Distributed Energy and Parallel Generation; Sub. for HB 2149

Sub. for HB 2149 establishes consumer protections for distributed energy customers and amends law related to parallel generation service contracts and net metering, including removing renewable generator capacity limits, permitting the use of locational marginal pricing, establishing a formula for determining the appropriate size for electrical loads, and establishing the customer's right to repair.

Definitions

The bill defines the following terms for the new sections of law regarding distributed energy:

- "Distributed energy customer" (customer) means a property owner of a single-family dwelling or multi-family dwelling of two units or fewer and who is offered a contract from a distributed energy retailer for the construction, installation, or operation of a distributed energy system that is primarily intended to offset the energy consumption of a single-family or multi-family dwelling;

- "Distributed energy retailer" (retailer) means any person or entity that sells, markets, solicits, advertises, finances, installs, or otherwise makes available for purchase a distributed energy system in the state of Kansas;

- "Distributed energy system" (system) means any device or assembly of devices and supporting facilities that is capable of feeding excess electrical power generated by a customer's energy producing system into the utility's system such that all energy output and all other services will be fully consumed by the distributed energy customer or the utility and that is or will be subject to an agreement under state law or a net metering tariff that was voluntarily established by a utility;

  [*Note:* A residential solar panel system that is interconnected with the electric grid is an example of such a system.]

- "Permission to operate" is defined as it is in continuing law regarding parallel generation services; and

- "Utility" means an electric public utility, as defined in law; any cooperative, as defined in law; an electric utility owned by one or more such cooperatives; a non-stock member-owned electric cooperative corporation incorporated in Kansas; or a municipally owned or operated electric utility.

Consumer Protections

The bill prohibits any person or entity required to register with the Secretary of State pursuant to the Business Entity Standard Treatment Act from engaging in the business or act in the capacity of a distributed energy retailer within Kansas unless the person or entity is registered with the Secretary of State, in good standing, and authorized to conduct business in Kansas.

Retailer Disclosures

The bill requires a retailer, prior to entering into a contract with a customer for a distributed energy system, to provide each customer with a separate disclosure document that:

- Is written in at least 10-point font;
- Is written in the language that the retailer used to speak to the customer during the sales process or the language requested by the customer;
- Includes a description of the make and model of the system's major components and the expected useful life of the system;
- Includes a guarantee concerning the quantity of energy that the system will generate on a measurable interval and a remedy if the system does not comply with the guarantee within one year following the date the system received permission to operate;
- Does not contain blank spaces that may be subsequently filled in with terms or conditions that materially affect the timing, value, or obligation of the contract unless the terms and conditions are separately acknowledged in writing by the customer;
- Includes, in bold font and highlighted type, the total aggregate cost to the customer that would be incurred over the entirety of the contract. The total aggregate cost must be separately acknowledged in writing by the customer;
- Includes a description of the ownership and transferability of any tax credits, rebates, incentives, or renewable energy certificates in connection with the system;
- Includes the name and certification number of the individual certified by the North American Board of Certified Energy Practitioners who would oversee the permitting and installation of the system or the name and license number of the master electrician or electrical contractor who would oversee the permitting and installation of the system;
- Provides a description of the process and all associated fees for transferring any financing, warranty, or other agreements relating to the system to a new owner;

- Includes the name, phone number, email, and mailing address of the person or entity that the customer may contact for questions regarding performance, maintenance, or repair of the system;

- Includes a description of the assumptions used for any savings estimates that were provided to the customer and a description of the applicable utility billing structure that pertains to the system. The descriptions and assumptions must include the same provisions as outlined in the standard form published by the Attorney General;

- Includes a statement that the retailer will provide the customer proof that, within 30 days of completion of installation:
  - All permits required for the installation of the system were obtained prior to installation, if applicable;
  - The system was inspected and approved by a qualified individual pursuant to the requirements of any local municipal ordinance or county resolution;
  - The necessary interconnection applications and documentation were submitted to and approved by the affected utility; and
  - The system received permission to operate;

- Includes a statement that any recurring payments for a system will pause and not be due if the system does not receive permission to operate within 90 days of the date that the first recurring payment is due. The recurring payments can resume when the system receives permission to operate. Any payments due during any pause are either to be forgiven or added to the end of the financing term and will not incur any penalties for non-payment during the term;

- Includes a statement describing any rate escalation, balloon payment, or potential reconfiguration of payment structure;

- Includes a statement as to whether operations or maintenance services are included as part of the original contract price and whether the costs to remove, reinstall, and repair the system are included as part of the original contract price should the system need to be removed, reinstalled, or repaired due to natural causes or due to any exterior repair, replacement, construction, or reconstruction work on the premises;

