

SESSION OF 2005

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2263**

As Agreed to March 31, 2005

Brief *

The bill would enact the Kansas Electric Transmission Authority Act creating the Kansas Electric Transmission Authority (Authority). The purpose of the Authority would be to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the state's economy, and facilitate the consumption of Kansas energy through improvements in the state's electric transmission infrastructure. The Authority would fulfill that purpose through building electric transmission facilities or by facilitating the construction, upgrade, and repair of third party transmission facilities. These provisions were originally in HB 2263.

The bill also would enact a new law authorizing the Kansas Corporation Commission to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities those costs associated with the construction or improvement of electric transmission facilities under certain circumstances. Costs covered by the bill would be those incurred for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities would be subject to the jurisdiction of the Corporation Commission for implementation of the act. These provisions were originally in HB 2045.

Finally, the bill would amend existing law to authorize the Kansas Corporation Commission (KCC) to determine the reasonableness of and regulate and supervise curtailment of service from a gas gathering system to an end-use customer. These provisions were originally in HB 2530 and SB 303.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

The bill will become effective upon publication in the *Kansas Register*.

Transmission Authority Governance

The Transmission Authority Board would be composed of seven members: three appointed to staggered four-year terms by the Governor, subject to Senate confirmation; and the chairs and ranking minority members of the House and Senate utilities committees.

The Governor's appointees would have to be qualified Kansas voters who possess special knowledge or have at least five years managerial experience in the field of electric transmission or generation development. No more than two gubernatorial appointees could be members of the same political party. A member of the Board appointed by the Governor could be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing conducted in accordance with the provisions of the Kansas Administrative Procedure Act. Board members would be paid compensation (\$35/day, or legislative pay), subsistence, expenses, and mileage as provided by statute for other state boards and commissions.

Transmission Authority Powers

In order to carry out the purposes of the Act, the Authority could plan, finance, construct, develop, acquire, own, and dispose of transmission facilities. In addition to general authority to function as a public entity and to implement the Act, the Authority could contract for maintenance and operation of transmission facilities. The Authority could not directly operate or maintain transmission facilities.

Other specific powers of the Authority would include the ability to enter into contracts with the Kansas Development Finance Authority (KDFa) which would be authorized to issue bonds and provide financing for construction, upgrading, or repair of the Authority's transmission facilities and acquisition of right-of-way for those facilities. KDFa bond revenue also could be used to make loans to finance construction, upgrading, or repair of transmission facilities that are not owned by the Authority and acquisition of right-of-way for those facilities.

Transmission facilities financed with KDFA-issued bonds would not have to be wholly located in Kansas if the majority of the project is located within the state and the Kansas Corporation Commission (KCC) certifies that those portions of the project located outside the state will improve the reliability and security of the state's transmission system or will contribute to the long-term well being of Kansas.

The Authority would recover its costs through tariffs of the Southwest Power Pool (SPP) Regional Transmission Organization. If all costs are not recovered through SPP tariffs, the Authority would recover the remainder of its costs through assessments against all utilities that benefit from Authority projects and that have customers in Kansas. Each utility's assessment would be based on its benefit from the project as determined by the KCC. Electric utilities would recover costs attributable to such assessments from their customers in a manner approved by the KCC, or, in the case of municipal and cooperative electric utilities, by their governing boards.

Transmission Authority Limitations

The Authority could exercise the rights and powers that would be granted by the Act only:

- If private entities are not meeting the need and are not willing to finance and own required new infrastructure; and
- In regard to transmission facilities approved by the SPP.

The Authority would be required to publish notice of its intent to provide facilities or services in the *Kansas Register*, a newspaper and a trade magazine in the area where the service or facilities would be provided. Private entities would have three months to notify the Authority of its intention and ability to perform the acts, finance, and construct the facilities, or provide the service contemplated by the Authority. If no private entity expresses its intent to build the facility or provide the service, or if the private entity fails to begin the project within six months, the Authority could proceed with the project. If a private entity begins, but fails to make satisfactory progress toward completion of, a project, the Authority could provide notice of its intent to complete the project and could proceed to do so if no private entity expresses willingness to complete the project.

