

## HOUSE BILL No. 2689

By Committee on Federal and State Affairs

2-10

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1 AN ACT concerning public utilities; relating to coal-fired electric  
2 generation facilities; limiting a public utility's cost recovery when  
3 replacing or retiring facilities; requiring electric public utilities to make  
4 efforts to sell such facilities; obligations to purchase electricity from  
5 purchased facilities; exempting certain facilities from commission  
6 jurisdiction; amending K.S.A. 2021 Supp. 66-104 and repealing the  
7 existing section.  
8

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

10 New Section 1. (a) Notwithstanding any other provision of chapter 66  
11 of the Kansas Statutes Annotated, and amendments thereto, rates charged  
12 by an electric public utility as defined in K.S.A. 66-101a, and amendments  
13 thereto, except a cooperative electric utility as defined in K.S.A. 66-104d,  
14 and amendments thereto, shall not include any recovery of or earnings on  
15 the capital costs associated with new electric generation facilities built, in  
16 whole or in part, to replace the electricity generated from one or more  
17 coal-fired electric generating facilities located in Kansas and retired on or  
18 after January 1, 2022, unless the commission has determined that the  
19 public utility that owned the retired coal-fired electric generation facility  
20 made a good faith effort to sell the facility to another person prior to such  
21 facility's retirement. In determining whether such public utility made a  
22 good faith effort to sell the facility, the commission shall consider the  
23 following:

24 (1) Whether the public utility refused a reasonable offer to purchase  
25 the facility or, if a reasonable offer was received and not executed, whether  
26 the sale was not executed for a reason beyond the reasonable control of the  
27 utility;

28 (2) whether the public utility provided sufficient time prior to the  
29 facility's retirement for potential purchasers to evaluate purchasing the  
30 facility;

31 (3) whether the public utility used reasonable efforts to make  
32 potential purchasers aware of the opportunity to purchase the facility;

33 (4) whether the public utility reasonably evaluated any offers to  
34 purchase the facility; and

35 (5) any other factor deemed appropriate by the commission.

36 (b) In determining whether an offer to purchase a coal-fired electric

1 generation facility under this section was reasonable, the commission shall  
2 consider whether accepting the offer to purchase the retired facility would  
3 have:

4 (1) Reduced costs to the public utility's customers as compared to  
5 retiring the facility;

6 (2) reduced risks to the public utility's customers as compared to  
7 retiring the facility, including any diminished environmental remediation  
8 risks; and

9 (3) been in the public interest.

10 (c) Upon an application by a public utility, the commission may  
11 approve procedures for the solicitation and review of offers to purchase a  
12 retiring electric generation facility in advance of a proposed retirement. If  
13 the public utility follows the procedures approved by the commission to  
14 solicit and review offers to purchase an otherwise retiring electric  
15 generation facility, there shall be no limitation under subsection (a) for  
16 recovery of costs or earnings associated with electric generation built to  
17 replace a retired coal-fired electric generation facility.

18 (d) Any proposed purchase agreement between a public utility and  
19 another person for the sale of a coal-fired electric generation facility  
20 pursuant to this section shall not be effective until approved by the  
21 commission. In reviewing the agreement the commission shall consider:

22 (1) Whether the proposed purchaser has, or has contracted for,  
23 financial, technical and managerial abilities sufficient to reasonably  
24 operate and maintain the facility;

25 (2) whether the proposed purchaser has, or has contracted for,  
26 financial, technical and managerial abilities sufficient to reasonably  
27 decommission and retire the facility, if and to the extent the facility shall  
28 be decommissioned and retired;

29 (3) whether the proposed purchaser has, or has contracted for,  
30 financial, technical and managerial abilities sufficient to reasonably satisfy  
31 any environmental obligations associated with the operation, maintenance  
32 or potential retirement of the facility;

33 (4) if the coal-fired electric generation facility is comprised of one or  
34 more generation units at a larger power plant where the public utility will  
35 continue to own and operate one or more generation units, whether the  
36 proposed purchaser and the public utility have made reasonable  
37 contractual arrangements for the sharing of the costs associated with any  
38 joint or common facilities at the plant;

39 (5) whether the proposed purchaser has agreed to reasonable terms  
40 and conditions for environmental remediation;

41 (6) whether the agreement contains a provision to allow the public  
42 utility, with commission approval, to revoke the sale in the event the  
43 purchaser is unable to timely obtain all necessary local, state and federal

1 permits;

2 (7) whether the agreement contains a provision to allow the public  
3 utility, with commission approval, to revoke the sale in the event the  
4 purchaser is unable to timely enter into any necessary operational and  
5 labor agreements;

6 (8) whether the proposed purchaser has agreed in the purchase  
7 agreement to obtain commission approval prior to transferring, in whole or  
8 in part, the facility to any other person so that the commission may ensure  
9 that any such transfer meets the requirements of this section; and

10 (9) any other factor deemed appropriate by the commission.

11 New Sec. 2. (a) Electric public utilities as defined in K.S.A. 66-104a,  
12 and amendments thereto, other than cooperative electric utilities defined in  
13 K.S.A. 66-104d, and amendments thereto, shall be obligated to purchase  
14 electricity generated from a coal-fired electric generation facility  
15 purchased under an agreement approved by the commission pursuant to  
16 section 1, and amendments thereto, if:

17 (1) The purchaser of the otherwise retiring coal-fired electric  
18 generation facility offers to sell some or all of the electricity from the  
19 facility to an electric public utility;

20 (2) the electricity is sold at a price that is not greater than the  
21 purchasing electricity utility's avoided cost, as may be determined by the  
22 commission;

23 (3) the electricity is sold under a power purchase agreement with a  
24 specific term length and such other terms and conditions, as may be  
25 approved by the commission; and

26 (4) the commission approves complete rate recovery of the cost of the  
27 power purchase agreement and the respective cost recovery is allocated to  
28 the public utility's Kansas customers, unless otherwise agreed to by the  
29 public utility.