- Includes a statement describing the expected start and completion dates for the installation of the system;

- Includes a statement indicating whether any warranty or maintenance obligations related to the system could be transferred by the retailer to a third party and, if so, a statement that provides:

> “The maintenance and repair obligations under your contract may be assigned or transferred without your consent to a third party who, if required pursuant to state law, shall be registered with the Secretary of State, in good standing and authorized to conduct business in the state and bound to all terms of the contract. If a transfer occurs, you will be notified in writing of any change to the name, mailing address, email, or phone number to use for questions and payments or to request system maintenance or repair”;

- Includes a statement indicating whether the retailer would place a lien, notice, or other filing on or against real property as a result of the contract;

- Includes a statement, in bold font and highlighted type, indicating whether the retailer will impose any fees or other costs upon the customer. If any fees or other costs will be charged to the customer, the aggregate total of the fees and other costs must be provided and separately acknowledged in writing by the customer;

- Includes a statement in capital letters and bold font and highlighted type that states:

  > “[name of retailer] is not affiliated with any utility company or governmental agency and shall not claim any such affiliation”; and

- Could include any additional information that the retailer considers appropriate, only if such additional information is not intended to conceal or obscure the disclosures required pursuant to this section.

The bill requires the disclosure statement to be signed and dated by the customer at least one calendar day after the date that the contract for the system was executed.

Violations

The bill requires that any person or entity that violates the disclosure provisions or any retailer that fails to provide and perform the disclosures in the form and manner required pursuant to this section or that makes a materially misleading statement as part of, or when presenting, the disclosures will be liable for a civil penalty in an amount not to exceed $10,000 for each violation.

The violator is liable to the aggrieved person or customer, or to the State, for repayment of the civil penalty. The civil penalty is recoverable in an action brought by the aggrieved person or customer or the Attorney General, county attorney, or district attorney. Any civil penalty is in addition to any other relief, which could be granted pursuant to any other remedy available in law or equity.

If a retailer fails to comply with this section, any contract entered into between the retailer and the customer that pertains to the system will be deemed null and void.

This section does not apply to a transaction of real property on which a system is already located.

This section takes effect on July 1, 2025.

Utility Disclosures

To allow a distributed energy retailer to provide informed and accurate information to the customer, the bill requires a utility, upon the request of any distributed energy retailer, to disclose all applications, rules, service standards, forms, or other documents required for interconnection of a system pursuant to law or a net metering tariff that was voluntarily established by a utility, including the utility's historic amount of compensation per kilowatt-hour for interconnected systems and the current compensation amount for those systems. The historic amount of compensation must be provided in a dollar amount and shown on a monthly or similar billing period basis for not less than the preceding five years.

This section takes effect on July 1, 2025.

Standard Disclosure Form

The bill requires the Attorney General to appoint and convene an advisory group to collectively develop, approve, and periodically revise a standard form that could be used by distributed energy retailers to perform and provide the required disclosures. The advisory group consists of the following:

- The Attorney General or designee;
- Representatives from interested groups, including representatives of distributed energy retailers and utilities;
- One or more members of the general public who own residential property in Kansas;
- One or more Assistant Attorneys General; and
- Any other members the Attorney General considers necessary or appropriate.

The bill requires the Attorney General to publish on the Attorney General's website, on or before July 1, 2025, the most current version of the standard form that is developed and approved by the advisory group.

Parallel Generation Service Contracts

Definitions

The bill amends continuing law related to parallel generation service contracts and incorporates the following definitions:

- “Avoided cost” means the incremental cost to an electric energy utility that the utility would generate itself or purchase from another source and as “avoided cost” is interpreted by the Federal Energy Regulatory Commission from time to time;
- “Distributed energy system” means any device or assembly of devices and supporting facilities that are capable of feeding excess electric power generated by the customer’s energy-producing system into the utility’s system such that all energy output and all other services will be fully consumed by the customer or the utility;
- “Export” means power that flows from a customer’s electrical system through such customer’s billing meter and onto the utility’s electricity lines. It includes the sum of power on all phase conductors;
- “Interconnected” means a listed system that is designed to export power and attached or connected on the customer’s side of the retail meter at the customer’s delivery point;
- “Listed” means that the device or equipment has been tested and certified to meet the Institute of Electrical and Electronics Engineers safety standards that specifically pertain to the intended function of the device or equipment;
- “Locational marginal price” means the hourly average market price of alternating current energy per kilowatt-hour established by the applicable locational marginal price pricing code of the Southwest Power Pool (SPP);
- “Monthly system average cost of energy per kilowatt hour” means the sum of all volumetric costs incurred by an electric utility during a calendar month or similar billing period as billed to the utility by generation and transmission providers and any volumetric generation costs incurred by the utility to generate energy divided by the total amount of retail kilowatt-hours that the utility sold in such month or billing period;
- “Permission to operate” means the operational date of the customer’s system as determined by the utility;
- “Utility” means any electric public utility, as defined in law; cooperative, as defined in law; electric utility owned by one or more such cooperatives; non-stock

member-owned electric cooperative corporation incorporated in Kansas; or municipally owned or operated electric utility; and

