

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 fossil fuel-fired electric generating facilities unless***  
9 ***certain requirements are met;*** authorizing electric public utilities to  
10 retain certain electric generating facilities in the utility's rate base;  
11 ***requiring the commission to report annually on public utility requests***  
12 ***to retire fossil fuel-fired electric generating facilities;*** amending  
13 K.S.A. 2023 Supp. 66-1239 and repealing the existing section.  
14

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

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

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

1 proposed by the public utility, that will apply to the recovery in wholesale  
2 or retail rates of the cost to be incurred by the public utility to acquire such  
3 public utility's stake in the transmission facility during the expected useful  
4 life of the transmission facility.

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

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

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

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

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

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

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

39 (2) Any utility seeking a determination of rate-making principles and  
40 treatment under subsection (c)(1) shall as a part of its filing submit the  
41 following information: (A) A description of the public utility's  
42 conservation measures; (B) a description of the public utility's demand  
43 side management efforts; (C) the public utility's ten-year generation and

1 load forecasts; and (D) a description of all power supply alternatives  
2 considered to meet 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) *In any proceeding conducted pursuant to this subsection*  
9 *relating to the abandonment or retirement of a fossil fuel-fired electric*  
10 *generating unit, the commission shall not approve the abandonment or*  
11 *retirement of such electric generating unit, authorize a surcharge or*  
12 *issuance of bonds for the decommissioning of such electric generating*  
13 *unit or take any other action that authorizes or allows for the recovery of*  
14 *costs for the retirement of such electric generating unit, including*  
15 *recovery of stranded assets, unless the commission determines that*  
16 *relevant evidence sufficiently supports the commission to find that:*

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

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

26 (ii) *is dispatchable by either the utility or the regional transmission*  
27 *organization or independent system operator responsible for balancing*  
28 *load within the utility's service area; and*

29 (iii) *maintains or improves the reliability and resilience of the*  
30 *electric transmission grid;*

31 (B) *the abandonment or retirement is not expected to harm the*  
32 *utility's customers or decrease the utility's regional rate competitiveness*  
33 *by causing the utility to experience higher costs than would be expected*  
34 *by continuing to operate such electric generating unit in compliance*  
35 *with applicable law, unless, consistent with the integrated resource*  
36 *planning framework utilized by the commission, the commission*  
37 *determines that such higher costs are justified by other factors that are*  
38 *specified by the commission. The utility shall provide the commission*  
39 *with evidence of all known direct and indirect costs of abandonment or*  
40 *retirement of the electric generating unit and demonstrate that cost*  
41 *savings or avoided or mitigated cost increases to customers will occur as*  
42 *a result of the abandonment or retirement of the electric generating*  
43 *unit; and*

1       ***(C) unless the abandonment or retirement of the electric generating***  
2 ***unit is required to comply with federal or state laws, such abandonment***  
3 ***or retirement is for economic purposes and for the benefit of customers***  
4 ***and not principally based on achieving environmental, social and***  
5 ***governance goals that are not mandated by federal or state laws.***

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

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

11       ***(B)*** retired or abandoned.

12       ~~***(5)***~~***(6)*** The commission in all proceedings in which the cost of the  
13 public utility's stake in the generating facility or the cost of the purchased  
14 power under the contract is considered shall utilize the rate-making  
15 principles and treatment applicable to the generating facility, contract or  
16 retired or abandoned generating facility.

17       ~~***(6)***~~***(7)*** If the commission fails to issue a determination within ~~180~~ **240**  
18 days of the date a petition for a determination of rate-making principles  
19 and treatment is filed, the rate-making principles and treatment proposed  
20 by the petitioning public utility will be deemed to have been approved by  
21 the commission and shall be binding for rate-making purposes during the  
22 useful life of the generating facility, during the term of the contract or  
23 during the period when the cost of the retired or abandoned generating  
24 facility is reflected in customer rates.

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

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

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

34       ***(2) In furtherance of such legislative intent, a public utility that***  
35 ***intends to file a petition for a determination of ratemaking principles***  
36 ***and treatment pursuant to this section shall provide notice to the***  
37 ***commission of such public utility's intent to file such petition not less***  
38 ***than 30 days before filing a petition pursuant to this section. Upon***  
39 ***receipt of such notice, the commission shall provide notice of the public***  
40 ***utility's intent to file a petition pursuant to this section to each person or***  
41 ***entity that was a party to or an intervenor in the public utility's most***  
42 ***recently concluded base rate case.***

43       ***(3) In any proceeding conducted pursuant to this section, any***

1 *application for intervention in such proceeding shall be submitted not*  
2 *later than 10 days after the public utility's filing of a petition for a*  
3 *determination of ratemaking principles and treatment. The commission*  
4 *shall adopt a procedural schedule for the proceeding not later than 30*  
5 *days after a public utility files a petition for a determination of*  
6 *ratemaking principles and treatment pursuant to this section.*

7 *(e)* The public utility shall have one year from the effective date of  
8 the determination of the commission to notify the commission whether it  
9 will construct or participate in the construction of the generating or  
10 transmission facility, whether it will perform under terms of the contract or  
11 whether it will retire or abandon the generating facility.

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

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

27 ~~(g)~~*(h)* *For coal-fired electric generating facilities, if determined by*  
28 *the commission to be just, reasonable and necessary for the provision of*  
29 *sufficient and efficient service, an electric public utility shall be permitted*  
30 *to:*

- 31 *(1) Retain such facilities in such utility's rate base;*
- 32 *(2) recover expenses associated with the operation of such facilities*  
33 *that remain in service to provide greater certainty that generating capacity*  
34 *will be available to provide essential service to customers, including*  
35 *during extreme weather events; and*
- 36 *(3) recover any portion of such utility's rate base and prudently*  
37 *incurred expenses necessary for such facilities:*
  - 38 *(A) To operate at a low-capacity factor; or*
  - 39 *(B) that are offline during normal operating conditions and providing*  
40 *capacity only.*

41 *(i) The commission shall prepare and submit an annual report to*  
42 *the legislature by December 1 of each year providing:*

- 43 *(1) The number of requests by utilities to retire electric generating*

1 *units in the state, the nameplate capacity of each of those units and*  
2 *whether the request was approved or denied by the commission;*

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

5 *(A) Utility's and state's generation fuel mix;*

6 *(B) required capacity reserve margins for the utility;*

7 *(C) need for capacity additions or expansions at new or existing*  
8 *facilities as a result of the retirement; and*

9 *(D) need for additional power or capacity reserve arrangements;*  
10 *and*

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

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

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

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