

HOUSE BILL No. 2527

By Committee on Energy, Utilities and Telecommunications

Requested by Laura Lutz, on behalf of Evergy

1-18

1 AN ACT concerning public utilities; relating to the state corporation
2 commission; authorizing cost recovery mechanisms for certain rate
3 base additions; requiring the commission to evaluate the capital
4 structure of certain public utilities without regard for entities affiliated
5 with such utility; authorizing certain public utilities to elect a specific
6 return on equity in rate proceedings; increasing the peak demand
7 threshold and discount term for economic development electric rates
8 for large facilities; removing requirements for tracking and deferral to a
9 regulatory asset of revenue reductions caused by economic
10 development rates; authorizing a rate adjustment mechanism for the
11 construction of new gas-fired electric generating facilities; amending
12 K.S.A. 2023 Supp. 66-101j and 66-1239 and repealing the existing
13 sections.
14

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

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

17 (1) "Commission" means the state corporation commission.

18 (2) "Public utility" means the same as defined in K.S.A. 66-104, and
19 amendments thereto.

20 (3) "Qualifying electric plant" means all rate base additions by an
21 electric public utility.

22 (4) "Rate base cutoff date" means the date rate base additions are
23 accounted for in a general rate proceeding. In the absence of a commission
24 order that specifies the rate base cutoff date, "rate base cutoff date" means
25 the date as reflected in any jointly proposed procedural schedule submitted
26 by the parties in the applicable general rate proceeding, or the date that is
27 otherwise agreed to by such parties.

28 (5) "Weighted average cost of capital" means the return on rate base
29 used to determine the revenue requirement in the public utility's most
30 recently completed general rate proceeding except that in the absence of
31 any commission determination made on or after July 1, 2021, and prior to
32 July 1, 2024, to establish the return on rate base for such public utility, the
33 weighted average cost of capital shall be determined using the public
34 utility's actual capital structure as of December 31, 2023, excluding short-
35 term debt, the public utility's actual cost of long-term debt and preferred

1 stock as of December 31, 2023, and a cost of common equity of 9.5%.

2 (b) Notwithstanding any other provision of law except K.S.A. 66-
3 1239(b)(5), and amendments thereto, commencing on July 1, 2024, a
4 public utility shall defer to a regulatory asset 100% of all depreciation
5 expense and return associated with all qualifying electric plants recorded
6 to plant-in-service on the utility's books if the public utility has provided
7 notice to the commission of the public utility's election to make such
8 deferrals pursuant to subsection (f). Except as provided in subsection (c),
9 in each general rate proceeding concluded after August 28, 2018, the
10 balance of the regulatory asset as of the rate base cutoff date shall be
11 included in the public utility's rate base without any offset, reduction or
12 adjustment based upon consideration of any other factor with the
13 regulatory asset balance arising from deferrals associated with qualifying
14 electric plants placed in service after the rate base cutoff date to be
15 included in rate base in the next general rate proceeding.

16 (c) The regulatory asset balances arising under this section shall be
17 adjusted to reflect any prudence disallowances ordered by the commission.
18 This section shall not be construed to affect existing law with respect to
19 the burdens of production and persuasion in general rate proceedings for
20 rate base additions.

21 (d) Parts of regulatory asset balances created under this section that
22 are not included in rate base shall include carrying costs at the public
23 utility's weighted average cost of capital, plus applicable federal, state and
24 local income or excise taxes. Regulatory asset balances arising under this
25 section that are included in rate base shall be recovered in rates through a
26 20-year amortization beginning on the date new rates reflecting such
27 amortization take effect.

28 (e) (1) Depreciation expense deferred under this section shall account
29 for all qualifying electric plants placed into service less retirements of the
30 plant replaced by such qualifying electric plant.

31 (2) Return deferred under this section shall be determined using the
32 weighted average cost of capital applied to the change in plant-related rate
33 base caused by the qualifying electric plant, plus applicable federal, state
34 and local income or excise taxes. In determining the return deferred, the
35 public utility shall account for changes in all plant-related accumulated
36 deferred income taxes and changes in accumulated depreciation, excluding
37 retirements.

38 (f) This section shall only apply to any public utility that has elected
39 to make the deferrals for which this section provides and filed a notice
40 with the commission of such election. A public utility that makes such
41 election shall be authorized to make the deferrals authorized by this
42 section.

