

66-1239. Electric generating or transmission facility; determination of rate-making principles and treatment; procedure. (a) As used in this section:

- (1) "Commission" means the state corporation commission;
- (2) "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000 annually;
- (3) "generating facility" means any electric generating plant or improvement to existing generation facilities;
- (4) "stake" means a public utility's whole or fractional ownership share or leasehold or other proprietary interest in a generating facility or transmission facility;
- (5) "public utility" has the meaning provided by K.S.A. 66-104, and amendments thereto; and
- (6) "transmission facility" means: (A) Any existing line, and supporting structures and equipment, being upgraded for the transfer of electricity with an operating voltage of 34.5 kilovolts or more of electricity; or (B) any new line, and supporting structures and equipment, being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

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

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

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

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

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

(c) (1) Prior to undertaking the construction of, or participation in, a generating facility or prior to entering into a new contract, a public utility may file with the commission a petition for a determination of the rate-making principles and treatment, as proposed by the public utility, that will apply to recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the generating facility during the expected useful life of the generating facility or the recovery in rates of the contract during the term thereof.

(2) Any utility seeking a determination of rate-making principles and treatment under subsection (c)(1) shall as a part of its filing submit the following information: (A) A description of the public utility's conservation measures; (B) a description of the public utility's demand side management efforts; (C) the public utility's ten-year generation and load forecasts; and (D) a description of all power supply alternatives considered to meet the public utility's load requirements.

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

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

(5) The commission in all proceedings in which the cost of the public utility's stake in the generating facility or the cost of the purchased power under the contract is considered shall utilize the rate-making principles and treatment applicable to the generating facility or contract.

(6) If the commission fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, the rate-making principles and treatment proposed by the petitioning public utility will be deemed to have been approved by the commission and shall be binding for rate-making purposes during the useful life of the generating facility or during the term of the contract.

(d) The public utility shall have one year from the effective date of the determination of the commission to notify the commission whether it will construct or participate in the construction of the generating or transmission facility or whether it will perform under terms of the contract.

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

(f) If the public utility notifies the commission under subsection (d) that it will construct or participate in a generating facility or purchase power contract and subsequently does not, it will be required to notify the commission immediately and file an alternative supply plan with the commission per subsection (c) within 90 days.

History: L. 2003, ch. 148, § 1; L. 2004, ch. 120, § 9; July 1.