

As Amended by House Committee

As Amended by Senate Committee

Session of 2024

SENATE BILL No. 455

By Committee on Utilities

2-6

1 AN ACT concerning electric public utilities; relating to the state  
2 corporation commission; ***extending the timeline for the commission to***  
3 ***make a predetermination of ratemaking principles and treatment***  
4 ***prior to the construction of or acquiring a stake in an electric***  
5 ***generation or transmission facility; establishing procedural***  
6 ***requirements to support the timely and expeditious completion of***  
7 ***such proceedings; prohibiting the commission from authorizing the***  
8 ***retirement of nuclear powered and fossil fuel-fired electric***  
9 ***generating facilities unless certain requirements are met;*** authorizing  
10 electric public utilities to retain certain electric generating facilities in  
11 the utility's rate base; ***requiring the commission to report annually on***  
12 ***public utility requests to retire fossil fuel-fired electric generating***  
13 ***facilities;*** amending K.S.A. 2023 Supp. 66-1239 and repealing the  
14 existing section.  
15

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

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

- 19 (1) "Commission" means the state corporation commission;  
20 (2) "contract" means a public utility's contract for the purchase of  
21 electric power in the amount of at least \$5,000,000 annually;  
22 (3) "generating facility" means any electric generating plant or  
23 improvement to existing generation facilities;  
24 (4) "stake" means a public utility's whole or fractional ownership  
25 share or leasehold or other proprietary interest in a generating facility or  
26 transmission facility;  
27 (5) "public utility" means the same as defined in K.S.A. 66-104, and  
28 amendments thereto; and  
29 (6) "transmission facility" means: (A) Any existing line, and  
30 supporting structures and equipment, being upgraded for the transfer of  
31 electricity with an operating voltage of 34.5 kilovolts or more of  
32 electricity; or (B) any new line, and supporting structures and equipment,  
33 being constructed for the transfer of electricity with an operating voltage  
34 of 230 kilovolts or more of electricity.

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

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

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

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

22 (5) If the commission does not have jurisdiction to set wholesale rates  
23 for use of the transmission facility the commission need not consider rate-  
24 making principles and treatment for wholesale rates for the transmission  
25 facility.

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

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

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

42 (2) Any utility seeking a determination of rate-making principles and  
43 treatment under subsection (c)(1) shall as a part of its filing submit the

1 following information: (A) A description of the public utility's  
2 conservation measures; (B) a description of the public utility's demand  
3 side management efforts; (C) the public utility's ten-year generation and  
4 load forecasts; and (D) a description of all power supply alternatives  
5 considered to meet the public utility's load requirements.

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

11 (4) ~~In any proceeding conducted pursuant to this subsection~~ For  
12 requests by a public utility for a determination of ratemaking  
13 principles and treatment relating to the abandonment or retirement of a  
14 nuclear powered or fossil fuel-fired electric generating unit, the  
15 commission shall not approve the abandonment or retirement of such  
16 electric generating unit, authorize a surcharge or issuance of bonds for  
17 the decommissioning of such electric generating unit or take any other  
18 action that authorizes or allows for the recovery of costs for the  
19 retirement of such electric generating unit, ~~including recovery of~~  
20 ~~stranded assets~~ asset recovery, unless the commission determines that  
21 relevant evidence sufficiently supports the commission to find that:

22 (A) ~~The utility will replace the abandoned or retired electric-~~  
23 ~~generating unit with new electric generating capacity that:~~

24 (i) ~~Is equal to or greater than the amount of electric generating-~~  
25 ~~capacity necessary to meet the minimum reserve capacity requirements-~~  
26 ~~established pursuant to accreditation rules of the regional transmission-~~  
27 ~~organization or independent system operator responsible for accrediting-~~  
28 ~~capacity within the utility's service area based on an estimate of the-~~  
29 ~~average replacement capacity at the time construction of such-~~  
30 ~~replacement capacity begins;~~

31 (ii) ~~is dispatchable by either the utility or the regional transmission-~~  
32 ~~organization or independent system operator responsible for balancing-~~  
33 ~~load within the utility's service area; and~~

34 (iii) ~~maintains or improves the reliability and resilience of the-~~  
35 ~~electric transmission grid;~~ demonstrates that the public utility will be  
36 able to meet current and reasonably-anticipated future resource  
37 adequacy requirements of the regional transmission organization or  
38 independent system operator; and

39 (B) ~~the abandonment or retirement is not expected to harm the~~  
40 ~~utility's customers or decrease the utility's regional rate competitiveness~~  
41 ~~by causing the utility to experience higher costs than would be expected~~  
42 ~~by continuing to operate such electric generating unit in compliance~~  
43 ~~with applicable law, unless, consistent with the integrated resource~~

