

HOUSE BILL No. 2679

By Committee on Energy, Utilities and Telecommunications

2-13

1 AN ACT concerning public utilities; relating to the Kansas energy
2 efficiency investments act; demand-side programs; amending K.S.A.
3 66-1283 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 66-1283 is hereby amended to read as follows: 66-
7 1283. (a) As used in this section:

8 (1) "Commission" means the state corporation commission;

9 (2) "demand response" means measures that decrease peak demand or
10 shift demand to off-peak periods of time;

11 (3) "demand-side program" means any program ~~conducted by: (A)~~
12 ~~An electric utility to reduce the net consumption of electricity by a retail~~
13 ~~electric customer; or (B) a natural gas utility to reduce the net consumption~~
14 ~~of natural gas by a retail gas customer or portfolio of programs conducted~~
15 ~~by a public utility to modify the consumption of electricity or natural gas~~
16 ~~on the customer's side of the utility meter. "Demand-side program" may~~
17 ~~include, but shall not be limited to: (A) energy efficiency measures, not to~~
18 ~~include any measures to incent fuel switching for residential heating~~
19 ~~systems; (B) programs, load management; (C), demand response; and (D)~~
20 ~~interruptible or curtailable load; rates;~~

21 (4) "energy efficiency program" means ~~measures that a program or~~
22 ~~portfolio of programs conducted by a public utility to reduce the amount of~~
23 ~~energy required to achieve a given end use on the customer's side of the~~
24 ~~meter while achieving substantially the same level of end-use service; and~~

25 (5) "fuel switching" means changing an existing particular end-use
26 from natural gas to electricity or from electricity to natural gas;

27 (6) "interruptible or curtailable rate" means a tariffed rate under
28 which a customer receives a reduced rate in exchange for agreeing to
29 allow the utility to withdraw the supply of electricity or natural gas under
30 certain specified conditions;

31 (7) "lost margin revenue" means income from retail sales of
32 electricity or natural gas that is not collected by a utility as a direct result
33 of the success of such utility's demand-side program, less any expenses the
34 utility was not required to pay by forgoing the sale of such electricity or
35 natural gas;

36 (5)(8) "public utility" means any public electric or gas utility, as

1 defined in K.S.A. 66-101, and amendments thereto, but does not include a
 2 municipally-owned electric or gas utility or an electric or gas cooperative
 3 that is exempt from commission jurisdiction pursuant to K.S.A. 66-104d,
 4 and amendments thereto; and

5 (9) *"total resource cost test" means a test that compares the sum of*
 6 *avoided utility costs to the sum of all incremental costs of end-use*
 7 *measures that are implemented due to the program, including both utility*
 8 *and participant contributions, plus utility costs to administer, deliver and*
 9 *evaluate each demand-side program.*

10 (b) It is the goal of the state to promote the implementation of ~~cost-~~
 11 ~~effective~~ *effective* demand-side programs in Kansas *to minimize the long*
 12 *term cost of utility service.* It shall be the policy of the state to value
 13 demand-side program investments equal to traditional investments in
 14 supply and delivery infrastructure ~~as much as is practicable, but when~~
 15 ~~evaluated over the long-term planning horizon, but demand-side programs~~
 16 ~~shall not:~~

17 (1) ~~Require public utilities shall not be required to offer, implement or~~
 18 ~~continue demand-side programs;~~

19 (2) *result in fuel switching; or*

20 (3) *restrict fuel choice for new construction residential heating end-*
 21 *uses.*

22 (c) (1) (A) *Upon a finding that a submission for any demand-side*
 23 *program was consistent with this section, the commission shall permit*
 24 *public utilities to implement ~~commission-approved~~ such demand-side*
 25 ~~programs~~ *program and to recover the associated costs through cost*
 26 *recovery mechanisms submitted pursuant to this section. The commission*
 27 *shall issue an order on any demand-side program plan, associated costs*
 28 *and cost-recovery mechanisms within ~~180~~ 120 days after submission to the*
 29 *commission. The commission may extend the approval period to ~~240~~ 180*
 30 *days for good cause. Consistent with K.S.A. 66-117(e), and amendments*
 31 ~~thereto,~~ *If the commission fails to issue a final order on such program*
 32 *plan, associated costs and cost-recovery mechanism within ~~180~~ 120 days,*
 33 *or ~~240~~ 180 days if the approval period was extended by the commission*
 34 *for good cause, such program plan, associated costs and cost-recovery*
 35 *mechanism shall be deemed approved by the commission and shall take*
 36 *effect on the proposed effective date contained in such plan.*

