

**Testimony for Hearing on House Bill 2233 Presented to
The House Energy & Environment Committee
By Tom Gross, Bureau of Air
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Good afternoon Chairman and members of the Committee. I am Tom Gross with the Bureau of Air at the Kansas Department of Health and Environment. I appreciate the opportunity to provide comments on House Bill 2233. We oppose the bill as currently written because the bill would cause the Environmental Protection Agency to issue a Federal Implementation Plan (FIP) regarding CO₂ emission reductions and because of the additional impact the bill would have on our development of a state plan. KDHE and KCC have enjoyed a good working relationship and I am aware that KCC is working on proposals that will address some of the concerns I will share with you today. I look forward to working with KCC to resolve issues that impact our respective agencies.

House Bill 2233 amends K.S.A. 65-3031, which was established by House Bill 2636 during the 2014 legislative session in response to the U.S. EPA's proposed carbon dioxide standards for electric generating units under Section 111(d) of the Clean Air Act. EPA's proposed Clean Power Plan would require states to prepare and submit state plans to EPA. States would have one year to prepare the plans with the potential for a one-year extension if certain criteria are met. The Kansas plan would affect 28 existing fossil-fuel-fired power plants identified as being subject to the proposed federal rule. If a state does not submit a plan, the EPA will issue a federal plan (FIP) that will be implemented and enforced by the EPA in that state.

House Bill 2233 places limitations on KDHE when developing a plan for Kansas that would seriously jeopardize our ability to meet the one year timeline in the proposed rule. Section 1, paragraph (c) of the bill directs that KDHE "shall not implement a carbon emission trading mechanism without first obtaining specific statutory authority for the mechanism." This provision would prevent KDHE from implementing any emissions trading mechanism, including trading or sharing between units within a company, trading between companies within the state, as well as interstate trading. This jeopardizes the availability of any kind of emissions trading as a flexibility option, both to KDHE for implementation and to the affected utilities for compliance.

Sections 1, paragraphs (c), (d), and (e) of the bill overlay the Kansas Corporation Commission (KCC) administrative process on KDHE. This process would include a 300-day period for KCC's review of KDHE's draft state plan, a requirement for the KDHE secretary to issue an order adopting KCC's order of recommendations, and a final approval decision by the KCC before KDHE would be allowed to submit the state plan to the EPA. This will slow the development and implementation of a 111(d) state plan for Kansas and will prevent us from meeting the one-year deadline for submittal to the EPA. Missing the submittal deadline will result in a federal plan being issued in place of a state plan with the EPA having sole authority over implementation and enforcement of the Clean Power Plan in Kansas. In addition, this bill would give the KCC expanded jurisdiction over several electrical generating companies that it does not currently or traditionally have jurisdiction over in the rate setting process.

In conclusion, House Bill 2233 will impose additional burdensome steps and procedures upon KDHE staff in order to satisfy the KCC's administrative process. KDHE has and will continue to work with the KCC where our responsibilities overlap. The proposed legislation is not necessary to ensure our continued coordination and collaboration with the KCC in developing an acceptable 111(d) state plan for Kansas, especially since the final rule will not be issued by the EPA until later this year.

I appreciate this opportunity to provide comments and will stand for questions at the appropriate time.