

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 662

By: Marlatt

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6 AS INTRODUCED

7 An Act relating to electric transmission facilities;
8 amending Section 1, Chapter 161, O.S.L. 2005, as last
9 amended by Section 1, Chapter 150, O.S.L. 2008 (17
10 O.S. Supp. 2010, Section 286), which relates to
11 electric utility recovery of transmission upgrades;
12 removing obsolete language; and declaring an
13 emergency.

14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY Section 1, Chapter 161, O.S.L.
16 2005, as last amended by Section 1, Chapter 150, O.S.L. 2008 (17
17 O.S. Supp. 2010, Section 286), is amended to read as follows:

18 Section 286. A. 1. The portion of costs incurred by an
19 electric utility, which is subject to rate regulation by the
20 Corporation Commission, for transmission upgrades approved by a
21 regional transmission organization to which the utility is a member
22 and resulting from an order of a federal regulatory authority having
23 legal jurisdiction over interstate regulation of transmission rates,
24 shall be presumed recoverable by the utility. The presumption
established in this paragraph may be rebutted by evidence that the

1 costs so incurred by the utility for the transmission upgrades
2 exceed the scope of the project authorized by the regional
3 transmission organization or order issued by the federal regulatory
4 authority having jurisdiction over interstate regulation of
5 transmission rates. The Commission shall transmit rules to
6 implement the requirements of this subsection to the Legislature ~~on~~
7 ~~or before April 1, 2006.~~ The rules may authorize an electric
8 utility to periodically adjust its rates to recover all or a portion
9 of the costs so incurred by the utility for the transmission
10 upgrades.

11 2. Reasonable costs incurred by an electric utility for
12 transmission upgrades:

- 13 a. needed to develop wind generation in this state,
- 14 b. approved by the Southwest Power Pool, and
- 15 c. placed into service before December 31, 2013,

16 shall be presumed recoverable through a periodic adjustment in the
17 rates of the utility, provided that the presumption of the recovery
18 of such costs or the recovery of such costs through a periodic
19 adjustment in rates may be rebutted by evidence presented to the
20 Commission. The determination of whether the costs shall be
21 recovered and whether the costs shall be recovered through a
22 periodic adjustment of rates shall be made by the Commission
23 following proper notice and hearing in a cause to be filed by the
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1 electric utility in which it files such information as the
2 Commission may require.

3 B. An electric utility subject to rate regulation by the
4 Corporation Commission may file an application seeking Commission
5 authorization of a plan by the utility to make capital expenditures
6 for equipment or facilities necessary to comply with the federal
7 Clean Air Act (CAA), the Clean Water Act (CWA), the Comprehensive
8 Environmental Response, Compensation, and Liability Act (CERCLA),
9 the Emergency Planning & Community Right-to-Know Act (EPCRA), the
10 Endangered Species Act (ESA), the National Environmental Policy Act
11 (NEPA), the Occupational Safety and Health Act (OSHA), the Oil
12 Pollution Act (OPA), the Pollution Prevention Act (PPA), the
13 Resource Conservation and Recovery Act (RCRA), the Safe Drinking
14 Water Act (SDWA), the Toxic Substances Control Act (TSCA), all as
15 amended, and, as the Commission may deem appropriate, federal,
16 state, local or tribal environmental requirements which apply to
17 generation facilities. If approved by the Commission, after notice
18 and hearing, the equipment or facilities specified in the approved
19 utility plan are conclusively presumed used and useful. The utility
20 may elect to periodically adjust its rates to recover the costs of
21 the expenditures. The utility shall file a request for a review of
22 its rates pursuant to Section 152 of this title no more than twenty-
23 four (24) months after the utility begins recovering the costs
24 through a periodic rate adjustment mechanism and no more than

1 twenty-four (24) months after the utility begins recovering the
2 costs through any subsequent periodic rate adjustment mechanism.
3 Provided further, that a periodic rate adjustment or adjustments are
4 not intended to prevent a utility from seeking cost recovery of
5 capital expenditures as otherwise may be authorized by the
6 Commission. However, the reasonableness of the costs to be
7 recovered by the utility shall be subject to Commission review and
8 approval. The Commission shall promulgate rules to implement the
9 provisions of this subsection, ~~such rules to be transmitted to the~~
10 ~~Legislature on or before April 1, 2007.~~

11 C. 1. An electric utility subject to rate regulation by the
12 Corporation Commission may elect to file an application seeking
13 approval by the Commission to construct a new electric generating
14 facility, to purchase an existing electric generation facility or
15 enter into a long-term contract for purchased power and capacity
16 and/or energy, subject to the provisions of this subsection. If,
17 and to the extent that, the Commission determines there is a need
18 for construction or purchase of the electric generating facility or
19 long-term purchase power contract, the generating facility or
20 contract shall be considered used and useful and its costs shall be
21 subject to cost recovery rules promulgated by the Commission. The
22 Commission shall enter an order on an application filed pursuant to
23 this subsection within two hundred forty (240) days of the filing of
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1 the application, following notice and hearing and after
2 consideration of reasonable alternatives.

3 2. Following receipt of an application filed pursuant to this
4 subsection, the Corporation Commission staff may file a request to
5 assess the specific costs, to be paid by the electric utility and
6 which shall be deemed to be recoverable, for the costs associated
7 with conducting the analysis or investigation of the application
8 including, but not limited to, the cost of acquiring expert
9 witnesses, consultants, and analytical services. The request shall
10 be filed at and heard by the Corporation Commissioners in the docket
11 opened by the electric utility pursuant to this subsection. After
12 notice and hearing, the Commission shall decide the request.

13 3. Additionally, following receipt of an application filed
14 pursuant to this subsection, the Office of the Attorney General may
15 file a request with the Corporation Commission for the assessment of
16 specific costs, to be paid by the electric utility and which shall
17 be deemed to be recoverable, associated with the performance of the
18 Attorney General's duties as provided by law. Those costs may
19 include, but are not limited to, the cost of acquiring expert
20 witnesses, consultants and analytical services. The request shall
21 be filed at and heard by the Corporation Commissioners in the docket
22 opened by the electric utility pursuant to this subsection. After
23 notice and hearing, the Commission shall decide the request.

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1 4. The Commission shall promulgate rules to implement the
2 provisions of this subsection. The rules shall be transmitted to
3 the Legislature on or before April 1, 2006. In promulgating rules
4 to implement the provisions of this subsection, the Commission shall
5 consider, among other things, rules which would:

6 a. permit contemporaneous utility recovery from its
7 customers, the amount necessary to cover the
8 Corporation Commission staff and Attorney General
9 assessments as authorized by this subsection,

10 b. establish how the cost of facilities approved pursuant
11 to this subsection shall be timely reviewed, approved,
12 and recovered or disapproved, and

13 c. establish the information which an electric utility
14 must provide when filing an application pursuant to
15 this subsection.

16 5. The Commission shall also consider rules which may permit an
17 electric utility to begin to recover return on or return of
18 Construction-Work-In-Progress expenses prior to commercial operation
19 of a newly constructed electric generation facility subject to the
20 provisions of this subsection.

21 SECTION 2. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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