37 (B) *Pursuant to the requirements of this section, the public utility and*
 38 *the commission shall both have the independent authority to accept or*
 39 *reject any proposed establishment, continuation or modification of a*
 40 *demand-side program, ~~portfolio of programs~~ or associated cost-recovery or*
 41 *incentive mechanisms, but no such establishment, continuation or*
 42 *modification of such ~~programs~~ program or mechanisms shall take effect*
 43 *without the approval of both the utility and the commission. If the public*

1 utility rejects modifications to a demand-side program or portfolio of
 2 programs approved by the commission, including modifications to the
 3 cost-recovery mechanism, the public utility shall not be required to
 4 implement the program or mechanism.

5 ~~(C) Upon final ruling of the commission order, The public utility has~~
 6 ~~shall have~~ the right to reconsider and may ~~withdraw its plan during the~~
 7 ~~reconsideration period, which elect not to implement the program and~~
 8 ~~cost-recovery mechanisms approved by the commission order. The~~
 9 ~~reconsideration period~~ shall not exceed 30 calendar days from the date the
 10 final order was issued. Pursuant to K.S.A. 77-613, and amendments
 11 thereto, the time period for filing a petition for judicial review shall not
 12 begin until the completion of any such reconsideration period.

13 ~~(D) (1) In making its decision deciding whether or not to approve the~~
 14 ~~a proposed program, the commission shall determine the appropriate test~~
 15 ~~for evaluating the cost-effectiveness of the demand-side program, the~~
 16 ~~commission shall:~~

17 ~~(A) Consider the entire portfolio of programs and may consider~~
 18 ~~multiple cost-effectiveness tests in evaluating the cost-effectiveness of such~~
 19 ~~demand-side program;~~

20 ~~(B) give primary consideration to the total resource cost test, but~~
 21 ~~shall not reject a demand-side program solely based on the results of a~~
 22 ~~single resource cost test. If a demand-side program passes the total~~
 23 ~~resource cost test with a benefit to cost ratio greater than or equal to a~~
 24 ~~one-to-one ratio, such program shall be found to be just and reasonable~~
 25 ~~and shall be approved; and~~

26 ~~(C) evaluate future investments in demand-side programs without~~
 27 ~~using previous public utility sunk costs.~~

28 ~~(2) Programs targeted to low-income customers or general education~~
 29 ~~campaigns do not need to meet a any cost-effectiveness test, so long as the~~
 30 ~~commission determines that the program or campaign is in the public~~
 31 ~~interest and is supported by a reasonable budget in the context of the~~
 32 ~~overall budget.~~

33 ~~(2)(3) The commission shall allow recovery of the reasonable and~~
 34 ~~prudent costs associated with delivering—commission-approved any~~
 35 ~~demand-side programs program implemented pursuant to this section, so~~
 36 ~~long as the program:~~

37 ~~(A) (i) Results in Reduces retail energy consumption; or (ii) reduces~~
 38 ~~the peak demand savings; and (B) is; or (iii) shifts demand to off-peak~~
 39 ~~periods; and~~

40 ~~(B) does not result in fuel switching; and~~

41 ~~(C) is beneficial to customers in the customer class for which the~~
 42 ~~programs were implemented, whether or not the program is utilized by all~~
 43 ~~customers in such class.~~

1 (4) The fact that a ~~commission-approved~~ program implemented
 2 pursuant to this section proves not to be cost-effective is not by itself
 3 sufficient grounds for disallowing cost recovery. Programs determined
 4 during subsequent review to ~~not be non-cost-effective~~ cost-effective, other
 5 than programs targeted to low-income customers or general education
 6 campaigns, shall be modified to address deficiencies or terminated
 7 following such determination.

