

Substitute for SENATE BILL No. 545

AN ACT relating to public utilities; concerning public right-of-way and certain fees and costs; providing for recovery of certain costs of security measures of certain public utilities.

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

Section 1. As used in sections 1 and 2, and amendments thereto:

(a) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the easements obtained by utilities or private easements in platted subdivisions or tracts.

(b) "Public utility" means all public utilities as defined in K.S.A. 66-104, and amendments thereto, except that it does not include any public utilities included in the definitions set forth in K.S.A. 66-1,187, and amendments thereto.

Sec. 2. (a) Without prejudice to a public utility's other rights and authorities, a public utility which is assessed by a city and collects and remits fees associated with the utility's use, occupancy or maintenance of such utility's facilities in the public right-of-way may file a tariff with the state corporation commission to add to such utility's end-user customer's bill, statement or invoice a surcharge equal to the pro rata share of any such fees.

(b) Costs which are incurred by a public utility in excess of those normal and reasonable costs incurred by a public utility applying good utility practices due to actions of a city's governing body may file a tariff with the state corporation commission to add to the bill, statement or invoice of each end-user customer located within such city through a surcharge equal to a pro rata share of such costs.

(c) For purposes of this section and section 2, and amendments thereto, costs shall not include expenses specifically covered by any other cost recovery mechanism in existence as of April 1, 2002, including but not limited to franchise fees and relocation expenses.

(d) The fees and costs incurred by the utility identified in subsections (a) and (b) in excess of the amount included in the utility's existing rates shall be subject to review by the state corporation commission upon filing for recovery of the costs in a surcharge. Upon a finding by the commission that (1) the fees included for recovery in such surcharge were required to be paid by the utility as the result of action of the governing body of a city, (2) the costs were incurred as a result of action of the governing body of such city, (3) such costs were reasonably incurred to meet the requirements imposed by the governing body of such city and (4) the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in fees and costs charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in fees and costs incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing. If the commission determines that the surcharge is not applied to bills in a reasonable manner, the costs or portions thereof do not meet the above requirements or that the calculation is not adequately supported by the documentation provided in the filing, the commission, at its option, may either disapprove such tariff within 30 days of the filing and require re-submission by the utility, suspend the effective date of the tariff for an additional 60 days to receive appropriate documentation from the utility and/or modify such tariff in a manner that recovers in a reasonable manner the costs or portions thereof which meet the above requirements. Any over or under collection of the actual fees and costs charged to expense on the books of the utility shall be either credited or collected through the surcharge in subsequent periods. The establishment of a surcharge under this section shall not be deemed to be a rate increase for purposes of this act.

(e) Upon the filing of a tariff with the corporation commission pursuant to this act, the utility shall deliver to the affected city a complete copy of the filing. Such copy shall be delivered within 10 days of the filing with the corporation commission.

Sec. 3. (a) Section 1, and amendments thereto, shall affect only such costs and fees which are incurred between April 1, 2002, and June 30, 2003.

(b) The provisions of this section and sections 1 and 2, and amendments thereto, shall expire on June 30, 2003.

Sec. 4. (a) As used in this section:

(1) "Electric public utility" means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto.

(2) "Natural gas public utility" means any natural gas public utility, as defined in K.S.A. 66-1,200, and amendments thereto.

(b) On and after July 1, 2002, the state corporation commission, upon application and request, shall authorize electric public utilities and natural gas public utilities to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets by an adjustment to the utility's customers' bills. The application and request shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the expenditures and the reasonableness of the measures, as the commission deems appropriate. Such application and request shall be confidential and subject to protective order of the commission.

(c) The provisions of this section shall expire on July 1, 2004.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

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

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.