

STATE OF KANSAS

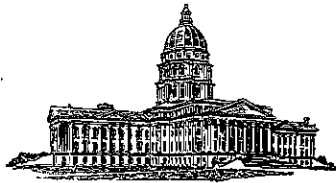
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Testimony on SB 36



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: WATER AND ENVIRONMENT

MEMBER: AGRICULTURE
AGRICULTURE AND NATURAL
RESOURCES BUDGET
ENERGY, UTILITIES &
TELECOMMUNICATIONS

Mr. Chairman, Committee Members: I am neutral on SB 36, but bring to you an issue of increasing importance to many Kansas businesses, electric utilities, and electric vehicle owners.

Currently, only electric utilities may sell electricity within their certificated areas of operation. KCPL asked the Kansas Corporation Commission to permit them to install electric charging stations and include those costs in the general rate base. In other words, the company asked for the authority to charge all electric customers within their service area to pay for electric charging stations on the same basis as they charge for electric generation, transmission, and distribution system costs.

The Corporation Commissioners rejected that application, instead determining that KCPL's shareholders could pay for the installation and the company could charge for the electricity. You may have seen some of KCPL's charging stations in Johnson County or at the Kansas City Airport parking lot (I know, MCI is in Missouri).

A few companies are installing electric charging stations at their expense, but are unable to recover any of the costs from customers because they cannot charge for the electricity. Tesla has a station in Topeka and Hy-Vee has several charging stations in Johnson County. Tesla charges purchasers of their vehicles a fee to help pay for the recharging stations nationwide, but their competitors do not. Hy-Vee's grocery customers subsidize the recharging stations, but that affects the company's competitive position vis-à-vis Price Chopper and other grocery stores. Without being able to charge for the electricity delivered (and for which they must pay), neither Tesla's model nor Hy-Vee's is a long-term sustainable business model.

I introduced HB 2166 in the Energy, Utilities and Telecommunications Committee to permit companies to sell electricity for vehicle charging without being considered a public utility and regulated by the Kansas Corporation Commission. Westar Energy and KCPL electric utilities were neutral on the bill, preferring that they provide the service, but recognizing that they will be paid for all electricity used.

Tesla, Hy-Vee, and the Automobile Manufacturers supported the initiative to make electric vehicle charging stations more available by allowing interested businesses to recover their costs.

The Kansas Corporation Commission staff testified as neutrals on HB 2166 and suggested language that more clearly states that electric utilities and other businesses may provide charging stations as a non-regulated business. The Commission staff's language is what is proposed here.

HB 2166 was heard on the last day Committees could meet, and thus Committee members did not have an opportunity to consider the KCC staff's language. As was stated above, Westar Energy and KCPL electric utilities were neutral on HB 2166 and the KCC staff's language better ensures that utilities and other businesses may, but are not required, to provide charging stations in a manner through which the electric vehicle owners pay for the service, and not other utility or retail customers so not subsidize the service. Accordingly, I believe this proposed amendment is reasonable and responsible.

The number of current manufacturers of electric vehicles includes Tesla, Mercedes Benz, Chevrolet and soon Ford, Volkswagon, and other companies will join the market. Hy-Vee provides charging stations, but soon hotels, amusement parks, employers, and other retail centers will do the same.

The proposed amendment to SB 36 ensures that if a business determines that providing charging stations is in their and their customers' best interests, that the business can recover its investment and the cost of electricity from the electric vehicle owners, not from their other customers.

Thank you for your consideration of this proposed amendment. Because I am no longer a member of the Transportation Committee, I cannot participate in Committee debate. If you have questions after today's hearing, please e-mail, call, or catch me on the House Floor.

Mr. Chairman, I will respond to questions at the appropriate time.

