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## Utilities and Energy

### M-3 Electric Utility Regulation and Ratemaking

#### Overview of Electric Utility Structure in Kansas

Three types of electric utilities exist in Kansas: investor-owned, cooperative, and municipal. Investor-owned utilities (IOUs) are those in which shareholders provide the capital for operation and maintenance of electric service. Westar Energy, Kansas City Power & Light (KCP&L), and Empire District Electric are the three IOUs in Kansas. (Note: The Kansas Corporation Commission (KCC) approved a merger of Westar Energy and Great Plains Energy, Inc. (parent company of KCP&L) on May 24, 2018, creating a new company called Eergy Energy, Inc. For the purposes of this article, the companies will be referenced as Westar and KCP&L.) Cooperatives generally exist in rural areas where the customers own the company that provides their electric service. There are 32 cooperatives currently operating in Kansas. Finally, 118 municipalities provide electric service for their citizens.

The following electric companies are regulated by the KCC: KCP&L, Westar, Empire District Electric, and Southern Pioneer. Cooperatives and municipalities are outside of the KCC jurisdiction pursuant to KSA 66-104b and KSA 66-104f, respectively, though KCC may have jurisdiction over these entities in certain limited circumstances.

Electric utilities under the jurisdiction of the KCC must receive KCC approval to change their rates or terms of service. The KCC's role, according to KSA 66-101 *et seq.*, is to establish rates that are just and reasonable while ensuring efficient and sufficient service from the utility. In addition to setting rates, the KCC has the authority to regulate:

- Structure of the retail market for sales of electricity;
- Permitting and siting of transmission and generation;
- Transmission of bundled retail electricity (service in which all aspects of energy production, *i.e.*, generation, transmission, and distribution, are provided by one entity);
- Mergers and acquisition activity; and
- Other various public policies relating to regulated entities.

## Ratemaking

In determining an appropriate rate for a regulated electric utility, the KCC must first determine the utility's annual revenue requirement considering five factors:

- The cost of capital invested in assets (also called a rate of return) that reflects the actual cost of debt and a reasonable return or profit the utility has an opportunity to earn on shareholders' equity;
- The total investment, or rate base, upon which a return will be earned;
- The accumulated and ongoing depreciation of plant(s) and equipment;
- The company's reasonable and prudent operating expenses; and
- Income taxes.

After determining the revenue requirement, the KCC must design rates that will collect the utility's revenue requirement from the utility's customers in an efficient and equitable manner.

## Process

**Application.** The process of ratemaking begins when the utility files an application to change its rates, including details of the proposal, prepared testimony, and supporting data. In most cases, the KCC is allowed 240 days from the filing date to make its decision. However, the time limit can be waived under certain circumstances.

**Review.** In its review of the application, KCC staff, composed of accountants, economists, financial analysts, and engineers, reviews the utility's books and records. This review can take several months to complete. Staff then provides a non-binding recommendation to the three-member Commission. Interested parties, such as consumer groups or industrial customers, may also file recommendations in the case. The Citizens Utility Ratepayer Board (CURB) is the State-appointed representative of residential and small commercial ratepayers in rate cases before the KCC.

**Public hearing.** A public hearing is not required by law, but it is generally held in significant rate cases. The hearing provides an opportunity for the public to learn more about a utility company's proposal and speak before the KCC to express their views on the case. The public may also submit comments online *via* the KCC's website or in an e-mail or letter during the designated comment period.

**Evidentiary hearing.** The facts of a rate case are presented during a formal evidentiary hearing. Expert witnesses may testify and answer questions based on their written testimony submitted by the utility, KCC staff, CURB, and other parties to the case. The three members of the Commission read the written testimony, review the exhibits, hear the cross-examination, and may ask the witnesses questions as they weigh the evidence in the case.

