

Senate Substitute for HOUSE BILL No. 2585

By Committee on Utilities

3-17

1 AN ACT concerning utilities; relating to the state corporation commission;
2 approval of certain contract and reduced electric rates; approval of cost
3 recovery from rate classes; report to the legislature; income taxation;
4 exemption from income taxation, certain public utilities; income tax
5 expenses, exclusion from retail electric rates; amending K.S.A. 79-
6 32,113 and repealing the existing section.
7

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

9 New Section 1. (a) Notwithstanding the provisions of K.S.A. 66-101b
10 and 66-109, and amendments thereto, the commission shall have the
11 authority to approve a contract rate, outside a general rate proceeding, that
12 is not based on the electric public utility's cost of service for a facility, if
13 the commission:

14 (1) (A) Determines that the facility would not continue operations, or
15 resume operations that had previously been suspended, in the state of
16 Kansas without such contract rate; and

17 (B) determines that the contract rate is in the interest of the state of
18 Kansas based on:

19 (i) The interests of the customers of the electric public utility serving
20 the facility;

21 (ii) an evaluation of the incremental cost to serve the facility; and

22 (iii) the interests of the citizens of the state generally in promoting
23 economic development, retaining the tax base, keeping employment
24 opportunities in the state and promoting such other benefits to the state as
25 the commission may determine are created by approval of the contract
26 rate;

27 (2) allocates the reduced revenues from the contract rate, as
28 determined by a comparison of the contract rate to the revenues that would
29 have been generated at the retail rate the facility would have paid without
30 such contract rate, to the electric public utility's other non-contract
31 customers through a uniform percentage adjustment. Such reduced
32 revenues shall be applied in each general rate proceeding of the electric
33 public utility serving the facility to all components of the base rates of all
34 customer classes, except the rates for service provided to customers under
35 any contract rate approved by the commission pursuant to subsection (a) or
36 (b) or the commission's general rate making authority; and

1 (3) (A) approves a tracking mechanism to track reductions in revenue
2 experienced by the electric public utility serving the facility as a result of
3 the contract rate from the date the contract rate becomes effective; and

4 (B) such reductions in revenue shall be deferred to a regulatory asset
5 and shall accrue interest at the weighted average cost of capital used by the
6 commission to set the electric public utility's rates in its most recently
7 concluded general rate proceeding with the balance of such regulatory
8 asset to be included in the rate base and revenue requirement of the electric
9 public utility in each of its general rate proceedings through an
10 amortization of the balance over a reasonable period until fully collected
11 from the electric public utility's non-contract rate customers.

12 (b) Notwithstanding the provisions of K.S.A. 66-101b and 66-109,
13 and amendments thereto, the commission shall have the authority to
14 approve a contract rate, outside a general rate proceeding, that is based on
15 the electric public utility's incremental cost of service for a facility, if the
16 commission:

17 (1) (A) Determines that the facility would not commence or expand
18 operations in the state of Kansas without such contract rate;

19 (B) determines that the contract rate recovers the incremental cost of
20 providing service to the facility; and

21 (C) determines that the contract rate is in the interest of the state of
22 Kansas based on:

23 (i) The interests of the customers of the electric public utility serving
24 the facility;

25 (ii) the incremental cost of serving the facility; and

26 (iii) the interests of the citizens of the state generally in promoting
27 economic development, expanding the tax base, increasing employment
28 opportunities in the state and promoting such other benefits to the state as
29 the commission may determine are created by approval of the contract
30 rate; and

31 (2) uses the reduction in revenues that result from any contract rate
32 approved by the commission pursuant to this subsection that will be in
33 effect during the effective period of the rate for the purposes of
34 determining the electric utility's revenue requirement in each general rate
35 proceeding concluded after the effective date of this section.

36 (c) The contract rates authorized by this section may be approved by
37 the commission for a term of up to 10 years, and an electric public utility
38 may apply for reapproval of such contract rates for a facility that the
39 commission has granted approval under this section.

40 (d) The provisions of this section shall not affect any contract rates
41 approved by the commission prior to, and in effect on, the effective date of
42 this section. This section shall not:

43 (1) Affect or diminish the authority of the commission to approve just

1 and reasonable contract rates filed pursuant to the commission's general
2 ratemaking authority according to custom and practice of the commission
3 in place prior to the effective date of this section; or

4 (2) establish standards for approval of such contract rates.

5 (e) If the commission approves a contract rate pursuant to this
6 section, the commission shall not have the authority to modify or eliminate
7 any such rate during the specified term, subject to the conditions
8 established by this section.

