

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2527

As Amended by Senate Committee on Utilities

Brief*

HB 2527, as amended, would create new definitions and modify existing definitions pertaining to cost recovery and rate making procedures before the Kansas Corporation Commission (KCC). The bill would establish new mechanisms for the recovery of costs associated with deferred depreciation and new gas-fired generating units. Further, the bill would modify the qualification requirement receiving a discounted electric rate and increase the term of the discount for certain facilities. The bill would also make technical amendments.

Definitions (New Sections 1 and 2)

The bill would establish new definitions for provisions related to a utility's recovery of cost for regulatory assets (e.g., power plants, transmission lines). Among the new definitions would be the following:

- “Qualifying electric plant” would mean all rate base additions by an electric public utility, but not including transmission facilities or new electric generating units;
- “Qualifying regulatory asset” would mean any regulatory asset balance arising from provisions related to the deferral of depreciation of qualifying electric plants, from the rate base cutoff date in the utility's most recent completed rate case to the

*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>

cutoff date in the current general rate proceeding in which a revenue requirement impact cap is applied;

- “Rate base cutoff” would mean the date rate base additions are accounted for in a general rate proceeding. In the absence of a commission order that specifies the rate base cutoff date, “rate base cutoff date” would mean the date as reflected in any jointly proposed procedural schedule submitted by the parties in a general rate proceeding or the date that is agreed to by the parties; and
- “Weighted average cost of capital” would mean the return on rate base used to determine the revenue requirement or that was approved to be used for regulatory accounting purposes in the public utility’s most recently ordered return on rate base in a general rate proceeding.

The bill would also provide a definition for “revenue requirement impact cap.” Beginning on July 1, 2024, this cap would limit the revenue requirement a utility could seek in a general rate proceeding for regulatory asset balances, and any excess to that cap would result in the regulatory asset balance being reduced. Calculating the impact cap bill would require multiplying $\frac{1}{12}$ of 1.5 percent by the number of months between two dates: the effective date of new base rates in the utility’s most recent completed rate case and the effective date of new base rates in a general rate case where the cap was initially applied. The resulting value is then multiplied by the revenue requirement from the preceding completed rate case. This definition would only apply to electric public utilities utilizing provisions pertaining to the deferral of depreciation to regulatory assets.

Depreciation Deferrals, Cost Recovery and Return on Equity (New Section 2)

Beginning July 1, 2024 and ending on December 31, 2030, the bill would allow an electric public utility to defer 90 percent of depreciation expenses and returns linked to qualifying electric plants in service as regulatory assets. This deferral would begin on July 1, 2024, once the utility notifies the KCC. Any remaining balances would be included in the utility's rate base and recovered through rates without any adjustments. The KCC has the authority to disallow balances it deems imprudent.

The bill would specify that the electric public utilities' earnings on the deferred balances will be calculated using the weighted average cost of capital (previously defined) applied to the change in the rate base related to the qualifying electric plant, along with any relevant taxes. Additionally, any portions of deferred balances not included in the rate base would be mandated to be accounted for as carrying costs at the electric public utilities' weighted average cost of capital, including applicable taxes.

The bill requires that regulatory asset balances established by its provisions must be recovered from rates over a 20-year period, starting from the date the balance is incorporated into electric utility rates.

The KCC would be authorized, upon receiving an application from a public utility utilizing a deferral before December 31, 2028, to permit the utility to extend such deferrals until December 31, 2036. The KCC must reach its decision on the extended deferrals within 240 days of the application's filing and may conduct a hearing on the application if requested by relevant parties. If the KCC denies the application, the denial would affect only deferrals occurring after December 31, 2030.

Economic Development Rates; Requirements (Section 3)

The bill would add to the list of facilities eligible to receive a discounted rate the facilities with a projected peak demand of 25 megawatts (MW) within two years of service under the discounted rate. Demand projections could not be the result of shifting existing demand from the customer's other facilities in the utility's certified service territory.

Further, the bill would clarify how long certain facilities would be eligible to receive discounted rates and extend the discounted rate from five to ten years for facilities with a projected peak demand of 25 MW. The bill would stipulate the maximum average discount for these facilities could not exceed 40 percent, but discounts could range between 20 percent and 50 percent in the first five-year period. In the second five-year period, the maximum average discount could not exceed 20 percent, but discounts could be between 10 percent and 30 percent in such period.