**Reviewing the record.** Commissioners review the record, the facts of the case, and legal briefs to make their decision. The KCC will authorize rate changes that are just and reasonable and in the public interest. By law, the company must be allowed the opportunity to make enough money to meet reasonable expenses, pay interest on debts, and provide a reasonable return to stockholders.

**Decision.** When a decision is made, the KCC announces it through a written order that is approved in an open business meeting. That order is subject to appellate court review, which may be initiated by any party, with the exception of KCC staff, who has filed a timely request for reconsideration.

Additional information on ratemaking may be found at <http://www.kcc.state.ks.us/electric/how-rates-are-set>.

## Recent Developments in Ratemaking

In the 2018 Legislative Session, the Kansas Senate introduced a concurrent resolution (SCR 1612) urging the KCC to lower electric rates to regionally competitive levels. Proponents of the concurrent resolution stated electric rates in Kansas are much higher than those in surrounding

states. Opponents stated the resolution was unnecessary as rate reductions would be realized through a pending merger of Westar and KCP&L. The resolution passed the Senate Committee of the Whole but died in the House Committee on Energy, Utilities and Telecommunications.

In September 2018, the KCC approved a \$66.0 million rate cut for electric customers of Westar, resulting in a decrease of \$3.80 per month for the average residential customer.

### Additional Regulators of Electricity

In addition to the KCC, several other entities have regulatory power over the generation, transmission, and distribution of electricity in Kansas.

**Kansas Department of Health and Environment (KDHE).** KDHE regulates electric generating units (EGUs) pursuant to KSA 65-3001 *et seq.*, the Kansas Air Quality Act. Specifically, KSA 65-3031 provides the Secretary of Health and Environment, in accordance with the requirements of the Environmental Protection Agency's (EPA's) rule on *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, may develop and submit to the EPA a state plan for compliance with the regulation of carbon dioxide from any affected or existing EGUs. The Secretary may implement such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading, or other alternative implementation measures that the Secretary determines to be in the interest of Kansas.

**Environmental Protection Agency.** Amendments to the federal Clean Air Act in 1970 established comprehensive regulations for stationary sources of air pollutants such as fossil-fuel burning power plants throughout the United States; the EPA began regulating greenhouse gases emitted by power plants in 2011. President Obama proposed the Clean Power Plan (CPP) rule in 2015, which aimed to reduce carbon dioxide emissions from electrical power generation by 32.0 percent by 2030, relative to 2005 levels. On

August 21, 2018, President Trump proposed the Affordable Clean Energy (ACE) rule, which would establish emission guidelines for states to develop plans to address greenhouse gas emissions from existing coal-fired EGUs. If adopted, ACE would replace the CPP. The ACE rule is discussed in article [M-1 Affordable Clean Energy Rule](#) of this Briefing Book.

**Federal Energy Regulatory Commission (FERC).** FERC has jurisdiction over electricity in Kansas as it relates to:

- Wholesale sales of electricity;
- Reliability of large interconnected electrical systems made up of generation and transmission facilities and their control systems, often referred to as the “bulk power system” or electrical grid;
- Transmission of unbundled electricity, which provides for independent accounting for separate operations such as generation, transmission, and distribution;
- Allocation of costs for interstate electric transmission;
- Licensure of non-federal hydroelectric power;
- Capacity requirements for regional transmission organizations;
- Mergers and acquisitions activity; and
- Market manipulation enforcement.

**North American Electric Reliability Corporation (NERC).** The federal Energy Policy Act of 2005 provided for the creation of a federal electric reliability organization to develop mandatory reliability standards for the bulk power system in the United States. In 2007, FERC granted NERC the legal authority to enforce those reliability standards. NERC oversees the nine regional reliability entities that comprise the interconnected power system in the United States, Canada, and Mexico. Other responsibilities of the NERC include assessing adequacy of resources and providing education and training opportunities as part of an accreditation program to ensure power system operators remain qualified and proficient.

