

Distributed Generation: Kansas Supreme Court Addresses Challenge to Rate Design



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The Kansas Supreme Court (“Court”) in an April 3rd Opinion addressed a challenge to a utility rate increase and rate design change. See *In the Matter of the Joint Application of Westar Energy, Inc.*, No. 120,436, 2020 WL 1646814 (Kan. Apr. 3, 2020).

A focus of the decision was its application to distribution generation systems.

A rate increase and design change was proposed by Westar Energy, Inc. and Kansas Gas and Electric Company (“Utilities”) because of declining sales and rising costs. It was stated to have been driven by an alleged inequity between customers who generate their own electricity and those who do not.

The Opinion includes a discussion of how utilities typically charge their customers. They have traditionally recovered the costs of providing electricity by using a two-part rate—a flat rate service charge and a variable charge based on the number of kilowatt hours used in a billing period.

Utilities do not recover all of their fixed costs through the flat service charge. Instead, to incentivize customers to consume energy more efficiently, some of the fixed costs are recovered through a variable rate charge.

This rate structure was the focus of the dispute. The Court highlights the different perspectives stating that:

... interplay between designing a sound economic model of electricity generation and delivery, on the one hand, and promoting a policy of responsible energy production and use, on the other, is at the heart of today’s dispute.

Some of the Utilities’ customers generate their own electricity from a renewable source. As a result, they are stated to pay generally lower variable charges than more dependent customers. They are known as “partial requirements customers” or “residential distributed generation customers” (“DG”). These customers incur lower variable charges. Further, they sometimes generate more electricity than they utilize. This electricity is sold back to the grid. This is stated to result in a variable charge of net-zero.

In this scenario, the Utilities’ fixed costs remain the same. This lower dependence is denominated by the Court as a “free rider” problem. The more dependent customers are stated to incur a larger portion of the fixed costs than the DG customers.

The Utilities applied to the Kansas Corporation Commission (“Commission”) for a rate increase and rate design change. The new rate structure applied only to the DG customers.

From the Utilities’ perspective, “the ongoing viability of their economic model depends on fixing the inequities created by [distributed generation] customers not paying their ‘fair share.’” The challengers’ responded that the original rate structure was designed to incentivize more efficient energy consumption. Thus, “the free rider problem identified by the Utilities is a feature of the system rather than a bug (because lower energy users will necessarily pay a smaller per-unit share of the fixed costs).”

Various parties intervened in the proceeding. Most of the parties reached a settlement. However, some interveners objected. The Commission approved the settlement, and several of the objecting interveners appealed. The intermediate appellate court found in favor of the Utilities.

The Court reviewed two Kansas statutes that were allegedly in conflict—K.S.A. 66-117d and K.S.A. 66-1265(e). K.S.A. 66-117d, enacted in 1980, provides:

“No electric or gas utility providing electrical or gas service in this state shall consider the use of any renewable energy source other than nuclear by a customer as a basis for establishing higher rates or charges for any service or commodity sold to such customer nor shall any such utility subject any customer utilizing any renewable energy source other than nuclear to any other prejudice or disadvantage on account of the use of any such renewable energy source.”

K.S.A. 66-1265(e), enacted more recently, allows utilities to propose different rate structures to distributed generation customers. It provides:

“Each utility shall . . . :

“(e) for any customer-generator which began operating its renewable energy resource under an interconnect agreement with the utility on or after July 1, 2014, have the option to propose, within an appropriate rate proceeding, the application of time-of-use rates, minimum bills or other rate structures that would apply to all such customer-generators prospectively.”

The Utilities argued that “K.S.A. 66-1265(e)’s language permits utilities to charge DG customers a higher price than they charge to non-DG customers.” Because the statutes were in conflict, the Utilities argued that the legislature intended to repeal the older statute, K.S.A. 66-117d, and the more recent statute controlled.

The Court disagreed. It highlighted a number of historical efforts to decrease fossil fuel consumption and focus through a focus on energy conservation. The Carter Administration initiatives addressing energy conservation and renewable energy sources were cited. Also referenced as the enactment of the Public Utilities Regulatory Policies Act of 1978 and the Federal Regulatory Energy Commission’s adoption of regulations that included a pricing antidiscrimination provision.

K.S.A. 66-117d was noted to have been enacted during this period. The Court describes the statute as beneficial both environmentally and economically. The economic benefits were characterized as assisting utilities in achieving load management control. This was stated to be due to the private generation of electricity from renewable sources.

The Court also determined that the two statutes, by their plain language, were not in conflict. K.S.A. 66-117d was deemed to be focused on prohibiting price discrimination. K.S.A. 66-1265(e) addressed rate structure rather than price.

The Court reasoned that utilities could change rate structures without necessarily increasing prices. Thus, the two statutes were found to be in harmony. K.S.A. 66-1265(e) allows utilities to alter the rate structure for DG customers. However, under K.S.A. 66-117d, the utilities must avoid price discrimination. Further, the Court provided examples of how it believed the Utilities could reduce their free rider problem without price discrimination.

The Utilities' proposed rate design was held to have violated K.S.A. 66-117d and the two previously referenced statutes were deemed not in conflict. As a result, the Court reversed the decisions of both the intermediate appellate court and the Commission.

A copy of the Opinion can be downloaded [here](#).