1 *planning framework utilized by the commission, the commission*  
 2 *determines that such higher costs are justified by other factors that are*  
 3 *specified by the commission. The utility shall provide the commission*  
 4 *with evidence of all known direct and indirect costs of abandonment or*  
 5 *retirement of the electric generating unit and demonstrate that cost*  
 6 *savings or avoided or mitigated cost increases to customers will occur as*  
 7 *a result of the abandonment or retirement of the electric generating*  
 8 *unit; and*

9 ~~*(C) unless the abandonment or retirement of the electric generating*~~  
 10 ~~*unit is required to comply with federal or state laws, such abandonment*~~  
 11 ~~*or retirement is for economic purposes and for the benefit of customers*~~  
 12 ~~*and not principally based on achieving environmental, social and*~~  
 13 ~~*governance goals that are not mandated by federal or state laws.*~~

14 (5) The commission shall issue an order setting forth the rate-making  
 15 principles and treatment that will be applicable to the public utility's stake  
 16 in the generating facility or to the contract in all rate-making proceedings  
 17 on and after such time as the generating facility is:

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

19 (B) retired or abandoned.

20 ~~(5)~~(6) The commission in all proceedings in which the cost of the  
 21 public utility's stake in the generating facility or the cost of the purchased  
 22 power under the contract is considered shall utilize the rate-making  
 23 principles and treatment applicable to the generating facility, contract or  
 24 retired or abandoned generating facility.

25 ~~(6)~~(7) If the commission fails to issue a determination within ~~180~~ 240  
 26 days of the date a petition for a determination of rate-making principles  
 27 and treatment is filed, the rate-making principles and treatment proposed  
 28 by the petitioning public utility will be deemed to have been approved by  
 29 the commission and shall be binding for rate-making purposes during the  
 30 useful life of the generating facility, during the term of the contract or  
 31 during the period when the cost of the retired or abandoned generating  
 32 facility is reflected in customer rates.

33 (d) (1) *It is the intent of the legislature that when a public utility*  
 34 *files a petition for a determination of ratemaking principles and*  
 35 *treatment pursuant to subsection (b) or (c), consistent with the state*  
 36 *corporation commission's customary practices, the commission shall:*

37 (A) *Issue a determination on such petition in an expeditious*  
 38 *manner; and*

39 (B) *when circumstances allow, attempt to issue such determination*  
 40 *in a period of time that is less than the 240-day deadline to issue such*  
 41 *determination established pursuant to subsection (b) or (c).*

42 (2) *In furtherance of such legislative intent, a public utility that*  
 43 *intends to file a petition for a determination of ratemaking principles*

1 *and treatment pursuant to this section shall provide notice to the*  
 2 *commission of such public utility's intent to file such petition not less*  
 3 *than 30 days before filing a petition pursuant to this section. Upon*  
 4 *receipt of such notice, the commission shall provide notice of the public*  
 5 *utility's intent to file a petition pursuant to this section to each person or*  
 6 *entity that was a party to or an intervenor in the public utility's most*  
 7 *recently concluded base rate case.*

8 *(3) In any proceeding conducted pursuant to this section, any*  
 9 *application for intervention in such proceeding shall be submitted not*  
 10 *later than 10 days after the public utility's filing of a petition for a*  
 11 *determination of ratemaking principles and treatment. The commission*  
 12 *shall adopt a procedural schedule for the proceeding not later than 30*  
 13 *days after a public utility files a petition for a determination of*  
 14 *ratemaking principles and treatment pursuant to this section.*

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

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

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

35 ~~(g)~~*(h)* **For nuclear powered and coal-fired electric generating**  
 36 *facilities, if determined by the commission to be just, reasonable and*  
 37 *necessary for the provision of sufficient and efficient service, an electric*  
 38 *public utility shall be permitted to:*

- 39 *(1) Retain such facilities in such utility's rate base;*  
 40 *(2) recover expenses associated with the operation of such facilities*  
 41 *that remain in service to provide greater certainty that generating capacity*  
 42 *will be available to provide essential service to customers, including*  
 43 *during extreme weather events; and*

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

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

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

6       (i) *The commission shall prepare and submit ~~an annual report~~ to*  
7 *the legislature by December 1 of each year ~~providing~~ an annual report*  
8 *based on the preceding calendar year that provides:*

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

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

14       (A) *Utility's and state's generation capacity by ~~fuel-mix~~ type;*

15       (B) *required capacity reserve margins for the utility and the overall*  
16 *capacity reserve margin within the state;*

17       (C) *utility's need for capacity additions or expansions at new or*  
18 *existing facilities as a result of the retirement; and*

19       (D) *utility's need for additional power or capacity reserve*  
20 *arrangements; and*

21       (3) *whether the retirement resulted in stranded costs for ratepayers*  
22 *that will be recovered by the utility through securitization or some other*  
23 *charge on customer bills.*

24       (j) *The provisions of subsection (c)(4) shall expire on July 1, 2034.*

25       Sec. 2. K.S.A. 2023 Supp. 66-1239 is hereby repealed.

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