

Senate Substitute for HOUSE BILL No. 2585

AN ACT concerning utilities; relating to the state corporation commission; approval of certain contract and reduced electric rates; approval of cost recovery from rate classes; report to the legislature; income taxation; exemption from income taxation, certain public utilities; income tax expenses, exclusion from retail electric rates; amending K.S.A. 79-32,113 and repealing the existing section.

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

New Section 1. (a) Notwithstanding the provisions of K.S.A. 66-101b and 66-109, and amendments thereto, the commission shall have the authority to approve a contract rate, outside a general rate proceeding, that is not based on the electric public utility's cost of service for a facility, if the commission:

(1) (A) Determines that the facility would not continue operations, or resume operations that had previously been suspended, in the state of Kansas without such contract rate; and

(B) determines that the contract rate is in the interest of the state of Kansas based on:

(i) The interests of the customers of the electric public utility serving the facility;

(ii) an evaluation of the incremental cost to serve the facility; and

(iii) the interests of the citizens of the state generally in promoting economic development, retaining the tax base, keeping employment opportunities in the state and promoting such other benefits to the state as the commission may determine are created by approval of the contract rate;

(2) allocates the reduced revenues from the contract rate, as determined by a comparison of the contract rate to the revenues that would have been generated at the retail rate the facility would have paid without such contract rate, to the electric public utility's other non-contract customers through a uniform percentage adjustment. Such reduced revenues shall be applied in each general rate proceeding of the electric public utility serving the facility to all components of the base rates of all customer classes, except the rates for service provided to customers under any contract rate approved by the commission pursuant to subsection (a) or (b) or the commission's general rate making authority; and

(3) (A) approves a tracking mechanism to track reductions in revenue experienced by the electric public utility serving the facility as a result of the contract rate from the date the contract rate becomes effective; and

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

(b) Notwithstanding the provisions of K.S.A. 66-101b and 66-109, and amendments thereto, the commission shall have the authority to approve a contract rate, outside a general rate proceeding, that is based on the electric public utility's incremental cost of service for a facility, if the commission:

(1) (A) Determines that the facility would not commence or expand operations in the state of Kansas without such contract rate;

(B) determines that the contract rate recovers the incremental cost of providing service to the facility; and

(C) determines that the contract rate is in the interest of the state of Kansas based on:

(i) The interests of the customers of the electric public utility serving the facility;

(ii) the incremental cost of serving the facility; and

(iii) the interests of the citizens of the state generally in promoting economic development, expanding the tax base, increasing employment

opportunities in the state and promoting such other benefits to the state as the commission may determine are created by approval of the contract rate; and

(2) uses the reduction in revenues that result from any contract rate approved by the commission pursuant to this subsection that will be in effect during the effective period of the rate for the purposes of determining the electric utility's revenue requirement in each general rate proceeding concluded after the effective date of this section.

(c) The contract rates authorized by this section may be approved by the commission for a term of up to 10 years, and an electric public utility may apply for reapproval of such contract rates for a facility that the commission has granted approval under this section.

(d) The provisions of this section shall not affect any contract rates approved by the commission prior to, and in effect on, the effective date of this section. This section shall not:

(1) Affect or diminish the authority of the commission to approve just and reasonable contract rates filed pursuant to the commission's general ratemaking authority according to custom and practice of the commission in place prior to the effective date of this section; or

(2) establish standards for approval of such contract rates.

(e) If the commission approves a contract rate pursuant to this section, the commission shall not have the authority to modify or eliminate any such rate during the specified term, subject to the conditions established by this section.

(f) Starting in January 2023, the commission shall biennially provide a status report to the legislature about any contract rates authorized pursuant to this section. Such report shall include the:

(1) Number of entities with such contract rates;

(2) number of entities with increased load;

(3) number of entities with decreased load;

(4) aggregate load and change in aggregate load on an annual basis;

(5) total subsidy and the subsidy for each individual contract;

(6) annual and cumulative rate increase on non-contract rate customers; and

(7) estimated economic development impact of entities with contract rates that occurred as a result of such contract rates through an evaluation of the annual: (A) Total employment for such entities; (B) change in employment for such entities; and (C) tax revenue generated by such entities.

