

HOUSE BILL No. 2190

By Committee on Energy, Utilities and Telecommunications

1-26

1 AN ACT concerning electricity; sale of renewable energy; public utility,
2 definitions, exceptions; amending K.S.A. 66-1,170 and K.S.A. 2016
3 Supp. 66-104 and repealing the existing sections.
4

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

6 New Section 1. (a) As used in this section:

7 (1) "Ancillary services" means those services necessary to support the
8 transmission of electric power from the renewable energy supplier to the
9 renewable energy customer, given the obligations of utilities in certified
10 territories to maintain reliable operations of the interconnected
11 transmission system.

12 (2) "Commission" means the state corporation commission.

13 (3) "Renewable energy customer" means any person or entity with an
14 aggregate electric consumption need of at least 200 kilowatts who elects to
15 enter into a power purchase agreement with a renewable energy supplier
16 for electricity.

17 (4) "Renewable energy supplier" means any corporation, company,
18 individual, association of persons, their trustees, lessees or receivers that
19 use a renewable energy resource, as defined in K.S.A. 66-1257, and
20 amendments thereto, to generate or store electricity at a facility and is a
21 qualifying small power production facility pursuant to 16 U.S.C. § 796 as
22 in effect on the effective date of this act, but does not include an electric
23 generating facility whose costs have been included in a utility's rates as a
24 facility providing electric service to the utility's system.

25 (5) "Utility" means an electric public utility as defined in K.S.A. 66-
26 101a, and amendments thereto, but does not include any electric
27 cooperative or municipal electric public utility.

28 (b) (1) Any electric customer shall have the option to purchase
29 electricity as a renewable energy customer from a renewable energy
30 supplier by: (A) Providing 180 days' notice of such intent to the local
31 certificated utility serving the customer and to the commission;

32 (B) demonstrating that the customer is electing to purchase renewable
33 energy to meet an established corporate objective or respond to customer
34 demand; and

35 (C) demonstrating that the electricity to be delivered pursuant to the
36 power purchase agreement will not exceed the customer's expected

1 consumption on a monthly basis. The commission may establish any
2 criteria for determining the facility's generating capacity and the
3 customer's expected monthly consumption.

4 (2) A single renewable energy customer may receive electricity under
5 the power purchase agreement at multiple, separately metered locations
6 and may aggregate multiple, separately metered renewable energy
7 suppliers.

8 (3) The commission shall approve just and reasonable cost-based
9 tariffs for such power purchase agreements to be assessed to the renewable
10 energy customer for generation capacity, transmission, distribution,
11 administrative costs and ancillary services, costs for a utility to facilitate
12 the delivery of electricity from a renewable energy supplier to a renewable
13 energy customer for renewable energy facilities that are located both on
14 the premises and off the premises of the customer.

15 (c) Upon receiving notice from a renewable energy customer
16 pursuant to subsection (b), the local certificated utility serving the
17 customer shall have the right of first refusal to provide renewable energy
18 to the customer at the prospective renewable energy supplier's total service
19 price to provide renewable energy and the commission affirmed utility
20 ancillary services pursuant to subsection (b)(3).

21 (d) In exercising the purchase option in subsection (b), the renewable
22 energy customer shall enter into a contract with the local certificated utility
23 that includes the following terms and conditions:

24 (1) The renewable energy customer shall furnish, install, operate and
25 maintain in good order and repair and without cost to the utility, such
26 relays, locks and seals, breakers, automatic synchronizers and other
27 control and protective apparatuses as shall be designated by the utility as
28 being required as suitable for the transmission and distribution of
29 electricity on the utility's system. In addition, the utility may install, own
30 and maintain a disconnecting device located near the electric meter or
31 meters. Interconnection facilities between the customer's and the utility's
32 equipment shall be accessible at all reasonable times to utility personnel;

