

SENATE BILL No. 457

By Committee on Assessment and Taxation

3-27

1 AN ACT concerning utilities; relating to the state corporation commission;
2 ratemaking, hearings; amending K.S.A. 66-117 and repealing the
3 existing section.
4

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

6 New Section 1. In all regulatory proceedings before the state
7 corporation commission concerning the regulation of electric public
8 utilities or natural gas public utilities, these terms shall have the following
9 meanings:

10 (a) "Class cost of service" means the cost that a utility incurs in
11 providing service to a customer or group of customers, only to include
12 actual costs that are incurred.

13 (b) "Commercial customer" means a larger, non-residential customer
14 whose principle use of electricity or natural gas is for space heating,
15 refrigeration or other HVAC purposes.

16 (c) "Fixed costs" means costs that do not vary directly with usage.
17 "Fixed costs" include costs that are associated with electric generating
18 facilities and natural gas distribution systems.

19 (d) "Industrial customer" means a larger, non-residential customer
20 whose principle use of electricity or natural gas is for motors, direct inputs
21 to the production process itself or some HVAC purposes that are primarily
22 in the production process.

23 (e) "Load factor" means an index of the average use load of
24 electricity or natural gas compared to the peak usage of such electricity or
25 natural gas.

26 (f) "Variable costs" mean costs that vary directly with usage such as
27 kilowatt hours or electric charges or the quantities of natural gas that are
28 used by a customer or group of customers.

29 Sec. 2. K.S.A. 66-117 is hereby amended to read as follows: 66-117.

30 (a) Unless the state corporation commission otherwise orders, no common
31 carrier or public utility over which the commission has control shall make
32 effective any changed rate, joint rate, toll, charge or classification or
33 schedule of charges, or any rule or regulation or practice pertaining to the
34 service or rates of such public utility or common carrier except by filing
35 the same with the commission at least 30 days prior to the proposed
36 effective date. The commission, for good cause, may allow such changed

1 rate, joint rate, toll, charge or classification or schedule of charges, or rule
2 or regulation or practice pertaining to the service or rates of any such
3 public utility or common carrier to become effective on less than 30 days'
4 notice. If the commission allows a change to become effective on less than
5 30 days' notice, the effective date of the allowed change shall be the date
6 established in the commission order approving such change, or the date of
7 the order if no effective date is otherwise established. Any such proposed
8 change shall be shown by filing with the state corporation commission a
9 schedule showing the changes, and such changes shall be plainly indicated
10 by proper reference marks in amendments or supplements to existing
11 tariffs, schedules or classifications, or in new issues thereof.

12 (b) Whenever any common carrier or public utility governed by the
13 provisions of this act files with the state corporation commission a
14 schedule showing the changes desired to be made and put in force by such
15 public utility or common carrier, the commission either upon complaint or
16 upon its own motion, may give notice and hold a hearing upon such
17 proposed changes. Pending such hearing, the commission may suspend the
18 operation of such schedule and defer the effective date of such change in
19 rate, joint rate, toll, charge or classification or schedule of charges, or any
20 rule or regulation or practice pertaining to the service or rates of any such
21 public utility or common carrier by delivering to such public utility or
22 common carrier a statement in writing of its reasons for such suspension.

23 (c) The commission shall not delay the effective date of the proposed
24 change in rate, joint rate, toll, charge or classification or schedule of
25 charges, or in any rule or regulation or practice pertaining to the service or
26 rates of any such public utility or common carrier, more than 240 days
27 beyond the date the public utility or common carrier filed its application
28 requesting the proposed change. If the commission does not suspend the
29 proposed schedule within 30 days of the date the same is filed by the
30 public utility or common carrier, such proposed schedule shall be deemed
31 approved by the commission and shall take effect on the proposed
32 effective date. If the commission has not issued a final order on the
33 proposed change in any rate, joint rate, toll, charge or classification or
34 schedule of charges, or any rule or regulation or practice pertaining to the
35 service or rates of any such public utility or common carrier, within 240
36 days after the carrier or utility files its application requesting the proposed
37 change, then the schedule shall be deemed approved by the commission
38 and the proposed change shall be effective immediately, except that: (1)
39 For purposes of the foregoing provisions regarding the period of time
40 within which the commission shall act on an application, any amendment
41 to an application for a proposed change in any rate, which increases the
42 amount sought by the public utility or common carrier or substantially
43 alters the facts used as a basis for such requested change of rate, shall, at