(g) As used in this section:

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

(2) "facility" means an existing or proposed building or buildings of an existing or potential electric customer with existing or expected load equal to, or in excess of, a monthly demand of 50 megawatts, and such load may represent the aggregate demand of multiple meter accounts.

New Sec. 2. (a) Notwithstanding the provisions of K.S.A. 66-101b or 66-109, and amendments thereto, the commission shall authorize an electric public utility to implement economic development rate schedules that provide discounts from otherwise applicable standard rates for electric service for new or expanded facilities of industrial or commercial customers that are not in the business of selling or providing goods or services directly to the general public. To be eligible for such discounts, such customer shall:

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

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

facility; and

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

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

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

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

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

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

(ii) the level of capital investment;

(iii) additional off-peak usage;

(iv) curtailable or interruptible load;

(v) new industry or technology; or

(vi) competition with existing industrial customers; or

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

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

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

(c) The discount authorized by this section shall be determined by reducing otherwise applicable charges associated with the rate schedule applicable to the new or expanded existing facility by a fixed percentage for each year of service under the discount for a period of up to five years. The average of the annual discount percentages shall not:

(1) Exceed 20% for discounts that qualify pursuant to subsection (b)(1), but may be between 5% to 30% in any year; and

(2) exceed 40% for discounts that qualify pursuant to subsection (b)(2), but may be between 20% to 50% in any year.

(d) In each general rate proceeding concluded after the effective date of this section, the commission shall allocate the reduced level of revenues arising from the discounted rates provided for in this section through the application of a uniform percentage adjustment to the revenue requirement responsibility for all customer classes of the electric public utility providing such discounted rate, including the classes with customers that qualify for discounts under this section, except for rates for service provided to customers under contract rates either approved by the commission pursuant to section 1, and amendments thereto, or the commission's general ratemaking authority.

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

(2) such reductions in revenue shall be deferred to a regulatory asset and shall accrue interest at the weighted average cost of capital used by the commission to set the electric public utility's rates in its most recently concluded general rate proceeding with the balance of such regulatory asset to be included in the rate base and revenue requirement of the electric public utility in each of the utility's general

rate proceedings through an amortization of the balance over a reasonable period until fully collected from the utility's non-contract rate customers.

(f) The provisions of this section shall not apply to rates for service provided to customers under contract rates approved by the commission pursuant to section 1, and amendments thereto, or the commission's general ratemaking authority according to custom and practice of the commission in place prior to the effective date of this section.

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

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

(h) For the purposes of this section:

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

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

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

New Sec. 3. (a) If a public utility as defined in K.S.A. 66-104, and amendments thereto, includes expenses related to income taxes as a component of its retail rates, the utility shall track and defer into a regulatory asset or liability, as appropriate, any overcollection or undercollection of income tax expense if the income tax rates assessed on such utility are adjusted as a result of any changes in state or federal law.

(b) When any change in state or federal law either increases or decreases the income tax rates assessed on a utility and results in an overcollection or undercollection of income tax expenses that is equal to or exceeds 0.25% of such utility's base revenue level approved by the state corporation commission in the utility's most recent general rate proceeding, such utility shall file an application for new retail rates reflecting the adjusted income taxation rates with the commission within 60 days of the enactment of such change in state or federal law. The utility shall either refund the tracked overcollected amounts to, or recover the tracked undercollected amounts from, such utility's retail customers in a manner approved by the commission.

(c) A filing required pursuant to subsection (b) shall not:

- (1) Require the utility to file a full general rate proceeding;
- (2) require the utility to update any component of such utility's retail rates other than the income tax expense component; or
- (3) constitute a violation of any existing rate moratorium agreement if such filing only updates the income tax expense

component of a utility's rates.

(d) The state corporation commission shall issue an order addressing the application filed under subsection (b):

(1) That, if requested by the utility, gives due consideration to the common interests of the public utility and its customers, including, but not limited to, use of a two-year implementation of current period rate changes to maintain the credit quality of the utility by ensuring that any such change in retail rates will not cause the utility's credit metrics that are traditionally considered by the credit rating agencies to deteriorate to a level that could impair the utility's current credit rating. To the extent a retail rate change to address adjusted income taxes is implemented over a period of time, as provided in this paragraph, the utility shall: (A) Track and defer any overcollection or undercollection of income tax expenses as a regulatory liability or asset, as appropriate, that will accrue interest at the utility's weighted average cost of capital, as determined by the commission in the utility's most recent general rate proceeding; and (B) refund or collect the balance of such amounts in its next full general rate proceeding; and

(2) within 120 days of the date of such filing.