43 New Sec. 2. (a) As used in this section:

1 (1) "Commission" means the state corporation commission.

2 (2) "Large public utility" means a public utility as defined in K.S.A.
3 66-104, and amendments thereto, that serves not less than 20,000 retail
4 customers in Kansas on July 1, 2024.

5 (b) In any general rate proceeding filed pursuant to K.S.A. 66-117,
6 and amendments thereto, the commission shall evaluate any large public
7 utility on a stand-alone basis and, for purposes of establishing the revenue
8 requirement, utilize such public utility's test year capital structure, without
9 regard to the capital structure or investments of any other entities with
10 which such public utility may be affiliated, unless the commission finds
11 based on evidence in the record that the large public utility's parent
12 company does not hold an investment-grade credit rating from at least one
13 nationally recognized credit rating agency. The capital structure shall
14 include the relative proportions of common equity, long-term debt and
15 preferred stock consistent with the public utility's test year.

16 (c) (1) In any general rate proceeding filed pursuant to K.S.A. 66-117,
17 and amendments thereto, a large public utility may elect to base its return
18 on equity on the fully-litigated case 12-month average from the most
19 recent report issued in the regulatory research associates regulatory focus
20 publication, or its successor publication, for the applicable utility type. In
21 the case of large public utilities that are also electric public utilities, fully-
22 litigated observations from cases for electric utilities in restructured
23 jurisdictions or special rider or non-base rate cases in other jurisdictions
24 shall be excluded from the average. If the large public utility elects to use
25 such return on equity, such election shall be conclusive and binding on the
26 commission for purposes of determining the revenue requirement and,
27 except as provided in paragraph (2), no other evidence of return on equity
28 shall be admitted.

29 (2) The commission may establish pursuant to a commission order,
30 operational metrics for large public utilities which, if achieved, may result
31 in an adjustment of up to 25 basis points above or below the regulatory
32 research associates regulatory focus publication, or its successor
33 publication, to the fully-litigated case average return on equity determined
34 pursuant to paragraph (1), where dictated by customer service, operations,
35 changing economic or market conditions or other relevant factors.

36 (d) The commission shall consider all admissible evidence on return
37 on equity and select a reasonable return on equity for a large public utility
38 that does not elect the return on equity treatment in subsection (c).

39 Sec. 3. K.S.A. 2023 Supp. 66-101j is hereby amended to read as
40 follows: 66-101j. (a) Notwithstanding the provisions of K.S.A. 66-101b or
41 66-109, and amendments thereto, the commission shall authorize an
42 electric public utility to implement economic development rate schedules
43 that provide discounts from otherwise applicable standard rates for electric

1 service for new or expanded facilities of industrial or commercial
2 customers that are not in the business of selling or providing goods or
3 services directly to the general public. To be eligible for such discounts,
4 such customer shall:

5 (1) Have incentives from one or more local, regional, state or federal
6 economic development agencies to locate such new or expanded facilities
7 in the electric public utility's certified service territory;

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

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

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

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

20 (A) Has an annual load factor that is reasonably projected to equal or
21 exceed the electric public utility's annual system load factor within two
22 years of the date the customer first receives service under the discounted
23 rate; or

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

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

28 (ii) the level of capital investment;

29 (iii) additional off-peak usage;

30 (iv) curtailable or interruptible load;

31 (v) new industry or technology; or

32 (vi) competition with existing industrial customers; or

33 (2) a peak demand that is reasonably projected to be at least ~~300~~
34 ~~kilowatts~~ 25 megawatts within two years of the date the customer first
35 receives service under the discounted rate and is not the result of shifting
36 existing demand from other facilities of the customer in the electric public
37 utility's certified service territory and:

38 (A) An annual load factor that is reasonably projected to be at least
39 55% within two years of the date the customer first receives service under
40 the discounted rate; and

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

43 (c) The discount authorized by this section shall be determined by

1 reducing otherwise applicable charges associated with the rate schedule
 2 applicable to the new or expanded existing facility by a fixed percentage
 3 for each year of service under the discount for a period of up to:

4 (1) Five years to facilities that qualify pursuant to subsection (b)(1);
 5 and

6 (2) 10 years to facilities that qualify pursuant to subsection (b)(2).