8 (d) (1) ~~To comply with this section, The commission may allow shall~~
 9 ~~approve implementation of~~ cost recovery mechanisms ~~that by public~~
 10 ~~utilities upon a finding that such mechanisms~~ further encourage
 11 investments in demand-side programs. Such cost recovery mechanisms
 12 may include, but shall not be limited to: (A) Capitalization of investments
 13 in and expenditures for demand-side programs; (B) recovery of lost
 14 revenue associated with demand-side programs; (C) decoupling; (D) rate
 15 design modifications; (E) accelerated depreciation on demand-side
 16 investments; and (F) allowing the public utility to retain a portion of the
 17 net benefits of a demand-side program for its shareholders shall:

18 (A) Provide timely cost recovery of investments and expenditures for
 19 demand-side programs that may include: (i) Direct contemporaneous
 20 recovery as costs are incurred; (ii) mechanisms that project such costs
 21 with a later true-up to actual costs; or (iii) capitalization of investment
 22 and expenditures for demand-side programs recovered by the utility
 23 through amortization;

24 (B) ensure the recovery of the lost margin revenue, unless the utility's
 25 prior general rate case proceeding provided for lost margin revenue
 26 recovery of demand-side programs through: (i) Comprehensive utility
 27 decoupling mechanisms consistent with best utility practices; or (ii) rate
 28 design modifications; and

29 (C) provide timely earnings opportunities for public utilities
 30 associated with cost-effective, measurable and verifiable demand-side
 31 program savings that: (i) Allow the public utility to retain a portion of the
 32 net benefits of such demand-side programs; (ii) achieve targets through
 33 energy savings-based or demand-savings-based incentives; and (iii)
 34 provide rate-of-return incentives on investments and expenditures for such
 35 programs.

36 (2) In determining rates for electricity as part of a demand-side
 37 program, the commission shall fairly apportion the costs and benefits of
 38 such programs to each customer class.

39 ~~(e) To achieve the goals of this act, (3) (A) The commission shall:~~
 40 ~~(1) Provide timely cost recovery for electric public utilities;~~

41 ~~(2) ensure that the financial incentives for an electric public utility~~
 42 ~~are aligned with helping such utility's customers use energy more~~
 43 ~~efficiently and in a manner that sustains or enhances such customers'~~

1 incentives to use energy more efficiently;

2 ~~(3) provide timely earnings opportunities for public utilities~~
 3 ~~associated with cost-effective, measurable and verifiable demand-side~~
 4 ~~program savings;~~

5 ~~(4) provide oversight and approval for utility-specific settlements~~
 6 ~~and tariff provisions; and~~

7 ~~(5) provide ensure independent-evaluation evaluations of demand-~~
 8 ~~side programs, as deemed necessary by the commission are conducted.~~

9 *(B) Such evaluations shall be conducted by a third-party vendor*
 10 *selected by the public utility and approved by the commission. Such*
 11 *evaluations shall include: (i) Peak demand and energy savings and the*
 12 *techniques used to estimate such savings; (ii) the estimated cost-*
 13 *effectiveness of the demand-side programs; (iii) any adjustment to the*
 14 *presumed net to gross ratio of 1.0 that reflects any savings that are*
 15 *attributable to the demand-side programs; and (iv) the net benefits of the*
 16 *demand-side programs.*

17 ~~(f) On or before May 31 of each year, Each public utility shall submit~~
 18 ~~an annual report to the commission describing the results of such demand-~~
 19 ~~side programs for the previous calendar year program year within five~~
 20 ~~months of the program year's end. The report shall include:~~

21 (1) Program expenditures, including incentive payments;

22 (2) *estimated peak demand and energy savings impacts and the*
 23 *techniques used to estimate such impacts;*

24 ~~(3) avoided costs and the techniques used to estimate such costs;~~

25 ~~(4) the estimated cost-effectiveness of the demand-side programs;~~

26 ~~(5) the net economic benefits of the demand-side programs; and~~

27 ~~(6)(3) a comparison of the commission authorized program budget to~~
 28 ~~actual costs.~~

29 (g) The commission may adopt rules and regulations for the
 30 administration of this ~~act~~ section.

31 (h) *This section shall govern demand-side programs for public*
 32 *utilities and shall control to the extent it conflicts with any other provision*
 33 *of law or rule or regulation.*

34 (i) This section shall be known and may be cited as the Kansas
 35 energy efficiency investment act.

36 Sec. 2. K.S.A. 66-1283 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its
 38 publication in the statute book.