KLRD

# Kansas Legislator Briefing Book 2021

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## Utilities and Energy

### N-1 Broadband Expansion

The federal government and the state of Kansas have engaged in multiple efforts over the past few decades to determine how to expand broadband access, particularly to rural America. The COVID-19 pandemic spurred the federal government and states to address broadband expansion by increasing funding for grant projects and focusing funds on increasing access to remote learning for children in K-12 schools and students at college universities. The pandemic also increased the need for quality broadband access due to the large shift to telehealth practice during the pandemic. This article provides a summary of some of the recent broadband expansion initiatives at the federal level, initiatives in Kansas, and recent legislative committee work on the topic.

#### Federal Government

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act created several funding sources for broadband expansion. The Distance Learning, Telemedicine, and Broadband Program, to be administered by the Rural Utilities Service within the U.S. Department of Agriculture, was created to respond to the coronavirus pandemic (COVID-19) domestically and internationally for telemedicine and distance learning services in rural areas. The Program was allocated $25.0 million for grant awards. States, local government entities, federally-recognized tribes, nonprofits, and for-profit businesses can apply. The grant funds may be used for acquisition of eligible capital assets, such as broadband facilities; audio, video, and interactive video equipment; computer hardware, network components, and software; and inside wiring and similar infrastructure that further distance learning and telemedicine services.

Section 20004 of the CARES Act allows for short-term agreements or contracts with telecommunications providers to expand telemental health services for isolated veterans during the public health emergency. This provision allows the Secretary of Veterans Affairs (Veterans Secretary) to enter into short-term agreements or contracts with telecommunications companies to provide temporary, complimentary or subsidized, fixed, and mobile broadband services for the purposes of providing expanded mental health services to isolated veterans through telehealth or

Veterans Affairs Video Connect during a public health emergency. This provision prioritizes veterans who live in unserved and underserved areas, veterans that reside in rural and highly rural areas, low-income veterans, and any other veterans that the Veterans Secretary considers to be a higher risk for suicide and mental health concerns during isolation periods due to a public health emergency.

## Kansas

### *2020 Legislation*

House Sub. for SB 173 authorizes and directs the Secretary of Transportation (Transportation Secretary) to initiate a program called the Eisenhower Legacy Transportation Program (Program). The Program provides for the construction, improvement, reconstruction, and maintenance of the state highway system. As part of preservation plus projects, the bill authorizes adding technology elements in a preservation plus project. This includes laying broadband fiber or the conduit for broadband fiber.

The bill also authorizes the Transportation Secretary, working with the Office of Broadband Development within the Department of Commerce, to make grants for construction projects that expand and improve broadband service in Kansas. The bill requires grants made by the Transportation Secretary to reimburse grant recipients for up to 50 percent of actual construction costs in expanding and improving broadband service.

The bill also establishes the Broadband Infrastructure Construction Grant Fund. This fund is to be used to provide grants for the expansion of broadband service in Kansas. The bill requires $5.0 million from the State Highway Fund be transferred to the Broadband Infrastructure Construction Grant Fund on July 1, 2020, 2021, and 2022. On July 1, 2023, and each July 1 thereafter, through July 1, 2030, the annual required transfer is $10.0 million.

### *SPARK Taskforce*

The CARES Act provided $150.0 billion in direct relief to states from the U.S. Department of the Treasury through the federal Coronavirus Relief Fund (CRF). Kansas was allocated $1.25 billion in CRF moneys. The Strengthening People and Revitalizing Kansas (SPARK) Taskforce is responsible for distributing the CRF moneys in Kansas. CRF moneys must be expended by December 30, 2020.

The SPARK Taskforce recommended, and the State Finance Council approved, the transfer of $50.0 million from the CRF to the Kansas Department of Commerce Office of Broadband Initiatives for Connectivity Emergency Response Grant (CERG) funds. Governor Kelly created the Office of Broadband Initiatives through Executive Order No. 20-67 to oversee the CERG application process and distribute funds. Internet service providers (ISPs), local governments, nonprofits, and other private entities are eligible to apply for the grants.