Transmission Authority Oversight and Regulation

The Authority would be required to provide an annual report to the Governor and the Legislature. The report would include any audit of the Authority performed under the Act.

The Authority would not be supervised or subject to regulation by the KCC, except in regard to wire stringing and transmission line siting. In those instances, other existing statutes would govern.

Transmission Authority Taxation

The Authority would not be required to pay Kansas income tax and its purchases would be exempt from sales tax. The Authority's transmission facilities would be exempt from property tax to the extent they would be exempt if privately owned.

Transmission Authority Cooperation with State and Local Entities

State and local agencies would have to provide information, assistance, and advice requested by the Authority. Those agencies would be reimbursed by the Authority. State agencies and local governments also would be authorized to lease, lend, grant, or convey land to the Authority without advertising or obtaining a court order for the transaction.

Transmission Authority State General Fund Loan

Any State General Fund financing provided by the Legislature to the Authority would be a loan to be repaid with interest in a single payment within ten years. Any such loan would not be considered an indebtedness of the state and would accrue interest at the statutory rate set for inactive state accounts.

Transmission Authority Open Meetings and Open Records Acts Exceptions

Exceptions to the Open Meetings and Open Records acts would be provided to protect competitive positions of third parties and the security of transmission facilities. Those exceptions would apply to:

- Proprietary information obtained with a promise of confidentiality;
- Information about the location of transmission facilities and security measures; and
- Information about transmission capacity or availability that is not generally available to all electricity market participants.

Transmission Authority Board Conflicts of Interest

Board members and staff would be required to disclose in writing any interest in contracts or transactions with the Authority. No Authority member or staff with an interest in an Authority transaction would be able to participate in authorization of the transaction.

Board members would be required to file statements of substantial interest as required by Kansas' ethics laws. Employees, agents, and advisors of the Authority who have a substantial interest in contracts or transactions with the Authority also would be required to file statements of substantial interest.

Recovery of Costs of Electric Transmission Facility Construction and Improvement

Provisions originally included in HB 2045 would authorize the Kansas Corporation Commission (KCC) to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities costs associated with the construction or improvement of electric transmission facilities under certain circumstances. Costs covered by the bill would be those incurred for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities would be subject to the jurisdiction of the Corporation Commission for implementation of the Act. The KCC would be

authorized to approve inclusion of the specified costs in retail utility rates if the Commission finds:

- That a regional transmission organization has identified the construction or upgrade as appropriate for reliability of the electric transmission system or for economic benefit to transmission owners and customers; and
- A state agency has determined that the project will provide measurable economic benefit to Kansas electric consumers that would exceed anticipated project costs.

The Commission could approve recovery of project costs in retail electric rates only if those costs would not otherwise be recovered.

The Commission would be authorized to consider the following when determining whether to approve inclusion of project costs in retail rates:

- The speed with which electric consumers would benefit from the transmission facility;
- The long-term benefits of the facility to Kansas electric customers; and
- Whether those factors outweigh other less costly options.

Applications for cost recovery for projects covered by the Act would have to include information required by the Commission to enable it to make those determinations.

The Commission would be required to conduct an expedited review of any request filed pursuant to the act if the application includes evidence that expedited construction or upgrade would provide significant, measurable economic benefit to Kansas electric consumers. Regional transmission organization recommendation or approval of a project covered by the act would create a rebuttable presumption of the appropriateness of the project for system reliability or economic benefit.

Any project cost recovery authorized by the Commission pursuant to the Act would be assessed against all utilities that have

retail customers in Kansas and that receive benefits from the project. Individual assessments would be based on benefits received by the utility from the project. In making its decision regarding benefit and cost allocation, the Commission could consider funding and cost recovery mechanisms developed by regional transmission organizations and would be required to consider transmission users' payments approved by the Federal Energy Regulatory Commission or the regional transmission organization.

Curtailment of Consumer Service From Gas Gathering Systems

Provisions of HB 2530 and SB 303 as included in this bill would require providers of end-user services from a gas gathering system to provide notice to the KCC and to customers at least 30 days prior to a curtailment of services, except in the case of an emergency.