30 (b) (1) The commission may determine the avoided cost price and  
31 other terms and conditions for the purchase of electricity from an  
32 otherwise retiring coal-fired electric generation facility in advance of the  
33 facility's proposed retirement date to make potential purchasers aware of  
34 the avoided cost price and other terms and conditions for sales from that  
35 facility prior to entering into an agreement to purchase such facility.

36 (2) In determining an electric public utility's avoided costs under this  
37 section, the commission may consider:

38 (A) The value of the electric energy and capacity generated from the  
39 facility;

40 (B) the value of any reliability benefits associated with the operation  
41 of the facility; and

42 (C) any other factor deemed appropriate by the commission.

43 (c) As used in this section, "avoided cost" means the incremental

1 costs to an electric utility of electric energy or capacity, or both, the utility  
2 would generate itself or incur in a purchase from another source, if not for  
3 purchasing electricity from the otherwise retiring coal-fired electric  
4 generation facility. Avoided costs may change over the course of an  
5 approved power purchase agreement at specified intervals set forth in the  
6 power purchase agreement and as determined by the commission.

7 Sec. 3. K.S.A. 2021 Supp. 66-104 is hereby amended to read as  
8 follows: 66-104. (a) The term "public utility," as used in this act, shall be  
9 construed to mean every corporation, company, individual, association of  
10 persons, their trustees, lessees or receivers, that now or hereafter may own,  
11 control, operate or manage, except for private use, any equipment, plant or  
12 generating machinery, or any part thereof, for the transmission of  
13 telephone messages or for the transmission of telegraph messages in or  
14 through any part of the state, or the conveyance of oil and gas through  
15 pipelines in or through any part of the state, except pipelines less than 15  
16 miles in length and not operated in connection with or for the general  
17 commercial supply of gas or oil, and all companies for the production,  
18 transmission, delivery or furnishing of heat, light, water or power. No  
19 cooperative, cooperative society, nonprofit or mutual corporation or  
20 association that is engaged solely in furnishing telephone service to  
21 subscribers from one telephone line without owning or operating its own  
22 separate central office facilities, shall be subject to the jurisdiction and  
23 control of the commission as provided in this section, except that it shall  
24 not construct or extend its facilities across or beyond the territorial  
25 boundaries of any telephone company or cooperative without first  
26 obtaining approval of the commission. The term "transmission of  
27 telephone messages" shall include the transmission by wire or other means  
28 of any voice, data, signals or facsimile communications, including all such  
29 communications now in existence or as may be developed in the future.

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

39 (c) Except as provided in this section, the power and authority to  
40 control and regulate all public utilities and common carriers situated and  
41 operated wholly or principally within any city or principally operated for  
42 the benefit of such city or its people, shall be vested exclusively in such  
43 city, subject only to the right to apply for relief to the corporation

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

8 (d) The term "public utility" shall not include any activity of an  
9 otherwise jurisdictional corporation, company, individual, association of  
10 persons, their trustees, lessees or receivers as to:

11 (1) The marketing or sale of:

12 ~~(1)(A)~~ Compressed natural gas for end use as motor vehicle fuel; or

13 ~~(2)(B)~~ electricity that is purchased through a retail electric supplier in  
14 the certified territory of such retail electric supplier, as such terms are  
15 defined in K.S.A. 66-1,170, and amendments thereto, for the sole purpose  
16 of the provision of electric vehicle charging service to end users; *or*

17 (2) *the ownership, control, operation or management of a coal-fired*  
18 *electric generation facility purchased under an agreement approved by the*  
19 *commission pursuant to section 1, and amendments thereto.*

20 (e) (1) Except as provided in paragraph (2), at the option of an  
21 otherwise jurisdictional entity, the term "public utility" shall not include  
22 any activity or facility of such entity as to the generation, marketing and  
23 sale of electricity generated by an electric generation facility or addition to  
24 an electric generation facility that:

25 (A) Is newly constructed and placed in service on or after January 1,  
26 2001; and

27 (B) is not in the rate base of:

28 (i) An electric public utility that is subject to rate regulation by the  
29 state corporation commission;

30 (ii) any cooperative, as defined by K.S.A. 17-4603, and amendments  
31 thereto, or any nonstock member-owned cooperative corporation  
32 incorporated in this state; or

33 (iii) a municipally owned or operated electric utility.

34 (2) The provisions of this subsection shall not be construed to affect  
35 the authority of the state corporation commission to regulate any activity  
36 or facility of an otherwise jurisdictional entity with regard to wire stringing  
37 pursuant to K.S.A. 66-183 et seq., and amendments thereto.

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

42 (g) For purposes of the authority to appropriate property through  
43 eminent domain, the term "public utility" shall not include any activity for

1 the siting or placement of wind powered electrical generators or turbines,  
2 including the towers.

3 Sec. 4. K.S.A. 2021 Supp. 66-104 is hereby repealed.

4 Sec. 5. This act shall take effect and be in force from and after its  
5 publication in the statute book.