- "Witness test" means an authorized representative of the electric utility who measures or verifies a specific setting or operational condition.

Removing Capacity Limits

The bill removes language from continuing law regarding compensation, renewable generator capacity limits, and certain definitions. The bill makes technical and conforming amendments to the law, including clarifying that the customer must be in good standing with the utility.

Applications

The bill authorizes a utility to require any customer seeking to construct and install a system to submit an application prior to any connection of the system with the utility's system; notify the utility of the proposed system; and verify that the system is constructed, installed, and operated with all applicable standards and codes. Any customer who submits an application to construct, install, and operate a system has the option to remain on a retail rate tariff that is identical to the same rate class for which the customer would otherwise qualify as a retail customer who is not otherwise receiving service under a parallel generation service tariff or net metering tariff.

The bill requires a utility to provide notice to a customer that the utility received the customer's application within 30 days following receipt of the application. The bill requires the utility to act upon the application within 90 calendar days of receipt of the application. If one or more additional studies are required, the utility is not subject to the 90-day deadline but would provide the customer with an estimated time frame for action on the application as soon as practicable after any studies are completed. If the application is denied, the utility is required to provide the customer with a list of the reasons for such denial and corrective actions needed for approval.

The bill allows a utility to assess upon any customer requesting to install a system:

- A fair and reasonable non-refundable interconnection application fee;

- Any applicable costs incurred by the utility for any study conducted to verify and allow the requested export capacity to be interconnected at the customer's point of delivery, including, but not limited to, costs incurred as a result of the SPP's study processes; and

- Costs associated with any related system upgrade costs, devices, and equipment required to be furnished by the utility for the provision of accepting the requested export capacity.

Compensation and Locational Marginal Pricing

The bill requires every contract for parallel generation service to include provisions relating to fair and equitable compensation for energy exported to a utility by the consumer. The compensation cannot be less than 100 percent of the utility's monthly avoided cost. A utility is required to credit the compensation to the customer's account and disclose to any customer the formula that the utility uses to determine the compensation that the utility provides pursuant to a contract for parallel generation service.

The bill provides an exception that a utility could use the locational marginal price or monthly system average cost of energy per kilowatt-hour to determine compensation for energy exported to the utility by the customer. Any utility that uses locational marginal price or monthly system average cost of energy per kilowatt-hour will compensate the customer for the energy exported to the utility at least annually. The compensation can be paid to the customer or credited to the customer's account. When determining compensation, in no case can a utility issue an invoice for energy exported to the utility by the customer's system. Upon the request of any customer who is subject to locational marginal price compensation, the utility is required to disclose the locational marginal price and corresponding amount of energy exported to the utility by the customer's system.

The locational marginal price exception will sunset on July 1, 2030.

Terms and Conditions for Parallel Generation Service

The bill requires a utility to furnish, own, and maintain at the utility's expense all necessary meters and associated equipment for billing. A utility can install, at the utility's expense, load research meters and equipment to monitor customer generation and load. The customer is required to provide the utility, at no expense to the utility, a location for these meters and equipment.

The customer is required to furnish, install, operate, and maintain in good order and repair, at the customer's expense, a listed device that is suitable for the operation of the customer's system in parallel with the utility's system. The bill allows the utility to install, own, and maintain a disconnecting device located near the electric meter(s) or allows the utility to require that a customer's system contain a switch, circuit breaker, fuse, or other device or feature that could be accessed by the utility at any time and allow an authorized utility worker to manually disconnect the customer's system from the utility's electric distribution system.

Before granting permission to operate a system, the bill allows the utility to require:

- A witness test of the customer's system and interconnection facilities;

- The customer to provide the certificate of inspection of the customer's system completed pursuant to any municipal ordinance or code requirements or a certification from an electrician or electrical engineer licensed in Kansas that the system is installed according to applicable codes and standards; and

- The customer to provide documentation that the customer's system was constructed and installed under the direction of a person who is certified by the North American Board of Certified Energy Practitioners or either a master electrician or electrical contractor licensed under continuing law.