9 (f) Starting in January 2023, the commission shall biennially provide
10 a status report to the legislature about any contract rates authorized
11 pursuant to this section. Such report shall include the:

12 (1) Number of entities with such contract rates;

13 (2) number of entities with increased load;

14 (3) number of entities with decreased load;

15 (4) aggregate load and change in aggregate load on an annual basis;

16 (5) total subsidy and the subsidy for each individual contract;

17 (6) annual and cumulative rate increase on non-contract rate
18 customers; and

19 (7) estimated economic development impact of entities with contract
20 rates that occurred as a result of such contract rates through an evaluation
21 of the annual: (A) Total employment for such entities; (B) change in
22 employment for such entities; and (C) tax revenue generated by such
23 entities.

24 (g) As used in this section:

25 (1) "Electric public utility" means the same as prescribed in K.S.A.
26 66-101a, and amendments thereto, but does not include any such utility
27 that is a cooperative as defined in K.S.A. 66-104d, and amendments
28 thereto, or owned by one or more such cooperatives; and

29 (2) "facility" means an existing or proposed building or buildings of
30 an existing or potential electric customer with existing or expected load
31 equal to, or in excess of, a monthly demand of 50 megawatts, and such
32 load may represent the aggregate demand of multiple meter accounts.

33 New Sec. 2. (a) Notwithstanding the provisions of K.S.A. 66-101b or
34 66-109, and amendments thereto, the commission shall authorize an
35 electric public utility to implement economic development rate schedules
36 that provide discounts from otherwise applicable standard rates for electric
37 service for new or expanded facilities of industrial or commercial
38 customers that are not in the business of selling or providing goods or
39 services directly to the general public. To be eligible for such discounts,
40 such customer shall:

41 (1) Have incentives from one or more local, regional, state or federal
42 economic development agencies to locate such new or expanded facilities
43 in the electric public utility's certified service territory;

1 (2) qualify for service under the electric public utility's non-
2 residential and non-lighting rate schedules for such new or expanded
3 facility; and

4 (3) not receive the discount together with service provided by the
5 electric public utility pursuant to any other special contract agreements.

6 (b) The discount authorized by this section shall only be applicable to
7 new facilities or expanded facilities that have:

8 (1) A peak demand that is reasonably projected to be at least 200
9 kilowatts within two years of the date the customer first receives service
10 under the discounted rate and is not the result of shifting existing demand
11 from other facilities of the customer in the electric public utility's certified
12 service territory and:

13 (A) Has an annual load factor that is reasonably projected to equal or
14 exceed the electric public utility's annual system load factor within two
15 years of the date the customer first receives service under the discounted
16 rate; or

17 (B) otherwise warrants a discounted rate based on any of the
18 following factors:

19 (i) The number of new permanent full-time jobs created or the
20 percentage increase in existing permanent full-time jobs created;

21 (ii) the level of capital investment;

22 (iii) additional off-peak usage;

23 (iv) curtailable or interruptible load;

24 (v) new industry or technology; or

25 (vi) competition with existing industrial customers; or

26 (2) a peak demand that is reasonably projected to be at least 300
27 kilowatts within two years of the date the customer first receives service
28 under the discounted rate and is not the result of shifting existing demand
29 from other facilities of the customer in the electric public utility's certified
30 service territory and:

31 (A) An annual load factor that is reasonably projected to be at least
32 55% within two years of the date the customer first receives service under
33 the discounted rate; and

34 (B) the facility shall, once first achieved, maintain the peak demand
35 and load factor for the remaining duration of the discounted rate.

36 (c) The discount authorized by this section shall be determined by
37 reducing otherwise applicable charges associated with the rate schedule
38 applicable to the new or expanded existing facility by a fixed percentage
39 for each year of service under the discount for a period of up to five years.
40 The average of the annual discount percentages shall not:

41 (1) Exceed 20% for discounts that qualify pursuant to subsection (b)
42 (1), but may be between 5% to 30% in any year; and

43 (2) exceed 40% for discounts that qualify pursuant to subsection (b)

1 (2), but may be between 20% to 50% in any year.

2 (d) In each general rate proceeding concluded after the effective date
3 of this section, the commission shall allocate the reduced level of revenues
4 arising from the discounted rates provided for in this section through the
5 application of a uniform percentage adjustment to the revenue requirement
6 responsibility for all customer classes of the electric public utility
7 providing such discounted rate, including the classes with customers that
8 qualify for discounts under this section, except for rates for service
9 provided to customers under contract rates either approved by the
10 commission pursuant to section 1, and amendments thereto, or the
11 commission's general ratemaking authority.