1 the option of the commission, be deemed a new application and the 240-
2 day period shall begin again from the date of the filing of the amendment;,
3 (2) if hearings are in process before the commission on a proposed change
4 requested by the public utility or common carrier on the last day of such
5 240-day period, such period shall be extended to the end of such hearings
6 plus 20 days to allow the commission to prepare and issue its final order;,
7 and; (3) nothing in this subsection shall preclude the public utility or
8 common carrier and the commission from agreeing to a waiver or an
9 extension of the 240-day period.

10 (d) Except as provided in subsection (c), no change shall be made in
11 any rate, toll, charge, classification or schedule of charges or joint rates, or
12 in any rule or regulation or practice pertaining to the service or rates of any
13 such public utility or common carrier, without the consent of the
14 commission. Within 30 days after such changes have been authorized by
15 the state corporation commission or become effective as provided in
16 subsection (c), copies of all tariffs, schedules and classifications, and all
17 rules and regulations, except those determined to be confidential under
18 rules and regulations adopted by the commission, shall be filed in every
19 station, office or depot of every such public utility and every common
20 carrier in this state, for public inspection.

21 (e) Upon a showing by a public utility before the state corporation
22 commission at a public hearing and a finding by the commission that such
23 utility has invested in projects or systems that can be reasonably expected
24 to: (1) ~~To~~ Produce energy from a renewable resource other than nuclear for
25 the use of its customers; (2) ~~to~~ cause the conservation of energy used by
26 its customers; or (3) ~~to~~ bring about the more efficient use of energy by its
27 customers, the commission may allow a return on such investment equal to
28 an increment of from $\frac{1}{2}\%$ to 2% plus an amount equal to the rate of return
29 fixed for the utility's other investment in property found by the
30 commission to be used or required to be used in its services to the public.
31 The commission may also allow such higher rate of return on investments
32 by a public utility in experimental projects, such as load management
33 devices, which it determines after public hearing to be reasonably designed
34 to cause more efficient utilization of energy and in energy conservation
35 programs or measures which it determines after public hearing provides a
36 reduction in energy usage by its customers in a cost-effective manner.

37 (f) Whenever, after the effective date of this act, an electric public
38 utility, a natural gas public utility or a combination thereof, files tariffs
39 reflecting a surcharge on the utility's bills for utility service designed to
40 collect the annual increase in expense charged on its books and records for
41 ad valorem taxes, such utility shall report annually to the state corporation
42 commission the changes in expense charged for ad valorem taxes. For
43 purposes of this section, such amounts charged to expense on the books

1 and records of the utility may be estimated once the total property tax
2 payment is known. If found necessary by the commission or the utility, the
3 utility shall file tariffs which reflect the change as a revision to the
4 surcharge. Upon a showing that the surcharge is applied to bills in a
5 reasonable manner and is calculated to substantially collect the increase in
6 ad valorem tax expense charged on the books and records of the utility, or
7 reduce any existing surcharge based upon a decrease in ad valorem tax
8 expense incurred on the books and records of the utility, the commission
9 shall approve such tariffs within 30 days of the filing. Any over or under
10 collection of the actual ad valorem tax increase charged to expense on the
11 books of the utility shall be either credited or collected through the
12 surcharge in subsequent periods. The establishment of a surcharge under
13 this section shall not be deemed to be a rate increase for purposes of this
14 act. The net effect of any surcharges established under this section shall be
15 included by the commission in the establishment of base rates in any
16 subsequent rate case filed by the utility.