The utility can require periodic witness testing of the customer's system and interconnection facilities throughout the provision of parallel generation service.

The bill authorizes the utility to have the right and authority to disconnect and isolate the distributed energy system without notice and at utility's sole discretion when:

- Electric service to a customer's premises is discontinued for any reason;

- Adverse electrical effects, such as power quality problems, are occurring or are believed to be occurring on the utility's system or the electrical equipment of other utility customers;

- Hazardous conditions are occurring or are believed to be occurring on the utility's system as a result of the operation of the system or protective equipment;

- The utility identifies uninspected or unapproved equipment or modifications to the system after initial approval;

- There is recurring abnormal operation, substandard operation, or inadequate maintenance of the distributed energy system;

- The customer fails to remit payment to the utility for any amounts owed, including, but not limited to, amounts invoiced;

- The customer does not comply with the obligations of the interconnection agreement, except that, if such non-compliance is not an emergency situation, the utility shall give the customer 90 days to cure the non-compliance prior to disconnecting and isolating the distributed energy system; or

- Disconnection is necessary due to emergency or maintenance purposes. In the event that the utility disconnects the system for maintenance, the utility is required to make reasonable efforts to reconnect the system as soon as practicable.

The bill allows the customer to retain the authority to temporarily disconnect the customer's system from the utility's system at any time. Any such disconnection cannot be construed as a customer's termination of the interconnection agreement absent an express action to terminate such agreement pursuant to the terms and conditions of the agreement.

Formula for Appropriately Sized Electrical Load

The bill determines the export capacity of a customer's distributed energy system to be appropriately sized for each customer's electric load by:

- Dividing the customer's historic consumption in kilowatt-hours for the previous 12-month period by 8,760.
- Then dividing the quotient by a capacity factor of:
  - 0.144 when the customer is in the service territory of an investor-owned utility; and
  - 0.288 when the customer is in the service territory of a cooperative as defined in law, electric utility owned by one or more cooperatives, non-stock member-owned electric cooperative corporation incorporated in Kansas, or municipally owned or operated electric utility.

If the customer does not have historic consumption data that adequately reflects the customer's consumption at the premises, the bill sets the customer's historic consumption for the previous 12-month period to be 7.15 kilowatt-hours per square foot of conditioned space and rounds the amount determined by the historic consumption formulas to the nearest 1 kilowatt alternating current power increment.

Aggregate Export Capacity

The bill requires, except as provided in the following "Exclusions" subsection, each utility to make parallel generation service available to customers who are in good standing with the utility on a first-come, first-served basis, until the utility's aggregate export capacity from all distributed energy systems, including systems that are subject to a parallel generation service tariff and systems that are subject to a net metering tariff that was either voluntarily established by the utility or by law, equals or exceeds the following:

- Commencing July 1, 2025, 6 percent of the utility's historic peak demand;
- Commencing July 1, 2026, 7 percent of the utility's historic peak demand; and
- Commencing July 1, 2027, and each year thereafter, 8 percent of the utility's historic peak demand.

The bill allows the utility to limit the export capacity of additional distributed energy systems to be connected to the utility's system due to the capacity of the distribution line to which the system would be connected.

Exclusions

The bill clarifies that a utility is not required to make parallel generation service available to any customer who has a new or expanded facility that receives electric service at a voltage of 34.5 kilovolts or higher and commences such electric service on or after July 1, 2025.

In determining a utility's historic peak demand, a utility's peak demand does not include the additional demand of any new or expanded facility of an industrial, commercial, or data center customer that receives electric service at a voltage of 34.5 kilovolts or higher and commences such electric service on or after July 1, 2025.

This exclusion subsection expires on July 1, 2026.

Export-limiting Devices

The bill requires the following regarding export-limiting devices for any customer with a distributed energy system:

- The customer to own and maintain any necessary export-limiting device;
- Protections to be in place to restrict the export-limiting device settings to qualified persons;
- The utility has the option to require a witness test of the export-limiting device's functions or settings prior to granting permission to operate and at any time during which the distributed energy system is connected to the utility's system;
- The export capacity of the system cannot be increased without prior approval of the utility;
- The customer allows the utility to perform periodic witness tests of the export-limiting device's functions or settings upon request;
- If the export-limiting device's functions or settings are incorrect or if the device fails to limit the export of power below the designated export capacity for more than 15 minutes in any single event, the customer must cease operation of the system until repair or reprogramming of the export-limiting device is completed. The utility could require and conduct a witness test prior to authorizing operation of the system; and
- The utility cannot restrict the brand or model of the export-limiting device if the device is approved by the manufacturer of a listed distributed energy system or is listed to perform such operations in conjunction with the customer's system.