For purposes of the grant applications, underserved areas are defined as having Internet speeds lower than 25 megabits per second (download) and 3 megabits per second (upload) [25/3 Mbps]. For areas that are considered served with adequate broadband, an entity could submit an application demonstrating a need. Applicants were required to provide a local match. The state share of the proposed project may not exceed $10.0 million. Factors considered when evaluating proposals included level of demonstrated need related to the COVID-19 pandemic, project readiness, broad community support, and geographic dispersion.

The State Finance Council also approved $10.0 million from the CRF to the Department of Commerce for a Provider Partnership Support program that would use existing ISP programs to provide broadband access to low-income households. ISPs would determine household eligibility, which is typically based on qualification for the National School Lunch Program and Supplemental Nutrition Assistance Program (SNAP). In exchange for state funding support in fiscal year (FY) 2020, ISPs would provide continued support using existing funds for 6 to 12 months in FY 2021.

### *Statewide Broadband Expansion Task Force (2018)*

Prior to the COVID-19 pandemic, the Legislature passed Senate Sub. for HB 2701 (2018), which created the Statewide Broadband Expansion Task Force (Task Force).

The Task Force submitted a progress report to the Legislature in January 2019. At the March 28, 2019, meeting, the Task Force established three subcommittees to address the various aspects of its charge. The three subcommittees were Mapping and Funding, Deployment, and Oversight and Projected Timeline. Each subcommittee met twice and prepared a report to the Task Force on its activities and recommendations. The Task Force submitted a final report to the Legislature in January 2020. In its final report, the Task Force recommended to the Legislature, among other things:

- Create a broadband policy statement goal that considers broadband as not only reliable internet access, but as a tool for attracting and promoting economic development, public safety, educational opportunities, health care, and agriculture;
- Establish a goal to ensure every Kansan has access to broadband services, and access should be at a speed of, at a minimum, 25/3 Mbps with scalable technology; and
- Request funding to maintain the current Kansas Broadband Map and request Connected Nation create a broadband availability map that includes projects that have been awarded in Connect America Fund—Phase II, Alternative Connect America Cost Model-Phase I and II, and other grant funding for broadband that has been deployed or is planned for development.

### *Mapping*

On July 31, 2019, Connected Nation, a nonprofit organization that helps address broadband and digital technology gaps, in partnership with the Governor's Office, published a statewide broadband map of wire-line and wireless coverage: [https://connectednation.org/kansas/interactivemap](https://connectednation.org/kansas/interactivemap). The map was funded by a $300,000 grant in 2018 and was created by collecting data in collaboration with Kansas broadband service providers.

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# Utilities and Energy

## N-2 Electric Utility Rates

The Kansas Legislature has sought to address the issue of increasing electricity rates in recent legislative sessions. An overview of measures undertaken by stakeholders and legislative leaders to study and make recommendations on rising electricity costs follows.

### How Electric Utility Rates Are Set

Electric utilities under the jurisdiction of the Kansas Corporation Commission (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 ensure utilities establish rates that are just and reasonable while also ensuring efficient and sufficient service from the utility. 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.

### Legislative Activity Affecting Rates

#### *2015 House Sub. for SB 91*

The 2015 Legislature passed House Sub. for SB 91, providing that after January 1, 2016, a voluntary goal replaces the renewable energy portfolio standard (RPS) that required affected utilities to achieve net renewable generation capacity equal to at least 20 percent of the utility's peak demand by the year 2020. The bill continues all rules and regulations of the KCC in effect on June 30, 2015, that allow a utility to recover costs incurred to meet the RPS. In addition, the KCC is required to allow affected utilities to recover reasonable costs that have been committed to be incurred to comply with the RPS prior to its repeal or incurred as a result of meeting the 20 percent goal.

