

HOUSE Substitute for SENATE BILL No. 263

By Committee on Appropriations

4-30

AN ACT relating to public utilities; concerning prior determination of rate-making principles and treatment by the corporation commission; repealing section 1 of 2003 Substitute for Senate Bill No. 104.

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

Section 1. (a) As used in this section:

(1) "Commission" means the state corporation commission;

(2) "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000 annually;

(3) "generating facility" means any electric generating plant or improvement to existing generation facilities;

(4) "stake" means a public utility's whole or fractional ownership share or leasehold or other proprietary interest in a generating facility or transmission facility;

(5) "public utility" has the meaning provided by K.S.A. 66-104, and amendments thereto; and

(6) "transmission facility" means: (A) Any existing line, and supporting structures and equipment, being upgraded for the transfer of electricity with an operating voltage of 69 kilovolts or more of electricity; or (B) any new line, and supporting structures and equipment, being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

(b) (1) Prior to undertaking the construction of, or participation in, a transmission facility, a public utility may file with the commission a petition for a determination of the rate-making principles and treatment, as proposed by the public utility, that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the transmission facility during the expected useful life of the transmission facility.

(2) The commission shall issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the transmission facility in all rate-making proceedings on and after such time as the transmission facility is placed in service or the term of the contract commences.

(3) The commission in all proceedings in which the cost of the public

1 utility's stake in the transmission facility is considered shall utilize the
2 rate-making principles and treatment applicable to the transmission
3 facility.

4 (4) If the commission fails to issue a determination within 180 days
5 of the date a petition for a determination of rate-making principles and
6 treatment is filed, the rate-making principles and treatment proposed by
7 the petitioning public utility will be deemed to have been approved by
8 the commission and shall be binding for rate-making purposes during the
9 useful life of the transmission facility.

10 (5) If the commission does not have jurisdiction to set wholesale rates
11 for use of the transmission facility the commission need not consider rate-
12 making principles and treatment for wholesale rates for the transmission
13 facility.

14 (c) (1) Prior to undertaking the construction of, or participation in,
15 a generating facility or prior to entering into a new contract, a public
16 utility may file with the commission a petition for a determination of the
17 rate-making principles and treatment, as proposed by the public utility,
18 that will apply to recovery in wholesale or retail rates of the cost to be
19 incurred by the public utility to acquire such public utility's stake in the
20 generating facility during the expected useful life of the generating facility
21 or the recovery in rates of the contract during the term thereof.

22 (2) Any utility seeking a determination of rate-making principles and
23 treatment under subsection (c)(1) shall as a part of its filing submit the
24 following information: (A) A description of the public utility's conserva-
25 tion measures; (B) a description of the public utility's demand side man-
26 agement efforts; (C) the public utility's ten-year generation and load fore-
27 casts; and (D) a description of all power supply alternatives considered
28 to meet the public utility's load requirements.

29 (3) In considering the public utility's supply plan, the commission
30 may consider if the public utility issued a request for proposal from a
31 wide audience of participants willing and able to meet the needs identi-
32 fied under the public utility's generating supply plan, and if the plan
33 selected by the public utility is reasonable, reliable and efficient.

34 (4) The commission shall issue an order setting forth the rate-making
35 principles and treatment that will be applicable to the public utility's stake
36 in the generating facility or to the contract in all rate-making proceedings
37 on and after such time as the generating facility is placed in service or
38 the term of the contract commences.

39 (5) The commission in all proceedings in which the cost of the public
40 utility's stake in the generating facility or the cost of the purchased power
41 under the contract is considered shall utilize the rate-making principles
42 and treatment applicable to the generating facility or contract.

43 (6) If the commission fails to issue a determination within 180 days

1 of the date a petition for a determination of rate-making principles and
2 treatment is filed, the rate-making principles and treatment proposed by
3 the petitioning public utility will be deemed to have been approved by
4 the commission and shall be binding for rate-making purposes during the
5 useful life of the generating facility or during the term of the contract.

6 (d) The public utility shall have one year from the effective date of
7 the determination of the commission to notify the commission whether
8 it will construct or participate in the construction of the generating or
9 transmission facility or whether it will perform under terms of the
10 contract.

11 (e) If the public utility notifies the commission within the one-year
12 period that the public utility will not construct or participate in the con-
13 struction of the generating or transmission facility or that it will not per-
14 form under the terms of the contract, then the determination of rate-
15 making principles pursuant to subsection (b) or (c) shall be of no further
16 force or effect, shall have no precedential value in any subsequent pro-
17 ceeding, and there shall be no adverse presumption applied in any future
18 proceeding as a result of such notification.

19 (f) If the public utility notifies the commission under subsection (d)
20 that it will construct or participate in a generating facility or purchase
21 power contract and subsequently does not, it will be required to notify
22 the commission immediately and file an alternative supply plan with the
23 commission per subsection (c) within 90 days.

24 Sec. 2. Section 1 of 2003 Substitute for Senate Bill No. 104 is hereby
25 repealed.

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

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