

**66-104. Utilities subject to supervision; exceptions.** (a) The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

(b) The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located in an area outside of and more than three miles from the corporate limits of such municipality, but regulation of the rates, charges and terms and conditions of service of such utility within such area shall be subject to commission regulation only as provided in K.S.A. 2016 Supp. 66-104f, and amendments thereto. Nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. 66-131a, and amendments thereto.

(c) Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as provided in K.S.A. 66-133, and amendments thereto, and to the provisions of K.S.A. 66-104e, and amendments thereto. A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolley bus and motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the commission.

(d) The term "public utility" shall not include any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel.

(e) At the option of an otherwise jurisdictional entity, the term "public utility" shall not include any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility which:

(1) Is newly constructed and placed in service on or after January 1, 2001; and

(2) is not in the rate base of: (A) An electric public utility that is subject to rate regulation by the state corporation commission; (B) any cooperative, as defined by K.S.A. 17-4603, and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state; or (C) a municipally owned or operated electric utility.

(f) Additional generating capacity achieved through efficiency gains by refurbishing or replacing existing equipment at generating facilities placed in service before January 1, 2001, shall not qualify under subsection (e).

(g) For purposes of the authority to appropriate property through eminent domain, the term "public utility" shall not include any activity for the siting or placement of wind powered electrical generators or turbines, including the towers.

**History:** L. 1911, ch. 238, § 3; R.S. 1923, 66-104; L. 1949, ch. 335, § 1; L. 1951, ch. 366, § 1; L. 1968, ch. 333, § 6; L. 1974, ch. 262, § 1; L. 1975, ch. 339, § 1; L. 1978, ch. 263, § 2; L. 1992, ch. 69, § 1; L. 1997, ch. 84, § 1; L. 2001, ch. 206, § 1; L. 2005, ch. 72, § 2; L. 2007, ch. 176, § 2; July 1.

**Revisor's Note:**

Section was amended by L. 2007, ch. 112, § 2, but that version was repealed by L. 2007, ch. 176, § 4.