7 (d) (1) For discounts to facilities that qualify pursuant to subsection
 8 (b)(1), the average of the annual discount percentages shall not:

9 ~~(1) exceed 20% for discounts that qualify pursuant to subsection (b)~~
 10 ~~(1), but, except that such discounts may be between 5% to 30% in any~~
 11 ~~year; and of such five-year period.~~

12 (2) For discounts to facilities that qualify pursuant to subsection (b)
 13 (2), the average of the annual discount percentages shall not exceed:

14 (A) For the first five years of the discount period, 40% ~~for discounts~~
 15 ~~that qualify pursuant to subsection (b)(2), but, except that such discounts~~
 16 may be between 20% to 50% in any year of such five-year period; and

17 (B) for the final five years of the discount period, 20%, except that
 18 such discounts may be between 10% and 30% in any year of such five-
 19 year period.

20 ~~(d)(e)~~ In each general rate proceeding concluded after the effective
 21 date of this section, the commission shall allocate the reduced level of
 22 revenues arising from the discounted rates provided for in this section
 23 through the application of a uniform percentage adjustment to the revenue
 24 requirement responsibility for all customer classes of the electric public
 25 utility providing such discounted rate, including the classes with customers
 26 that qualify for discounts under this section, except for rates for service
 27 provided to customers under contract rates either approved by the
 28 commission pursuant to K.S.A. 2023 Supp. 66-101i, and amendments
 29 thereto, or the commission's general ratemaking authority.

30 ~~(e)(1) The commission shall approve a tracking mechanism to track~~
 31 ~~reductions in revenue experienced by the electric public utility serving the~~
 32 ~~facility as a result of the discount rate from the date the discount rate~~
 33 ~~becomes effective; and~~

34 ~~(2) such reductions in revenue shall be deferred to a regulatory asset~~
 35 ~~and shall accrue interest at the weighted average cost of capital used by the~~
 36 ~~commission to set the electric public utility's rates in its most recently~~
 37 ~~concluded general rate proceeding with the balance of such regulatory~~
 38 ~~asset to be included in the rate base and revenue requirement of the electric~~
 39 ~~public utility in each of the utility's general rate proceedings through an~~
 40 ~~amortization of the balance over a reasonable period until fully collected~~
 41 ~~from the utility's non-contract rate customers.~~

42 (f) The provisions of this section shall not apply to rates for service
 43 provided to customers under contract rates approved by the commission

1 pursuant to K.S.A. 2023 Supp. 66-101i, and amendments thereto, or the
 2 commission's general ratemaking authority according to custom and
 3 practice of the commission in place prior to the effective date of this
 4 section.

5 (g) Starting in January 2023, the commission shall biennially provide
 6 a status report to the legislature about any discounts from tariffed rates
 7 authorized pursuant to this section. Such report shall include the:

- 8 (1) Number of entities with such discounts;
- 9 (2) number of entities with increased load;
- 10 (3) number of entities with decreased load;
- 11 (4) aggregate load and change in aggregate load on an annual basis;
- 12 (5) total subsidy and the subsidy for each individual contract;
- 13 (6) annual and cumulative rate impact on non-contract rate
 14 customers; and
- 15 (7) estimated economic development impact of entities with
 16 discounted rates that occurred as a result of such discounts through an
 17 evaluation of the annual: (A) Total employment for such entities; (B)
 18 change in employment for such entities; and (C) tax revenue generated by
 19 such entities.

20 (h) For the purposes of this section:

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

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

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

34 Sec. 4. K.S.A. 2023 Supp. 66-1239 is hereby amended to read as
 35 follows: 66-1239. (a) As used in this section:

- 36 (1) "Commission" means the state corporation commission;
- 37 (2) "contract" means a public utility's contract for the purchase of
 38 electric power in the amount of at least ~~\$5,000,000~~ *\$10,000,000* annually;
- 39 (3) "generating facility" means any electric generating plant or
 40 improvement to existing generation facilities;
- 41 (4) "stake" means a public utility's whole or fractional ownership
 42 share or leasehold or other proprietary interest in a generating facility or
 43 transmission facility;

1 (5) "public utility" means the same as defined in K.S.A. 66-104, and
2 amendments thereto; and

3 (6) "transmission facility" means: (A) Any existing line, and
4 supporting structures and equipment, being upgraded for the transfer of
5 electricity with an operating voltage of 34.5 kilovolts or more of
6 electricity; or (B) any new line, and supporting structures and equipment,
7 being constructed for the transfer of electricity with an operating voltage
8 of 230 kilovolts or more of electricity.

