

SENATE BILL No. 456

By Committee on Utilities

2-6

1 AN ACT concerning public utilities; relating to the state corporation
2 commission; extending the timelines for the state corporation
3 commission to make a determination regarding rate-making treatment
4 for electric generating or transmission facilities; establishing a
5 rebuttable presumption that a fossil fuel-fired electric generating unit
6 shall not be retired; prohibiting the commission from authorizing the
7 retirement of such an electric generating unit unless the utility
8 overcomes such presumption with sufficient evidence; requiring the
9 commission to report annually on requests to retire such units;
10 amending K.S.A. 2023 Supp. 66-1239 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2023 Supp. 66-1239 is hereby amended to read as
15 follows: 66-1239. (a) As used in this section:

- 16 (1) "Commission" means the state corporation commission;
17 (2) "contract" means a public utility's contract for the purchase of
18 electric power in the amount of at least \$5,000,000 annually;
19 (3) "generating facility" means any electric generating plant or
20 improvement to existing generation facilities;
21 (4) "stake" means a public utility's whole or fractional ownership
22 share or leasehold or other proprietary interest in a generating facility or
23 transmission facility;
24 (5) "public utility" means the same as defined in K.S.A. 66-104, and
25 amendments thereto; and
26 (6) "transmission facility" means: (A) Any existing line, and
27 supporting structures and equipment, being upgraded for the transfer of
28 electricity with an operating voltage of 34.5 kilovolts or more of
29 electricity; or (B) any new line, and supporting structures and equipment,
30 being constructed for the transfer of electricity with an operating voltage
31 of 230 kilovolts or more of electricity.
32 (b) (1) Prior to undertaking the construction of, or participation in, a
33 transmission facility, a public utility may file with the commission a
34 petition for a determination of the rate-making principles and treatment, as
35 proposed by the public utility, that will apply to the recovery in wholesale
36 or retail rates of the cost to be incurred by the public utility to acquire such

1 public utility's stake in the transmission facility during the expected useful
2 life of the transmission facility.

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

8 (3) The commission in all proceedings in which the cost of the public
9 utility's stake in the transmission facility is considered shall utilize the rate-
10 making principles and treatment applicable to the transmission facility.

11 (4) If the commission fails to issue a determination within ~~180~~ 240
12 days of the date a petition for a determination of rate-making principles
13 and treatment is filed, the rate-making principles and treatment proposed
14 by the petitioning public utility will be deemed to have been approved by
15 the commission and shall be binding for rate-making purposes during the
16 useful life of the transmission facility.

17 (5) If the commission does not have jurisdiction to set wholesale rates
18 for use of the transmission facility the commission need not consider rate-
19 making principles and treatment for wholesale rates for the transmission
20 facility.

21 (c) (1) Prior to undertaking the construction of, or participation in, a
22 generating facility, prior to entering into a new contract or prior to retiring
23 or abandoning a generating facility, or within a reasonable time after
24 retirement or abandonment if filing before retirement or abandonment is
25 not possible under the circumstances, a public utility may file with the
26 commission an application for a determination of the rate-making
27 principles and treatment, as proposed by the public utility, that will apply
28 to:

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

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

37 (2) Any utility seeking a determination of rate-making principles and
38 treatment under subsection (c)(1) shall as a part of its filing submit the
39 following information:

40 (A) A description of the public utility's conservation measures;

41 (B) a description of the public utility's demand side management
42 efforts;

43 (C) the public utility's ten-year generation and load forecasts; and

1 (D) a description of all power supply alternatives considered to meet
2 the public utility's load requirements.

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

8 (4) *For an application by a public utility for determination of rate-*
9 *making principles and treatment related to the abandonment or retirement*
10 *of a fossil fuel-fired electric generating unit, there shall be a rebuttable*
11 *presumption against such abandonment or retirement. The commission*
12 *shall not approve the retirement of such an electric generating unit,*
13 *authorize a surcharge or issuance of bonds for the decommissioning of*
14 *such unit or take any other action that authorizes or allows for the*
15 *recovery of costs relating to the retirement of such unit, including any*
16 *stranded asset recovery, unless the presumption established by this section*
17 *is rebutted by evidence sufficient for the commission to find that:*

18 (A) *The utility will replace the abandoned or retired electric*
19 *generating unit with new electric generating capacity that:*

20 (i) *Is dispatchable by either the utility or the regional transmission*
21 *organization or independent system operator responsible for balancing*
22 *load within the utility's service area;*

23 (ii) *maintains or improves the reliability and resilience of the electric*
24 *transmission grid; and*

25 (iii) *maintains the minimum reserve capacity requirement established*
26 *by the utility's reliability coordinator;*

27 (B) *the abandonment or retirement will not harm the utility's*
28 *ratepayers or decrease the utility's regional rate competitiveness by*
29 *causing the utility to incur any net incremental costs to be recovered from*
30 *ratepayers that could be avoided by continuing to operate the electric*
31 *generating unit proposed for retirement in compliance with applicable*
32 *law;*

33 (C) *the abandonment or retirement is for economic purposes and for*
34 *the benefit of ratepayers and not solely based on achieving environmental,*
35 *social or governmental goals, laws, rules or regulations; and*

36 (D) *cost savings to customers as a result of the abandonment or*
37 *retirement of the electric generating unit will occur. The utility shall*
38 *provide the commission with evidence of all known direct and indirect*
39 *costs relating to the abandonment or retirement of the electric generating*
40 *unit and demonstrate such cost savings.*

41 (5) The commission shall issue an order setting forth the rate-making
42 principles and treatment that will be applicable to the public utility's stake
43 in the generating facility or to the contract in all rate-making proceedings

1 on and after such time as the generating facility is:

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

3 (B) retired or abandoned.

4 ~~(5)~~(6) The commission in all proceedings in which the cost of the
5 public utility's stake in the generating facility or the cost of the purchased
6 power under the contract is considered shall utilize the rate-making
7 principles and treatment applicable to the generating facility, contract or
8 retired or abandoned generating facility.

9 ~~(6)~~(7) If the commission fails to issue a determination within ~~180~~ 240
10 days of the date a petition for a determination of rate-making principles
11 and treatment is filed, the rate-making principles and treatment proposed
12 by the petitioning public utility will be deemed to have been approved by
13 the commission and shall be binding for rate-making purposes during the
14 useful life of the generating facility, during the term of the contract or
15 during the period when the cost of the retired or abandoned generating
16 facility is reflected in customer rates.

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

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

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

37 (g) *The commission shall prepare and submit an annual report to the*
38 *legislature by December 1 of each year detailing:*

39 (1) *The number of requests by utilities to retire electric generating*
40 *units in the state, the nameplate capacity of each of those units and*
41 *whether the request was approved or denied by the commission;*

42 (2) *the impact of any commission-approved retirement of an electric*
43 *generating unit on the:*

- 1 (A) *Utility's and state's generation fuel mix;*
- 2 (B) *required capacity reserve margins for the utility;*
- 3 (C) *need for capacity additions or expansions at new or existing*
- 4 *facilities as a result of the retirement; and*
- 5 (D) *need for additional power or capacity reserve arrangements; and*
- 6 (3) *whether the retirement resulted in stranded costs for ratepayers*
- 7 *that will be recovered by the utility through securitization or through some*
- 8 *other charge on the customer bill.*

9 Sec. 2. K.S.A. 2023 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.