12 (e) (1) The commission shall approve a tracking mechanism to track
13 reductions in revenue experienced by the electric public utility serving the
14 facility as a result of the discount rate from the date the discount rate
15 becomes effective; and

16 (2) such reductions in revenue shall be deferred to a regulatory asset
17 and shall accrue interest at the weighted average cost of capital used by the
18 commission to set the electric public utility's rates in its most recently
19 concluded general rate proceeding with the balance of such regulatory
20 asset to be included in the rate base and revenue requirement of the electric
21 public utility in each of the utility's general rate proceedings through an
22 amortization of the balance over a reasonable period until fully collected
23 from the utility's non-contract rate customers.

24 (f) The provisions of this section shall not apply to rates for service
25 provided to customers under contract rates approved by the commission
26 pursuant to section 1, and amendments thereto, or the commission's
27 general ratemaking authority according to custom and practice of the
28 commission in place prior to the effective date of this section.

29 (g) Starting in January 2023, the commission shall biennially provide
30 a status report to the legislature about any discounts from tariffed rates
31 authorized pursuant to this section. Such report shall include the:

32 (1) Number of entities with such discounts;
33 (2) number of entities with increased load;
34 (3) number of entities with decreased load;
35 (4) aggregate load and change in aggregate load on an annual basis;
36 (5) total subsidy and the subsidy for each individual contract;
37 (6) annual and cumulative rate impact on non-contract rate
38 customers; and

39 (7) estimated economic development impact of entities with
40 discounted rates that occurred as a result of such discounts through an
41 evaluation of the annual: (A) Total employment for such entities; (B)
42 change in employment for such entities; and (C) tax revenue generated by
43 such entities.

1 (h) For the purposes of this section:

2 (1) "Electric public utility" means the same as prescribed in K.S.A.
3 66-101a, and amendments thereto, but does not include any such utility
4 that is a cooperative as defined in K.S.A. 66-104d, and amendments
5 thereto, or owned by one or more such cooperatives;

6 (2) "expanded facility" means a separately metered facility of the
7 customer, unless the utility determines that the additional costs of separate
8 metering of such facility would exceed the associated benefits or that it
9 would be difficult or impractical to install or read the meter, that has not
10 received service in the electric utility's certified service territory in the
11 previous 12 months; and

12 (3) "new facility" means a building of the customer that has not
13 received electric service in the electric utility's certified service territory in
14 the previous 12 months.

15 New Sec. 3. (a) If a public utility as defined in K.S.A. 66-104, and
16 amendments thereto, includes expenses related to income taxes as a
17 component of its retail rates, the utility shall track and defer into a
18 regulatory asset or liability, as appropriate, any overcollection or
19 undercollection of income tax expense if the income tax rates assessed on
20 such utility are adjusted as a result of any changes in state or federal law.

21 (b) When any change in state or federal law either increases or
22 decreases the income tax rates assessed on a utility and results in an
23 overcollection or undercollection of income tax expenses that is equal to or
24 exceeds 0.25% of such utility's base revenue level approved by the state
25 corporation commission in the utility's most recent general rate
26 proceeding, such utility shall file an application for new retail rates
27 reflecting the adjusted income taxation rates with the commission within
28 60 days of the enactment of such change in state or federal law. The utility
29 shall either refund the tracked overcollected amounts to, or recover the
30 tracked undercollected amounts from, such utility's retail customers in a
31 manner approved by the commission.

32 (c) A filing required pursuant to subsection (b) shall not:

33 (1) Require the utility to file a full general rate proceeding;

34 (2) require the utility to update any component of such utility's retail
35 rates other than the income tax expense component; or

36 (3) constitute a violation of any existing rate moratorium agreement if
37 such filing only updates the income tax expense component of a utility's
38 rates.

39 (d) The state corporation commission shall issue an order addressing
40 the application filed under subsection (b):

41 (1) That, if requested by the utility, gives due consideration to the
42 common interests of the public utility and its customers, including, but not
43 limited to, use of a two-year implementation of current period rate changes

1 to maintain the credit quality of the utility by ensuring that any such
2 change in retail rates will not cause the utility's credit metrics that are
3 traditionally considered by the credit rating agencies to deteriorate to a
4 level that could impair the utility's current credit rating. To the extent a
5 retail rate change to address adjusted income taxes is implemented over a
6 period of time, as provided in this paragraph, the utility shall: (A) Track
7 and defer any overcollection or undercollection of income tax expenses as
8 a regulatory liability or asset, as appropriate, that will accrue interest at the
9 utility's weighted average cost of capital, as determined by the commission
10 in the utility's most recent general rate proceeding; and (B) refund or
11 collect the balance of such amounts in its next full general rate proceeding;
12 and

13 (2) within 120 days of the date of such filing.