(e) If a utility has a full general rate proceeding pending before the commission, or has provided notice to the commission of its intent to file a full general rate proceeding application, at the time any adjusted income tax rates become effective, upon a showing by the utility that the public interest would be promoted, the commission may issue an order finding that such adjusted state or federal income tax rates should not be reflected in such utility's retail rates until the utility's new retail rates become effective following such utility's full general rate proceeding.

(f) Excess accumulated deferred income tax balances resulting from income taxes adjusted due to changes in state or federal law shall remain unamortized on the public utility's books of account until new retail rates from such utility's next full general rate proceeding after the adjusted income tax rates take effect. Such balances shall be amortized and reflected in retail rates at such time. If requested by the utility, excess accumulated deferred income tax balances resulting from changes in state law effective January 2021, shall be amortized over a period of not less than 30 years in retail rates for such utility by order of the commission. Excess accumulated deferred income tax balances resulting from any other changes in state or federal law shall be amortized in retail rates for such utility by order of the commission in a manner consistent with requirements of state and federal tax law and implementing regulations and in a manner that will not impair the utility's credit rating.

(g) The provisions of this section shall not apply to any:

(1) Municipal electric utility or natural gas utility; or

(2) utility that is a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or owned by one or more such cooperatives.

(h) For the purposes of this section, "overcollection or undercollection of income tax expense" means the portion of utility revenue representing the difference between the cost of service as approved by the state corporation commission in the utility's most recent base rate proceeding and the cost of service that would have resulted had the provision for state or federal income taxes been based upon the adjusted corporate income tax rate. "Overcollection or undercollection of income tax expense" does not include the effects of accumulated deferred income taxes or excess accumulated deferred income taxes.

Sec. 4. K.S.A. 79-32,113 is hereby amended to read as follows: 79-32,113. (a) A person or organization exempt from federal income taxation under the provisions of the federal internal revenue code shall also be exempt from the tax imposed by this act in each year in which such person or organization satisfies the requirements of the federal internal revenue code for exemption from federal income taxation. If the exemption applicable to any person or organization under the

provisions of the federal internal revenue code is limited or qualified in any manner, the exemption from taxes imposed by this article shall be limited or qualified in a similar manner.

(b) Notwithstanding the provisions of subsection (a) ~~of this section~~, the unrelated business taxable income, as computed under the provisions of the federal internal revenue code, of any person or organization otherwise exempt from the tax imposed by this act and subject to the tax imposed on unrelated business income by the federal internal revenue code shall be subject to the tax which would have been imposed by this act but for the provisions of subsection (a) ~~of this section~~.

(c) In addition to the persons or organizations exempt from federal income taxation under the provision of the federal internal revenue code, there shall also be exempt from the tax imposed by this act, insurance companies, banks, trust companies, savings and loan associations, credit unions and any other organizations, entities or persons specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(d) Notwithstanding the provisions of K.S.A. 79-32,110, and amendments thereto, the following entities shall be exempt from the tax imposed by the Kansas income tax act pursuant to K.S.A. 79-32,110, and amendments thereto:

(1) Any utility that is a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or owned by one or more such cooperatives; and

(2) effective for tax years ending on or after January 1, 2021, every electric and natural gas public utility as defined in K.S.A. 66-104, and amendments thereto, that is subject to rate regulation by the state corporation commission.

(e) Every electric and natural gas public utility as defined in K.S.A. 66-104, and amendments thereto, not including any such utility that is a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or owned by one or more such cooperatives shall:

(1) Not be permitted to be included in a consolidated or unitary combined return; and

(2) except as provided in section 3, and amendments thereto, not collect, as a component of such utility's retail rates, Kansas income tax expenses.

Sec. 5. K.S.A. 79-32,113 is hereby repealed.

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

I hereby certify that the above BILL originated in the House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.