Regulation

Regarding parallel generation service, for a utility subject to the jurisdiction, regulation, supervision, and control (regulation) of the Kansas Corporation Commission (KCC), the bill requires service under any parallel generation service contract to be subject to either the utility's rules and regulations on file with the KCC, which include a standard interconnection process and requirements for the utility's system, or the current Federal Energy Regulatory Commission (FERC) interconnection procedures and regulations.

For a utility that is not subject to KCC regulation, the bill requires service under any parallel generation service contract to be subject to the current FERC interconnection procedures and regulations.

The bill clarifies that, in any case where the customer and a utility that is subject to KCC regulation cannot agree to terms and conditions of any contract provided for by this section, the KCC must establish the terms and conditions for the contract.

Fees

The bill prohibits a utility from imposing any additional fees, charges, or requirements for the provision of parallel generation service unless expressly authorized in this section.

The bill also clarifies that nothing in this section could be construed to:

- Prohibit a utility from charging a customer for the use of the utility's system; and
- Authorize a utility to charge a customer for power exported to the utility by a customer.

Canceling Service Contracts

The bill requires any customer who has received utility approval to construct or operate a system to notify the utility within 30 calendar days following the date when the construction has been canceled or the system is permanently shut down. The utility is required to cancel the parallel generation service contract with the customer upon receipt of such notice.

If a utility has reason to suspect that a customer's system has been abandoned and is no longer producing energy, the utility can request verification from the customer that the system is still functioning, or that the customer has a reasonable plan to reenergize the system.

If a customer fails to repair the system or provide a reasonable plan to complete the repairs within six months, the utility has the option to cancel the parallel generation service contract with the customer.

Upon cancellation of any parallel generation service contract, the utility is not obligated to refund any fees previously paid by the customer.

Right to Repair

The bill establishes a customer's right to repair or rebuild their system with listed equipment as long as the repair or rebuild does not cause an increase in export capacity.

If a customer repairs or replaces a system, the customer is required to notify the utility prior to the repair or replacement and provide proof that the new equipment complies with the same rules, regulations, and approved capacity as the original installation. The utility has the right to require and conduct a witness test prior to authorizing operation of the system. A customer who repairs or replaces a system is required to submit a new parallel generation service application to the utility.

The bill prohibits a customer from repairing or replacing a distributed energy system in a way that increases the export capacity of the system without providing prior notification to the utility. The utility is permitted to require the customer to submit a new parallel generation service application to include the provisions and requirements relating to the system.

Demand Response

The bill clarifies that nothing in this section on distributed energy systems could be construed to require any cooperative, non-stock member-owned electric cooperative corporation incorporated in Kansas or a municipally owned or operated electric utility to opt-in to or otherwise participate in any demand response or distributed energy resource aggregation programs.

Net Metering and Easy Connection Act

The bill amends the Net Metering and Easy Connection Act to include several provisions similar to the amendments made to the parallel generation service contracts law in the bill.

Canceling Interconnection Agreements

The bill requires any customer-generator who has received approval from a utility to construct or operate a net metering facility to notify the utility within 30 days of when the construction has been canceled or the facility is permanently shut down. The utility is required to cancel the interconnection agreement with the customer upon receipt of the notice.

If a utility has reason to suspect that a customer-generator's facility has been abandoned and is no longer producing energy, the utility can request verification from the customer-generator that the facility is still functioning or that the customer-generator has a reasonable plan to reenergize the facility. If the customer-generator fails to repair the facility or provide a reasonable plan to complete the repairs within six months, the utility has the option to cancel the interconnection agreement with the customer-generator.

Upon cancellation of any interconnection agreement, the utility is not obligated to refund any fees previously paid by the customer-generator.

Right to Repair

The bill establishes a customer-generator's right to repair or rebuild their net metering facility that is subject to an interconnection agreement with listed equipment as long as the repair or rebuild does not cause an increase in export capacity.

If a customer-generator repairs or replaces a net metering facility, the customer is required to notify the utility prior to the repair or replacement and provide proof that the new equipment complies with the same rules, regulations, and approved capacity as the original installation. The utility has the right to require and conduct a witness test prior to authorizing operation of the facility. A customer who repairs and replaces a facility is not required to submit a new net metering interconnection application to the utility.

The bill prohibits a customer-generator from repairing or replacing a facility system in a way that increases the export capacity of the system without providing prior notification to the utility. The utility is permitted to require the customer-generator to submit a new net metering interconnection application to include the new provisions and requirements relating to the facility.