**Southwest Power Pool (SPP).** SPP is a regional transmission organization (RTO) mandated by FERC to ensure reliable supplies of power, adequate transmission infrastructure, and a competitive wholesale electricity market. To meet those mandates, SPP oversees the bulk power system and wholesale power market in the central United States on behalf of utilities and transmission companies in 14 states composed of Kansas, Arkansas, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

### **State Legislation Relating to Utility Regulation**

The Kansas Legislature has passed several bills related to the regulation of electric utilities over the years. Examples of such legislation follow.

#### ***HB 2047 (1976)***

With the enactment of the Retail Electric Suppliers Act (RESA) in 1976, the state was divided into electric service territories. RESA provides that “within each such territory, only one retail electric supplier shall provide retail electric service, and any such territory established for a retail electric supplier pursuant to this section shall be certified to such retail electric supplier by the [KCC] and such area shall be provided retail electric service exclusively by such supplier.”

#### ***HB 2263 (2005)***

The 2005 Legislature passed the Kansas Electric Transmission Authority Act, creating the Kansas Electric Transmission Authority (KETA). The purpose of KETA was to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the state’s economy, and facilitate the consumption of Kansas energy through improvements in the state’s electric transmission infrastructure. KETA fulfilled that purpose through building electric transmission facilities or by facilitating the construction, upgrade, and repair of third party transmission facilities. The 2016 Legislature repealed the

statutes authorizing KETA and abolished its funds in SB 318.

#### ***Senate Sub. for HB 2369 (2009)***

The 2009 Legislature passed the Renewable Energy Standards Act (Act) that requires electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The 2015 Legislature amended the Act by making it a voluntary goal for affected utilities to achieve net renewable generation capacity equal to at least 20.0 percent of the utility’s peak demand by the year 2020 rather than a mandatory requirement with the enactment of House Sub. for SB 91.

#### ***HB 2233 (2015)***

The 2015 Legislature passed HB 2233, which established the procedure for developing and submitting a state plan to the EPA to comply with the proposed federal CPP rule. In response to the U.S. Supreme Court’s issuance of a stay on litigation related to the CPP rule on February 9, 2016, the 2016 Legislature suspended all state agency activities, studies, and investigations in furtherance of the preparation of the submission of a final state plan pursuant to the CPP rule in SB 318.

#### ***Sub. for SB 323 (2018)***

The 2018 Legislature amended law related to Kansas municipal energy agencies (MEAs), the oversight of electric cooperatives by KCC, and retail electric suppliers with the enactment of Sub. for SB 323.

**MEAs.** The bill requires MEAs to file for a certificate for transmission rights for any electric facilities used to transmit electricity constructed in the certificated territory of a retail electric supplier. Under continuing law, MEAs are authorized to operate as public utilities without obtaining a certificate of public convenience (certificate requirements described in KSA 66-131). The bill also provides a MEA is allowed to elect to be exempt from the jurisdiction, regulation,

supervision, and control of the KCC by having an election of its voting members, not more often than once every two years, by complying with specified requirements as listed in the bill.

**Oversight of electric cooperatives.** The bill allows the KCC's oversight role of electric cooperatives to be limited as it relates to charges or fees for transmission services that are recovered through an open access transmission tariff of an RTO and that has its rates approved by FERC.

**Retail electric suppliers.** When a municipality proposes to annex land located within the certified territory of a retail electric supplier, the municipality is required to provide notice to the

retail electric supplier no less than 30 days prior to the municipality making a selection for a franchise agreement. When a municipality is making a franchise agreement selection, it is required by continuing law to consider certain factors. The bill adds two factors for a municipality to consider: 1) proposals from any retail electric supplier holding a certificate in the annexed area; and 2) whether the selection is in the public interest as it relates to all the factors considered by the municipality.

For a comprehensive summary of bills related to the regulation of electricity in Kansas, see the memorandum entitled "1998 through 2018 Bills Impacting Energy Production and Transportation of Energy" located on the Kansas Legislative Research Department's website.

For more information, please contact:

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