

SENATE BILL No. 190

By Committee on Utilities

1-31

AN ACT relating to natural gas public utilities; concerning performance-based ratemaking mechanism; amending K.S.A. 2000 Supp. 66-117 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 66-117 is hereby amended to read as follows: 66-117. (a) Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date. The commission, for good cause, may allow such changed rate, joint rate, toll, charge or classification or schedule of charges, or rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier to become effective on less than 30 days' notice. If the commission allows a change to become effective on less than 30 days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change, or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the state corporation commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof.

(b) Whenever any common carrier or public utility governed by the provisions of this act files with the state corporation commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, the commission either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such schedule and defer the effective date of such change in rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier by delivering to such public utility

1 or common carrier a statement in writing of its reasons for such
2 suspension.

3 (c) The commission shall not delay the effective date of the proposed
4 change in rate, joint rate, toll, charge or classification or schedule of
5 charges, or in any rule or regulation or practice pertaining to the service
6 or rates of any such public utility or common carrier, more than 240 days
7 beyond the date the public utility or common carrier filed its application
8 requesting the proposed change. If the commission does not suspend the
9 proposed schedule within 30 days of the date the same is filed by the
10 public utility or common carrier, such proposed schedule shall be deemed
11 approved by the commission and shall take effect on the proposed effec-
12 tive date. If the commission has not issued a final order on the proposed
13 change in any rate, joint rate, toll, charge or classification or schedule of
14 charges, or any rule or regulation or practice pertaining to the service or
15 rates of any such public utility or common carrier, within 240 days after
16 the carrier or utility files its application requesting the proposed change,
17 then the schedule shall be deemed approved by the commission and the
18 proposed change shall be effective immediately, except that (1) for pur-
19 poses of the foregoing provisions regarding the period of time within
20 which the commission shall act on an application, any amendment to an
21 application for a proposed change in any rate, which increases the amount
22 sought by the public utility or common carrier or substantially alters the
23 facts used as a basis for such requested change of rate, shall, at the option
24 of the commission, be deemed a new application and the 240-day period
25 shall begin again from the date of the filing of the amendment, (2) if
26 hearings are in process before the commission on a proposed change
27 requested by the public utility or common carrier on the last day of such
28 240-day period, such period shall be extended to the end of such hearings
29 plus 20 days to allow the commission to prepare and issue its final order,
30 and, (3) nothing in this subsection shall preclude the public utility or
31 common carrier and the commission from agreeing to a waiver or an
32 extension of the 240-day period.

33 (d) Except as provided in subsection (c), no change shall be made in
34 any rate, toll, charge, classification or schedule of charges or joint rates,
35 or in any rule or regulation or practice pertaining to the service or rates
36 of any such public utility or common carrier, without the consent of the
37 commission. Within 30 days after such changes have been authorized by
38 the state corporation commission or become effective as provided in sub-
39 section (c), copies of all tariffs, schedules and classifications, and all rules
40 and regulations, except those determined to be confidential under rules
41 and regulations adopted by the commission, shall be filed in every station,
42 office or depot of every such public utility and every common carrier in
43 this state, for public inspection.

1 (e) Upon a showing by a public utility before the state corporation
2 commission at a public hearing and a finding by the commission that such
3 utility has invested in projects or systems that can be reasonably expected
4 (1) to produce energy from a renewable resource other than nuclear for
5 the use of its customers, (2) to cause the conservation of energy used by
6 its customers, or (3) to bring about the more efficient use of energy by
7 its customers, the commission may allow a return on such investment
8 equal to an increment of from $\frac{1}{2}\%$ to 2% plus an amount equal to the
9 rate of return fixed for the utility's other investment in property found
10 by the commission to be used or required to be used in its services to the
11 public. The commission may also allow such higher rate of return on
12 investments by a public utility in experimental projects, such as load man-
13 agement devices, which it determines after public hearing to be reason-
14 ably designed to cause more efficient utilization of energy and in energy
15 conservation programs or measures which it determines after public hear-
16 ing provides a reduction in energy usage by its customers in a cost-effec-
17 tive manner.

18 (f) Whenever, after the effective date of this act, an electric public
19 utility, a natural gas public utility or a combination thereof, files tariffs
20 reflecting a surcharge on the utility's bills for utility service designed to
21 collect the annual increase in expense charged on its books and records
22 for ad valorem taxes, such utility shall report annually to the state cor-
23 poration commission the changes in expense charged for ad valorem taxes.
24 For purposes of this section, such amounts charged to expense on the
25 books and records of the utility may be estimated once the total property
26 tax payment is known. If found necessary by the commission or the utility,
27 the utility shall file tariffs which reflect the change as a revision to the
28 surcharge. Upon a showing that the surcharge is applied to bills in a
29 reasonable manner and is calculated to substantially collect the increase
30 in ad valorem tax expense charged on the books and records of the utility,
31 or reduce any existing surcharge based upon a decrease in ad valorem tax
32 expense incurred on the books and records of the utility, the commission
33 shall approve such tariffs within 30 days of the filing. Any over or under
34 collection of the actual ad valorem tax increase charged to expense on
35 the books of the utility shall be either credited or collected through the
36 surcharge in subsequent periods. The establishment of a surcharge under
37 this section shall not be deemed to be a rate increase for purposes of this
38 act. The net effect of any surcharges established under this section shall
39 be included by the commission in the establishment of base rates in any
40 subsequent rate case filed by the utility.