In the case of an emergency, service to a residence or to an office could be cut off immediately. Notice in cases of immediate termination of service would have to be given immediately to the end-user and to the public utility. The company that turned off the gas service would be required to report the curtailment within 24 hours to the KCC along with the basis for and evidence upon which the company based its good faith belief that immediate curtailment of service was necessary. If the Commission determines that there was no good-faith basis for the curtailment and that the curtailment was unnecessary, the company would be responsible for the cost of the service curtailment, including reconnection and temporary heating costs.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to HB 2263 with the following exceptions:

- providing for the House and Senate Utilities committees ranking minority members to serve on the Transmission Authority Board rather than having the President and the Speaker each appoint a member;
- deleting the requirement for Finance Council approval of bond issuances; and

- including in HB 2263 major provisions of HB 2530, SB 303, and HB 2045.

The Conference Committee concurred in the Senate Amendment to HB 2045 which deleted a 5-mile minimum line length requirement for transmission lines for which cost recovery could be sought.

HB 2530 and SB 303, as introduced, were identical. However, the bills were slightly different as passed in their respective first chambers. The Conference Committee agreed to make the following amendments to HB 2530, as passed by the House, and incorporate the provisions into HB 2263:

- specify that the service covered by the bill involves end-use customers who obtain gas by direct connection to a gas gathering system;
- clarify that the KCC's authority does not extend to curtailment of service that results from contractual disputes;
- require cut-off notice within 24 hours of curtailment in the case of an emergency, except when service to a residence or an office is to be cut off;
- remove the time limits for KCC orders; and
- provide for KCC review of any immediate emergency curtailment of service to a residence and for the company to bear the cost of an unnecessary curtailment.

Background

The Kansas Electric Transmission Authority Act was the original subject of HB 2263. At the House Utilities Committee hearing on HB 2263, proponents included representatives of the Kansas Chapter of the Sierra Club, Sunflower Electric Power Corporation, Kansas Electric Power Cooperatives Inc., Kansas Electric Cooperatives, Inc., Midwest Energy, Inc., Westar Energy, and Composite Technology Corporation. Testimony in opposition to the bill was presented by a representative of the Citizens' Utility Ratepayer Board (CURB). Representatives of the KCC, Kansas City Power and Light Company, and an individual presented testimony that neither supported nor opposed the bill, but which enumerated their concerns.

The House Utilities Committee amended HB 2263 to clarify that KDFEA would be authorized to borrow money for Authority projects and

that the Authority could make loans to third parties for projects authorized by the act. Any such loans would be made from funds provided to the Authority pursuant to an agreement with KDFA. The House Utilities Committee amendment also required allocation of assessments to recover cost not covered by SPP tariffs to be based on benefits received by utilities and their customers. This latter provision parallels language included in HB 2045 by a House Utilities Committee amendment to that bill.

The Senate Utilities Committee amended HB 2263 to expanded the electric public utilities ability to recover and assess costs to all of its customers and not just its retail customers. The Senate Utilities Committee also changed the time period for any State General Fund loan repayment from five years to ten years.

The Senate Committee of the Whole amended HB 2263 to reduce the number of gubernatorial appointees from five to three and added a provision that would allow the President of the Senate and the Speaker of the House each to appoint a member to the Authority Board. The Senate President's initial appointee would serve a term of four years and the Speaker of the House's initial appointee would serve a term of two years. The Senate Committee of the Whole also amended the bill to require approval of the State Financial Council for the Kansas Development Finance Authority to issue bonds.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2263 states that enactment would not have a fiscal effect on the KCC or CURB. The fiscal note also states that electric customers' bills could be increased by passage because the Authority's costs could be assessed to utilities and recovered by them in their rates. Finally, the fiscal note states that expenditures that might be made by the Authority cannot be estimated. The House Committee's amendment to the bill would not materially change the Division's estimate of fiscal impact.

Background on HB 2045

Representative Tom Sloan presented testimony in support of HB 2045 at the House Committee on Utilities hearing on the bill. Support also was expressed at that hearing by a representative of the Kansas Chapter of the Sierra Club. The Governor's office expressed support for the concept and goals of the bill.

