

HOUSE BILL No. 2661

By Special Committee on Utilities

1-22

AN ACT concerning retail electric suppliers; amending K.S.A. 66-1,176 and 66-1,176b and repealing the existing sections.

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

Section 1. K.S.A. 66-1,176 is hereby amended to read as follows: 66-1,176. (a) *Whenever a city proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier in the manner prescribed by K.S.A. 12-520a, and amendments thereto.* All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city. Such period of 180 days shall be extended to 210 days from the date of annexation if a franchise is granted to the retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within such period of 210 days. *Whenever the city annexes land that is located within the certified territory of a retail electric supplier, the city shall negotiate for the issuance of a franchise agreement pursuant to K.S.A. 12-2001, et seq., and amendments thereto, with a retail electric supplier holding a certificate within the annexed area. Nothing herein shall be construed to require a supplier holding both a certificate of convenience and a franchise for the area annexed to obtain a new franchise. The city shall have the final selection of which supplier receives a franchise to operate within the annexed area. When making such selection, the city shall consider certain factors including, but not limited to: (1) The public convenience and necessity; (2) rates of various suppliers; (3) desires of the customer or customers to be served; (4) economic impact on the suppliers; (5) economic impact on the customers of the suppliers; (6) the utility's operational ability to serve the annexed area; (7) avoiding the wasteful duplication of facilities; (8) avoiding unnecessary encumbrance on the landscape; and (9) preventing the waste of materials and natural resources. Within 30 days after the final decision of the city, any supplier aggrieved thereby may file an appeal in the district court of the county in which the annexed area is located to determine the reasonableness of the final decision. In the event that an appeal of the decision is*

1 *filed in the district court, the retail electric supplier providing service at*
2 *the time of annexation shall continue to provide service until such time*
3 *as the appeal has been concluded.* In the event service rights are termi-
4 nated pursuant to this section, the commission shall certify such annexed
5 area as a single certified territory to the supplier holding a franchise for
6 or then providing retail electric service in the city immediately prior to
7 the annexation.

8 (b) In the event the supplier holding a franchise or then providing
9 retail electric service does not effect the assumption of electric service to
10 the annexed area at the termination of the applicable 180-day or 210-day
11 period as provided in subsection (a), then the originally certified supplier
12 shall have the right to continue service to the annexed area and charge
13 its ordinary rates therefor until such supplier does assume service to the
14 annexed area. Such service shall be free of any franchise fee or other
15 compensation to the city or the electric supplier holding the franchise. If
16 the supplier holding a franchise has not assumed service to the annexed
17 area within 180 days following the applicable 180-day or 210-day period
18 provided in subsection (a), the city may require the originally certified
19 supplier to obtain a franchise in order to continue service to the annexed
20 area. Unless otherwise mutually agreed upon by the affected suppliers,
21 no assumption of electric service shall occur within 15 days following
22 notice to the originally certified supplier of the intended changeover time.

23 (c) Whenever the service rights of a retail electric supplier are ter-
24 minated pursuant to subsection (a), fair and reasonable compensation
25 shall be paid to such retail electric supplier by the supplier subsequently
26 authorized to provide electric service. Such compensation shall be an
27 amount mutually agreed upon by the affected suppliers or the sum of the
28 following:

29 (1) The depreciated replacement cost for the electric utility facilities
30 in the territory in which the service rights have been terminated pursuant
31 to subsection (a). As used in this paragraph, “depreciated replacement
32 cost” shall mean the original installed cost of the facilities, adjusted to
33 present value by utilizing a nationally recognized index of utility construc-
34 tion costs, less accumulated depreciation based on the book depreciation
35 rates of the selling utility as filed with and approved by the state corpo-
36 ration commission, which are in effect at the time of acquisition;

37 (2) all reasonable and prudent costs of detaching the electric system
38 facilities to be sold and all reasonable and prudent costs of reintegrating
39 the remaining electric system facilities of the retail electric supplier whose
40 service rights are terminated pursuant to subsection (a);

41 (3) an amount equal to *two times* the gross revenues attributable to
42 the customers in the terminated territory during the 12 months next pre-
43 ceding the date of ~~termination~~ *transfer* of the service ~~rights~~ pursuant to

1 subsection (a); and

2 (4) an amount equal to the state and federal tax liability created by
3 the taxable income pursuant to the provisions of this paragraph and par-
4 agraphs (1), (2) and (3) by the retail electric supplier whose service rights
5 are terminated pursuant to subsection (a), calculated without regard to
6 any tax deductions or benefits not related to the sale of assets covered
7 herein.