9 (7) *"Weighted average cost of capital" means the same as defined in*
10 *section 1, and amendments thereto.*

11 (b) (1) Prior to undertaking the construction of, or participation in, a
12 transmission facility, a public utility may file with the commission a
13 petition for a determination of the rate-making principles and treatment, as
14 proposed by the public utility, that will apply to the recovery in wholesale
15 or retail rates of the cost to be incurred by the public utility to acquire such
16 public utility's stake in the transmission facility during the expected useful
17 life of the transmission facility.

18 (2) The commission shall issue an order setting forth the rate-making
19 principles and treatment that will be applicable to the public utility's stake
20 in the transmission facility in all rate-making proceedings on and after
21 such time as the transmission facility is placed in service or the term of the
22 contract commences.

23 (3) The commission in all proceedings in which the cost of the public
24 utility's stake in the transmission facility is considered shall utilize the rate-
25 making principles and treatment applicable to the transmission facility.

26 (4) If the commission fails to issue a determination within 180 days
27 of the date a petition for a determination of rate-making principles and
28 treatment is filed, the rate-making principles and treatment proposed by
29 the petitioning public utility will be deemed to have been approved by the
30 commission and shall be binding for rate-making purposes during the
31 useful life of the transmission facility.

32 (5) If the commission does not have jurisdiction to set wholesale rates
33 for use of the transmission facility the commission need not consider rate-
34 making principles and treatment for wholesale rates for the transmission
35 facility.

36 (c) (1) ~~Prior to undertaking the construction of, or participation in,~~
37 *acquiring a stake in* a generating facility, prior to entering into a new
38 contract or prior to retiring or abandoning a generating facility, or within a
39 reasonable time after retirement or abandonment if filing before retirement
40 or abandonment is not possible under the circumstances, a public utility
41 may file with the commission an application for a determination of the
42 rate-making principles and treatment, as proposed by the public utility, that
43 will apply to:

1 (A) Recovery in wholesale or retail rates of the cost to be incurred by
2 the public utility to acquire such public utility's stake in the generating
3 facility during the expected useful life of the generating facility or the
4 recovery in rates of the contract during the term thereof; or

5 (B) reflection in wholesale or retail rates of the costs to be incurred
6 and the cost savings to be achieved by the public utility in retiring or
7 abandoning such public utility's stake in the generating facility, including,
8 but not limited to, the reasonableness of such retirement or abandonment.

9 (2) Any utility seeking a determination of rate-making principles and
10 treatment under subsection (c)(1) shall as a part of its filing ~~submit the~~
11 ~~following information:~~ (A) A description of the public utility's
12 ~~conservation measures;~~ (B) a description of the public utility's demand
13 ~~side management efforts;~~ (C) the public utility's ten-year generation and
14 ~~load forecasts;~~ and (D) a description of all power supply alternatives
15 ~~considered to meet the public utility's load requirements~~ *describe how the*
16 *public utility's stake in the generating facility is consistent with the public*
17 *utility's most recent preferred plan and resource acquisition strategy*
18 *submitted to the commission.*

19 (3) In considering the public utility's ~~supply preferred plan and~~
20 *resource acquisition strategy*, the commission may consider if the public
21 utility issued a request for proposal from a wide audience of participants
22 willing and able to meet the needs identified under the public utility's
23 ~~generating supply preferred plan~~, and if the plan selected by the public
24 utility is reasonable, reliable and efficient.

25 (4) The commission shall issue an order setting forth the rate-making
26 principles and treatment that will be applicable to the public utility's stake
27 in the generating facility or to the contract in all rate-making proceedings
28 *and all securitization proceedings* on and after such time as the generating
29 facility is:

30 (A) Placed in service or the term of the contract commences; or

31 (B) retired or abandoned.

