

April 24, 2014

The Honorable Pat Apple, Chairperson
Senate Committee on Utilities
Statehouse, Room 224-E
Topeka, Kansas 66612

Dear Senator Apple:

SUBJECT: Fiscal Note for SB 408 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 408 is respectfully submitted to your committee.

SB 408 would allow for the retail sale of electric generation, and would create the Kansas Electricity Competition and Choice Act, under the authority of the Kansas Corporation Commission (KCC). The Act provides the following:

1. The state would be divided into certificated service territories.
2. The continuation of safe and reliable electric service would be provided to all retail customers, allowing for choice through direct access among electric generation suppliers, and ensure that electric public utility services, tariffs, and bills are unbundled to separate charges for generation, transmission and distribution.
3. Utility restructuring rate caps would be applied to ensure that public utilities that own or operate transmission and distribution facilities provide that service to all retail customers in its certificated territory and to all electric cooperatives and generation suppliers.
4. The KCC would require that restructuring of the electric industry be implemented in a nondiscriminatory manner.
5. Each electric public utility would have appropriate cost recovery mechanisms.
6. Universal service and energy conservation policies, activities and services would be appropriately funded and available in each electric distribution territory.
7. Rates would be established for jurisdictional transmission and distribution services.

8. A schedule would be established to allow for the transition to and phase-in of direct access to competitive electric generation.
9. The KCC would have the authority to order utility participation in retail pilot programs with direct access to begin on April 1, 2015 and would conduct quarterly reviews of the transition. The KCC would approve competitive transition charges for cost recovery, and ensure that the transition to a competitive generation market is orderly, protects electric system reliability, and would be fair to ratepayers.
10. Customers would be able to choose an alternative provider of electric generation by January 1, 2020. A total charges cap for the customer would be approved by the KCC. Electric distribution utilities could seek exemptions for the retail rate caps if the utility meets the requirements for good cause.
11. The KCC would be authorized to encourage interstate power pools to enhance competition and to complement industry restructuring on a regional basis. The generation of electricity would not be regulated as a public utility service or function at the conclusion of a transition or phase-in period beginning on January 1, 2015 and ending January 1, 2020. Beginning January 1, 2020, all customers of electric distribution companies would have the opportunity to purchase electricity from the electric generation supplier of their choice.
12. All electric utilities in the state would be required to submit a restructuring plan to implement direct access to a competitive market. The KCC would establish a schedule for the submission of plans in consultation with the utilities. The plans would be submitted beginning on April 1, 2016 and ending on September 30, 2016.
13. Beginning January 1, 2015, the KCC could order utilities to submit proposals for retail access pilot programs to begin April 1, 2016. The order would include guidelines for the pilot programs.
14. By January 15, 2027, the KCC would adopt an energy efficiency and conservation program to require distribution companies to implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the certificated service territory of each distribution utility in the state.
15. By July 1, 2027, each electric distribution utility would be required to file an energy efficiency and conservation plan with the KCC for approval, after a public hearing has been held on each plan. The Commission would have 120 days, from date of submission, to approve or disapprove a plan. The plans adopted would reduce electric demand and set forth civil penalties for any electric utility that fails to submit a plan, or any electric utility that fails to achieve the reductions in consumption. Penalties would be deposited in the Public Service Regulation Fund, and could not be recovered from the ratepayers.

16. By March 1, 2027, the KCC would establish a registry of approved persons qualified to provide conservation services to all classes of customers. The Commission would develop a registry application and an application fee of \$10.
17. Each electric distribution utility must maintain the integrity of the distribution system in conformity with the national electric safety code and other industry standards to provide safe and reliable service to all customers.
18. There would be a rebuttable presumption that the distribution utility has the ability to receive energy at all points on the system to meet the needs of all electric generation suppliers' customers on its system.
19. The KCC would establish rules and regulations to ensure that an electric distribution utility does not change a customer's electricity supplier without oral or written consent and confirmation from the customer of record.
20. Each electric distribution utility, electricity supplier, marketer, aggregator, and broker must provide adequate and accurate customer information so that customers are able to make informed choices regarding the purchase of all electricity services.
21. The KCC and electric distribution utilities would implement retail electric customer education programs informing customers of changes in the electric industry.
22. Electric distribution utilities would be required to provide service prior to and following the expiration of the obligation to serve in certain instances. Territorial service providers must file a plan for competitive procurement and peak demand requirements for large customers of 15 megawatts or greater at a negotiated rate for service at all of the customers' locations within the certified service territory.
23. Electric distribution companies would be required to file a request for approval with the KCC on or before November 15, 2028 for any smart meter technology procurement and installation plans that describe the smart meter technologies the utility proposes to install. Territorial service providers must submit one or more proposed time-of-use rates and real-time price plans before the earlier of January 1, 2020, or the end of the applicable generation rate cap period. These provisions would not apply to electric distribution utilities with 100,000 or fewer customers.
24. Any customer accessing the transmission or distribution network must pay a competitive transition charge to the electric distribution utility in whose certificated service territory that customer is located. The competitive transition charge would be included on bills not to exceed the period from January 1, 2015 through December 31, 2023, although the KCC could extend the charge past December 31, 2023 for good cause. The KCC would also determine the level of transition or stranded costs that an electric distribution utility may recover through the competitive transition charge. The proposed competitive

transition charge, and supporting documentation, must be filed with the KCC by each electric public utility as part of its restructuring plan. On and after January 1, 2015, an electric public utility may apply to the KCC for a qualified rate order for some or all of its transition or stranded costs. The KCC would establish procedures for annual reviews of all competitive transition charges.