14 (e) If a utility has a full general rate proceeding pending before the
15 commission, or has provided notice to the commission of its intent to file a
16 full general rate proceeding application, at the time any adjusted income
17 tax rates become effective, upon a showing by the utility that the public
18 interest would be promoted, the commission may issue an order finding
19 that such adjusted state or federal income tax rates should not be reflected
20 in such utility's retail rates until the utility's new retail rates become
21 effective following such utility's full general rate proceeding.

22 (f) Excess accumulated deferred income tax balances resulting from
23 income taxes adjusted due to changes in state or federal law shall remain
24 unamortized on the public utility's books of account until new retail rates
25 from such utility's next full general rate proceeding after the adjusted
26 income tax rates take effect. Such balances shall be amortized and
27 reflected in retail rates at such time. If requested by the utility, excess
28 accumulated deferred income tax balances resulting from changes in state
29 law effective January 2021, shall be amortized over a period of not less
30 than 30 years in retail rates for such utility by order of the commission.
31 Excess accumulated deferred income tax balances resulting from any other
32 changes in state or federal law shall be amortized in retail rates for such
33 utility by order of the commission in a manner consistent with
34 requirements of state and federal tax law and implementing regulations
35 and in a manner that will not impair the utility's credit rating.

36 (g) The provisions of this section shall not apply to any:

37 (1) Municipal electric utility or natural gas utility; or

38 (2) utility that is a cooperative as defined in K.S.A. 66-104d, and
39 amendments thereto, or owned by one or more such cooperatives.

40 (h) For the purposes of this section, "overcollection or
41 undercollection of income tax expense" means the portion of utility
42 revenue representing the difference between the cost of service as
43 approved by the state corporation commission in the utility's most recent

1 base rate proceeding and the cost of service that would have resulted had
2 the provision for state or federal income taxes been based upon the
3 adjusted corporate income tax rate. "Overcollection or undercollection of
4 income tax expense" does not include the effects of accumulated deferred
5 income taxes or excess accumulated deferred income taxes.

6 Sec. 4. K.S.A. 79-32,113 is hereby amended to read as follows: 79-
7 32,113. (a) A person or organization exempt from federal income taxation
8 under the provisions of the federal internal revenue code shall also be
9 exempt from the tax imposed by this act in each year in which such person
10 or organization satisfies the requirements of the federal internal revenue
11 code for exemption from federal income taxation. If the exemption
12 applicable to any person or organization under the provisions of the federal
13 internal revenue code is limited or qualified in any manner, the exemption
14 from taxes imposed by this article shall be limited or qualified in a similar
15 manner.

16 (b) Notwithstanding the provisions of subsection (a) ~~of this section~~,
17 the unrelated business taxable income, as computed under the provisions
18 of the federal internal revenue code, of any person or organization
19 otherwise exempt from the tax imposed by this act and subject to the tax
20 imposed on unrelated business income by the federal internal revenue code
21 shall be subject to the tax which would have been imposed by this act but
22 for the provisions of subsection (a) ~~of this section~~.

23 (c) In addition to the persons or organizations exempt from federal
24 income taxation under the provision of the federal internal revenue code,
25 there shall also be exempt from the tax imposed by this act, insurance
26 companies, banks, trust companies, savings and loan associations, credit
27 unions and any other organizations, entities or persons specifically exempt
28 from Kansas income taxation under the laws of the state of Kansas.

29 (d) *Notwithstanding the provisions of K.S.A. 79-32,110, and*
30 *amendments thereto, the following entities shall be exempt from the tax*
31 *imposed by the Kansas income tax act pursuant to K.S.A. 79-32,110, and*
32 *amendments thereto:*

33 (1) *Any utility that is a cooperative as defined in K.S.A. 66-104d, and*
34 *amendments thereto, or owned by one or more such cooperatives; and*

35 (2) *effective for tax years ending on or after January 1, 2021, every*
36 *electric and natural gas public utility as defined in K.S.A. 66-104, and*
37 *amendments thereto, that is subject to rate regulation by the state*
38 *corporation commission.*

39 (e) *Every electric and natural gas public utility as defined in K.S.A.*
40 *66-104, and amendments thereto, not including any such utility that is a*
41 *cooperative as defined in K.S.A. 66-104d, and amendments thereto, or*
42 *owned by one or more such cooperatives shall:*

43 (1) *Not be permitted to be included in a consolidated or unitary*

1 *combined return; and*

2 *(2) except as provided in section 3, and amendments thereto, not*
3 *collect, as a component of such utility's retail rates, Kansas income tax*
4 *expenses.*

5 Sec. 5. K.S.A. 79-32,113 is hereby repealed.

6 Sec. 6. This act shall take effect and be in force from and after its
7 publication in the statute book.