Amendments to the bill were suggested by representatives of:

- Aquila Networks;
- Kansas Electric Power Cooperative, Inc.;
- Kansas Electric Cooperatives, Inc.;
- Midwest Energy, Inc.; and
- Sunflower Electric Power Corporation.

Testimony in opposition to HB 2045 was expressed by the Kansas Corporation Commission and the Citizens' Utility Ratepayer Board during the House Committee's hearing.

The House Committee on Utilities amended HB 2045 to allow the Corporation Commission to authorize cost recovery for reliability projects found by the regional transmission organization to be "appropriate" rather than "necessary" or those determined to provide economic benefits to transmission owners and customers. The House Committee's amendment also changed the allocation of cost recovery by assessing only those electric utilities that have retail customers in Kansas and that benefit from the project. Any assessment made pursuant to the bill would be based on each utility's benefits rather than on the amount of energy consumed by a utility's customers as in the introduced version of the bill. Finally, the amendment authorized the Commission to consider in its allocation of costs to utilities relevant funding and cost recovery mechanisms used or approved by the regional transmission organization or by the Federal Energy Regulatory Commission. Other House Committee amendments were technical and clarifying in nature.

The Senate Committee on Utilities amended HB 2045 to eliminate the limitation that the electric lines must be least five miles long in order to recover costs. The Conference Committee concurred in that amendment.

The fiscal note prepared by the Division of the Budget for the introduced version of HB 2045 states that the League of Kansas Municipalities and the Kansas Association of Counties anticipate that the bill would not have a fiscal effect on cities or counties. The Kansas Corporation Commission states that passage of HB 2045 would have no fiscal effect on its operations. However, the recovery cost could be passed on to Kansas consumers of electric services.

Background on HB 2530

HB 2530 and SB 303 were introduced by the House Committee on Utilities and the Senate Committee on Utilities, respectively, as a response to the termination of service for a number of gas gathering system customers in southwest Kansas. Service to those customers was stopped because high levels of hydrogen sulfide were detected in some gas lines. The degree of danger and the need to place those gas gathering system customers on an alternative energy source was disputed. Under current law, the KCC has no authority to intervene in matters involving gas gathering systems.

Proponents of HB 2530 at the House Utilities Committee hearing included Representative Ward Loyd, and representatives of the Kansas Corporation Commission, the Citizens' Utility Ratepayer Board, and Aquila, Inc. The Southwest Kansas Irrigation Association and the Southwest Kansas Royalty Owners Association provided written testimony to the House Committee. No opponents to the bill presented testimony at the House Committee hearing.

The House Committee amended HB 2530 to:

- specify that the service covered by the bill involves end use customers who obtain gas by direct connection to a gas gathering system;
- clarify that the KCC's authority does not extend to curtailment of service that results from contractual disputes;
- require that non-emergency cut-off notice be provided at least 30 days prior to curtailment and that the KCC conduct a hearing and issue relevant orders within 30 days of receiving notice;
- require cut-off notice in the case of an emergency within 24 hours of curtailment, except when service to a residence is to be cut off; and
- provide for KCC review of any immediate emergency curtailment of service to a residence and for the company to bear the cost of an unnecessary curtailment.

The Senate Committee amended SB 303 by limiting the time period of notification to the end user of intent to curtail to within 24 hours by any person providing gas gathering services, except when the end user is a residential dwelling. When the end user is a residential dwelling, the curtailment may be immediate, if there is a good faith belief that an emergency exists. The person seeking

curtailment would be required to report to the Commission the basis for such person's good faith belief. If the Commission would find that curtailment was not based upon a good faith belief and was unnecessary, the person requesting curtailment would be held responsible for the costs of curtailment.

The Division of the Budget's fiscal notes for HB 2530 and HB 303 were not available at the time the House and Senate committees took action on the bills. However, the fiscal note was available at the time the Conference Committee took action. The fiscal notes state that the bills may require the Citizens' Utility Ratepayer Board to shift internal resources to protect consumers. The fiscal notes also indicates that the bill would have a negligible fiscal impact on the Corporation Commission.