33 (2) the renewable energy customer shall meet all applicable safety,
34 performance, interconnection and reliability standards established by the
35 national electrical code, the national electrical safety code, the institute of
36 electrical and electronics engineers, underwriters laboratories, the federal
37 energy regulatory commission and any local governing authorities. A
38 utility may require that a customer's system contain a switch, circuit
39 breaker, fuse or other easily accessible device or feature located in
40 immediate proximity to the customer's metering equipment that would
41 allow a utility worker the ability to manually and instantly disconnect the
42 unit from the utility's electric distribution system;

43 (3) the utility may not require a renewable energy supplier or

1 renewable energy customer whose facilities meet the standards in this
2 section to comply with additional safety or performance standards or
3 perform or pay for additional tests or purchase additional liability
4 insurance. A utility shall not be liable directly or indirectly for permitting
5 or continuing to allow an attachment of a renewable energy supplier or for
6 the acts or omissions of the renewable energy customer that cause loss or
7 injury, including death, to any third party;

8 (4) service provided by a utility to a renewable energy customer
9 pursuant to this section shall be subject to either the utility's rules and
10 regulations on file with the state corporation commission, which shall
11 include a standard interconnection process and requirements for such
12 utility's system, or the current federal energy regulatory commission
13 interconnection procedures and regulations; and

14 (5) in any case where the renewable energy customer and the utility
15 cannot agree to terms and conditions of any contract provided for by this
16 section, the commission shall establish the terms and conditions for such
17 contract.

18 (d) The commission may promulgate rules and regulations necessary
19 to effectuate the provisions of this section.

20 Sec. 2. K.S.A. 2016 Supp. 66-104 is hereby amended to read as
21 follows: 66-104. (a) The term "public utility," as used in this act, shall be
22 construed to mean every corporation, company, individual, association of
23 persons, their trustees, lessees or receivers, that now or hereafter may own,
24 control, operate or manage, except for private use, any equipment, plant or
25 generating machinery, or any part thereof, for the transmission of
26 telephone messages or for the transmission of telegraph messages in or
27 through any part of the state, or the conveyance of oil and gas through
28 pipelines in or through any part of the state, except pipelines less than 15
29 miles in length and not operated in connection with or for the general
30 commercial supply of gas or oil, and all companies for the production,
31 transmission, delivery or furnishing of heat, light, water or power. No
32 cooperative, cooperative society, nonprofit or mutual corporation or
33 association which is engaged solely in furnishing telephone service to
34 subscribers from one telephone line without owning or operating its own
35 separate central office facilities, shall be subject to the jurisdiction and
36 control of the commission as provided herein, except that it shall not
37 construct or extend its facilities across or beyond the territorial boundaries
38 of any telephone company or cooperative without first obtaining approval
39 of the commission. As used herein, the term "transmission of telephone
40 messages" shall include the transmission by wire or other means of any
41 voice, data, signals or facsimile communications, including all such
42 communications now in existence or as may be developed in the future.

43 (b) The term "public utility" shall also include that portion of every

1 municipally owned or operated electric or gas utility located in an area
2 outside of and more than three miles from the corporate limits of such
3 municipality, but regulation of the rates, charges and terms and conditions
4 of service of such utility within such area shall be subject to commission
5 regulation only as provided in K.S.A. 2016 Supp. 66-104f, and
6 amendments thereto. Nothing in this act shall apply to a municipally
7 owned or operated utility, or portion thereof, located within the corporate
8 limits of such municipality or located outside of such corporate limits but
9 within three miles thereof—~~except as provided in K.S.A. 66-131a, and~~
10 ~~amendments thereto.~~

11 (c) Except as herein provided, the power and authority to control and
12 regulate all public utilities and common carriers situated and operated
13 wholly or principally within any city or principally operated for the benefit
14 of such city or its people, shall be vested exclusively in such city, subject
15 only to the right to apply for relief to the corporation commission as
16 provided in K.S.A. 66-133, and amendments thereto, and to the provisions
17 of K.S.A. 66-104e, and amendments thereto. A transit system principally
18 engaged in rendering local transportation service in and between
19 contiguous cities in this and another state by means of street railway,
20 trolley bus and motor bus lines, or any combination thereof, shall be
21 deemed to be a public utility as that term is used in this act and, as such,
22 shall be subject to the jurisdiction of the commission.