As Amended by Senate Committee

Session of 2017

SENATE BILL No. 36

By Committee on Transportation

1-18

1 AN ACT concerning the state corporation commission; relating to motor
2 carriers, definitions, registration; amending K.S.A. 66-125 and K.S.A.
3 2016 Supp. 8-135, 8-2703, 16-121, 66-1,108, 66-1,108b, 66-1,109 and
4 66-1,139 and repealing the existing sections.

relating to motor
vehicles; vehicle
charging stations;

and 66-1,170

66-104,

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

7 Section 1. K.S.A. 2016 Supp. 8-135 is hereby amended to read as
8 follows: 8-135. (a) Upon the transfer of ownership of any vehicle
9 registered under this act, the registration of the vehicle and the right to use
10 any license plate thereon shall expire and thereafter there shall be no
11 transfer of any registration, and the license plate shall be removed by the
12 owner thereof. Except as provided in K.S.A. 8-172, and amendments
13 thereto, and 8-1,147, and amendments thereto, it shall be unlawful for any
14 person, other than the person to whom the license plate was originally
15 issued, to have possession thereof. When the ownership of a registered
16 vehicle is transferred, the original owner of the license plate may register
17 another vehicle under the same number, upon application and payment of a
18 fee of \$1.50, if such other vehicle does not require a higher license fee. If a
19 higher license fee is required, then the transfer may be made upon the
20 payment of the transfer fee of \$1.50 and the difference between the fee
21 originally paid and that due for the new vehicle.

22 (b) Subject to the provisions of subsection (a) of K.S.A. 8-198(a), and
23 amendments thereto, upon the transfer or sale of any vehicle by any person
24 or dealer, or upon any transfer in accordance with K.S.A. 59-3511, and
25 amendments thereto, the new owner thereof, within 60 days, inclusive of
26 weekends and holidays, from date of such transfer shall make application
27 to the division for registration or reregistration of the vehicle, but no
28 person shall operate the vehicle on any highway in this state during the
29 sixty-day period without having applied for and obtained temporary
30 registration from the county treasurer or from a dealer. After the expiration
31 of the sixty-day period, it shall be unlawful for the owner or any other
32 person to operate such vehicle upon the highways of this state unless the
33 vehicle has been registered as provided in this act. For failure to make
34 application for registration as provided in this section, a penalty of \$2 shall
35 be added to other fees. When a person has a current motorcycle or
36 passenger vehicle registration and license plate, including any registration

1 another contractor with respect to strict liability under environmental laws;
2 (3) an indemnification agreement that is an integral part of an offer to
3 compromise or a settlement of a disputed claim, if:

- 4 (A) The settlement is based on consideration;
- 5 (B) the dispute relates to an alleged event that is related to a
6 construction contract and that occurred before the settlement is made; and
- 7 (C) the indemnification relates only to claims that have arisen or may
8 arise from the past event;
- 9 (4) the validity of any insurance contract, construction bond or other
10 agreement lawfully issued by an insurer or bonding company;
- 11 (5) a separately negotiated provision or provisions whereby the
12 parties mutually agree to a reasonable allocation of risk, if each such
13 provision is:

- 14 (A) Based on generally accepted industry loss experience; and
- 15 (B) supported by adequate consideration; and
- 16 (6) an agreement that provides for indemnity if the parties agree in
17 writing that the indemnity obligation will be supported by liability
18 insurance coverage to be furnished by the promisor subject to the
19 following limitations:

20 (A) With respect to a mutual indemnity obligation, the indemnity
21 obligation is limited to the extent of the coverage and dollar limits of
22 insurance or qualified self-insurance each party as promisor has agreed to
23 obtain for the benefit of the other party as promisee.

24 (B) With respect to a unilateral indemnity obligation, the indemnity
25 obligation is limited to the extent of the coverage and dollar limits of
26 insurance the promisor has agreed to obtain for the benefit of the other
27 party as promisee. Such indemnity obligation shall be at the promisee's
28 expense and shall be a separate liability insurance policy.

29 (e) Notwithstanding any contractual provision to the contrary, the
30 laws of the state of Kansas shall apply to and govern every contract to be
31 performed in this state. Any litigation, arbitration or other dispute
32 resolution proceeding arising from such contract shall be conducted in this
33 state. Any provision, covenant or clause in such contract that conflicts with
34 the provisions of this subsection shall be void and unenforceable.