32 (5) *With respect to a new gas-fired generating facility, unless the*
33 *commission timely elects not to set forth ratemaking principles applicable*
34 *in the future on the grounds that acquiring a stake in such a generating*
35 *facility is not reasonable, then notwithstanding any other provision of law,*
36 *the public utility shall be permitted to implement a new rate adjustment*
37 *mechanism designed to recover the return on 100% of amounts recorded*
38 *to construction work in progress on the public utility's books for the public*
39 *utility's stake in such a generating facility at the weighted average cost of*
40 *capital without offset, adjustment or reduction for any other issue or*
41 *consideration, except that such return shall be in lieu of any otherwise*
42 *applicable allowance for funds used during construction that would have*
43 *accrued from and after the effective date of such rate adjustment*

1 *mechanism. A rate adjustment mechanism authorized pursuant to this*
2 *section shall become effective not sooner than 365 days after construction*
3 *of the generation facility begins and within 30 days of the filing for the*
4 *establishment of such mechanism by the public utility. As construction of*
5 *the public utility's stake in such a generating facility continues and the*
6 *balance of construction work in progress grows, the rate adjustment*
7 *mechanism in effect shall be subject to periodic increases, without*
8 *adjustment, offset or reduction for any other issue or consideration, except*
9 *that such periodic increases shall not occur more frequently than once*
10 *every six months. Except as provided in this section, the public utility's*
11 *customers shall be charged pursuant to such rate adjustment mechanism*
12 *until such time as new base rates reflecting the public utility's investment*
13 *in such generating facility take effect, with such base rates to include*
14 *carrying costs on any unrecovered portion of such investment at the public*
15 *utility's weighted average cost of capital as determined in the rate-making*
16 *proceeding setting such base rates that occurred between the date such*
17 *generation facility was placed in service on the public utility's books and*
18 *the effective date of base rates in such proceeding. A rate adjustment*
19 *mechanism authorized pursuant to this section shall be permitted to*
20 *remain in effect for a period not to exceed six years.*

21 (6) The commission in all proceedings in which the cost of the public
22 utility's stake in the generating facility or the cost of the purchased power
23 under the contract is considered shall utilize the rate-making principles and
24 treatment applicable to the generating facility, contract or retired or
25 abandoned generating facility.

26 (6)(7) If the commission fails to issue a determination within 180
27 days of the date a petition for a determination of rate-making principles
28 and treatment is filed, the rate-making principles and treatment proposed
29 by the petitioning public utility will be deemed to have been approved by
30 the commission and shall be binding for rate-making purposes during the
31 useful life of the generating facility, during the term of the contract or
32 during the period when the cost of the retired or abandoned generating
33 facility is reflected in customer rates.

34 (d) The public utility shall have one year from the effective date of
35 the determination of the commission to notify the commission whether it
36 will ~~construct or participate in the construction of~~ *acquire a stake in* the
37 generating or transmission facility, whether it will perform under terms of
38 the contract or whether it will retire or abandon the generating facility.

39 (e) If the public utility notifies the commission within the one-year
40 period that the public utility will not ~~construct or participate in the~~
41 ~~construction of~~ *acquire a stake in* the generating or transmission facility,
42 that it will not perform under the terms of the contract or that it will not
43 retire or abandon the generating facility, then the determination of rate-

1 making principles pursuant to subsection (b) or (c) shall be of no further
2 force or effect, shall have no precedential value in any subsequent
3 proceeding, and there shall be no adverse presumption applied in any
4 future proceeding as a result of such notification.

5 (f) If the public utility notifies the commission under subsection (d)
6 that it will ~~construct or participate~~ *acquire a stake* in a generating facility
7 or *participate in a* purchase power contract and subsequently does not, or
8 that it will retire or abandon a generating facility and subsequently does
9 not, it will be required to notify the commission immediately *in the*
10 *proceeding it initiated pursuant to this section* and ~~file an alternative~~
11 ~~supply plan with the commission pursuant to subsection (e) within 90 days~~
12 *provide notification of a change in the utility's preferred resource plan as*
13 *required by commission order.*

14 Sec. 5. K.S.A. 2023 Supp. 66-101j and 66-1239 are hereby repealed.

15 Sec. 6. This act shall take effect and be in force from and after its
16 publication in the statute book.