41 (g) *The state corporation commission shall allow a natural gas public*
42 *utility to file a performance-based ratemaking mechanism (the PBRM).*
43 *The PBRM shall replace the reasonableness or prudence review of the*

1 natural gas public utility's gas purchasing activities overseen by the state
2 corporation commission. The PBRM shall be designed to encourage the
3 natural gas public utility to maximize its gas purchasing activities at min-
4 imum costs, consistent with efficient operations and service reliability, and
5 shall provide for a shared savings or costs between the natural gas public
6 utility's customers and shareholders. The PBRM shall include:

7 (1) A gas procurement incentive mechanism which establishes a pre-
8 defined benchmark index to which the natural gas public utility's com-
9 modity cost of gas will be compared. It also will address the use of financial
10 instruments or private contracts in managing gas costs. The net incentive
11 savings or costs will be shared between the natural gas public utility's
12 customers and the natural gas public utility on an equal basis; and

13 (2) a capacity management incentive mechanism is designed to en-
14 courage the natural gas public utility to actively market off-peak, unutil-
15 ized transportation and storage capacity on upstream pipelines in the
16 secondary market. The net incentive benefits will be shared by the natural
17 gas public utility's customers and the natural gas public utility on an equal
18 basis.

19 In regard to commodity costs under the gas procurement incentive
20 mechanism, on a monthly basis, the natural gas public utility will compare
21 its commodity cost of gas to the appropriate benchmark amount. The
22 benchmark amount will be computed by multiplying actual quantities
23 purchased for the month, including quantities purchased for injection into
24 storage, by the appropriate price index. For seasonal and monthly con-
25 tracts, the price index will be a simple average of the appropriate Inside
26 FERC Gas Market Report, Natural Gas Intelligence, and NYMEX indices
27 for the particular month. For daily contracts, the published Gas Daily
28 rate for the first business day of gas flow will be used as the index. For
29 long-term purchases which have a term longer than a seasonal period,
30 these indices will be adjusted for the natural gas public utility's rolling
31 three-year average premium paid to ensure long-term supply availability
32 during peak periods. If the total commodity cost of gas in a month falls
33 outside the total commodity cost of gas, based upon the index, the amount
34 under or above the total commodity cost of gas based upon the index shall
35 be deemed savings or costs under the mechanism. Such savings or costs
36 will be shared equally between the natural gas public utility's customers
37 and its shareholders.

38 With respect to financial instruments or other private contracts, to the
39 extent the natural gas public utility uses futures contracts, financial de-
40 rivative products, storage swap arrangements or other private arrange-
41 ments to hedge, manage or reduce the gas costs, any savings or costs will
42 flow through the commodity cost component of the gas procurement in-
43 centive mechanism.

1 *With respect to the capacity management incentive mechanism, to the*
2 *extent the natural gas public utility is able to release daily transportation*
3 *or daily storage capacity, the associated savings will be shared equally by*
4 *the natural gas public utility's customers and shareholders. The sharing*
5 *percentages shall be determined based upon the actual demand costs in-*
6 *curring by the natural gas public utility for transportation and storage*
7 *capacity during a year, as such costs may be adjusted due to refunds or*
8 *surcharges from pipelines and storage suppliers. Any incentive savings or*
9 *costs resulting from adjustments to the sharing percentages caused by the*
10 *refunds or surcharges shall be recorded as provided herein.*

11 *In determining shared savings, each month the natural gas public util-*
12 *ity will compute any savings or costs in accordance with the PBRM. If*
13 *the natural gas public utility earns any savings, a separate below the line*
14 *incentive plan account (IPA) will be debited with such savings. If the*
15 *natural gas public utility incurs any costs, that same IPA will be credited*
16 *with such costs. Interest shall be computed on balances in the IPA using*
17 *the same interest rate and methods as used in the natural gas public*
18 *utility's actual cost adjustment (ACA) account. The offsetting entries to*
19 *IPA savings or costs will be recorded to income or expense, as appropriate.*
20 *Savings or costs accruing to the natural gas public utility under the PBRM*
21 *will form the basis for a rate increment or decrement to be filed and placed*
22 *into effect, separate from any other rate adjustments, to recover or refund*
23 *such amount over a prospective twelve-month period. Annually, the rates*
24 *for all sales customers will be increased or decreased by a separate rate*
25 *increment or decrement designed to amortize the collection or refund of*
26 *the IPA balance over the succeeding twelve-month period. The rate in-*
27 *crement or decrement will be established by dividing the IPA annual bal-*
28 *ance by the appropriate sales billing determinants for the previous twelve-*
29 *month period. During the twelve-month amortization period, the amount*
30 *collected or refunded each month will be computed by multiplying the*
31 *sales billing determinants for such month by the rate increment or dec-*
32 *rement, as applicable. The product will be credited or debited to the IPA*
33 *as appropriate. The balance in the IPA will be tracked as a separate col-*
34 *lection mechanism.*

35 *Annually, the unamortized amount of the previous year's IPA balance*
36 *will be trued-up in the new rate increment or decrement. The natural gas*
37 *public utility shall file calculations of shared savings and shared costs*
38 *quarterly with the state corporation commission, not later than 60 days*
39 *after the end of the quarter, and will file an annual report not later than*
40 *60 days following the end of each plan year. Unless the state corporation*
41 *commission provides written notification to the natural gas public utility*
42 *within 180 days of such reports, the IPA shall be deemed in compliance*
43 *with this statute.*

1 ~~(g)~~ (h) Except as to the time limits prescribed in subsection (c), pro-
2 ceedings under this section shall be conducted in accordance with the
3 provisions of the Kansas administrative procedure act.

4 Sec. 2. K.S.A. 2000 Supp. 66-117 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its
6 publication in the statute book.

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