The bill would also prohibit the inclusion in the calculation of the public utilities revenue requirements any variance in revenues resulting from discounted rates, compared with what revenues would have been without the discounts.

The bill would provide an exception for any reduction in revenue resulting from any discount that was tracked by the public utility and deferred to a regulatory asset prior to July 1, 2024, would be recoverable in any general rate proceeding initiated on or after July 1, 2024, through an equal percentage adjustment to the revenue requirement responsibility for all customer classes of the public utility, including the customer classes that include customers that qualify for discounts pursuant in continuing law.

Continuation of Discount Rates for Certain Facilities

Electric public utilities would only be authorized to offer discount rates for facilities with a projected peak demand of 25 MW until December 31, 2030, unless they apply to the KCC for continued authorization of the discounted rate until December 31, 2036. An application for continued authorization would be required to be received on or before December 31, 2028. The KCC would be required to make determination within 240 days of the application's filing and could conduct a hearing on the application if requested by relevant parties. If the KCC denies the application, the denial would affect only discounted rates that would have occurred after December 31, 2030.

Removal of Tracking Requirements

The bill would remove the requirements for a utility to track reductions in revenue as a result of the discounted rate and defer those reductions in revenue to a regulatory asset.

Rate-making, Generally (Section 4)

The bill would modify the definition of "contract" to increasing the threshold at which a utility would need to receive a KCC determination on rate-making principles from \$5.0 million to \$10.0 million. The bill would also clarify that a public utility could file with the KCC for a determination of rate-making principles for cost recovery when it acquires a stake in a generating facility.

Rate-making Principles for New Gas-fired Generation

The bill would establish rules for how a gas-fired power plant's costs could be covered by utility rates. If the KCC decides it is reasonable for the utility to invest in the plant, the utility would be able to recover 100 percent of construction costs at the weighted average cost of capital, not to exceed

the cost estimate found reasonable by the KCC. The cost recovery from customers could begin no sooner than 365 days after construction begins and within 60 days of filing to utilize the cost recovery mechanism. The rates could be adjusted every six months until new base rates reflecting the plant's costs are established.

Electric public utilities would only be authorized to recover construction costs with this mechanism until December 31, 2030, unless they make application to the KCC for continued authorization of the cost recovery mechanism before December 31, 2036. An application for continued authorization would be required to be received on or before December 31, 2028. The KCC would be required to make determination within 240 days of the application's filing and could conduct a hearing on the application if requested by relevant parties. If the KCC denies the application, the denial would affect only discounted rates that would have occurred after December 31, 2030.

The KCC would have the authority, after a hearing, to require a public utility to issue a refund to customers if it utilizes a mechanism to recover costs of a facility under construction and subsequently terminates the initiative to acquire a stake in the facility.

Legislative Intent and KCC Rate-making Procedures

The bill would express legislative intent as it applies to petitions for determination of rate-making principles for the construction of transmission and generating facilities and increase from 180 days to 240 days the amount of time the KCC would have to make a determination on petitions.

The bill would establish the following requirements for the KCC in regard to such matters:

- Issue a determination on such petitions expeditiously;

- Attempt to issue a determination in less than the 240-day deadline;
- Provide notice of the public utility's intent to file a petition to each party or intervenor involved in the utility's most recent rate case;
 - Petitions to intervene would be submitted after a public utility files the petition; and
- Adopt a procedural schedule within 30 days a petition is filed.

Background

The bill was introduced by the House Committee on Energy, Utilities and Telecommunications at the request of a representative of Evergy.

House Committee on Energy, Utilities and Telecommunications

In the House Committee hearing on February 6, 2024, representatives of Evergy, Greater Topeka Chamber, and Salina County Economic Development provided **proponent** testimony, stating the bill would grow the state's capacity for energy generation, which will invite capital investment and encourage economic growth. The proponents also explained the legislation would make Kansas more competitive with neighboring states for economic development.