#### *2018 SCR 1612*

In the 2018 Legislative Session, the 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 Energy (Westar) and Kansas City Power & Light (KCP&L). The resolution passed the Senate Committee of the Whole but died in the House Committee on Energy, Utilities and Telecommunications.

#### *2019 Sub. for SB 69*

In 2019, the Legislature passed Sub. for SB 69. The bill directs the Legislative Coordinating Council (LCC) to authorize a study conducted by one or more independent organizations that have experience evaluating electric utilities. The purpose of the study is to provide information that may assist future legislative and regulatory efforts in developing electric policy that includes regionally competitive rates and reliable electric service. The study also requires input from residential, commercial, and industrial customers, electric utilities, and other stakeholders. The study was conducted in two parts, with the first portion to be completed by January 8, 2020, and the second portion to be completed by July 1, 2020.

#### *2020 Senate Sub. for HB 2585*

The bill exempts certain public utilities subject to rate regulation by the KCC from paying Kansas income tax. The bill also requires a utility that includes expenses related to income taxes as a component of its retail rates to track and defer into a regulatory asset or liability, as appropriate, any overcollection or undercollection of income tax expenses that is a result of any change to a utility's income tax rate by state or federal law. The bill allows certain utilities to apply for adjusted retail rates due to this change in income tax expenses.

The bill also allows the KCC to approve, for a term of up to ten years, contract rates not based on the cost of service to a facility or on the incremental cost to a facility, if certain conditions are met. The bill also authorizes the KCC to approve, for a period of up to five years, discounts from standard rates for electric service for new or expanded facilities of industrial or commercial customers that are not in the business of selling or providing goods or services directly to the general public, if certain requirements are met.

For both contract rates and discounted rates, the bill requires the KCC to approve a mechanism to track the utility's reductions in revenue as a result of the contract rate or discounted rate from the date the rate becomes effective, and requires such reductions in revenue be deferred to a regulatory asset. The balance of the regulatory asset is included in the rate base and revenue requirement of the utility in each of its general rate proceedings, through an amortization of the balance over a reasonable period, until fully collected from the utility's non-contract rates and discount rate customers.

### Other Developments Affecting Rates

#### *Westar/KCP&L Merger*

On May 24, 2018, the KCC approved a settlement agreement giving Westar and Great Plains Energy (the parent company of KCP&L) approval to merge as equals. Under the agreement, the two companies will become wholly owned subsidiaries of a new parent company, Evergy, and serve more than 1.5 million customers in Kansas and Missouri. As the regulator of public utilities in the state, the KCC was charged with determining if the merger is in the public interest. That determination is made largely on the satisfaction of eight merger standards previously established by the KCC. In its review of the standards, the KCC found the merger, as modified by the Settlement Agreement plus one additional condition, was in the public interest. The additional condition requires the companies to develop and submit to the KCC an Integrated Resource Plan (IRP) reporting process within three months of the close of the transaction. The implementation of the IRP will ensure the merger maximizes the use of Kansas energy resources.

### *Westar/KCC Rate Studies*

In order to address the concerns about Westar and KCP&L's rates, the parties to the Settlement Agreement agreed that the utilities and KCC staff would complete separate studies comparing the prices of KCP&L and Westar Energy with other utilities in the region and explain the major differences between surrounding states rates.

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.

In December 2018, the KCC approved a settlement agreement that would cut electric rates for KCP&L customers by $10.7 million dollars annually, as well as provide $36.9 million in bill credits.

## 2019 Sub. for SB 69 Rate Study

### *Part 1*

On July 29, 2019, the LCC approved a bid submitted by the consulting firm London Economics, Inc. (LEI) to conduct Part 1 of the rate study authorized by Sub. for SB 69. This phase of the study addressed the effectiveness of current Kansas ratemaking practices and evaluated options for making retail electricity prices in Kansas regionally competitive.

