

Before the Senate Committee on Utilities

February 15, 2024

Neutral Testimony On Senate Bill 456

Submitted by Jeff McClanahan, Director, Utilities Division
On Behalf of
The Staff of the Kansas Corporation Commission

Chair Fagg, Vice Chair Petersen, Ranking Minority Member Francisco, and members of the Committee, thank you for the opportunity to provide testimony today on behalf of the Staff of the Kansas Corporation Commission (Commission).

The Staff of the Commission (Staff) is neutral with respect to Senate Bill 456 (SB 456). SB 456 amends K.S.A. 66-1239 to: (1) extend the timeline for the Commission to make a determination regarding rate-making treatment for electric generating or transmission facilities from 180 days to 240 days, (2) establish a rebuttable presumption that a fossil fuel-fired generating unit shall not be retired absent sufficient evidence that the retirement meets certain newly defined criteria, and (3) require the Commission to submit an annual report on requests to retire fossil fuel-fired generation.

By way of background, Staff initiated three work study meetings on generation resource adequacy during January and February of 2023. These work studies were designed to educate Staff and Commissioners' on the current state of generation resource adequacy as well as the forecasted timing of emerging technologies such as battery storage and modular nuclear reactors. One area of specific concern addressed was the impact on reliability from the rapid pace of fossil fuel-fired generation retirements coupled with the rapid increase in renewable energy resources. Based on what was learned during the work studies, Staff considered opening a general investigation to gather evidence on the reliability impact from fossil fuel-fired generation retirements. Should the evidence have demonstrated there could be a potential impact on reliability, Staff intended to recommend that the Commission issue an order requiring all generation retirements be approved by the Commission. However, the Southwest Power Pool (SPP) was reviewing generation resource adequacy simultaneously and began a number of changes related to how the reliability attributes of generation, particularly resource performance and availability, could be reflected in its resource accreditation policies.¹ SPP also increased the planning reserve margin from 12% to 15%. The practical effect of SPP's changes is that it will be very difficult for a utility to prematurely retire fossil fuel-fired generation and still meet its planning reserve margin requirements. Based on SPP's increase to the planning reserve margin percentage and the proposed resource accreditation reforms, Staff decided not to pursue a general investigation.

¹ SPP's changes to resource accreditation have not received FERC's approval, but the expectation is that FERC will approve in the near future.

Staff views the proposed changes to SB 456 to be a policy decision for the legislature. As noted above, SPP's proposed changes to its generation resource accreditation methodology and increase in the planning reserve margin largely obviate the need to legislatively discourage the retirement of fossil fuel-fired generation. However, it is possible that a legislative requirement that fossil fuel-fired generation be reviewed and approved before replacement or retirement could provide reliability protections in the future. For example, if the Environmental Protection Agency promulgated emissions or other rules that would force the retirement of fossil fuel-fired generation, the Commission would have the legal authority to deny the retirement based on any reliability concerns and then coordinate with the Kansas Attorney General to pursue legal remedies.

As can be seen from the previous comments in this testimony, Staff does not have a conceptual disagreement with SB 456. However, Staff does believe that SB 456 as proposed is overly prescriptive and may inadvertently increase costs for a utility and its customers. For example, (c)(4)(A)(i) requires a utility to replace an abandoned or retired electric generating unit with a generating unit that is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area. A plain reading of this section indicates a new dispatchable generating unit has to replace any abandoned or retired electric generating unit *after* the abandonment or retirement. However, in most cases, new electric generating units will be in place *prior* to any retirement or abandonment of existing electric generating units. This is generally the case because a utility has to continue to meet its minimum reserve capacity requirement. Section (c)(4)(A)(iii) requires a utility to maintain the minimum reserve capacity requirement established by the utility's reliability coordinator, which seems to indicate that (c)(4)(A)(i) could simply fall under (c)(4)(A)(iii).

Some, but not all, of the other areas that are not clear are:

- The definition of "...any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating proposed for retirement..." in Section (c)(4)(B).
- As outlined in Section (c)(4)(D), whether costs savings to customers as a result of abandonment or retirement of an electric generating unit can always be achieved.

Staff would also note for stakeholder and committee consideration that the fossil fuel-fired generation unit abandonment or retirement review and approval criteria outlined in SB 456 are amending K.S.A. 66-1239, which means the utility has discretion as to whether it makes a filing. As noted previously, Staff's position when we considered a general investigation was to make the Commission's review and approval of a retirement of any electric generating unit mandatory.

If the Committee so desires, Staff would welcome the opportunity to participate with stakeholders on revising SB 456. Thank you for the opportunity to appear before your Committee and offer Staff's perspective on the proposed bill.