

# 2018 Kansas Legislative Update

Capital City: Topeka

Primary Election: August 7, 2018 (House and Statewide – first Democratic gubernatorial primary in 20+ years)

General Election: November 6, 2018

Legislature convenes annually the second Monday in January for a 90-day session. Past few years has gone long, but finished up in time this Session. Avoided a much-anticipated summer special session when state Supremes said legislature could deal with school funding shortfall when they come back in January '19.

**Governor:** Dr. Jeff Colyer (R) – previously Lt. Gov. Took office the end of January when Sam Brownback (R), who served nearly two terms, left to accept President Trump’s nomination and eventual Senate confirmation to be U.S. Ambassador of Religious Freedom. Colyer currently running for Governor in a crowded primary, which includes Insurance Commissioner Ken Selzer and Secretary of State Kris Kobach (face of Trump’s now defunct voter fraud panel), plus a couple of teenagers, an “entrepreneurial evangelist” and a retired physician who picked his wife as his running mate. Democratic primary includes Senate Assistant Minority Leader Laura Kelly, former state legislator/farmer/ag secretary Josh Svaty, and Wichita Mayor Carl Brewer.

**Senate** (not up for election this year): 31 R, 9 D

Four-year terms.

Senate President – Susan Wagle (R - Wichita), ALEC board member

Minority Leader – Anthony Hensley (D - Topeka) – longest serving legislator

Major Utility Committee – Senate Utilities Committee (11 members)

Chair – Rob Olson (R - Olathe)

**House:** 85 R and 40 D

Two-year terms.

Speaker – Ron Ryckman (R – Olathe)

Minority Leader – Jim Ward (D – Wichita, was candidate for Gov, dropped out last month).

Major Utility Committees – House Energy, Utilities and Telecomm (19 members -- this used to be two separate committees)

Chair – Joe Seiwert (R – Pretty Prairie)

In 2016, added a Water & Environment committee.

**Regulatory Body:** Kansas Corporation Commission

Three-person commission appointed by the Governor. No more than two can be of the same party as the governor. Confirmed by the Senate.

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Chairwoman Shari Feist-Albrecht appointed in 2014. Second commissioner is former state senator. Third commissioner (oil and gas guy) just appointed by Gov. Colyer and confirmed in May.

Has transmission siting authority.

## Congressional Contests –

1<sup>st</sup> **Roger Marshall**, Great Bend, R - Retired ob/gyn, running for second term; largest district in Kansas. No credible opponents.

2<sup>nd</sup> **Lynn Jenkins**, Topeka, R – CPA, former state treasurer, not seeking re-election. Has resulted in a crowded R primary featuring three sitting state senators; one current and one former House member; and two young military veterans. D candidate is Paul Davis, who nearly unseated Sam Brownback in 2014 Gov race.

3<sup>rd</sup> **Kevin Yoder**, tough race. Three-way primary. Pence campaigned in KC area for him on July 11. Six-way D primary.

4<sup>th</sup> **Ron Estes**, Wichita. Former state treasurer. Opponent is also named Ron Estes. Controversy over how to list on ballot. Two D candidates, James Thompson ran against him last year in special election when sitting Congressman Mike Pompeo was named CIA director.

## LEGISLATION - 2018 SESSION

In the end, there were few utility related bills enacted during the 2018 Legislative session. But that obscures the true nature of this year's session, which was unlike any that Kansas utilities have seen in recent memory. It was a perfect storm of several things garnering lawmakers' attention, including:

- 1) the pending merger between KCP&L and Westar Energy (finalized June 4, 2018 into new holding company Evergy Inc., but two operating companies will retain original names until 2019);
- 2) rate review requests from both companies;
- 3) angst from consumers (especially business and industry) over repeated rate increases;
- 4) federal tax reform and returning money to consumers because of the corporate income tax reduction.
- 5) An election year ...

With the corporate income tax reduction, legislators didn't take long into the 2018 Session to begin calling for utilities to return the windfall to consumers (even though Westar and KCP&L had already begun the process at the Commission to ensure customers would receive the benefits of federal income tax reform). But then, Westar announced a rate case (the last one prior to the expected merger between KCP&L and Westar), and that caught the attention of business and industry in the state. The Kansas Industrial Consumers (KIC) group, which historically had fought rate battles solely within the regulatory arena, launched an all-out assault on Kansas IOUs, creating a website [KansasEnergyProblem.com](http://KansasEnergyProblem.com); creating a strong social media presence; and lobbying legislators that rates

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are too high in Kansas; that it is stunting economic development; and that rates in Kansas are higher than surrounding states.

The utilities pushed back with reasons for the increases over the last decade (environmental upgrades driven by Federal mandates; investment in renewables; investments to strengthen the grid) and emphasized the benefits of the pending merger of KCP&L and Westar, which would stabilize rates. Then, several environmental groups joined forces with KIC to oppose the portion of Westar's rate review that asks for additional charges for distributed generation customers. The group began introducing legislation to roll back the net-metering law of 2014; to change the Kansas Energy Efficiency Investment Act; to address dual regulation of transmission rates; to require the KCC to address "rising rates" by conducting a study to compare Kansas rates to those of surrounding states; to require a study on the benefits of distributed generation; and the Senate adopted a Resolution calling for Regionally Competitive Electric Rates (was never heard on House side).