17 (g) *For the purpose of establishing rates, the state corporation*
18 *commission shall group customers into classes based on similar load and*
19 *usage characteristics. The establishing of class rates, commonly referred*
20 *to as the function or issue of rate design, shall be a quasi-judicial function*
21 *and subject to any judicial review on that basis and using the associated*
22 *standard of review. All courts of this state shall require the state*
23 *corporation commission to support all portions of each of the*
24 *commission's decisions with substantial and competent evidence and shall*
25 *not review rate design decisions of the state corporation commission as*
26 *though they were acts of this legislature.*

27 (h) *The state corporation commission shall not grant any preference*
28 *to or discriminate against any customer or group of customers by*
29 *increasing such customer or group of customers' rate in excess of their*
30 *embedded cost of service. A preferential rate shall include any rate that*
31 *does not recover that group of customers' embedded cost of service. The*
32 *commission shall employ a methodology that is based on each customer*
33 *classes' use of the utility's electric generating facilities or natural gas*
34 *distribution resources at the utility's peak load.*

35 (i) *For any electric rates that are established for commercial and*
36 *industrial customers by the state corporation commission, the commission*
37 *shall give primary consideration to the respective embedded cost of*
38 *service that the utility incurs to provide service to such customer or group*
39 *of customers. The commission shall not consider vintaged, marginal,*
40 *social or socialized costs. The commission shall also include in the*
41 *commission's decision or order the impact that load factor has on*
42 *decisions respecting the incurrence of cost. In the case of an electric*
43 *public utility, the commission shall not assign, whether in whole or in part,*

1 *the cost of a peaking, intermediate or base load electric generating unit of*
2 *a utility to particular groups of customers based on load factor or any*
3 *other measure of consistency of use, but shall recognize that the*
4 *generating unit is provided by the utility to serve all of such utility's native*
5 *load.*

6 *(j) (1) The state corporation commission shall adhere to a cost*
7 *allocation methodology such that fixed costs are recovered from the*
8 *customer or class of customer causing and having control over those costs*
9 *and allocated only based on system utilization by such customer or class*
10 *of customer measured at the utility's peak load. In the commission's*
11 *decision or order, the commission shall explicitly demonstrate that it has*
12 *complied with this provision. Insofar as variable costs are concerned, such*
13 *cost allocation methodology shall vary directly with electric or gas usage*
14 *as apportioned to customer classes or to individual customers on the basis*
15 *of energy, volumetric or commodity usage. The commission shall not*
16 *include any fixed costs or demand charges in the part of rates that vary*
17 *with usage.*

18 *(2) The state corporation commission shall not establish or apportion*
19 *rates based on what is perceived beneficial social welfare purposes and*
20 *doing so shall be considered as granting a prohibited preference.*

21 *(k) The state corporation commission shall treat all intervening*
22 *customers and groups of intervening customers as parties that are*
23 *equivalent in notice, discovery, hearing and briefing rights to those of the*
24 *commission staff and the citizens' utility ratepayers board. The*
25 *commission shall operate all hearings in a manner that provides adequate*
26 *notice to all parties and the commission shall use standard and judicially*
27 *accepted rules of evidence, including cross-examination of witnesses.*

28 *(l) If the state corporation commission allows a utility to collect*
29 *energy efficiency charges, such charges shall be fully disclosed and*
30 *itemized on utility bills so that each customer can identify specifically the*
31 *cost that such customer is incurring to support such activity on the part of*
32 *the utility.*

33 *(m) Except as to the time limits prescribed in subsection (c),*
34 *proceedings under this section shall be conducted in accordance with the*
35 *provisions of the Kansas administrative procedure act.*

36 Sec. 3. K.S.A. 66-117 is hereby repealed.

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