 (2) that such renewable generation is a science project being  
31 conducted for educational purposes and ~~that~~ such project may not recoup  
32 the expenses of the project through energy cost savings. Any school  
33 proceeding under this section may contract or enter into a finance, pledge,  
34 loan or lease-purchase agreement with the Kansas development finance  
35 authority as a means of financing the cost of such renewable generation.

36 (g) Each kilowatt of nameplate capacity of the parallel generation of  
37 electricity provided for in this section shall count as 1.10 kilowatts toward  
38 the compliance of the affected utility, as defined in K.S.A. 66-1257, and  
39 amendments thereto, and with whom the customer-generator has  
40 contracted, with the renewable energy standards act in K.S.A. 66-1256  
41 through 66-1262, and amendments thereto.

42 (h) The provisions of the net metering and easy connection act shall  
43 not preclude the state corporation commission from approving net

1 metering tariffs upon request of an electric utility for other methods of  
2 renewable generation not prescribed in ~~subsection (b)(1)~~ of K.S.A. 66-  
3 1264(b)(1), and amendments thereto.

4 Sec. 5. K.S.A. 66-1264 is hereby amended to read as follows: 66-  
5 1264. As used in the net metering and easy connection act:

6 (a) "Commission" means the state corporation commission.

7 (b) "Customer-generator" means the owner or operator *or person that*  
8 *contracts with an owner or operator pursuant to section 1, and*  
9 *amendments thereto*, of a net metered facility ~~which that~~:

10 (1) Is powered by a renewable energy resource;

11 (2) is located on a premises owned, operated, leased or otherwise  
12 controlled by the customer-generator;

13 (3) is interconnected and operates in parallel phase and  
14 synchronization with an affected utility and is in compliance with the  
15 standards established by the affected utility;

16 (4) is intended primarily to offset part or all of the customer-  
17 generator's own electrical energy requirements; *and*

18 (5) contains a mechanism, approved by the utility, that automatically  
19 disables the unit and interrupts the flow of electricity back onto the  
20 supplier's electricity lines in the event that service to the customer-  
21 generator is interrupted.

22 (c) "Peak demand" shall have the meaning ascribed thereto in K.S.A.  
23 66-1257, and amendments thereto.

24 (d) "Renewable energy resources" shall have the meaning ascribed  
25 thereto in K.S.A. 66-1257, and amendments thereto.

26 (e) "Utility" means investor-owned electric utility.

27 Sec. 6. K.S.A. 66-104, 66-1,170, 66-1,184 and 66-1264 are hereby  
28 repealed.

29 Sec. 7. This act shall take effect and be in force from and after its  
30 publication in the statute book.