When the group was unsuccessful getting any legislation moved out of committee, they tried a different tactic through Approps and trying to get an amendment on the budget bill calling for a rate freeze and comparative rate study. Utilities combined to oppose. Circulated a letter to legislators; presented to groups; lots of discussion. Several attempts on House floor, but the motion ultimately failed.

Westar's rate review will be decided by the Commission in late September. KCP&L filed a rate review in July. Opponents will likely continue their efforts next Session to get KCC to study rates (even though as part of the merger settlement, Westar/KCP&L agreed to a rate study).

## ENACTED LEGISLATION

The following utility-related bills were enacted during the 2018 Session of the Kansas Legislature.

### ***SB 279 – Gas Safety and Reliability Surcharge (cost recovery and GSRS)***

The bill allows natural gas public utilities to recover costs for eligible infrastructure system investments; current law allows recovery for eligible infrastructure system replacements. The bill also changes the amount of a GSRS that may be approved by the KCC to an amount that results in GSRS revenues exceeding 20 percent of the utility's base revenue as determined in the most recent general rate proceeding; current law allows GSRS revenues to exceed no more than 10 percent of a utility's base revenue level. In determining a utility's pretax revenue, the KCC considers factors involving eligible infrastructure system investments rather than eligible infrastructure system replacements.

The bill raises the cap on the GSRS monthly charge from \$0.40 to \$0.80 per residential customer over the base rates in effect for the initial filing and each filing thereafter. KCC approval of the GSRS is not binding on any KCC decision in determining rates to be applied to eligible infrastructure system investments or regulatory assets during a subsequent general rate proceeding reviewing the reasonableness and prudence of such costs. If a natural gas public utility is disallowed to recover costs associated with eligible infrastructure system investments previously included in a GSRS, the utility is able to offset its GSRS in the future as necessary. Nothing in the bill is to be construed as limiting the authority of the KCC to review and consider

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the costs of infrastructure system investments or regulatory assets during any general rate proceeding of any natural gas public utility.

## ***SB 323 – Oversight of MEAs and Co-ops; service territory and annexation***

Retail Electric Suppliers - When a city proposes to annex land located within the certified territory of a retail electric supplier, the city is required to provide notice to the retail electric supplier no less than 30 days prior to the city making a selection for a franchise agreement. When a city is making a franchise agreement selection, it is required by continuing law to consider certain factors. The bill adds the following two factors for a city to consider:

Proposals from any retail electric supplier holding a certificate in the annexed area; and

Whether the selection is in the public interest as it relates to all the factors considered by the city.

The city is required to produce a record of its deliberations and findings upon each factor and the basis for its selection. The record shall be available as a public record within ten days after the city makes a selection. Under continuing law, within 30 days after a city makes its selection, any supplier aggrieved may file an appeal in the district court of the county in which the annexed area is located. The bill requires the appeal determine whether the city met the requirements set forth in previously enacted law and the new requirements set forth in the bill, and whether the city's selection is based upon substantial, competent evidence. The appeal shall be docketed as a new civil action and the docket fee collected. The district is allowed to take additional evidence on the factors set forth in continuing law and in the bill. The review of the city's selection shall be limited to the record produced and supplemented by any additional evidence received by the court.

Under continuing law, whenever the service rights of a retail electric supplier are terminated, fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. The bill adds to such compensation an amount equal to 8.5 percent of the gross revenues of total retail sales attributable to new customers in the territory in which service rights have been terminated for a period of ten years following the date of termination of service rights of the retail electric supplier. The payments shall be made in annual installments to the retail electric supplier whose service rights are terminated. Gross revenues shall be determined based on the rates charged and billed at the time each annual payment is made. Such retail electric supplier is required to have the right to review, audit, or cause to be audited the subsequent supplier's financial records with respect to retail electric service in the territory in which service rights have been terminated to determine the amount payable. A retail electric supplier shall be entitled to compensation if a franchise agreement between a city and a retail electric supplier was agreed to but was terminated within ten years after such agreement was effectuated by the parties.

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## In Summary

Although it felt like the Session was dominated by utility issues, for most in the Kansas Statehouse, the main issue was school funding, and continues to be. Although the State began to recover from the “failed Brownback tax experiment” by rolling back the tax cuts of 2012, many believe it will take at least a decade to right the ship. The Supreme Court ruled again that the legislature is not funding schools adequately, so the 2019 legislature will have to find additional money to pump into schools. Those fed up with the endless litigation are mounting an effort to pass a constitutional amendment taking away the Court’s authority to decide school funding. The 2018 election outcome will determine whether Kansas can proceed on this path of recovery or instead revert to gutting transportation and social services if those favoring tax cuts and less gov’t spending ascend to the Governor’s office.