23 (d) The term "public utility" shall not include: (1) Any activity of an
24 otherwise jurisdictional corporation, company, individual, association of
25 persons, their trustees, lessees or receivers as to the marketing or sale of
26 compressed natural gas for end use as motor vehicle fuel; *and*
27 (2) *a renewable energy supplier, as defined in section 1, and*
28 *amendments thereto, for the supplier's provision of electricity pursuant to*
29 *section 1, and amendments thereto, to a renewable energy customer, as*
30 *defined in section 1, and amendments thereto.*

31 (e) At the option of an otherwise jurisdictional entity, the term "public
32 utility" shall not include any activity or facility of such entity as to the
33 generation, marketing and sale of electricity generated by an electric
34 generation facility or addition to an electric generation facility which:

35 (1) Is newly constructed and placed in service on or after January 1,
36 2001; and

37 (2) is not in the rate base of: (A) An electric public utility that is
38 subject to rate regulation by the state corporation commission; (B) any
39 cooperative, as defined by K.S.A. 17-4603, and amendments thereto, or
40 any nonstock member-owned cooperative corporation incorporated in this
41 state; or (C) a municipally owned or operated electric utility.

42 (f) Additional generating capacity achieved through efficiency gains
43 by refurbishing or replacing existing equipment at generating facilities

1 placed in service before January 1, 2001, shall not qualify under
2 subsection (e).

3 (g) For purposes of the authority to appropriate property through
4 eminent domain, the term "public utility" shall not include any activity for
5 the siting or placement of wind powered electrical generators or turbines,
6 including the towers.

7 Sec. 3. K.S.A. 66-1,170 is hereby amended to read as follows: 66-
8 1,170. As used in this act:

9 (a) "Distribution line" means an electric line used to furnish retail
10 electric service, including any line from a distribution substation to an
11 electric consuming facility; but such term does not include a transmission
12 facility used for the bulk transfer of energy even if such energy is reduced
13 in voltage and used as station power.

14 (b) "Electric consuming facility" means any entity which utilizes
15 electric energy from a central station service.

16 (c) "Commission" means the state corporation commission of the
17 state of Kansas.

18 (d) "Retail electric supplier" means any person, firm, corporation,
19 municipality, association or cooperative corporation engaged in the
20 furnishing of retail electric service, *but does not include a renewable*
21 *energy supplier, as defined in section 1, and amendments thereto, for the*
22 *supplier's provision of electricity pursuant to section 1, and amendments*
23 *thereto, to a renewable energy customer, as defined in section 1, and*
24 *amendments thereto.*

25 (e) "Certified territory" means an electric service territory certified to
26 a retail electric supplier pursuant to this act.

27 (f) "Existing distribution line" means a distribution line which is in
28 existence on the effective date of this act, and which is being or has been
29 used as such.

30 (g) "Single certified service territory" means that service area in
31 which only one retail electric supplier has been granted a service
32 certificate by the commission.

33 (h) "Dual certified service territory" means that service area where
34 more than one retail electric supplier has been granted a service certificate
35 by the commission.

36 (i) "Station power" means electric energy used for operating
37 equipment necessary for the process of generating electricity at any
38 generating plant owned by a utility or a generating plant specified in
39 ~~subsection (e) of K.S.A. 66-104(e)~~, and amendments thereto, and placed in
40 use on or after January 1, 2002, whether such electrical energy is generated
41 at such generating plant or provided through the adjacent transformation
42 and transmission interconnect, but does not include electric energy used
43 for heating, lighting, air conditioning and office needs of the buildings at a

1 generating plant site.

2 Sec. 4. K.S.A. 66-1,170 and K.S.A. 2016 Supp. 66-104 are hereby
3 repealed.

4 Sec. 5. This act shall take effect and be in force from and after its
5 publication in the statute book.