

## 2018 Kansas Statutes

### **66-1,176. Termination of service rights in annexed areas; selection of electric service provider; notice and record requirements; appeal; right to serve existing customers, when; compensation for termination of service rights, determination.**

(a) (1) Whenever a city proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier no less than 30 days prior to the city making a selection pursuant to subsection (a)(2). All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city. Such period of 180 days shall be extended to 210 days from the date of annexation if a franchise is granted to the retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within such period of 210 days.

(2) Whenever the city annexes land that is located within the certified territory of a retail electric supplier, the city shall negotiate for the issuance of a franchise agreement pursuant to K.S.A. 12-2001, et seq., and amendments thereto, with a retail electric supplier holding a certificate within the annexed area. Nothing herein shall be construed to require a supplier holding both a certificate of convenience and a franchise for the area annexed to obtain a new franchise. The city shall make the selection of which supplier receives a franchise to operate within the annexed area. When making such selection, the city shall consider certain factors including, but not limited to: (A) The public convenience and necessity; (B) rates of various suppliers; (C) desires of the customer or customers to be served; (D) economic impact on the suppliers; (E) economic impact on the customers of the suppliers; (F) the supplier's operational ability to serve the annexed area; (G) avoiding the wasteful duplication of facilities; (H) avoiding unnecessary encumbrance on the landscape; (I) preventing the waste of materials and natural resources; (J) proposals from any retail electric supplier holding a certificate in the annexed area; and (K) whether the selection is in the public interest as it relates to all the factors considered by the city.

(b) When considering the factors contained in subsection (a)(2), or any other factors, the city shall produce a record of the city's deliberations and findings upon each factor and the basis for the city's selection. Such record shall be available as a public record within 10 days after the city makes a selection.

(c) Within 30 days after the city makes its selection, any supplier aggrieved thereby may file an appeal of such selection in the district court of the county in which the annexed area is located. Such appeal shall be to determine whether the city met the requirements of subsections (a) and (b) and whether the city's selection is based upon substantial, competent evidence. The appeal shall be docketed as a new civil action and the docket fee collected. The district court may take additional evidence on the factors in section (a)(2). The review of the city's selection shall be limited to the record produced and supplemented by any additional evidence received by the court pursuant to this section.

(d) (1) In the event that an appeal of the selection is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service at its ordinary rates until such time as the appeal has been concluded and service rights terminated.

(2) If the service rights of a supplier are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

(e) In the event that a new retail electric supplier does not effect the assumption of electric service to the annexed area at the termination of a retail electric service provider's service rights pursuant to subsection (a), then the originally certified supplier shall have the right to continue service to the annexed area and charge its ordinary rates therefor until such supplier does assume service to the annexed area. Such service shall be free of any franchise fee or other compensation to the city or the electric supplier holding the franchise. Unless otherwise mutually agreed upon by the affected suppliers, no assumption of electric service shall occur within 15 days following notice to the originally certified supplier of the intended changeover time.

(f) Whenever the service rights of a retail electric supplier are terminated pursuant to subsection (a), fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. Such compensation shall be an amount mutually agreed upon by the affected suppliers or the sum of the following:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated pursuant to subsection (a). As used in this paragraph, "depreciated replacement cost" shall mean the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) all reasonable and prudent costs of detaching the electric system facilities to be sold and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated pursuant to subsection (a);

(3) an amount equal to two times the gross revenues attributable to the customers in the terminated territory during the 12 months next preceding the date of transfer of the service pursuant to subsection (a);

(4) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2), (3) and (5) by the retail electric supplier whose service rights are terminated pursuant to subsection (a), calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein; and

(5) an amount equal to 8.5% of the gross revenues of total retail sales attributable to new customers in the territory in which service rights have been terminated for a period of 10 years following the date of termination of service rights of the retail electric supplier. Payments shall be made in annual installments to the retail electric supplier whose service rights are terminated pursuant to subsection (a). Gross revenues shall be determined based on the rates charged and billed at the time each annual payment is made. Such retail electric supplier shall have the right to review, audit or cause to be audited the subsequent supplier's financial records with respect to retail electric service in the territory in which service rights have been terminated to determine the amount payable pursuant to this paragraph.

(g) In the event that the compensation due pursuant to subsection (f) is disputed, after 60 days following the date of termination of service rights, either party may apply to the district court having jurisdiction where any portion of the facilities are located for determination of compensation. Such determination shall be made by the court sitting without a jury.

(h) Notwithstanding the provisions of K.S.A. 66-1,176b, and amendments thereto, a retail electric supplier shall be entitled to compensation pursuant to subsections (f) and (g) if a franchise agreement between a city and a retail electric supplier was agreed to pursuant to this section and K.S.A. 12-2001 et seq., and amendments thereto, but was terminated pursuant to K.S.A. 66-1,176b, and amendments thereto, within 10 years after such

franchise agreement was effectuated by the parties.

**History:** L. 1976, ch. 284, § 7; L. 1986, ch. 249, § 3; L. 1987, ch. 257, § 3; L. 2002, ch. 27, § 1; L. 2018, ch. 6, § 3; Mar. 8.