25. Any person or entity must obtain a certificate of public convenience and necessity from the KCC prior to engaging in business in the state as an electric generation supplier.
26. The KCC would be required to monitor the market for the supply and distribution of electricity to retail electric customers and take the necessary steps to prevent anticompetitive or discriminatory conduct or the unlawful exercise of market power. This would result in the investigation of the impact on the proper functioning of a fully competitive retail electricity market, including the effects of mergers, consolidations, acquisition or disposition of assets, transmission congestion, and anticompetitive or discriminatory conduct. Electric distribution utilities could pursue reasonable action to quantify or seek recovery of damages for ratepayers affected by market manipulation. Failure to seek action on behalf of ratepayers would be punishable by civil penalty, assessed by order of the KCC of not more than \$10,000 per day, each day being a separate offense for failure to obey the order.
27. The KCC would be authorized to issue qualified rate orders to facilitate the recovery or financing of qualified transition expenses of an electric public utility. The qualified rate order could be adopted by the KCC upon application by the electric public utility. An electric public utility could file an application for a qualified rate order on or after January 1, 2015, and those applications should receive an expedited review within 120 days. Qualified rate orders would require that the proceeds from the assignment, sale or transfer or other financing of intangible transition property would be used principally to reduce the electric public utility's transition or stranded costs and to reduce the related capitalization. The KCC would be authorized to specify that any or all of a qualified rate order would be irrevocable. In addition, the KCC would provide, in the qualified rate order, a procedure for periodic adjustments to the intangible transition charges, and any adjustments that are required. These adjustments would be approved within 90 days of each anniversary date of the issuance of the qualified rate order. The KCC would have exclusive jurisdiction over any dispute arising out of the obligations to impose and collect intangible transition charges of an electric public utility.
28. The KCC could not order a territorial service provider to procure power from a specific generation supplier, generation fuel type, or new generation, with certain exceptions.
29. Electric cooperative corporations must provide open and nondiscriminatory access and allow other electric generation suppliers that have been certificated by the KCC or jurisdictional public utilities to utilize the cooperative's facilities to make sales to end-use customers it serves.

30. Any confidential, proprietary or trade secret information provided to the KCC would be exempt from the Kansas Open Records Act.
31. The KCC would be authorized to prescribe a mandatory system of a sliding scale of rates or other method for the automatic adjustment of the utility's rates for any electric public utility, allowing for a fair return on the rate base of such utility. Any sliding scale or other method that automatically adjusts rates to reflect change in fuel costs would be limited to the cost of such fuel delivered to the utility at the generation site after deducting the present salvage or reuse value of the fuel. Upon notice and hearing, the KCC could revoke approval of those cost adjustments, if the existing rates are determined to be unjust and unreasonable. Any proceedings would be in conformance with the Kansas Administrative Procedures Act.

Estimated State Fiscal Effect				
	FY 2014 SGF	FY 2014 All Funds	FY 2015 SGF	FY 2015 All Funds
Revenue	--	--	--	\$1,000
Expenditure	--	--	--	\$913,929
FTE Pos.	--	--	--	11.00

The KCC estimates that the passage of SB 408 would have the following fiscal effect on the agency:

1. Civil penalties of \$100,000 per day would be assessed for any electric distribution utility that has not filed an energy efficiency and conservation plan with the KCC. The money would be deposited in the Public Service Regulation Fund.
2. Civil penalties of \$1,000,000 and not more than \$20,000,000 would be assessed for a utility's failure to achieve reductions as outlined in its energy efficiency and conservation plan. This money would be deposited in the Public Service Regulation Fund.
3. Civil penalties of \$10,000 per day, with each day being a separate occurrence for an electric distribution utility that fails to seek action on behalf of its ratepayers affected by market manipulation. The bill does not indicate where the fines and penalties would be deposited. Since the KCC would assess the penalty, it is assumed that the money would be deposited in the Public Service Regulation Fund.
4. Presently, the Commission has a provision in its appropriations bill, effective through FY 2015, that requires that all fines collected and deposited in the Public Service Regulation Fund, the Motor Carrier Fee Fund, and the Conservation Fee Fund, be transferred to the State General Fund. The KCC is unable to estimate the number of civil penalties that would be assessed.

5. The KCC would establish a registry of persons approved to provide conservation services to all classes of customers, and charge an application fee of \$10. Based on the number of qualified energy auditors in the state, the KCC estimates that 100 applicants would apply for registration. This would result in \$1,000 in revenue to be deposited in the Public Service Regulation Fund.
6. The KCC would be required to monitor the market for the supply and distribution of electricity to retail electric customers and take the necessary steps to prevent anti-competitive or discriminatory conduct and the unlawful exercise of market power. To fulfill this requirement of the bill, the KCC would require the following:

Salaries and Wages for 11.00 FTE positions:

2.00 Engineer FTE Positions at \$76,039 each	\$152,078
6.00 Market/Rate Analyst FTE Positions at \$76,039 each	456,234
2.00 Economist FTE Positions at \$76,039 each	152,078
1.0 Attorney FTE Position at \$76,039	<u>76,039</u>
Total Salaries and Wages	\$836,429

Operating expenditures:

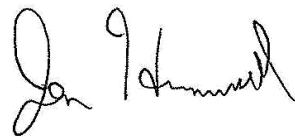
Computers and supplies at \$2,500 per FTE Position	\$27,500
Software, Website Development, Maintenance	<u>50,000</u>
Total Operating Costs	\$77,500

Total Salary and Wages and Operating Costs: \$913,929

7. The amount of revenue that would be deposited to the Public Service Regulation Fund would be \$1,000 annually. The amount of revenue that would be transferred to the State General Fund for fines and penalties is unknown.

Any fiscal effect associated with SB 408 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,



Jon Hummell,
Interim Director of the Budget

cc: Tom Day, KCC