With respect to the effectiveness of current Kansas ratemaking practices, LEI identified both strengths and areas for improvement, as highlighted below.

#### *Strengths*

- Policies for investor-owned utilities (IOUs) attract adequate capital investments;
- Electric cooperatives and municipal utilities are effective at providing reliable electric services at a reasonable cost; and
- Relative to surrounding states, Kansas does not have an unusual institutional framework nor more burdensome requirements.

#### *Areas for Improvement*

- Residential rates of IOUs are high compared to similarly regulated utilities in regional states;
- Ratepayers continue to pay for utility investments that are underutilized;
- IOU cost recovery through surcharges and riders without a comprehensive ratemaking process is contributing to rising costs to ratepayers; and
- Kansas lacks a mandated IRP process, as found in other states.

With respect to steps that could be taken to make retail electricity prices in Kansas regionally competitive, LEI identified costs and benefits for each option that they evaluated, noting that each option could target different revenue components, such as generation, transmission, or distribution costs. They advised that implementation would depend on numerous factors that would require careful consideration, indicating that further analysis would be necessary to provide estimates of the costs and benefits of each of the options. Ultimately, LEI concluded that there are no simple means of reducing electricity rates, but that Kansas should adopt a multi-faceted approach.

They offered four near-term recommendations, as follows:

- Adopt a state energy plan;
- Create a competitive procurement framework and require regulated utilities to submit integrated resource plans at regular intervals;
- Allow KCC to explore the development of performance-based regulation mechanisms to incentivize efficiency and alignment with customer benefits and state policy objectives; and
- Establish a framework for the retirement and securitization of assets where cost-benefit analysis demonstrates clear benefits to customers.

***Part 2***

The LCC entered into a contract with the infrastructure firm AECOM on January 7, 2020, to provide the Kansas Legislature a report on other consequential issues materially affecting Kansas electricity rates. On July 1, 2020, AECOM submitted both a public and confidential report to the KCC. The public version was heavily redacted due to the confidential information provided by the electric public utilities. Subsequently, the KCC entered an order on July 14, 2020, directing staff and AECOM to identify the basis for each redaction and confirm that the information redacted is confidential. On September 29, 2020, a less- redacted version of the study was filed by AECOM. Both versions, along with Part 1 of the study, may be found at *https://kcc.ks.gov/electric/kansas-electric-rate-study*.

As directed by Sub. for SB 69, Part 2 of the study examined 13 topics, which AECOM divided into 9 categories: Electric Vehicle Charging, Advanced Energy Solutions, Transmission, Rates, Economic Development, Cost Causation, Security, Resource Planning, and Fuels.

AECOM broke down its review and assessment into economics, technology, and electric market areas of focus. Economics review included covered areas of service, electricity rate design, and integrated resource planning. The technology area of focus examined potential benefits of advanced energy solutions, cyber and physical security, and transmission investments. Review of electricity markets analyzed Kansas' regional economy and competitiveness, including regional electricity markets and electric vehicle charging station market trends. Highlights of some key findings are listed below:

*Electric Vehicle Charging*

- Costs of building and operating electric vehicle (EV) charging stations are not being recovered from ratepayers;
- Deregulation of EV charging stations may increase support services; and
- Kansas' current EV charging service rate is competitive with other states.

*Transmission*

- Regional transmission costs do not explain the relatively high electric rates in Kansas as compared to other regional states;
- Benefits of transmission investments include job creation and therefore increased earnings and tax revenue; and
- Localized marginal price has been decreasing, which shows the benefit of a regional electricity market.

*Economic Development*

- Current retail electric rates in Kansas might have a slight impact on Kansas' economic competitiveness as evidenced by some industrial sectors experiencing less growth than in peer states; and
- Although Kansas does offer Economic Development Rates to new and expanding businesses in Kansas, other states also offer such rates at a larger discount and for a longer time period.

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