35 (f) This section applies only to indemnification provisions and
36 ~~additional insured provisions entered into after January 1, 2009.~~

37 Sec. 4. K.S.A. 66-125 is hereby amended to read as follows: 66-125.

38 (a) Any investor-owned electric public utility incorporated in the state of
39 Kansas may issue stocks, certificates, bonds, notes or other evidences of
40 indebtedness, payable at periods of more than 12 months after the date
41 thereof, when necessary for the acquisition of property, for the purpose of
42 carrying out its corporate powers, the construction, completion, extension
43 or improvements of its facilities, for the improvements or maintenance of

Insert Attachment A
Renumber sections accordingly

1 accordance with the provisions of K.S.A. 75-4215, and amendments
2 thereto. Upon receipt of each such remittance, the state treasurer shall
3 deposit the entire amount in the state treasury to the credit of the motor
4 carrier license fees fund.

5 Sec. 9. ~~K.S.A. 66-125~~ and K.S.A. 2016 Supp. 8-135, 8-2703, 16-121,
6 66-1,108, 66-1,108b, 66-1,109 and 66-1,139 are hereby repealed.

7 Sec. 10. This act shall take effect and be in force from and after its
8 publication in the statute book.

Insert Attachment B
Renumber sections accordingly

and 66-1,170

66-104,

Attachment A

Sec. 4. K.S.A. 2016 Supp. 66-104 is hereby amended to read as follows: 66-104. (a) The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

(b) The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located in an area outside of and more than three miles from the corporate limits of such municipality, but regulation of the rates, charges and terms and conditions of service of such utility within such area shall be subject to commission regulation only as provided in K.S.A. 2016 Supp. 66-104f, and amendments thereto. Nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof ~~except as provided in K.S.A. 66-131a, and amendments thereto.~~

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

(d) The term "public utility" shall not include any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas or electricity for end use as motor vehicle fuel.

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

- (1) Is newly constructed and placed in service on or after January 1, 2001; and
- (2) is not in the rate base of: (A) An electric public utility that is subject to rate regulation by the state corporation commission; (B) any cooperative, as defined by K.S.A. 17-4603, and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state; or (C) a municipally owned or operated electric utility.

(f) Additional generating capacity achieved through efficiency gains by refurbishing or replacing existing equipment at generating facilities placed in service before January 1, 2001, shall not qualify under subsection (e).

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

Attachment B

Sec. 10. K.S.A. 66-1,170 is hereby amended to read as follows: 66-1,170. As used in this act:

- (a) "Distribution line" means an electric line used to furnish retail electric service, including any line from a distribution substation to an electric consuming facility; but such term does not include a transmission facility used for the bulk transfer of energy even if such energy is reduced in voltage and used as station power.
- (b) "Electric consuming facility" means any entity which utilizes electric energy from a central station service.
- (c) "Commission" means the state corporation commission of the state of Kansas.
- (d) "Retail electric supplier" means any person, firm, corporation, municipality, association or cooperative corporation engaged in the furnishing of retail electric service, except that the provision of electric vehicle charging services at one or more vehicle charging stations by any person, firm, corporation, municipality, association or cooperative shall not constitute the furnishing of retail electric service.
- (e) "Certified territory" means an electric service territory certified to a retail electric supplier pursuant to this act.
- (f) "Existing distribution line" means a distribution line which is in existence on the effective date of this act, and which is being or has been used as such.
- (g) "Single certified service territory" means that service area in which only one retail electric supplier has been granted a service certificate by the commission.
- (h) "Dual certified service territory" means that service area where more than one retail electric supplier has been granted a service certificate by the commission.
- (i) "Station power" means electric energy used for operating equipment necessary for the process of generating electricity at any generating plant owned by a utility or a generating plant specified in ~~subsection (e)~~ of K.S.A. 66-104(e), and amendments thereto, and placed in use on or after January 1, 2002, whether such electrical energy is generated at such generating plant or provided through the adjacent transformation and transmission interconnect, but does not include electric energy used for heating, lighting, air conditioning and office needs of the buildings at a generating plant site.