

SENATE BILL No. 455

By Committee on Utilities

2-6

Proposed Amendments to Senate Bill No. 455  
House Committee on Energy, Utilities and  
Telecommunications  
Prepared by: Nick Myers  
Office of Revisor of Statutes

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.*  
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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 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:*

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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 *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.

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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.

and the overall capacity reserve margin within the state