Written-only proponent testimony was provided by representatives of Block Real Estate Services, LLC; Greater Wichita Partnership; Hutchinson/Reno County Chamber; IBEW Local Union 124 & 271; JQ Resources, LLC; Kansas City Chamber of Commerce; Kansas City Area Development Council; Kansas Economic Development Alliance; Leawood Chamber; Liberty Utility; LiUNA Local Union 1290; Construction & General Laborers; Mid-America Carpenters

Regional Council; North Point Development; Overland Park Chamber; and Shawnee Chamber of Commerce.

Opponent testimony was provided by representatives of Kansas Industrial Consumers Group (KIC), Kansans for Lower Electric Rights (KLER), Citizens' Utility Ratepayer Board (CURB), KCC, Americans for Prosperity (AFP), and AARP Kansas. The opponents raised concerns with Section 2 of the bill, pertaining to provider control of setting return on equity and with the likelihood of increased costs to customers.

Written-only opponent testimony was provided by representatives of Kansas Chamber; Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association; and Wichita Public Schools.

Neutral testimony was provided by a representative of WindSoHy, LCC.

Written-only neutral testimony was provided by a representative of the Wichita Regional Chamber of Commerce.

On March 5, 2024, the House Committee discussed a proposed amendment to the bill and received testimony in support of the amendment from representatives of Evergy and the Kansas Chamber, who stated that stakeholders were able to find compromise by removing the contents of New Section 2 of the original bill and by making other amendments.

Further testimony on the amendment was provided by representatives of CURB, KCC, KLER, and the Kansas Sierra Club, who expressed that pieces of the original legislation with which they had concerns had been edited by the proposed amendment and, consequently, they considered themselves neutral on the bill.

The House Committee amended the bill to:

- Add a definition for “qualifying electric plant”;
- Remove provisions that prescribed how the KCC would establish a utilities revenue requirement and return on equity in a general proceeding;
- Change the amount of depreciation that could be deferred to a regulatory asset to 90 percent;
- Establish sunset and extension mechanisms for provisions related to deferred depreciation, certain discount rates, and recovery of cost for gas-fired generation units under construction;
- Express legislative intent and set forth requirements for KCC procedures related to petitions to construct transmission and generating facilities; and
- Make technical and conforming changes.

Senate Committee on Utilities

In the Senate Committee hearing on March 18, 2024, **proponent** testimony was provided by a representative of Evergy, who stated that the bill would incentivize an increase to capital investment in utilities in Kansas. He also noted that the bill would enhance Kansas’ electricity generation competitiveness with surrounding states while also maintaining energy reliability and lower costs to consumers.

Written-only proponent testimony was provided by representatives of Empire District Electric Company [*Note:* also known as Liberty Utilities in Kansas], Greater Kansas City Chamber of Commerce, Greater Topeka Chamber of Commerce, Hutchinson/Reno County Chamber of Commerce, International Brotherhood of Electrical Workers Local Unions 124 and 271, Kansas Chamber of Commerce,

Kansas Economic Development Alliance, Overland Park Chamber of Commerce, Mid-America Carpenters Regional Council, Shawnee Chamber of Commerce, and Wichita Regional Chamber of Commerce.

Neutral testimony was provided by representatives of the KCC, KIC and KLER; and CURB. They stated that the bill, as amended by the House Committee, would be a compromise between stakeholders in the industry with the addition of consumer protections, sunset date, Planned Service in Accounting provisions, depreciation recovery, and allowing collection of fees on construction works in progress. The representative of KIC and KLER provided an amendment that would not allow customers to be charged for economic rate cost changes and discounts until after the next rate case on or after July 1, 2024.

Neutral written-only testimony was provided by a representative of the Kansas Sierra Club.

No other testimony was provided.

The Senate Committee amended the bill to:

- Include the proposed amendment by the representative of KIC and KLER, which would provide that any reduction in revenue resulting from discounts could not be added to customers' bills until after the next general rate proceeding on or after July 1, 2024, and only those changes in revenue prior to July 1, 2024 could be added during the general rate proceeding; and
- Make technical amendments.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KCC indicates the

bill would not have a fiscal effect on its operations. CURB indicates the bill would not affect the agency's workload and would not have a fiscal effect on its operations. CURB notes the fiscal effect could change depending upon the number of filings and complexity of cases filed as a result of enactment of the bill. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Economic development; electric rates; KCC; public utilities