8 (d) In the event that the parties are unable to agree upon an amount
9 of compensation to be paid pursuant to subsection (c), after 60 days fol-
10 lowing the date of termination of service rights either party may apply to
11 the district court having jurisdiction where any portion of the facilities
12 are located, for determination of compensation. Such determination shall
13 be made by the court sitting without a jury.

14 Sec. 2. K.S.A. 66-1,176b is hereby amended to read as follows: 66-
15 1,176b. (a) When the service rights of a retail electric supplier are ter-
16 minated by a city during the period in which a valid franchise is in effect
17 and the service rights are assumed by the terminating city, the governing
18 body of the city shall acquire from the terminated supplier the parts of
19 the local electric distribution system necessary to serve all customers
20 within the previously franchised area and the terminated supplier shall
21 sell the system to the governing body of such city for which it shall be
22 fairly compensated. Such compensation shall be an amount mutually
23 agreed upon by the affected parties or an amount determined by the
24 following formula:

25 (1) The depreciated replacement cost for the electric utility facilities
26 in the territory in which the service rights have been terminated. As used
27 in this paragraph, "depreciated replacement cost" means the original in-
28 stalled cost of the facilities, adjusted to present value by utilizing a na-
29 tionally recognized index of utility construction costs, less accumulated
30 depreciation based on the book depreciation rates of the selling utility,
31 as filed with and approved by the state corporation commission, which
32 are in effect at the time of acquisition;

33 (2) the depreciated replacement costs of the remaining proportion of
34 any take or pay power contracts or participation power agreements;

35 (3) the depreciated replacement cost for the electric utility facilities
36 outside the affected territory used in providing service to the formerly
37 franchised area. Such facilities shall include all generation facilities and
38 all transmission facilities throughout the terminated utility's integrated
39 system, the value of which shall be determined by the depreciated re-
40 placement cost formula in paragraph (1) multiplied by the percentage of
41 the terminated utility's total retail kilowatt-hour sales to customers in the
42 affected area during the 12 months next preceding the effective date of
43 the sale;

1 (4) all reasonable and prudent costs of detaching the electric system
2 facilities to be sold, including the reasonable costs of studies and inven-
3 tories made to determine the facility's value and all reasonable and pru-
4 dent costs of reintegrating the remaining electric system facilities of the
5 retail electric supplier whose service rights are terminated;

6 (5) an amount equal to *two times* the net revenues received during
7 the 12 months next preceding the date of termination of the service rights
8 from the customers within the affected area of the retail electric supplier
9 whose service rights are terminated. As used in this paragraph, "net rev-
10 enues" means the total revenues received by the terminated utility for
11 electric service within the affected area less franchise and sales taxes col-
12 lected; the cost of fuel or purchased power recovered in the revenues;
13 and labor, maintenance, administration and insurance. This number shall
14 be multiplied by the number of years remaining in any franchise contract;
15 and

16 (6) an amount equal to the state and federal tax liability created by
17 the taxable income pursuant to the provisions of this paragraph and par-
18 agraphs (1), (2), (3), (4) and (5) by the retail electric supplier whose serv-
19 ice rights are terminated, calculated without regard to any tax deductions
20 or benefits not related to the sale of assets covered herein.

21 (b) If the parties are unable to agree upon the amount of compen-
22 sation to be paid pursuant to this act after 60 days following the date of
23 termination of service rights, either party may apply to the district court
24 having jurisdiction where any portion of the facilities is located for de-
25 termination of compensation. Such determination shall be made by the
26 court sitting without a jury.

27 Sec. 3. K.S.A. 66-1,176 and 66-1,176b are hereby repealed.

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

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