

SENATE BILL No. 350

By Committee on Utilities

1-19

1 AN ACT concerning electric public utilities; relating to the state
2 corporation commission; authorizing rate recovery for certain electric
3 generation facilities; amending K.S.A. 2021 Supp. 66-1239 and
4 repealing the existing section.

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

7 Section 1. K.S.A. 2021 Supp. 66-1239 is hereby amended to read as
8 follows: 66-1239. (a) As used in this section:

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

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

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

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

17 (5) "public utility" means the same as defined in K.S.A. 66-104, and
18 amendments thereto; and

19 (6) "transmission facility" means: (A) Any existing line, and
20 supporting structures and equipment, being upgraded for the transfer of
21 electricity with an operating voltage of 34.5 kilovolts or more of
22 electricity; or (B) any new line, and supporting structures and equipment,
23 being constructed for the transfer of electricity with an operating voltage
24 of 230 kilovolts or more of electricity.

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

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

1 (3) The commission in all proceedings in which the cost of the public
2 utility's stake in the transmission facility is considered shall utilize the rate-
3 making principles and treatment applicable to the transmission 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 the
8 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, a
15 generating facility, prior to entering into a new contract or prior to retiring
16 or abandoning a generating facility, or within a reasonable time after
17 retirement or abandonment if filing before retirement or abandonment is
18 not possible under the circumstances, a public utility may file with the
19 commission an application for a determination of the rate-making
20 principles and treatment, as proposed by the public utility, that will apply
21 to:

22 (A) Recovery in wholesale or retail rates of the cost to be incurred by
23 the public utility to acquire such public utility's stake in the generating
24 facility during the expected useful life of the generating facility or the
25 recovery in rates of the contract during the term thereof; or

26 (B) reflection in wholesale or retail rates of the costs to be incurred
27 and the cost savings to be achieved by the public utility in retiring or
28 abandoning such public utility's stake in the generating facility, including,
29 but not limited to, the reasonableness of such retirement or abandonment.

30 (2) Any utility seeking a determination of rate-making principles and
31 treatment under subsection (c)(1) shall as a part of its filing submit the
32 following information: (A) A description of the public utility's
33 conservation measures; (B) a description of the public utility's demand
34 side management efforts; (C) the public utility's ten-year generation and
35 load forecasts; and (D) a description of all power supply alternatives
36 considered to meet the public utility's load requirements.

37 (3) In considering the public utility's supply plan, the commission
38 may consider if the public utility issued a request for proposal from a wide
39 audience of participants willing and able to meet the needs identified under
40 the public utility's generating supply plan, and if the plan selected by the
41 public utility is reasonable, reliable and efficient.

42 (4) The commission shall issue an order setting forth the rate-making
43 principles and treatment that will be applicable to the public utility's stake

1 in the generating facility or to the contract in all rate-making proceedings
2 on and after such time as the generating facility is:

3 (A) Placed in service or the term of the contract commences; or

4 (B) retired or abandoned.

5 (5) The commission in all proceedings in which the cost of the public
6 utility's stake in the generating facility or the cost of the purchased power
7 under the contract is considered shall utilize the rate-making principles and
8 treatment applicable to the generating facility, contract or retired or
9 abandoned generating facility.

10 (6) If the commission fails to issue a determination within 180 days
11 of the date a petition for a determination of rate-making principles and
12 treatment is filed, the rate-making principles and treatment proposed by
13 the petitioning public utility will be deemed to have been approved by the
14 commission and shall be binding for rate-making purposes during the
15 useful life of the generating facility, during the term of the contract or
16 during the period when the cost of the retired or abandoned generating
17 facility is reflected in customer rates.

18 (d) The public utility shall have one year from the effective date of
19 the determination of the commission to notify the commission whether it
20 will construct or participate in the construction of the generating or
21 transmission facility, whether it will perform under terms of the contract or
22 whether it will retire or abandon the generating facility.

23 (e) If the public utility notifies the commission within the one-year
24 period that the public utility will not construct or participate in the
25 construction of the generating or transmission facility, that it will not
26 perform under the terms of the contract or that it will not retire or abandon
27 the generating facility, then the determination of rate-making principles
28 pursuant to subsection (b) or (c) shall be of no further force or effect, shall
29 have no precedential value in any subsequent proceeding, and there shall
30 be no adverse presumption applied in any future proceeding as a result of
31 such notification.

32 (f) If the public utility notifies the commission under subsection (d)
33 that it will construct or participate in a generating facility or purchase
34 power contract and subsequently does not, or that it will retire or abandon
35 a generating facility and subsequently does not, it will be required to notify
36 the commission immediately and file an alternative supply plan with the
37 commission pursuant to subsection (c) within 90 days.

38 (g) *For coal-fired electric generating facilities, if determined by the*
39 *commission to be just, reasonable and necessary for the provision of*
40 *sufficient and efficient service, an electric public utility shall be permitted*
41 *to:*

42 (1) *Retain such facilities in such utility's rate base;*

43 (2) *recover expenses associated with the operation of such facilities*

1 *that remain in service to provide greater certainty that generating capacity*
2 *will be available to provide essential service to customers, including*
3 *during extreme weather events; and*

4 *(3) recover any portion of such utility's rate base and prudently*
5 *incurred expenses necessary for such facilities:*

6 *(A) To operate at a low-capacity factor; or*

7 *(B) that are offline during normal operating conditions and providing*
8 *capacity only.*

9 Sec. 2. K.S.A. 2021 Supp. 66-1239 is hereby repealed.

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